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THE BUSINESS ENCYCLOPÆDIA AND LEGAL ADVISER

THE BUSINESS ENCYCLOPÆDIA 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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FRAUD may give rise to an action of damages for deceit, or to a right to relief from, and recision of, any contract to which it is attached. To sustain an action of deceit, there must be proof of fraud, and nothing short of that will suffice. Fraud is proved when it is shown that a false representation has been made: (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false. Though the two latter aspects of fraud are treated as distinct cases, the third is really but an instance of the second, for one who makes a statement under such circumstances can have no real belief in the truth of what he states. To prevent a false statement being fraudulent there must always be an honest belief in its truth; and this probably covers the whole ground, for one who knowingly alleges that which is false has obviously no such honest belief. Once fraud is proved, the motive of the person guilty of it is immaterial; it matters not that there was no intention to cheat or injure the person to whom the statement was made. But making a false statement through want of care falls far short of, and is a very different thing from fraud, and the same may be said of a false representation honestly believed though on insufficient grounds. If, therefore, there is fraud, it is actionable; if there is no fraud, but merely carelessness, it is not.

The following were the facts in the well-known case of *Derry* v. *Peek*, which has finally established the law on this subject, as stated above. A special Act incorporating a tramway company provided that the carriages might be moved by animal power, and, with the consent of the Board of Trade, by steam power. The directors issued a prospectus containing a statement that by their special Act the company had the right to use steam power instead of horses. The plaintiff took shares on the faith of this statement. The Board of Trade afterwards refused their consent to the use of steam power and the company was wound up. The plaintiff having brought an action of deceit against the directors, founded upon the false statement, it was held by the House of Lords that the defendants were not liable, the statement as to steam power having been made by them in the honest belief that it was true.

Fraud may be said to vitiate everything. Where there is a delay in seeking relief against a transaction charged as fraudulent, that delay will only operate so as to prejudice the complaining party after he has knowledge, or full means of knowledge, of the circumstances alleged as constituting the

fraud. Apart from this limitation, it may be said that in cases of fraud time has no effect. Were it otherwise, the jurisdiction of the Court would be defeated, not because the case is not one for its interference, but because the author of the fraud has been enabled to continue his deception until such a time has elapsed as to prevent the interference of the Court. "Such fortunately is not the law, and those who may be disposed to wrongfully appropriate to themselves the property of others may be assured that no time will secure them in the enjoyment of their plunder, but that their children's children will be compelled by the Court to restore it to those from whom it has been fraudulently abstracted." These strong words of a former Master of the Rolls have been from time to time expressly adopted by some of the highest dignitaries of the law. The principle they enunciate was again declared and acted on in the House of Lords in the case of *Savery* v. *King*, and was applied by Lord Chancellor Westbury in *Rolfe* v. *Gregory*, where a person taking from his debtor a promissory note held by the debtor upon a trust, was compelled to restore it, and, having taken it with knowledge of the trust, was declared to stand in all respects in the situation of the fraudulent trustee, the relief against the receiver being founded upon the fraud committed; and there, too, delay was held not to affect the case, the delay having been occasioned by the ignorance of the party entitled as to the rights she possessed.

A man may be morally and, under the terms of an Act of Parliament, legally culpable, and yet his conduct may not give any right of action to a private individual who suffers injury thereby. Not even will the breach of a statutory duty constitute of itself the foundation for a private right of action. A statement by the vendor of an article that the purchaser must take it "with all faults," and that he, the vendor, will give no warranty with it, and will refuse all future claim for compensation (where the vendor does nothing to conceal defect), relieves the vendor from all liability in respect of any defect in the article itself. There might, however, be ground for an action for deceit if such a statement were followed by a declaration of the vendor (who knew the reverse) that he believed the article to be free from objection. Nor would the case be excluded from the operation of this rule if the sale were made in a market wherein articles of the class sold were prohibited entry unless free from the particular defect or objection. Thus where a statute prohibits persons from sending animals affected with a contagious disease to market, and inflicts penalties on persons so sending them, the act of sending them, if known to be so infected, though a public offence, does not amount by implication to a warranty that they are sound, and does not of itself raise, as between the vendor of the animals and the purchaser of them, any right on the part of the purchaser to claim damages in respect of an injury he suffers in consequence of their purchase. In such a case the statute is passed for the benefit of the general public, and has nothing to do with the private bargains of individuals.

If the misrepresentation is by an agent, his principal will be liable therefor provided it was not made for the private ends of the agent himself, but was made for the benefit of the principal and in the course of his employment as agent and within the scope of his authority; and the agent is, of course also personally liable in respect thereof. The damages which

the person injured may obtain in an action of deceit is the actual amount of loss he has suffered as the result of relying upon the misrepresentation; but this rule is subject to an exclusion of any damages which may be technically too remote. It should be noted that no one who makes any representation as to the "conduct, character, credit, ability," &c., of another in order to induce any person to trust him, will be liable to an action for deceit or fraudulent misrepresentation, unless the representation is in writing and signed by the party making it. Accordingly, if in answer to an inquiry a man writes that a certain person is honest and of good credit, whereas, in fact, the person is absolutely dishonest and insolvent, that man may be liable for any loss which may be suffered by the inquirer as a consequence of his relying upon the representation.

The following case should be of interest: In order to enable a company to have a fictitious credit in case of inquiries at their bankers, a friend of the company placed money to their credit which they were told to hold in trust for him. Some of the money having been drawn out with his consent, and the company having been wound up while a balance remained, it was held that that friend could not claim to have the balance paid to him. Amongst other things this case teaches that a deceit, or fraudulent misrepresentation, may also be effected by a mere act or course of conduct, and without being made directly to the persons intended to be prejudiced. A fraudulent act or statement should therefore never at all be committed, for whoever may meet with it, and relying thereon or being affected thereby is caused to be prejudiced, may possibly be able to sustain an action for damages against him from whom it emanated. *See* CONTRACT.

FRAUDS, STATUTE OF.—This is the name given to an important statute of Charles II., whereby writing was made necessary as a condition precedent for the enforcement by the law of certain contracts. A number of the sections have been repealed, and of these the very important sections relating to contracts for the sale of goods have been re-enacted by the Sale of Goods Act, 1893. With the others which have most general and practical interest we will here deal.

Interests in land.—Any interest of freehold, term of years, or uncertain interest in any messuages, lands, tenements, or hereditaments, not put into writing and signed by the parties making or creating it, or by their agents lawfully authorised in writing, will have no more effect than an estate at will. And an assignment, grant, or surrender of such an interest is also subject to the same requirement of signed writing. In a great many of these cases a subsequent statute has made it necessary for the writing to be comprised in a deed. But leases not exceeding the term of three years, where the rent reserved amounts to three-fourths of the full improved value of the land, are not within the foregoing requirements, and may be created without writing.

Other contracts.—Section 4 is of extreme practical importance. It is thereby provided that no action can be brought in the case of five specified classes of contracts, unless the agreement upon which the action is brought, or some memorandum or note of that agreement, is in writing and signed by the party the action is intended to charge, or by some other person lawfully authorised by that party to sign on his behalf. The following are the

contracts:—(1) A special promise by an executor or administrator to become personally liable for damages due from the deceased; (2) a special promise to answer for the debt, default, or miscarriage of another; (3) any agreement made in consideration of marriage; (4) any contract or sale of lands or hereditaments, or any interest in or concerning them; (5) any agreement not to be performed within a year from the making thereof. It is probable that no statute has been the subject of so much litigation, and such extensive and at the same time precise judicial interpretation, as the statute now claiming our attention. As a result of this litigation and interpretation, every word of the statute has been carefully considered in its every bearing, and there has grown up around it such a mass of commentary and gloss as would make it worthy to rank with even a Brehon law. Of all this, or of even a tithe of it, the limits of the whole of this work would prevent an exhaustive study. But perhaps in a few lines attention may be directed to a few special points.

In the first place it will be noted that an absence of *signed writing* does not make the contract void or voidable; the contract is only made unenforceable by action. This is, of course, a most important restriction, but it has the advantage of leaving it legal to obtain the signed writing after the contract has been entered into but before action is commenced. Thus a signed letter containing the terms of the contract will be sufficient to bind the writer, and enable his correspondent to sue him, notwithstanding that the letter may perhaps be really a repudiation of the contract. Again, the agreement, *or some memorandum or note thereof*, must be in writing. The names of both parties to the agreement must appear, or be clearly indicated, in the document; the signatures should not be relied upon as such an indication; but an addressed envelope, in which a letter containing the agreement was enclosed, has been held to be part of the document for this purpose. The memorandum must also state the terms of the contract, for otherwise all the danger of perjury which the statute aimed at excluding would be let in; but here again it will be sufficient if these terms appear in a series or collection of two or more documents. Property need only be very generally described, so long as the description is sufficient for its identification. The *writing and signature.*—A printed document is a sufficient compliance with the statute; and so even would be a printed name sufficient as a signature, provided it could be shown to have been printed by the authority of the party intended to be charged. And it makes no difference in what part of the memorandum the signature appears—whether it is at the beginning, in the middle, or at the end. If the party cannot write, it will be sufficient if he affixes his mark, provided it is properly identified; no inquiry will be permitted as to whether he could, in fact, write or not. Attention should also be directed to the provision that the necessary signature is that of the party *to be charged.* That is to say, the only party whose signature is absolutely necessary is the one upon whom some liability is sought to be imposed in respect of the contract. Generally speaking, the plaintiff, or the party who seeks to take advantage of the contract, need not sign; but the defendant, or the party who is sought to be made chargeable thereunder, is bound to have signed in order that the plaintiff may be able to succeed in his action. Recognition of a previous signature is sufficient; thus where a proposal signed by A. is

made to B. and altered by B., if A. should assent to the alteration he will be liable, and oral evidence is admissible to prove his assent. An agent need *not* be authorised in writing in order to bind his principal, provided, of course, he is otherwise sufficiently authorised to sign as an agent. A telegraph clerk would be an agent to sign in case of a proposal by telegram; but should he make a mistake in transcribing the telegram, his principal—the real sender of the telegram—would not be liable therefor. If the absence of a written memorandum is caused by the fraud of one of the parties, the other party will be entitled to enforce the contract notwithstanding such absence.

Trusts.—A declaration or creation of a trust in lands or hereditaments, in order to be valid, must be made in writing, and signed by the party declaring or creating the trust. This writing and signature are not necessary, however, in the case of trusts which arise from implication of law It should be noted that the requisites of writing and signature are confined to trusts of lands and hereditaments. But grants or assignments of *all* trusts must be in writing and signed. Where a trust estate descends, the heir is liable for the debts of his ancestor, as though the estate had descended at common law; but his liability is limited in extent to the amount of the trust estate out of which they are due. And *see* CONTRACT; GUARANTEE; EXECUTORS; TRUSTS.

FRAUDULENT CONVEYANCES—against creditors.—The fraudulent debtor appears always to have enjoyed a considerable share of the attention of the law. As a criminal he has been well looked after with a view to his punishment; but apart from the question of crime, his deeds in fraud of his creditors are also carefully regarded by the law, with a view to their avoidance for the benefit of his estate. The common law itself would appear to have been always sufficient for the latter purpose; but so important has it appeared, from almost the very commencement of England's history as an industrial country, that there should be no room whatever for any doubt as to the exact tenor of the law, that over three hundred years ago the common law on the subject was digested and declared by the well-known statute 13 Eliz. c. 5. To this day that statute, "An Act against Fraudulent Deeds, Gifts, Alienations, &c.," remains one of the most beneficial and important on the roll.

After reciting that certain conveyances, judgments, executions, &c., had been contrived of "malice, fraud, covin, or guile," with intent or purpose to delay, hinder, and defraud creditors or others of their just and lawful actions, debts, damages, &c., the statute declares and enacts that every gift, grant, alienation, and conveyance, in writing or otherwise, of lands, tenements, hereditaments, goods, or chattels, and every bond, suit, judgment, or execution made for the intent or purpose to delay, hinder or defraud creditors or others of their just and lawful actions, debts, accounts, damages, &c., shall be utterly void as against that person, his heirs, successors, executors, administrators, or assigns, whose actions, suits, debts, &c., are or might be in anywise disturbed, delayed, hindered, or defrauded by such practices. But the operation of the statute is excluded from gifts, conveyances, &c., on good consideration, and *bonâ fide* lawfully conveyed to any person not having notice of the fraud.

In a few words the statute renders utterly void any transfer of property made with the object of delaying or defrauding the transferrer's creditors, unless such transfer is: (*a*) founded upon a good considera-

tion; *and* (*b*) is taken by the transferee *bonâ fide* and without notice of the intent to delay or defraud. It should be carefully noted that the condition of validity of such a transfer is a twofold one—*good consideration and bonâ fide*, and that the absence of either of these factors therein will render the transfer an invalid and futile one. There are four points which demand some special attention: (1) the property to which the statute applies; (2) the meaning of the term "good consideration"; (3) the meaning of *bonâ fide*; and (4) the nature and extent of the invalidity. Generally speaking, *any property* of a debtor which is available to his judgment creditors can only be lawfully dealt with by him under such circumstances as do not bring the transaction within the scope of the statute. The term therefore includes such property as debts due to him, stocks and shares, life interests and reversions, and any equitable interest in real or personal property. In view of the modern wide reach of the various classes of executions, a debtor's property which would not be within the statute, would necessarily be of a very rare character.

By the term *good consideration* is really meant *valuable* consideration. A valuable consideration could not consist of natural love, such as that between parent and child, or of the relationship of an existing marriage. It means, in effect, that the debtor's estate must receive a reasonably proportionate recompense for the transfer therefrom of the property; that it is not so unreasonably impoverished by the transfer as to materially diminish his assets available for his creditors. A transfer would be good if made in the ordinary course of business dealing, such as one made in consideration of the payment of a fair price, or in consideration of the transferee releasing the transferrer from a debt of proportionate amount, and in respect of which the transferee is pressing for payment. In conjunction with the condition of *bonâ fides* there runs that of absence of notice of the fraud to the transferee. Clearly, if the transferee had been distinctly informed of the fraudulent intention of the transferrer, he could not claim to have taken the transfer *bonâ fide*. On the other hand, if he really took it *bonâ fide* in the ordinary sense of the term, it is obvious that he had no notice or knowledge of the fraud. It is therefore, in all cases, a question of fact, with regard to the circumstances of the particular case, whether or no the transferee has taken *bonâ fide*. The mere notice or knowledge that the transferrer has *some* creditors, is no evidence in itself of the absence of *bonâ fides*; for most people have creditors to a more or less extent. On the other hand, the transferee may have no express notice whatever at the time of the transfer as to the financial position of the transferrer, and yet it may be possible, because of the whole circumstances of his general connection with or knowledge of the transferrer and his affairs, to fairly infer that he has not taken the transfer *bonâ fide*. If the value of the consideration for the transfer is equal to twenty shillings in the pound, or more, of the value of the property transferred, there will probably be no question as to the *bonâ fides* of the transaction; but the lower the consideration falls below that value, the stronger evidence will be required of *bonâ fides*. And when the consideration falls below the margin of the "valuable," *bonâ fides* will not count in the transferee's favour at all; for there will then be, in fact, no good consideration for the transaction.

The *invalidity* of the transfer may be claimed by any one of the creditors; but it will not be necessarily void altogether, for the creditors will only be allowed to take advantage of its invalidity to the extent that they have been prejudiced thereby—as to its valid part, that will continue in favour of the transferee. Creditors who have become such subsequently to the time of the transfer but who exist at the time it is set aside, are entitled to share in the benefit of its avoidance. And when approached with a view to the avoidance of such a transfer, the Court will scrupulously protect the rights and interests therein of any purchasers and mortgagees of the property the subject of the conveyance, but such persons, in order to be entitled to that protection, must have themselves acquired their rights and interests for valuable consideration, and without notice of the fraud.

In bankruptcy.—The foregoing statute has not, in itself, any special reference to bankruptcy, the provisions thereof being available to creditors whether the debtor subsequently becomes a bankrupt or not. But by the Bankruptcy Act, 1883, a debtor would commit an act of bankruptcy by making such a transfer as would be fraudulent within the meaning of the Act of Elizabeth; and should he make such a transfer, the transaction may be made a ground for proceedings against him in bankruptcy by any one of his creditors. By the Bankruptcy Act, 1883, certain voluntary settlements, or settlements made otherwise than upon valuable consideration, are made void in the event of the subsequent bankruptcy of the settler. Thus any settlement which is not made before or in consideration of marriage, or made in favour of a purchaser or encumbrancer in good faith, and for valuable consideration, or made on or for the wife or children of the settler of property which has accrued to him after marriage in the right of his wife, is void as against the settler's trustee in bankruptcy, provided his bankruptcy occurs within two years from the date of the settlement. But if the settler becomes a bankrupt after that two years, but within ten years from the date of the settlement, it will not be avoided if the parties claiming under it can prove that the settler, at the time of making it, was in a position to pay all his debts in full without the aid of the property comprised in the settlement, and that his interest in the property had forthwith passed to the trustee of the settlement.

As against purchasers.—By another well-known statute of Elizabeth—27 Eliz. c. 4—it is provided, as a measure against frauds upon purchasers, that all conveyances, estates, gifts, grants, and charges of, in, and out of any lands, tenements, and hereditaments, made with an intent to defraud and deceive persons who may purchase such lands, are utterly void. This statute, it will be noticed, only applies to land and other real property. Such a conveyance, though void as against a purchaser other than one who has taken it for good consideration and *bonâ fide*, is always good as against the person who has made it. The word "purchasers" includes mortgagees, and the result of the statute is that a concealed and fraudulent conveyance of property cannot prejudice the rights of those who may have subsequently, *bonâ fide* and for good consideration, purchased or taken the property in mortgage. As in the other statute of Elizabeth, the expression "good consideration" really means a "valuable consideration." But no voluntary conveyance would be fraudulent under the statute, if made *bonâ fide* and without fraudulent intent, although there may be a subsequent purchase for value (Voluntary Conveyances Act, 1893).

FRAUDULENT DEBTORS.—By the Debtors Act, 1869, and by amending and subsequent Bankruptcy Acts, it is provided that any person, whether

trader or not, who is adjudged a bankrupt, or in respect of whose estate a receiving order has been made, and any person whose affairs are liquidated by arrangement in pursuance of the Bankruptcy Act, 1869, will, in each of the following cases, be guilty of a misdemeanour, and liable on conviction to two years' imprisonment with hard labour:—(1) *Non-discovery of estate to trustee.*—If he does not, to the best of his knowledge and belief, fully and truly discover to the trustee administering his estate for the benefit of his creditors, all his property, real and personal, and how, and to whom, and for what consideration, and when, he disposed any part thereof, except such part as has been disposed of in the ordinary course of his trade (if any), or laid out in the ordinary expense of his family, unless the jury is satisfied that he had no intent to defraud; (2) *Non-delivery of estate to trustee.*—If he does not deliver up to such trustee, or as he directs, all such part of his real and personal property as is in his custody or under his control, and which he is required by law to deliver up, unless the jury is satisfied that he had no intent to defraud; (3) *Non-delivery of books, documents, &c.*—If he does not deliver up to such trustee, or as he directs, all books, documents, papers, and writings in his custody or under his control relating to his property or affairs, unless the jury is satisfied that he had no intent to defraud; (4) *Concealment of property.*—If after the presentation of a bankruptcy petition by or against him, or the commencement of the liquidation, or within four months next before such presentation or commencement, he conceals any part of his property to the value of £10 and upwards, or conceals any debt due to or from him, unless the jury is satisfied that he had no intent to defraud; (5) *Fraudulent removal of property.*—If after the presentation of a bankruptcy petition by or against him, or the commencement of the liquidation, or within four months next before such presentation or commencement, he fraudulently removes any part of his property of the value of £10 or upwards; (6) *Material omissions in statement of affairs.*—If he makes any material omission in any statement relating to his affairs, unless the jury is satisfied that he had no intent to defraud; (7) *Failure to inform trustee of false claims on estate.*—If, knowing or believing that a false debt has been proved by any person under the bankruptcy or liquidation, he fail for the period of a month to inform such trustee as aforesaid thereof; (8) *Preventing production of books, &c.*—If, after the presentation of a bankruptcy petition by or against him, or the commencement of the liquidation, he prevents the production of any book, document, paper, or writing, affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law; (9) *Destruction or concealment of books, &c.*—If after the presentation of a bankruptcy petition by or against him, or the commencement of the liquidation, or within four months next before such presentation or commencement, he conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of any book or document, affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law; (10) *Making false entries in books, &c.*—If after the presentation of a bankruptcy petition by or against him, or the commencement of the liquidation, or within four months next before such presentation or commencement, he makes, or is privy to the making of, any false entry in any book or document affecting or relating to

his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs, or to defeat the law; (11) *Fraudulently altering, &c., documents.*—If after the presentation of a bankruptcy petition by or against him, or the commencement of the liquidation, or within four months next before such presentation or commencement, he fraudulently parts with, alters, or makes any omission, or is privy to the fraudulently parting with, altering, or making any omission in any document affecting or relating to his property or affairs; (12) *Fictitious accounts of losses, &c.*—If after the presentation of a bankruptcy petition by or against him, or the commencement of the liquidation, or at any meeting of his creditors within four months next before such presentation or commencement, he attempts to account for any part of his property by fictitious losses or expenses; (13) *Obtaining property on credit by fraud.*—If within four months next before the presentation of a bankruptcy petition by or against him, or the commencement of the liquidation, he, by any false representation or other fraud, has obtained any property on credit and has not paid for the same; (14) *Traders obtaining goods by fraud.*—If within four months next before the presentation of a bankruptcy petition by or against him, or the commencement of the liquidation, he, being a trader, obtains, under the false pretence of carrying on business and dealing in the ordinary way of his trade, any property on credit and has not paid for the same, unless the jury is satisfied that he had no intent to defraud; (15) *Disposing of goods otherwise than in the course of trade.*—If within four months next before the presentation of a bankruptcy petition by or against him, or the commencement of the liquidation, he, being a trader, pawns, pledges, or disposes of, otherwise than in the ordinary course of his trade, any property which he has obtained on credit, and has not paid for, unless the jury is satisfied that he had no intent to defraud; (16) *False representation or fraud to obtain consent of creditors.*—If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors, or any of them to any agreement with reference to his affairs, or his bankruptcy or liquidation.

Absconding with property.—It is a felony for any person who is adjudged a bankrupt, or has his affairs liquidated by arrangement after the presentation of a bankruptcy petition by or against him, or the commencement of the liquidation, or within four months before such presentation or commencement, to quit England and take with him, or attempt or make preparation for quitting England and for taking with him, any part of his property to the amount of £20 or upwards, which ought by law to be divided amongst his creditors. The punishment may be two years' imprisonment with hard labour. *False claims by creditors.*—It is a misdemeanour, punishable with one year's imprisonment with hard labour, for any creditor in any bankruptcy or liquidation by arrangement or composition with creditors under the Bankruptcy Act, to wilfully and with intent to defraud, make any false claim, or any proof, declaration, or statement of account which is untrue in any material particular.

Prosecutions.—Where a trustee, or official receiver, in any bankruptcy, reports to the appropriate bankruptcy court, that, in his opinion, a bankrupt, or other person against whose estate a receiving order has been made, has been guilty of any offence under the Debtors or Bankruptcy Acts, *or* where the court is

satisfied, upon the representation of any creditor or member of the committee of inspection, that there is ground to believe that such person has been so guilty, the court, if it appears to it that there is a reasonable probability that such person may be convicted, must order the trustee or official receiver to prosecute. The costs of a prosecution so ordered are borne and paid in the same way as the costs of a prosecution for a felony. The vexatious INDICTMENTS Act applies; punishments are accumulative; and the bankruptcy court has power to directly commit for trial, without the necessity for a preliminary investigation by magistrates, any offender in respect of the foregoing offences. The judge in bankruptcy has, for this purpose, all the powers of a stipendiary magistrate. Where a debtor has been guilty of any criminal offence, he is not exempt from being proceeded against therefor by reason that he has obtained his discharge, or that a composition or scheme of arrangement has been accepted or approved.

Undischarged bankrupt obtaining credit.—Where an undischarged bankrupt, who has been adjudged bankrupt under the Bankruptcy Acts now in force, obtains credit to the extent of £20 or upwards without informing the person from whom he obtains the credit that he is an undischarged bankrupt, he will be guilty of a misdemeanour under the Debtors Act, 1869, and the foregoing provisions of that Act will apply to his case.

Frauds upon creditors generally.—The following provisions have no special or exclusive application to bankrupt debtors only. By the Debtors Act it is provided that any person, in each of the following cases, shall be deemed guilty of a misdemeanour, and, on conviction thereof, liable to imprisonment for one year with hard labour:—(1) *False pretences.*—If in incurring any debt or liability he has obtained credit under false pretences, or by means of any other fraud; (2) *Transfer of property.*—If, with intent to defraud his creditors, or any of them, he has made or caused to be made any gift, delivery, or transfer of, or any charge on, his property; (3) *Concealment of property.*—If, with intent to defraud his creditors, he has concealed or removed any part of his property since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against him. *See* BANKRUPTCY; DEBTORS ACT; FRAUDULENT CONVEYANCE.

FRAUDULENT PREFERENCE.—A fraudulent preference may be said to arise where a debtor, in contemplation of bankruptcy—that is, knowing his circumstances to be such that bankruptcy must be, or will be, the probable result, though it may not be the inevitable result,—makes a payment of money, or a delivery of property, to a creditor, not in the ordinary course of business, and without any pressure or demand on the part of the creditor. By sections 48 and 49 of the Bankruptcy Act 1883 such preferences are made void in certain cases.

By sec. 48:—(1) Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person, unable to pay his debts as they become due from his own money, in favour of any creditor, or any person in trust for any

creditor, with a view of giving such creditor a preference over the other creditors shall, if the person making, taking, paying, or suffering the same is adjudged bankrupt on a bankruptcy petition presented within *three months* after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the trustee in bankruptcy. (2) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

By sec. 49 it is provided that:—Subject to the foregoing provisions . . . nothing in this Act shall invalidate, in the case of a bankruptcy—(*a*) Any payment by the bankrupt to any of his creditors; (*b*) any payment or delivery to the bankrupt; (*c*) any conveyance or assignment by the bankrupt for valuable consideration; (*d*) any contract, dealing, or transaction by or with the bankrupt for valuable consideration: Provided that both the following conditions are complied with, namely,—(1) The payment, delivery, conveyance, assignment, contract, dealing, or transaction, as the case may be, takes place before the date of the receiving order; and (2) the person (other than the debtor) to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into, has not at the time of the payment, delivery, conveyance, assignment, contract, dealing, or transaction, notice of any available act of bankruptcy committed by the bankrupt before that time.

A perusal of the above sections will show that there are three essential elements in a fraudulent preference. In order that the preference shall be fraudulent and void under the Bankruptcy Act the person who makes it must, at the time of making it, be "unable to pay his debts as they become due from his own money"; in the second place, the act constituting the preference must be done "with a view of giving such creditor a preference over the other creditors"; and in the third place, the preference must be made within three months before the bankruptcy of the debtor. But from a glance at section 49 it will clearly appear that there is nothing to prevent or invalidate the *bonâ fide* payment by a debtor to any of his creditors, so long as it is made before the date of the receiving order and the creditor has no notice of any available act of bankruptcy committed by the debtor. The Act aims, in effect, at preventing an insolvent debtor, who anticipates his bankruptcy, from giving up any part of his property to some creditor, whom he favours, to the prejudice of the general body of his creditors. There is often some friend or relation whose debt an insolvent debtor would like to pay in full; this the law prevents, unless the payment can be made so as not to come within the denomination of a fraudulent preference. Once the trustee in bankruptcy has proved that the debtor was insolvent at the time when he made the payment that is impeached as a fraudulent preference, the onus of proof shifts, and it then lies upon the creditor who wishes to support the payment to affirmatively show that it was not made with the view of preferring him.

In order to constitute the preference a fraudulent one, it is necessary that the debtor should have made it *voluntarily*, that is to say, without pressure from his creditor, or in no way as a consequence of the act of the creditor. But it is not necessary that the act of the creditor, or his pressure, should be so extreme in its nature as the institution of legal proceedings against the debtor, or even a threat that such will be instituted; for, if the act or pressure is such that it overweighs the debtor's own actual inclination, and so

induces him, against his will, to prefer the creditor, the preference will not be fraudulent and void. And when a debtor, with bankruptcy impending, pays a creditor in the honest belief on reasonable grounds that he is legally bound to make the payment, it is not a fraudulent preference; not even though the debtor is in fact under no legal obligation to make the payment. But, generally speaking, the fact that a debt is not due, at the time of its payment, would be conclusive evidence that the payment is voluntary. It has been held that a firm, though insolvent, may withdraw from or put an end to a current speculation, the result of which is still uncertain, on the best terms procurable, without any imputation of fraud; so, also, the abandonment of a speculation whilst the result is uncertain may be both honest and politic, as it entirely differs from undue preference of one creditor to others after a debt has been incurred.

A careful distinction must be made between a payment made in contemplation of bankruptcy and a payment made with a view to avoiding bankruptcy, for should a trader make a payment, even after he has committed an act of bankruptcy and when he contemplated the probability of bankruptcy, that payment would not be a fraudulent preference, if made in order to enable him to stand his ground. And, in like manner, a payment made by a debtor in the ordinary course of business, even though he is in embarrassed circumstances, will not amount to a fraudulent preference provided that the creditor acted *bonâ fide*, and the evidence shows that the debtor did not intend the payment to be preferential. The doctrine of a fraudulent preference is intended to be a safeguard against the preference of individual creditors, not a prevention of *bonâ fide* acts, the object and reasonable result of which is the strengthening of the debtor's position and the consequent improvement of the position of the general body of the creditors. The intention which, to create a fraudulent preference, should dominate the debtor's mind should be that of preferring a creditor. If the debtor's intention is primarily to escape some extremely onerous consequence, then the fact that a creditor is preferred by his act will not make the preference fraudulent and void. Thus, a transfer of property on the eve of bankruptcy, for fear of criminal process, is valid; and so also would be a similar transfer under the apprehension that a degree of force, civil or criminal, is about to be applied. If the debtor's real or dominant motive is to save himself from exposure or criminal prosecution, a payment or transfer prompted thereby would not be a fraudulent preference. Apart from any question of anxiety on the part of the debtor to escape from some criminal liability, it should be remembered that the Act has in view only voluntary preferences as between a debtor and his creditors; any preference made by a debtor in favour of some person whose relation to him was other than that of creditor to debtor would not be stigmatised by the Act as fraudulent merely because it may have been a voluntary one. The relationship between co-trustees, or between a trustee and his *cestui que trust* has been held not to be that of debtor and creditor; wherefore a payment made previous to bankruptcy, in restitution of a breach of trust by a person "unable to pay his debts as they become due," cannot be recovered by the trustee in bankruptcy on the ground of fraudulent preference. Where a debtor, a few days before his bankruptcy, with a view to escape liability in respect of certain breaches of trust, voluntarily, and without being subject to

pressure, transferred certain property to a trustee upon trust to raise £4200 thereout for the purpose of making good those breaches of trust, it was held that the transfer being made, not with a view of preferring creditors but of shielding the debtor from the consequences of the breaches of trust, was not a fraudulent preference within section 48 of the Bankruptcy Act 1883.

But the question of *pressure* may become immaterial where the circumstances of the transaction are fraudulent from its inception, the transaction becoming thereby absolutely void. Thus a creditor suggested to his debtor that the latter should buy goods on credit from other persons, and should, with the proceeds of the sale, pay off the debt due to the former. This suggestion the debtor adopted and carried into effect, and notwithstanding evidence that the debtor had so acted in consequence of pressure brought to bear upon him by the creditor, the Court decided that the payments he had made to the latter should be returned to the debtor's estate as being fraudulent preferences; it was held that the transaction was fraudulent in its inception, and it was immaterial that the payments were made under pressure.

A prior agreement between the debtor and his creditor may often save a transaction from being invalid as a fraudulent preference. Thus where A. advanced money to B., an insolvent trader, for the purpose of enabling him to execute an order for goods, it being one of the terms of the advance that A. should be repaid out of the price of the goods, it was held that payment made by B. to A. out of that price was not a fraudulent preference. But such a preference made by a debtor simply because he thought it fair to do so would be held to be fraudulent and void; such was found to be the case by a creditor to whom his debtor had returned certain goods on the eve of bankruptcy, the price of which had not been paid, and which the debtor considered himself to be morally bound to return. There must be some good consideration for the transaction, otherwise it will be a fraudulent preference. *See* BANKRUPTCY; FRAUDULENT CONVEYANCE; FRAUDULENT DEBTORS.

FREIGHT is the sum agreed on for the hire of a ship, entirely or in part, for the carriage of goods from one port to another. Or it may be defined as the price to be paid for the actual transportation of goods by sea from one place to another; and even as any reward or compensation paid for the use of ships. It is a general principle of maritime law that the contract for the conveyance of goods on a voyage is, in its nature, an entire contract, and unless it is completely performed by the delivery of the goods at the place of destination no freight whatsoever is due. Lord Ellenborough, in *Hunter* v. *Prinsep*, thus stated the rule with great accuracy: "The shipowners undertake that they will carry the goods to the place of destination unless prevented by the dangers of the seas or other unavoidable casualties; and the freighter undertakes that if the goods be delivered at the place of their destination he will pay the stipulated freight; but it was only in the event, namely, of their delivery at the place of destination that he, the freighter, engages to pay anything. If the ship be disabled from completing her voyage the shipowner may still entitle himself to the whole freight by forwarding the goods by some other means to the place of destination; but he has no right to any freight if they be not so forwarded, unless the forwarding them be dispensed

with, or unless there be some new bargain upon this subject. If the shipowner will not forward them the freighter is entitled to them without paying anything. One party, therefore, if he forward them, or be prevented, or discharged from so doing, is entitled to his whole freight; and the other, if there be a refusal to forward them, is entitled to have them without paying any freight at all." Lord Mansfield said, "The safety of the ship is the mother of freight." The contract under which freight is payable is generally either a charter-party or a bill of lading.

Time freight is the sum payable under a charter-party which fixes a certain specified period of time during which the hire of the ship shall continue, and at which that sum shall be paid; *lump freight* is that which is agreed to be paid in a lump sum upon due delivery of the cargo. Where freight is payable by the ton, or bale, or package, or barrel severally, or where different parts of the cargo are shipped upon distinct and separate terms as to freight the consignee must pay for what is delivered. Otherwise freight is generally payable for the quantity *shipped* and not for that *delivered*. Thus, where freight by the charter-party was a certain rate "per ton of fifty cubic feet delivered," freight was held to be due only on the amount shipped, though the cargo, being pressed cotton, had expanded when taken from the hold. But where freight is payable per "net weight delivered" the freight is due only on the amount delivered. It is laid down as a general principle, in *Spaight* v. *Farnworth*, that freight, in the absence of special agreement to the contrary (or uniform custom of trade), becomes payable on only so much cargo as has been both shipped, carried, and delivered. If less has been shipped than has been delivered, as in the case of cargoes which heat under sea-water damage, freight is payable on the lesser quantity shipped. If less has been shipped and carried than has been delivered, as in the case of goods which are compressed on the voyage and expand on being unloaded, freight is payable on the compressed and not on the expanded measurements. If, on the other hand, less has been delivered than shipped, as in the case of goods lost on the way, then freight would be payable only on the quantity delivered. When needful, therefore, special contract should be made to modify the operation of this principle. A general and precise application of the provisions of the bill of lading would generally deprive the shipowner of all freight if the goods were not delivered in as good condition as received. But if the shipowner pays to the shipper the full value of goods not delivered, or the difference in value of goods damaged, he may deduct from his payment the freight which would have been receivable by him, as otherwise the shipper would be more than indemnified. The shipper is the person liable to pay the freight unless the charter-party or bill of lading imposes that liability upon some other party. As the usual bill of lading expresses that the goods are to be delivered to A B, "he paying freight thereon," the receiving of goods under that bill, whether by the original consignee, or any assignee or indorsee of the bill, who has a property on the goods, imposes upon the recipient a liability for payment of the freight. And if the shipowner gives credit to the consignee and takes the bill of lading for his own convenience the shipper is absolved from any liability.

If a consignee assigns and indorses over the bill of lading, and the indorsee takes the goods, the liabilities, and also all the rights of the original

consignee pass from him to the holder of the bill. But this rule would not apply, so as to impose a personal liability upon the holder, if he were only an agent for the consignee, and were known as such to the master of the ship. Nor does a person incur liability for freight who receives goods only on behalf of the real consignee, as where the consignment is to A care of B, or to B for A, even though the words "he or they paying freight" are added. Although, generally, it is the shipper who is *primâ facie* liable for the freight when there is no bill of lading, and not the consignee, yet if the shipowner can show prior dealings with the latter, and that he paid freight on those occasions, this will be evidence that he contracted to pay freight, and he will be held liable. In fact, the principle has been said to go farther than that, for it has been laid down that if the master of a ship delivers goods to any person, with notice to him that he will look to him personally for the freight, and that person accepts the goods and receives them with this notice, he becomes personally liable; but this rule would naturally not hold good if that person had an absolute right to receive the goods without payment of freight, and the master had therefore no right to withhold them.

It may happen that money is paid by a freighter to a shipowner, under such circumstances as to make it doubtful whether the payment is in the nature of an advance of freight, or is merely a loan. If it is a payment in respect of **advance freight** it cannot be recovered from the shipowner even if the freight is not earned, as where the goods are lost; but if it is a loan, then it must be accounted for as a loan. Unpaid advance freight may generally be claimed from the shipper although the ship and goods are lost at the time of the claim. If a consignee, or other party entitled to goods, is compelled to pay more than he is legally bound to pay, in order to get possession of them, he may recover it back; unless prevented by the rule that money paid in mistake or ignorance of the law cannot be recovered back.

Where there is no agreement as to the actual amount or rate of freight payable, it may be determined by the value of the service, subject to any usage which may exist. The basis of calculation is generally the weight or measurement of the goods according to an agreed standard, or according to the standards of weight or measurement imposed by the usages of different trades. It should also be noticed that the contract of affreightment, resting as it does upon the same general principles of law as other contracts, can only give rise to legal claims in respect of legal objects; and from this it follows that freight cannot be earned by an illegal voyage, that is to say, illegal from the point of view of the laws of the country to which the ship belongs. Thus, subject to any statutory provision, the general position would be that, for example, the freight of goods carried on a British ship, but contraband by English law, could not be recovered in an English court, but could be if they were contraband only by the law of some foreign country.

It is to the managing owner of a ship that the freight should generally be paid; but at the same time it should be remembered that the master of the ship can receive payment thereof, and give a valid receipt, unless the shipper has notice that the master has no authority to so receive payment of the freight. Should the owner of a ship with a cargo on board, sell the ship before the voyage begins, the right to the freight will pass to the buyer, who

alone can claim it; but if the sale had been effected during the voyage, the seller would retain the right to the freight, even though his contract with the buyer obliges him to pay over the freight when received. The buyer, however, may in the latter circumstances directly claim the freight from the shipper, if the latter knew of the contract and consented to it. The general rule is that the owner of the ship at the time that the payment of the freight falls due is the proper person to receive it and give a valid discharge therefor; when the person liable to pay the freight is met by conflicting claims for it he should interplead. In the case of the lawful capture of a ship, the right to the freight passes to the captor, provided, of course, that the contract has been executed by the cargo having been brought to the place of destination. The captor stands in the place of the owner of the ship, and is entitled to the price of the services which have been performed in the execution of the contract. Where a cargo has been brought to the country, but not to the port of destination, it has been held that the captors are entitled to freight.

It may be that when the goods arrive at their destination they are so injured as to have no mercantile value whatever—"are not merchantable and the same thing as shipped." In such a case the law, in England, is that the shipper is entitled to abandon his goods to the shipowner for the freight. In *Luke* v. *Lyde*, Lord Mansfield said: "As to the value of the goods, it is nothing to the master whether the goods are spoiled or not, provided the merchant takes them; it is enough if the master has carried them; for by so doing, he has earned his freight; and the merchant shall be obliged to take all that are saved or none; he shall not take some and abandon the rest, and so pick and choose what he likes, taking that which is not damaged, and leaving that which is spoiled or damaged. If he abandons he is excused freight, *and he may abandon all, though they are not all lost.*" The freight will be due, however, if the loss or damage is caused by the acts of the owner of the goods. But it is not due where the damage or loss is the result of physical or political causes beyond the control of the shipowner. *See* AFFREIGHTMENT; BILL OF LADING; CHARTER PARTY.

FRIENDLY SOCIETIES.—The law relating to Friendly and like societies has now been consolidated in the Friendly Societies Act 1896. Under the provisions of this Act, the following societies may be registered:—(1) Societies, properly called *friendly societies*, for the purpose of providing by voluntary subscriptions of members, with or without donations, for—(*a*) the relief or maintenance of the members, their husbands, wives, children, fathers, mothers, brothers, or sisters, nephews or nieces, or wards being orphans, during sickness or other infirmity, whether bodily or mental, in old age (which means any age after fifty) or in widowhood, or for the relief or maintenance of the orphan children of members during minority; or (*b*) insuring money to be paid on the birth of a member's child, or on the death of a member, or for the funeral expenses of the husband, wife, or child of a member, or of the widow of a deceased member, or, as respects persons of the Jewish persuasion, for the payment of a sum of money during the period of confined mourning; or (*c*) the relief or maintenance of the members when on travel in search of employment, or when in distressed circumstances, or in case of shipwreck, or loss or damage of or to boats or nets; or (*d*) the

endowment of members or nominees of members at any age; or (*e*) the insurance against fire, to any amount not exceeding £15, of the tools or implements of the trade or calling of the members. But a friendly society which contracts with any person for the assurance of an annuity exceeding £50 per annum, or of a gross sum exceeding £200, cannot be registered under the Act; (2) *Cattle insurance societies*, or societies for the purpose of insurance to any amount against loss of neat cattle, sheep, lambs, swine, horses, and other animals by death from disease or otherwise; (3) *Benevolent societies*, or societies for any benevolent or charitable purpose; (4) *Workingmen's clubs*, or societies for purposes of social intercourse, mutual helpfulness, mental and moral improvement, and rational recreation; (5) Societies *specially authorised* by the Treasury, such as agricultural, quoit, and angling societies.

In order to be registered a society must consist of at least seven members, and have rules approved by the registrar of friendly societies. There are special provisions for the registration of societies with branch offices. The subscription of a person being or having been a member of a registered society cannot be recovered at law; but there is an exception to this rule in respect of monies payable to his society by a member of a cattle insurance or specially authorised society. A registered society must have a registered office, one or more trustees, an audit of its accounts at least once a year, and make an annual return to the registrar. A quinquennial valuation is also required of every society to which such a valuation is appropriate.

To more than counterbalance the foregoing restrictions on the working of a registered society, such a society has certain very material advantages over one unregistered. It is exempt from the provisions of the Unlawful Societies Act, 1799, and of the Seditious Meetings Act, 1817. More practical, perhaps, are certain exemptions in its favour from stamp duties in respect of drafts, orders, receipts, powers of attorney, and policies of assurance. Any person may become a member of a society who is above one year of age; and such a member may, if he is over sixteen years of age, by himself, and if he is under that age, by his parent or guardian, execute all instruments and give all acquittances necessary to be executed or given under the rules. There are also certain advantageous provisions as to the transfer of stock standing in the name of a trustee, in case of his death, bankruptcy, absence, or removal; and giving certain priority in case of the death, bankruptcy, &c., of an officer of the society. A society may subscribe to hospitals in order to secure benefits for its members.

A member has a right to a copy of the rules upon demand, upon payment of not more than a shilling, also to a gratuitous supply of copies of the annual return, and also to inspection of the books. Being not under the age of sixteen years, he may dispose of money, not exceeding £100, to his credit in the society, so that the disposition may take effect upon his death, by a nomination, and without the formality of a will; and in case of his intestacy, his property in the society will, within certain limits, be distributed amongst his next-of-kin without need for letters of administration; and illegitimate children may benefit, at the discretion of the trustees of the society, as though they had been legitimate. The amount payable by a society, whether registered or not, in respect of child insurance, cannot, if

the child dies under five years of age, exceed £6 inclusive of any amount payable on the death of that child by any other society; in respect of a child dying over that age and under ten, there is a like limit of £10. *See* INDUSTRIAL ASSURANCE; SHOP CLUBS.

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GAMBLING POLICIES. *See* APPENDIX.

GAME-DEALER.—In order that a person may lawfully deal in game, it is necessary for him to obtain two licenses; but no innkeeper need take out either of these licenses in respect of any sale of game for consumption upon his own premises. The first license is known as the **local license,** and is granted under the Game Act, 1831, in a county district by the local district council, and in a county borough by the town council. The grant of this license is discretionary in the local authority, but in no case will it be granted to any person other than a householder or keeper of a shop or stall within the district. But the licensee must not be an innkeeper or victualler, or licensed to sell beer by retail, or the owner, guard, or driver of any mail-coach or other vehicle employed in the conveyance of the letter mails, or of any stage-coach or other public conveyance, nor in the employment of any such person. A carrier or higgler, however, may hold a game-dealer's license. The effect of the license is to permit the licensee to lawfully sell game at only one house, shop, or stall kept by him. The license expires in July in every year. Partners who carry on their business at one house, shop, or stall only, are not obliged to take out more than one license in a year. Every one licensed to deal in game is required to affix to some part of the outside of the front of his house, shop, or stall, and there keep, a board having thereon in clear and legible characters his Christian name and surname, together with the words "Licensed to deal in game." Those persons who are not themselves licensed to deal in game can only buy game from a duly licensed dealer, or *bonâ fide* from a person who has affixed to the outside of the front of his house, shop, or stall, a board purporting to be the board of a licensed dealer; the penalty for buying game otherwise is £5. The second license required by the game-dealer is the **excise license,** which costs £2, and will be granted by the excise authorities upon production of the local license; it runs for a year from the date of its issue.

A licensed game-dealer incurs a penalty of £10 if he buys or obtains any game from any person not authorised to sell game for want of a £3 game license; or for want of a license to deal in game; or from any person not authorised in writing by a justice to sell game seized as having been unlawfully taken, or hares killed under the Ground Game Acts, 1880 and 1906. He cannot escape conviction by pleading ignorance of the fact that the person was so unauthorised to sell, for it is his duty to require evidence of that authority before he deals. A like penalty is incurred in either of the following cases: to sell or offer for sale, any game at his house, shop, or stall, without the before-mentioned board being affixed as above described; to fix the board to more than one house, shop, or stall; to sell any game, at any place other than his house, shop, or stall, where the board has been affixed. There is also a similar penalty against any unlicensed person assuming or pretending, by affixing a board, or by exhibiting a certificate, or by any other device or pretence, that he is himself a licensed dealer in game. The buying and

selling of game by any persons employed on behalf of a licensed dealer in game, and acting in the usual course of their employment, and upon the premises where the dealing is carried on, is expressly recognised by statute as a lawful buying and selling in every case where it would have been lawful if transacted by the licensed dealer himself. It is doubtful how far a licensed dealer is liable to conviction for the acts of his partners or servants. There is no law to prevent a licensed dealer in game from selling game which has been sent to him to be sold on account of any other licensed dealer. To sell without a local or excise license is to incur a penalty of £20; and conviction of certain of the offences set out in this article will entail a forfeiture of the local license in addition to payment of the prescribed penalty.

If any licensed dealer buys, or sells, or knowingly has in his house, shop, stall, possession (as owner), or control, any bird of game (other than live game for breeding or for sale alive—Revenue Act, 1911, section 10—an amendment of the law which has now made pheasant farming lawful) after the expiration of ten days (one inclusive and the other exclusive) from the respective days in each year on which it becomes unlawful to kill or take them, he will, on conviction, forfeit the birds, and incur a fine of £1 for every head of them. But this provision does not extend to foreign game killed abroad, and accordingly there is nothing to prevent the dealer importing and selling a Russian partridge, for example, killed out of England. And particularly, with regard to the close time for hares, it should be noted that the Hares Preservation Act, 1892, does not apply to foreign hares imported into Great Britain, and here sold or exposed for sale. But as to game, more strictly speaking, the following close times should be observed: *Pheasants*, February 1 to September 30; *partridge*, February 1 to August 31; *grouse*, December 10 to August 12; *black game*, December 10 to August 20, except in Devon, Somerset, or the New Forest, where it extends to September 1; *bustard*, March 1 to September 1. Though there is no statutory close time for killing hares or rabbits, there is statutory provision against the sale of British *hares* or *leverets* in the months of March, April, May, June, and July, the penalty being £1; nor is there any statutory close time for *deer*, though it should be mentioned that the old fence month extended from fifteen days before until fifteen days after the 6th July. Game must not be killed or taken on a Sunday or Christmas day; not even if the snare is set on the day before. Generally the close time for wild birds is from March 1 to August 1, but this time may be extended under the provisions of the Wild Birds Protection Act, 1896.

GAME LAWS.—It is only about seventy years since the preservation and killing of game in England constituted an exclusive right belonging to a class privileged by birth or property. Apart from the fact that this right ministered to the sporting instinct of those who enjoyed it, there is no doubt that it was more particularly prized on account of the social prestige and power it conferred upon its possessors. Ideas derived from feudal times even yet attach some special social distinction to the right of killing birds and beasts of game. The game laws are the modern representatives of the old forest laws, under which the killing of one of the king's deer was equally penal with murdering one of his subjects. The difference between the forest laws and the game laws has been summed up by Blackstone as consisting in the fact that while "the forest laws established only one mighty hunter throughout the land, the game laws have raised a little Nimrod in every

manor." So bound up with social position and property has been the right to kill game, that the first statute—one of Richard II.—whereby the privilege of sport was extended, commences its enactments with the announcement that "none shall hunt but they who have a sufficient living." A priest who had less than £10 a year, or a layman with property worth less than forty shillings a year, would by that statute have been imprisoned for a year had he ventured to take game. But these qualifications were too low for James I. and Charles II., for in both these reigns they were raised. In the latter reign the privilege was restricted to freeholders deriving £100 a year from their estates, or leaseholders for ninety-nine years, at a rent of £150. And those who could satisfy these property tests were also required to satisfy the test of social position; they had to be at least the sons of esquires, for example. But now the only qualification is a game license, the cost and terms of which can be seen in the table of EXCISE duties.

The principal now effective statute on this subject is the Game Act, 1831, as amended by section 4 of the Revenue Act, 1911. By this Act the right to appoint gamekeepers was extended, and provision was made for the licensing of GAME-DEALERS. The word "game" is therein defined as meaning hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards. A penalty of £10 is laid upon any one who lays *poison* with intent to destroy game; and if any person who is not authorised to kill game himself, or who has not permission from a person who has such right, should take out of the nest or destroy the *eggs* of any bird of game, or of any swan, wild duck, teal, or widgeon, or should knowingly have in his possession any such eggs so taken, he will be liable to a penalty of 5s, with costs, for each egg. If any unauthorised person is found by day or night *trespassing* on any land in search of game, and has in his possession any game which appears to have been recently killed, any authorised person, such as a gamekeeper or occupier, or other person having the right to kill the game, may demand such game and seize it if it is not at once delivered up. "By day" would mean that time from one hour before sunrise to one hour after sunset, and the meaning of the term should be very clear in view of the rigorous character of the law against POACHING (*q.v.*), and of the provisions relating to the larceny of hares or rabbits hereinafter mentioned. And the person who has the right of killing the game, or the occupier of the land, or gamekeeper, or any person authorised by either of them, may require a person found trespassing in pursuit of game to quit the land, and to give his name and address; and in case of refusal, the trespasser may be taken instantly before a magistrate, who may fine him £5; but if he is not brought before a magistrate within twelve hours, the proceedings can only be taken by summons or warrant. If five or more persons together trespass in pursuit of game, and any one of them is armed with a gun, and if threats or violence are used to prevent any authorised person from approaching them for the purpose of requiring them to quit the land, or disclose their names and addresses, every person so offending is liable to a penalty of £5, in addition to any other penalty, with costs.

Larceny of hares or rabbits.—By the Larceny Act, 1861, it is made a misdemeanour to unlawfully and wilfully, between sunset and sunrise, take or kill any hare or rabbit in any warren or ground lawfully used for the

breeding or keeping of hares or rabbits; it matters not whether such warren or ground is enclosed or not. But the same offence, when committed between sunrise and sunset, is punishable on summary conviction with merely a penalty of £5; and this latter is also the punishment for at any time setting or using in such a warren or ground as aforesaid any snare or engine for the taking of hares or rabbits. It should be noted that the foregoing provisions are not intended to affect the taking or killing in the daytime of rabbits on sea and river-banks in Lincolnshire within a furlong of the banks or the extent of the tide.

The right to kill game is now *primâ facie* vested in the tenant of the land, but subject to the absolute provisions in favour of the occupier contained in the GROUND GAME (*q.v.*) ACTS, and to any rights reserved by his landlord.

GAMING.—"Our laws against gaming," wrote Blackstone, "are not so deficient as ourselves and our magistrates in putting those laws into execution." The *unlawful games* are ace of hearts, banker, *chemin de fer*, pharaoh, basset hazard, passage roulette, baccarat, every game of dice except backgammon, every game of cards which is not a game of mere skill, and any other mere game of chance. But to constitute *unlawful gaming* it is not necessary that the games played shall be unlawful games; it is enough that the play is carried on in a "common gaming-house." Section 4 of the Act 17 and 18 Vict. c. 38 runs as follows: "Any person, being the owner or occupier or having the use of any house, room, or place, who shall open, keep, or use the same for the purpose of unlawful gaming being carried on therein,—and any person who, being the owner or occupier of any house or room, shall knowingly and wilfully permit the same to be opened, kept, or used by any other person for the purpose aforesaid,—and every person having the care or management of or in any manner assisting in conducting the business of any house, room, or place opened, kept, or used for the purpose aforesaid,—and any person who shall advance or furnish money for the purpose of gaming with persons frequenting such house, room, or place," will become liable, on conviction, to a penalty of £500 or twelve months' imprisonment. The case of *Jenks* v. *Turpin* should always be read in connection with this statute. In the light of this case, the expression "unlawful gaming" should be taken as covering and including the playing of some games which, though lawful themselves, become unlawful when played in particular places or by particular persons. It is not a *public*, but a *common* gaming-house that is prohibited; and it makes no difference that the use of the house and the gaming carried on therein is limited to the subscribers or members of a club, or to visitors, and that it is not open to all persons who might be desirous of using it. And if premises are used, even in part, for common gaming, the offence is duly constituted. A particular house might have been opened and used for a double purpose, viz. as an honest social club for those who do not desire to play, as well as for the purposes of gaming for those who did; it would not the less be a house opened and kept "for the purpose of unlawful gaming."

There is a dictum of Lord Tenterden that "the playing for large and excessive sums of money would of itself make any game unlawful," but this must be now read in the light of the fact that at the time of its pronouncement there were in force certain statutes directed against excessive gaming

particularly. "But," said Mr. Justice Hawkins in the above-mentioned case, "though excessive gaming is no longer unlawful *per se*, the fact that it is habitually carried on in a house kept for the purpose of gaming is a cogent piece of evidence to be offered to a jury or other tribunal called on to determine whether the house is a common gaming-house, so as to make the keeper of it liable to be indicted for a nuisance at common law." It should be noticed that all persons who have the care or management of a gaming-house are responsible to the law equally with the keeper; and so also are those who *in any manner assist in conducting its business.* The case to which reference has been made also decided that the players in a gaming-house cannot be said to in any manner assist in conducting its business. If they do no more than play they are exempt from the provisions of the above statute. It may be said that they to some extent enhance the profits of the house, but it must be shown that they have taken part in its care or management. "A customer," to again quote Mr. Justice Hawkins, "who buys an article at a shop might just as well be said to assist in conducting the business of the shop. The law does not make it an offence to add to the profits of a gaming establishment; it requires that there should be *assistance in conducting the establishment.* Wherever the legislature has intended to impose a penality upon a mere player at an unlawful game, there has been express enactment to that effect." It would seem that the justices, in the case of a prosecution under an Act of Henry VIII., have power to require recognisances from a player that he will refrain from frequenting gaming-houses or from playing at prohibited games. The same Act also penalises, in the sum of 6s. 8d., all those who play unlawful games in gaming-houses; and two Acts, of the reigns of George II. and III. respectively, impose much heavier penalties upon the players of certain games, such as that of ace of hearts, and of dice.

For an account of the law on this subject from the point of view of contract, *see* the article on CONTRACT; and generally as to other branches of the subject, *see* BETTING.

But before concluding this article the reader's attention should be drawn to the still unrepealed Act of Charles I., commonly known as the Lord's Day Act, 1625, which provides for the "punishing of divers abuses cōmitted on the Lord's day, called Sunday." By this Act all meetings or concourse of people out of their own parishes on Sundays, for any sports or pastimes whatsoever, are prohibited; nor are any bear-baiting, interludes, common plays, or other unlawful exercises or pastimes, permitted on that day within the parish of those who take part in them. The penalty for a breach of this law is a fine of 3s. 4d. leviable by distress, or in default punishment by the stocks.

GAS.—Gas Companies are usually incorporated by private Acts of Parliament; but there are two public Acts—the Gasworks Clauses Acts of 1843 and 1871—the provisions of which are either expressly included in those private Acts, or operate independently and side by side with the private Acts. Only such of those provisions which have some practical general importance call for notice in this article.

Obligations of a Gas Company.—Certain powers are conferred upon a company to break up ground, streets, and pavements, and to open drains, lay

pipes, make sewers, erect lamps, and do other acts necessary for supplying gas in its district. It has no right to enter upon private land, for the purpose of laying pipes or doing other works, without the consent of the owner and occupier; but it may at any time, apparently without that consent, enter upon and lay any new pipe in the place of an existing pipe in any land wherein any pipe has been already lawfully laid down. In view of the accidents that so frequently occur from the disturbance of roads and other public property by a company in the course of its operations, it is of some importance to note that, apart from any general question of negligence, the company is under a statutory obligation to reinstate the place without delay. And it is also provided that it "shall at all times, whilst any such road or pavement shall be so opened or broken up, cause the same to be fenced and guarded, and shall cause a light sufficient for the warning of passengers to be set up and maintained against or near such road or pavement, where the same shall be open or broken up, every night during which the same shall be continued open or broken up." If a company allows any of its washings or other substance to flow into a stream or place for water, so that the water is thereby fouled, it will incur a penalty of £200, which may be sued for by the person injured if the action is brought within six months of the offence. There is also a daily penalty during the continuance of the offence, and also a like penalty for allowing an escape of gas. Any one who has reason to believe that his water is being fouled by a company as above mentioned, has power to himself dig up ground and examine the pipes and works of the company; but he must first give twenty-four hours' notice in writing to the company and to the local authorities, and is liable to reinstate the ground.

Under certain conditions, and within certain limits, a company is bound to supply gas to the owners and occupiers of local premises. The quality of all gas supplied is required, with respect to its illuminating power, to be such as to produce, at the testing place provided in conformity with the Act of 1871, a light equal in intensity to that produced by the prescribed number of sperm candles of six in the pound; and such gas, as to its purity, must not exhibit any trace of sulphuretted hydrogen when tested in accordance with the rules prescribed by the Act. When a company improperly neglects or refuses to give a supply of gas, it thereby incurs a penalty. The offence lies in the improper neglect or refusal, and accordingly a gas company does not incur any liability when the absence or deficiency of the supply is the effect of causes beyond its control, as where, through a frost, the pipes are blocked with ice. If it should be proved to the satisfaction of any two justices, who are not shareholders in the company, that on any day the gas supplied is (*a*) under less pressure; (*b*) of less illuminating power; or (*c*) of less purity than it ought to be, the company will be liable to forfeit to the complainant a sum of £20. The gas can be ordered to be tested, and the costs of the experiment will be payable according to the result.

Obligations of the public.—*Gas rents.*—If any one supplied with gas neglects to pay his rent due therefor, the company may stop the gas from entering the premises by cutting off the service pipe, or by such other means as it thinks fit. The rent due and the expenses of cutting off the gas may be recovered before the magistrates in the same manner as a penalty, which

means that a distress may be levied on his goods after an order has been obtained from the magistrate before whom the defaulter is summoned. An incoming tenant is not liable to pay the arrears of rent left unpaid by a former tenant, unless the incoming tenant has undertaken with the former tenant to pay or exonerate him from the payment of the arrears. *Meters.*—A company may require the consumer to use a properly stamped meter, and it must supply one to any consumer who requires one; but security for payment of the price or rent of the meter may be insisted upon by the company. A consumer who connects or disconnects any meter with any pipe through which gas is supplied by the company, without having given to the company twenty-four hours' previous notice in writing of his intention so to do, incurs thereby a penalty of forty shillings. He is also required to keep his meter in proper order and repair at his own expense, and in default the company need not supply any gas through the meter. And the company "shall have access to and be at liberty to take off, remove, test, inspect, and replace any such meter at all reasonable times, such taking off, removal, testing, inspecting, and replacing to be done at the expense" of the company if the meter is found in proper order, but otherwise at the expense of the consumer. It should be noted that the register of the meter is *primâ facie* evidence of the quantity of gas consumed, and in respect of which any rent is charged and sought to be recovered. But if the company and the consumer differ as to the quantity consumed, the difference may be determined, upon the application of either party, by two justices, who may also order by which of the parties the costs shall be paid. In a case tried some years ago in a London police court the Government inspector swore that a certain meter was perfectly accurate, and yet in the face of this, the consumer was able to successfully dispute its accuracy. But such a success cannot be always expected.

Generally.—Meters are not subject to distress for rent nor, in Scotland, to the landlord's hypothec, nor can they be taken in execution or under a bankruptcy. Any person who lays or causes to be laid a pipe to communicate with any pipe belonging to the company without their consent; or fraudulently injures a meter; or improperly uses or burns the gas supplied; or supplies any other person with any part of the gas supplied to him by the company, will forfeit a heavy penalty and the future supply of gas. To fraudulently abstract gas may even amount to a larceny, and the offence is frequently committed by persons who lay a pipe so as to enable the gas to be burned without passing through the meter. And so also will any one incur a penalty who wilfully removes, destroys, or damages any pipe, pillar, post, plug, lamp, or other work of the company; or wilfully extinguishes any of the public lamps or lights; or wastes or improperly uses any of the gas supply. And there is also, in the metropolis, a penalty against carelessly or accidentally breaking, throwing down, or damaging any pipe, pillar, or lamp. This offence is certainly rather an extreme one, as it may be constituted by an accidental result of the unsafe position of the pipe, pillar, or lamp itself. So an omnibus driver discovered to his cost in a case where a lamp and post on the pavement was so near the kerb and at such an angle from the perpendicular that it projected over the roadway, and where his omnibus injured the lamp on account of the horses swerving. The erection of gasworks will be

restrained by injunction if, by reason of noxious discharges of gas therefrom, health or property is injured.

GAVELKIND is the name applied to a tenure or custom, annexed and belonging to lands in Kent, whereby the lands of the father are equally divided at his death among all his sons; or the land of the brother among all his brothers, if he should have no issue of his own. It is said that all land in England was of the nature of gavelkind before the year 1066. Though certain lands in Kent have been "disgavelled" by various statutes, and so placed as regards descent under the common law of inheritance, all lands in that county are still presumed to be subject to the custom of gavelkind until the contrary is proved.

GAZETTE.—There are three official gazettes—the *London Gazette*, *Edinburgh Gazette*, and *Dublin Gazette*. Production of the *whole* copy of either of these journals is constituted by statute *primâ facie* evidence of any royal proclamations and Government orders and regulations therein contained. The *three Gazettes* are also the official mediums for the publication of certain bankruptcy proceedings such as adjudications, appointments of receivers, and notices of dividends; and production of a copy is evidence of the facts stated in any bankruptcy proceedings so published therein. There are other matters in respect of which the *Gazettes* have been made statutory evidence. And generally the *Gazettes* are the best mediums for proof of notices. A dissolution of partnership, or change therein, is usually and properly so notified; but by the Partnership Act, 1890, the notice will only affect persons who have not had any dealings with the firm before the date of the dissolution or change so advertised. Partnership advertisements should be in the *Gazette* of the country wherein the firm has its principal place of business. It is incumbent on persons dissolving a partnership or changing the constitution of a firm to give a special notice to those with whom they have dealt. An action can be maintained against a retiring partner with no other object than to get the Court to compel him to sign a notice of dissolution for the *Gazette*.

GENERAL DISTRICT RATE is the name given to a rate levied in urban districts towards the creation of a District Fund, the other contributions to the fund being derived from the sale of surplus lands, from penalties, and from profits on the sale of articles, such as refuse collected in pursuance of the Public Health Act, 1875. Generally all the expenses incurred or payable under that Act by an urban authority, such as an Urban District Council or a Town Council, are charged on and defrayed out of the District Fund. The rate may be levied from time to time as occasion may require, but it must be made by the authority under its common seal. It may be made and levied prospectively in order to raise money for the payment of future charges and expenses; and it may also be made and levied retrospectively, but in such a case it will only be lawful when its object is to raise money for the payment of charges and expenses incurred within six months before the rate is made. Public notice must be given of the intention to make the rate, and an opportunity is to be afforded to the public to inspect the statement of the proposed rate during the week before the date on which the rate is intended to be made.

Before proceeding to make a rate, the authority must prepare an estimate

showing the purposes in respect of which the rate is to be made. This estimate is entered in the rate-book and kept at the office of the authority, and is open to public inspection during office hours; it should show, in particular, the several sums required for each of the purposes, the rateable value of the property assessable, and the amount of the rate which for those purposes it is necessary to make on each pound of such value; every person interested in the rate has a right of inspection. If any of the purposes are illegal or not within the purposes specified in the Public Health Acts, any person, directly he has received a demand for payment of the rate, may appeal therefrom and will get it quashed. The rate is made and levied on the occupiers of all kinds of property for the time being by law assessable to the poor rate; it is to be assessed on the full net annual value of such property, ascertained by the valuation list for the time being in force; and if there is no such list it will be ascertained by the then last preceding poor rate. But the following classes of property are assessed at only one-fourth of their annual value:—tithes, tithe-rent charge, arable, meadow and pasture land, woodlands, orchards, market gardens, nursery grounds, land covered with water, canals, towing-paths, and railways. If a person finds that he has been made liable to the rate as an occupier, when in fact he is not an occupier and so not liable, he should wait for proceedings to be taken against him before the magistrates, when he can dispute his liability. But, at the option of the Authority, an owner may be rated instead of the occupier—(*a*) Where the rateable value of any premises liable to assessment under the Public Health Acts does not exceed £10; or (*b*) where any premises so liable are let to weekly or monthly tenants; or (*c*) where any premises so liable are let in separate apartments, or where the rents become payable or are collected at any shorter period than quarterly. Where the owner is rated instead of the occupier, he must be assessed on such reduced estimate as the Authority may deem reasonable of the net annual value; but this reduction cannot be less than two-thirds or more than four-fifths of the net annual value. If, however, the reduced estimate is in respect of tenements, *whether occupied or unoccupied*, then the assessment may be on one-half of the amount at which the tenements would be liable to be rated if they were occupied and the rate were levied on the occupiers.

If at the time of making the rate any premises in respect of which the rate is made are unoccupied, those premises will be included in the rate, but no one will be charged therewith in respect of so much time as they remain unoccupied. This does not apply, of course, to cases of assessments reduced to half, as above mentioned. If unoccupied premises are afterwards occupied during any part of the period for which the rate was made and before it has been fully paid, the name of the incoming tenant is inserted in the rate; thereupon a proportionate amount of that rate is recoverable from that tenant. Should an owner or occupier cease to own or occupy his premises before the end of the period for which the rate was made, and before it is fully paid off, he will then be liable only for a proportion of the rate in respect of the time of his ownership or occupancy; a subsequent owner or occupier becomes liable for the balance.

A certain Southend tradesman was tenant of a shop on the pier, using the shop during the summer season and removing all his stock before the

winter, through the whole of which latter season the shop was unoccupied and locked up; he was held liable for his rates during the period his shop was so locked up. If a district rate is not published in the same manner as the poor rate is required to be it will not be thereby necessarily void, and the person charged therewith can only escape payment on that ground by appealing. Those who fail to pay their rates may be proceeded against before the magistrates, but these proceedings must be taken within six months from fourteen days after demand has been made for their payment.

It is important to tradesmen and others who give credit to local authorities to notice that a retrospective rate can only be raised in respect of debts incurred within six months before the rate is made. The creditor should therefore require payment from the authority during the course of the rating year in which the debt is incurred. He can, however, sue within six months, and having once obtained judgment against the debtor authority, can also, within six months from the date of the judgment, obtain an order from the High Court directing the authority to levy a special rate for the purpose of satisfying the judgment.

GLEANING.—There is a very general impression that by the common law of England the poor have a right to enter and glean upon another's land, after the harvest, without being guilty of trespass. But this is not so; there is no such right, although goodwill may permit gleaning in various places under varying restrictions.

GLEBE.—Church land; being that land which belongs to a parish church, and which, with the tithes, forms the endowment of the church. The incumbent may farm this land himself or let it for a short term of years. Should the parson commit waste or attempt to alienate his glebe he is liable to a writ of prohibition at common law, or to a suit for waste in the Ecclesiastical Court, or to the more effective penalty of an injunction in the Chancery Division. But he has certain limited powers under statute enabling him to sell or mortgage it.

GOLDSMITHS' NOTES.—Until the year 1640, the royal mint at the Tower of London had for many years been used by merchants as a kind of bank wherein to deposit their cash for safety. In that year, however, the king, Charles I., began to make free with the money there deposited, and as a natural consequence the mint lost its credit for safety. Thereupon the merchants and traders of London, instead of depositing their money at the mint, began the practice of entrusting it to their servants. But the Civil War shortly breaking out, this new practice came to a speedy end, for apprentices and clerks no longer steadily attended to their masters' business, but deserted it for the profession of arms. This was about the year 1645, when the merchants, no longer caring to confide in their apprentices and clerks, began first to lodge their current cash in the hands of the goldsmiths, and to employ them to receive and pay on their account. Before then the usual business of London goldsmiths had been to buy and sell plate and foreign coins of gold and silver, to melt and cull them, to coin some part at the mint, and with the rest to supply the refiners, plate-makers, and merchants. Now they began to carry on business as bankers. In 1676 was printed, but apparently never published, a curious pamphlet—since become very scarce—entitled *The Mystery of the new-fashioned Goldsmiths or Bankers discovered,*

and from this pamphlet, which is a principal source of our information upon the subject, the following extract is made:—

It happened in those times of civil commotion, that the Parliament, out of the plate, and from the old coin brought into the mint, coined seven millions into half-crowns; and there being no mills then in use at the mint, this new money was of very unequal weight, sometimes twopence and threepence difference in an ounce; and most of it was, it seems, heavier than it ought to have been, in proportion to the value in foreign parts. Of this the goldsmiths made naturally the advantages usual in such cases, by picking out or culling the heaviest, and melting them down, and exporting them. It happened also that our gold coins were too weighty, and of these also they took the like advantage. Moreover, such merchants' servants as still keep their masters' running cash, had fallen into a way of clandestinely lending the same to the goldsmiths, at fourpence per cent. per diem; who, by these, and such like means, were enabled to lend out great quantities of cash to necessitous merchants and others, weekly or monthly, at high interest; and also began to discount the merchants' bills at the like, or an higher rate of interest. That, much about the same time, they began to receive the rents of gentlemen's estates, remitted to town, and to allow them, and others, who put their cash into their hands, some interest for it, if it remained but a single month in their hands, or even a lesser time. This was a great allurement for people to put their money into their hands, which would bear interest till the day they wanted it. And they could also draw it out by one hundred pounds, or fifty pounds, &c., at a time, as they wanted it, with infinitely less trouble than if they had lent it out on either real or personal security. The consequence was that it quickly brought a great quantity of cash into their hands; so that the chief or greatest of them were now enabled to supply Cromwell with money in advance on the revenues, as his occasions required, upon great advantages to themselves. After the restoration, King Charles being in want of money, the bankers took ten per cent. off him barefacedly, and, by private contracts on many bills, orders, tallies, and debts of that King, they got twenty, sometimes thirty per cent. to the great dishonour of the government. This great gain induced the goldsmiths more and more to become lenders to the King; to anticipate all the revenue; to take every grant of Parliament into pawn, as soon as it was given; also to outvie each other in buying and taking to pawn bills, orders, and tallies; so that, in effect, all the revenue passed through their hands.

And so this practice of banking with the goldsmiths went on, the goldsmiths giving bills or notes in return for the money deposited with them. Though there was no pretence that the money so deposited was retained in their hands as security for the due honouring of their paper, and though it was common knowledge that the deposits were used for the purpose of making loans, particularly to that very unsatisfactory borrower the king, the credit of the goldsmiths was so high that their bills and notes readily passed as money even in the matter of payments to the Government. In 1667 there was a run upon the goldsmiths in consequence of the disastrous defeat inflicted upon the English fleet by the Dutch at Chatham. The people knew that their deposits had been advanced by the goldsmiths to the king on the security of the revenue, and they were apprehensive lest the payments by the Exchequer should be suddenly stopped. The king, however, quieted the uneasiness and stayed the run, by declaring that he would preserve inviolably the course of payments in his Exchequer, both with regard to principal and

interest. But five years afterwards those apprehensions of the people were more than justified, for then the Exchequer was stopped. The goldsmiths not receiving payment from the king, were unable to meet the interest and other demands of their creditors. Great were the lamentations of the ruined people, and great the detriment to trade; and though, after a time, the Exchequer was re-opened, no attempt was made to pay the principal. This latter and the arrears of interest were subsequently adopted as a public debt in the reigns of William III. and Queen Anne, and goldsmiths' notes or bills were eventually made largely unnecessary, and superseded by the operations of the Bank of England.

GOODWILL is a term difficult of precise definition, the difficulty arising from its general use and comprehension in a very vague and extensive signification. It may, however, be sufficiently defined as the advantage or benefit which is acquired by a business establishment, or professional practice, beyond the mere value of the capital, stock, funds, or property employed therein, in consequence of the general public patronage and encouragement which the business or practice receives from constant customers or clients on account of its local position, or common celebrity, or reputation, for skill or affluence or punctuality, or from other accidental circumstances or necessities, or even from partialities or prejudices. It is, in short, that indefinable circumstance which is at the same time both the cause and effect of successful business or professional enterprise. In one particular case it may be exclusively bound up with personal ability and reputation, in another with locality, in another with monopolist advantages. But it is always attendant upon and attached to some business or profession, and the right to it must be capable of transfer, together with a transfer of the business or profession, to a new proprietor. A barrister, medical specialist, or an actor can hardly be said to possess a goodwill, for his connection is one which is absolutely valueless apart from his personality. Goodwill is essentially suggestive of the idea of transfer. A man sells his business to another; there at once arises the question whether or no the goodwill thereof has also been sold, and if so, what that goodwill really amounts to. Goodwill is clearly a form of property, and is consequently liable to stamp duty in case of transfer.

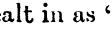
Unless **the purchase of a business** involves the transfer of an interest in land, such as the possession of the business premises, there is no need for the transfer of the business and its goodwill to be in writing. But a transfer in writing is always preferable, and should in fact never be omitted. Once, however, the agreement for transfer is reduced into writing, it is important that it should expressly state that the goodwill of the business is included in the property sold. The word "goodwill" itself should always appear in the particulars of the property sold, so that there may be no doubt as to the intended scope of the transfer, and that the goodwill was really intended to be assigned. Disputes are thereby avoided; such as those, for example, as have occurred with reference to expressions like "the establishment," "property and effects in the business," and "interest in the business," although these expressions may be generally taken as transferring the goodwill. And not only should the document of transfer include a specific transfer of the goodwill as such, but it should also contain, from the point of view of the purchaser, a covenant by the vendor that he will not set up a similar business capable

of competing with the one the subject of sale. This covenant, which is technically known as one in RESTRAINT OF TRADE (*q.v.*), can always be drawn in such a way, in detail, as to meet the requirements of any particular case. The purchaser should also be careful to compel the vendor to insure his obtaining possession of the business premises, or in default of the landlord permitting the transfer, to avoid the agreement. And in order to strengthen his position, a cautious purchaser, if the nature of the particular business should warrant the trouble, will, before concluding his agreement to purchase, arrange to bind the employees of the business not to set up in opposition to him. In some trades an old employee can do as much damage to the purchaser of a business, by setting up in opposition to it, as can its original owner.

The goodwill of a business having been transferred, but without any such covenants and precautions as have just been suggested, the position of the vendor and purchaser is as follows: The purchaser has acquired the sole and exclusive right to carry on the business, and to represent to the public that the business he thus carries on is that business which he has purchased from the vendor. He may accordingly continue to use the old firm or trade name of the business, whether that name is also its late owner's, or some prior owner's, or a fictitious or fancy name or title. But he must not use the old name in such a way as to involve the vendor in a liability for his debts. He also has the sole right to the trade marks belonging to the old business, and to the benefit of all contracts which the vendor, or previous owner, may have entered into with employees or others for the protection of the business. The vendor, on the other hand, practically falls into the ranks of the public in his relation to the business, and, so long as he does not encroach upon the above-mentioned rights acquired by the purchaser, is entitled to carry on a similar business on his own account, even, according to the doctrine in *Trego* v. *Hunt*, to the extent of dealing with the old customers so long as he does not solicit their custom or induce them not to deal with the purchaser. A purchaser will therefore see the necessity for the covenant by the vendor which will keep him out of competition. But a vendor will also see the wisdom of expressly retaining in the document of transfer, if possible, his exclusive right to the use of the trade name. A purchaser, however, will rarely agree to this, though the vendor has some reason on his side, as he may fear exposing himself to a liability for debts wrongfully incurred by the purchaser on the credit of the old name.

In the event of *bankruptcy* the trustee may sell the goodwill of a business, if any, and the book debts due or growing due to the bankrupt, by public auction or private contract, with power to transfer to any person or company. But on the sale of his goodwill under such circumstances, the bankrupt will not be compelled by the law to enter into a covenant not to compete with the purchaser. The business may be sold to the bankrupt himself; and, according to a learned judge, there is an advantage in "giving the debtor a chance of getting back the business, especially where it is one which depends upon the personal influence or skill of the individual. In many cases a higher price might be obtained from him than a stranger would be willing to give." Upon the dissolution of a *partnership*, apart from special agreement, the goodwill belongs to all the partners, according to their

respective shares in the partnership assets, and, where necessary, the court will order its protection and sale. And if the dissolution of the partnership is caused by the death of a partner, the principle will be the same, and the surviving partners will be required to account for the deceased partner's share in the goodwill as part of his estate, on the basis of its value at the date of his death. Where there is a partnership agreement, any question relating to the goodwill will be determined by reference to the agreement; and since a retiring, or even an expelled partner, is entitled to compete with the continuing firm to the same limited extent as is an unrestrained vendor of a business, it is advisable that the agreement should contain some appropriate provision in this respect. In estimating the value of the goodwill of a partnership business, especial regard must be paid to the period of the term unexpired at the time of the valuation. A partnership which has twenty years to run might have a very valuable goodwill; but one which had only two days to run has been held to have a merely nominal value. The goodwill of a partnership at will has, consistently with this view, no value at all.

GRADING AND CONDITIONING—Grading.—In many markets, and particularly in those wherein dealings of an extensive and speculative character are conducted upon the clearing system, the sales and purchases are generally completed without either party having seen the goods dealt with, or even a sample. All bargains are concluded upon the strength of a description of the goods, and which description has invariably a well-understood and precise signification. Briefly, grading may be defined as the sorting and classification of merchantable commodities into grades according to quality or value. The recognised grading in any market is usually one independent of official authority, its recognition and acceptance being due to the importance of the source of its determination. Thus, in the mineral oil market, dealings would be concluded upon the strength of certificates of quality from the Petroleum Association in London, and of the United Pipe Line in the United States; in the London bullion market on the basis of the mint standards. Jute may be dealt in as "medium  "; hay as "prime meadow"; and so on. In the copper market most of the dealings would be in "G. M. B." bars, *i.e.* in "good merchantable brands" of about 96 per cent., with allowances for difference in deliveries. On the other hand, when dealing in pig iron, there will not be found any such generally accepted fixed basis of quality or value, each maker having, as a rule, his own price for his own particular brand, there being no maker or association of predominating influence. Wheat is graded in the United States in qualities numbered 1, 2, and 3.

Conditioning is a process applied to certain textile goods, and which is akin to that of grading and sampling. Its object is to determine the quality and net weight, as well as the description of the raw material. There are testing or conditioning houses in Manchester and Bradford, which test, for standardisation, the goods submitted to them, not only from Lancashire and Yorkshire but from all parts of the world, and stamp them with an official certificate of quality. This certificate is accepted, throughout the world, as a guarantee of quality and authenticity. On the Continent such houses existed for many years, particularly in the silk manufacturing districts, before they were introduced into England. The testing house at Manchester was established, in connection with the Chamber of Commerce, in 1895, and the Corporation's conditioning house at Bradford was established 1891, and it is probable that in course of time establishments of a like

character will obtain a footing in England. The humidity of silk, wool, and to some extent cotton, has always presented considerable inconvenience to commercial men, preventing a purchaser knowing exactly the amount of silk, wool, or cotton he is buying. A result of this has been constant fraud and dispute. But with the advent of the conditioning houses this result has been obviated.

GRAIN.—Any person who offers or exposes for sale, or sells or gives away any grain or seed, which has been rendered poisonous, except for *bonâ fide* use in agriculture, will incur for so doing a penalty of £10, which is recoverable upon his conviction for the offence in a police court. And there is a like penalty for knowingly placing any such grain in or upon any land or building. But the Protection of Animals Act, 1911, which has imposed the foregoing penalties, does not prohibit the placing of poison for the destruction of rats or mice or other small vermin, provided reasonable precautions are taken to prevent access thereto of dogs, cats, fowls, or other domestic animals. Whoever commits an assault with the intention of *obstructing the sale of grain*, or its conveyance, or the sale or conveyance of wheat, flour, meal, malt, or potatoes, on the way to market, is liable, under the Offences against the Person Act, 1861, to three months' imprisonment.

The *carriage of grain* by sea is regulated by the Merchant Shipping Act, 1894, and the expression "grain," in this connection, is defined as meaning any corn, rice, paddy, pulse, seeds, nuts, or nut kernels. The phrase "ship laden with a grain cargo" has also its statutory definition as a ship carrying cargo of which the portion consisting of grain is more than one-third of the registered tonnage of the ship; and that third is computed, where the grain is reckoned in measures of capacity, at the rate of one hundred cubic feet for each ton of registered tonnage, and where the grain is reckoned in measures of weight, at the rate of two tons weight for each ton of registered tonnage. All necessary and reasonable precaution should be taken when loading a grain cargo, in order to prevent it from shifting. If such precautions are not taken, the master of the ship and any agent of the owner, whose duty it was to load the ship and send her to sea, will be each liable to a fine of £300; and so also will the owner unless he can show that he took all reasonable means to enforce the precautions being taken, and that he was not a party to the offence. In the case of a British ship being laden with a grain cargo at any port in the Mediterranean or Black Sea and bound to ports beyond Gibraltar, or of a ship being so laden on the coast of North America, there are special precautions with which the owner or master must comply, and also certain notices are required to be given by the master as to the kind and quantity of the grain cargo.

GRATINGS, COAL-HOLES, and all cellar-heads and lights in the surface of a street must be kept in good condition and repair by the owner or occupier thereof, or of the houses or buildings to which they belong; and so must all vaults, arches, and cellars under a street, and all openings and entrances into them in the surface of the street. Such owners and occupiers are also generally under an obligation to keep in good condition and repair the landings, flags, or stones of the path of the street over their cellars. The local authorities may, in certain cases, refuse to allow coal-holes and cellar shoots to be opened in streets. Should an occupier or owner

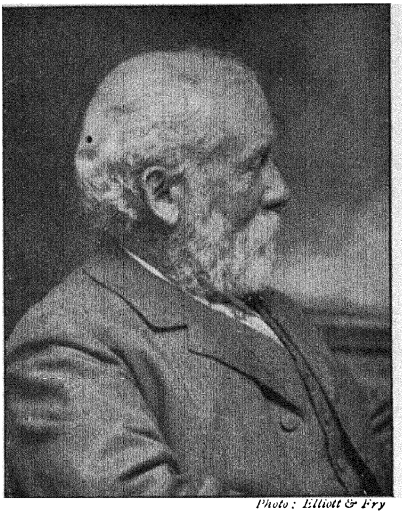


Photo: Elliott & Fry

SIR JOHN ISAAC THORNYCROFT, Vice-President of the Institute of Naval Architects, Member of Council of Mechanical Engineers, Naval Architect and Engineer. Founded the great shipbuilding works at Chiswick, and introduced improvements in naval architecture and marine engineering. Is now experimenting with high-speed motor boats.

Photo: Elliott & Fry

SIR MARCUS SAMUEL, Bart., head of the firm of M. Samuel & Co., merchants, of London and Japan, was born in 1853. He travelled much in the Far East, and was the first to bring petroleum in bulk through the Suez Canal. Lord Mayor of London 1902–3. Sir Marcus was knighted for services rendered to H.M.S. *Victorious*, and created Baronet by King Edward VII. in 1903.

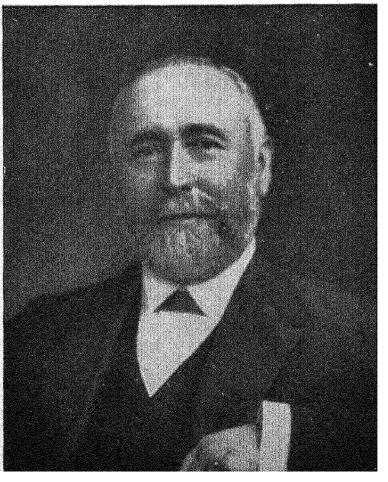


Photo: Elliott & Fry

THE RT. HON. LORD PIRRIE, D.L., LL.D., Lord Mayor of Belfast 1896 and 1897. Born at Quebec 1847. Is now principal of the world-famous shipbuilding firm of Harland and Wolff, Ltd., Belfast, whose employment he entered at the age of twelve years. Is also Chairman of the Ocean Transport Co., and holds many other influential commercial appointments.

Photo: Miles & Kaye

STANLEY MACHIN, Chairman of the Council of the London Chamber of Commerce 1910, and a rising business man, associated with the firm of Bager & Co., London, E. Has been President of the Confectioners' Association, and is President of the Manufacturing Confectioners' Alliance, which represents nearly every leading house and millions of capital.

SUCCESSFUL BUSINESS MEN

who is under an obligation to repair as aforesaid fail to do so, the local authority may itself do the necessary work and charge him therewith.

GREENLAND COMPANY.—By an Act of Parliament of 1693 a company of London merchants was incorporated to trade with Greenland, the corporation to exist for fourteen years. This incorporation was intended to regain, encourage, and settle the Greenland trade, the Act reciting that the trade to the Greenland seas, in the fishing for whales, had been very beneficial to England, both in respect to the employment of seamen and ships, and the consumption of great quantities of provisions, as also in the importation of great quantities of oil and whale-fins, but that this trade having been wholly lost to the kingdom, could then only be revived by united endeavours in a joint-stock company. The company does not appear to have had any success, and the Greenland trade continued in its state of depression notwithstanding subsequent efforts were made to revive it by means of bounties.

GRESHAM'S LAW.—During the reign of Elizabeth there was much concern at the impossibility of maintaining sound and undefaced money in circulation. All the money was clipped or otherwise depreciated, and though much new money was issued from the mint it speedily vanished from circulation, leaving in the country only the depreciated. The mistake of the authorities lay in their issuing the new money without having first withdrawn the depreciated currency, and this mistake was first pointed out to the queen by Sir Thos. Gresham. In effect, Gresham said that *bad money always drives good money out of circulation*; this formula is now generally known as Gresham's Law. There is an old but useful statement of the law that "when two sorts of coins are current in the same nation, of like value by denomination, but not intrinsically, that which has the least value will be current, and the other as much as possible hoarded," or dealt with as a subject of merchandise. From this it results that if the combined amount of money in circulation is sufficient, or more than sufficient, for the needs of the community, the good or valuable money will simply disappear from circulation, either through being transformed into another article, or being saved or exported; the bad or less valuable money will remain in circulation. But if that combined amount is insufficient to meet the monetary need, the good money will run to a premium. And in like manner a paper currency will invariably expel from circulation a metallic currency of like denomination.

GROUND GAME is an expression having the statutory meaning of "hares and rabbits," and is the subject of the Ground Game Acts, 1880 and 1906. The Act of 1880 commences with the following recital: "Whereas it is expedient in the interests of good husbandry, and for the better security of the capital and labour invested by the occupiers of land in the cultivation of the soil, that further provision should be made to enable such occupiers to protect their crops from injury and loss by ground game." It then proceeds to enact that every occupier of land shall have, as incident to *and inseparable* from his occupation of the land, the right to kill and take ground game thereon, concurrently with any other person who may be entitled to kill and take ground game on the same land. Such "other person" would be the owner of the land by a reservation of the right, or a person to whom the occupier

may have let the shooting. But this right of the occupier is subject to certain important limitations. (1) The occupier can kill and take ground game only by himself or by persons duly authorised by him in writing; the occupier himself and one other person authorised in writing by him are the only persons entitled to kill the game with *fire*arms; no person may be authorised by the occupier to kill or take ground game, except members of his household resident on the land in his occupation, persons in his ordinary service on the land, and any one other person *bonâ fide* employed by him for reward in the taking and destruction of ground game; every person so authorised by the occupier, on demand by any person having a concurrent right to take and kill the ground game on the land or any person authorised by him in writing to make the demand, must produce to the person so demanding the document by which he is authorised, and in default will not be deemed to be an authorised person. (2) No one will be deemed to be an occupier of land for the purposes of the Act by reason of his having a right of common thereover; or by reason of an occupation for the purpose of grazing or pasturage of sheep, cattle, or horses for not more than nine months. (3) In the case of moorlands and unenclosed lands (not being arable lands), the occupier and the person authorised by him can exercise ground game rights, so far only as regards killing and taking by *firearms*, only from the 11th day of December in one year until the 31st day of March in the next year, both inclusive; but this provision does not apply to detached portions of moorlands or unenclosed lands adjoining arable lands, where such detached portions of moorlands or unenclosed lands are less than twenty-five acres in extent.

Where the occupier of land is entitled otherwise than under the Ground Game Acts to kill and take ground game thereon, if he gives to any other person a title to kill and take the ground game, he will nevertheless retain and have, as incident to and inseparable from his occupation, the same right to kill and take the game as if he had not given the title. He may exercise any other or more extensive right which he may possess in respect of ground game or other game, in the same manner and to the same extent as if the Acts had not passed. Every agreement, condition, or arrangement, which purports to divest or alienate the right of the occupier as declared, given, and reserved to him by the Act, or which gives to him any advantage in consideration of his forbearing to exercise that right, or imposes upon him any disadvantage in consequence of his exercising the right, will be void. The occupier and the persons duly authorised by him are not required to obtain a license to kill game for the purpose of killing and taking under the Ground Game Acts, and he has the same power of selling any ground game killed by him, or the persons authorised by him, as if he had a license to kill game. Nothing in the Acts affects any rights and obligations in respect of ground game existing under leases made before the year 1880; nor do they affect any special right of killing or taking ground game to which any person other than the landlord, lessor, or occupier may have become entitled before the passing of the Act of 1880 under any purchase, charter, or Act of Parliament. No person, other than an occupying owner, who has a right to kill ground game may use any firearms for that purpose between the expiration of the first hour after sunset and the commencement of the last hour before sunrise; and no such person shall, for the purpose of killing ground game,

employ spring traps except in rabbit holes, nor employ poison; any person acting in contravention hereof will, on summary conviction, be liable to a penalty of £2. *See* GAME LAWS.

GUARANTEE.—This is the term usually applied to the contract of suretyship—a contract by which a person called the "guarantor" or "surety" promises to answer for the payment of some debt, or the performance of some duty, in the event of the default of the debtor or obligor, who is in the first instance liable. This definition may be extended further, so as to include, for example, a contract which aims at securing the fidelity of an employee, or at securing one person from harm resulting from the possible torts of another. A guarantee for the payment of the price of goods, wares, or merchandise, does not require a stamp. There are some points which should not be overlooked in connection with a guarantee. The obligation of the surety being collateral to the obligation of some other person who is the principal debtor, it is of its essence that there should be a valid obligation of the principal debtor; the nullity of the principal obligation necessarily involves the nullity of the collateral one, for without a principal there can be no collateral. By becoming surety a person does not exonerate the principal debtor, but merely contracts a liability collateral to that of the principal debtor. The obligation of the surety must be in respect of the same subject matter as that of the principal debtor. Though a surety may be under an obligation as such for less than the principal debtor, his obligation cannot exceed that of the principal debtor. The obligation of the surety being collateral to that of the principal debtor, it becomes extinct by the extinction of the latter. A man cannot be his own surety; for a surety being one who assumes an obligation on behalf of another, his obligation as surety is destroyed by his becoming himself the principal debtor.

Creation of the Contract.—By the Statute of Frauds, "no action shall be brought whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised." Wherefore *a verbal guarantee is not binding*; but if a verbal guarantee has been completely executed, and money paid thereunder by the surety, no action on the ground of the statute not having been complied with can be maintained by the surety to recover back his money. The contract of guarantee must therefore either be by deed or in writing. If, however, the party who assumes to guarantee is really liable to the creditor as a principal, the contract need not be in writing. Such a case might arise where A. says to B., "Send C. a suit of clothes and I will pay you." Here A. becomes primarily liable to B. for the price of the clothes, and not secondarily in case of default by C. And the principle of the liability of a *del credere* agent to his principal, so that it does not need a writing for its creation, is found in the fact that the agent has an interest in the subject matter with his principal, apart from his interest with the customer. A guarantor has no direct interest in the subject matter with the creditor.

The consideration.—Unless the guarantee is by deed, it must be founded upon consideration, otherwise it is invalid. Generally speaking, whatever

would be sufficient as a consideration in the case of any other kind of contract, is sufficient in the case of a guarantee. Any act in the nature of a benefit to the person who promises, or to any other person upon his request, or any act which is a trouble or detriment to him to whom the promise is made, is sufficient; and the amount of benefit, trouble, or detriment, or its comparative value in relation to the promise, is indifferent. Thus, a forbearance to a debtor for a debt until half-past two o'clock of the same day, would be a sufficient consideration for an agreement to pay it, made by a third person as a surety. A creditor's mere request to a sheriff not to execute a writ of *fieri facias*, then on his hands on behalf of a creditor, has been held to be a sufficient consideration whereon to found a guarantee. Though the amount of the value of the consideration is immaterial, it is yet essential that there should be at least something of legal value in it. Forbearance to sue is not sufficient, if the person in whose favour it is exercised is clearly not liable to an action; but it would be if the liability to the action were doubtful. In the case of a consideration in the nature of a forbearance to sue, it must be noted that the forbearance must be for a definite and certain time. It matters very little how limited that time may be, so long as it is definite and certain. Forbearance "for a reasonable time" is, however, sufficient, because what is a reasonable time can be determined by the court or a jury.

No court of law has ever decided that there must be a consideration moving directly between the person giving and the person receiving the guarantee; it is enough if the person for whom the guarantee is given thereby receives a benefit or advantage; or if the party to whom it is given suffer a detriment or inconvenience, to form an inducement to the surety to render himself liable for the debt of the principal. Thus a benefit to the debtor, without any benefit to the surety, is sufficient. It is a general rule that a past or executed consideration, as where the consideration is goods already supplied or money already paid, is sufficient to support a contract. If, therefore, a debtor at the time of the negotiation for a guarantee is already completely in the relationship of debtor to his creditor, and is not so in any way at the instance of the proposed surety, it is obvious that there must be a new consideration for the guarantee. But the foregoing general account of the nature of a sufficient consideration for a guarantee, shows that for all practical purposes the new consideration need only be some act or circumstances of a very indifferent character. It is sufficient, in effect, if something new takes place in the nature of a detriment to the creditor, or a benefit to the debtor or surety.

Though consideration is itself necessary, there is no need for a statement of it to appear on the face of a guarantee. This is the effect of the Mercantile Law Amendment Act, the third section of which enacts that "no special promise to be made by any person after the passing of this Act to answer for the debt, default, or miscarriage of another person, being in writing and signed by the party to be charged therewith, or some other person by him thereunto lawfully authorised, shall be deemed invalid to support an action, suit, or other proceeding to charge the person by whom such promise shall have been made, by reason only that the consideration for such promise does not appear in writing, or by necessary inference from a written instrument."

Form of the Contract.—All of the authorities concur that the form of the

contract is immaterial. A memorandum, note, letter, or any other kind of writing containing the terms of the agreement, is sufficient; or even if it does not contain the terms, but refers to an unsigned paper, and alleges that that does, it and the paper together are sufficient. But if neither the letter in which an agreement is mentioned, nor a writing clearly referred to by it, specify the terms, the statute is not satisfied; consequently a general acknowledgment to the effect that there is an agreement is not sufficient. It is not necessary that the agreement should in the first instance be reduced to writing, for the statute is complied with if this is done before any action is brought on the guarantee. Where the guarantee is said to be contained in a letter, it is immaterial whether that letter is or is not addressed with a view to authenticate or show the agreement; nor is it material as to whom it is addressed, for it may be written to the writer's own agent, to the agent of the other party, or even to a stranger, and yet constitute a valid guarantee. But the guarantee must be signed by the party to be charged thereunder, or by an agent on his behalf who is not also one of the other parties to the transaction. A signature in holograph, as I, A. B., &c., in the handwriting of A. B., is sufficient. But the signature of the guarantor must be expressly descriptive of his name; it would not be sufficient for a mother in a letter written to her son to merely subscribe herself as "your affectionate mother," and no more.

Perhaps one of the most important questions which arise upon the consideration of guarantees, is whether or no there is in fact an *agreement* between the guarantor and the creditor. A reference to the article on CONTRACT will remind the reader that to constitute an agreement there must be something in the nature of an offer and its acceptance. A mere expression of intention cannot alone create a contract, nor can an offer which has not been accepted. In *M'Iver* v. *Richardson*, an action was brought upon the following letter, written and signed by the defendant:—"Messrs. M'Iver & Co.—As I understand that Messrs. Anderson & Co. have given you an order for rigging, &c., which will amount to about £4000, I can assure you, from what I know of D. A.'s honour and probity, you will be perfectly safe in crediting them to that amount; *indeed I have no objection to guarantee you against any loss from giving them this credit.*" The letter was given by the defendant to Anderson & Co., and by them to the plaintiff, but no communication respecting it was made to the defendant until the failure of Anderson & Co. The Court thought that, without notice from the plaintiffs that they meant to accept it, or some proof that the defendants had subsequently consented to its being conclusive as a guarantee, it was not binding upon him. Neither of the following letters have been accepted by the Court as binding guarantees, there being in neither case any definite offer or promise, nor even any act on the creditor's part in the nature of an acceptance:—

"Sir,—*I have no objection* to guarantee the payment of rent, as far as that of each quarter, during Mr. T. Want's continuance in possession; but you must see that no arrears of rent accrue."

"Sir,—That it may not be said that I have made no effort to save my brother from prison, I wish to know if you will give him a full discharge if I will pay one moiety of his debt. I have specified what I will pay, and no more: if you will accept this, call upon me to-morrow morning."

A creditor who takes a guarantee must therefore be careful that the guarantor expresses his intention in the agreement in such precise terms as to leave no doubt that he means to, and does in so many words thereby bind himself as a surety; and immediately upon receipt of the document the creditor should communicate to the guarantor a definite acceptance of the proposed suretyship. Nor should it be forgotten that the document must be stamped with a 6d. stamp, unless it is on account of a sale of goods, wares, or merchandise, or under seal, when, in the latter case, the stamp duty would be 10s.

Extent of the contract.—It has already been mentioned, at the commencement of this article, that a surety cannot incur a liability to a greater extent than that imposed upon the principal debtor. Accordingly a person who is surety for the fidelity of another in an office of limited duration, or the appointment to which is only for a limited period, is under no obligation in respect of events occurring beyond that period. But unless he has expressly limited his obligation, it extends so as to precisely coincide with that of the principal debtor. If, however, it relates to a particular office or employment only, it then extends only to such things as were included in the office or employment at the time when the guarantee was effected. And if the guarantee is in respect of a particular individual, it will extend only to the acts of that individual, and will cease if he should take a partner. If a person becomes surety for more persons than one, the engagement is understood to be on behalf of those individuals collectively and jointly; and in case of the death of any of them, it will not continue on behalf of the survivors; unless, indeed, it appears, and that very clearly, that it was intended to continue on behalf of the survivors. The question in such a case turns upon the intention of the parties at the time of entering upon the contract. And in a great many ordinary commercial guarantees the question of the extent of the liability intended by the parties is a very difficult one, and can only be more or less arbitrarily decided after a careful study of the many conflicting decisions, and a careful determination of the facts of any particular case; general principles afford only a suggestion. But it should always be remembered that a contract of suretyship is a general one, and will be taken, as a rule, to bind the surety to the same extent as the principal. Accordingly a person who guarantees payment of a debt which bears interest will be liable, in case of default in payment by the debtor, for the interest in addition to the debt. But though the creditor may thus recover debt and interest from the surety, he may not so recover "the costs of a fruitless suit against the debtor, unless he has given notice of his intention to sue." A "continuing" guarantee is one which, though perhaps limited in total amount to a certain sum, continues to cover to the extent of the limit (if any) the debtor's indebtedness at all times until extinguished; it is, in effect, a floating security intended to cover the debtor's debit balances as from time to time they may stand. If the guarantor does not intend his guarantee to thus continue he should be careful to expressly limit its application to the desired specific transactions. By the Partnership Act, 1890, it is expressly provided that where a continuing guarantee is given either to a firm, or to a third person in respect of the transactions of the firm, it will be revoked as to future transactions by any change in the constitution of the firm, unless there is an express agreement to the contrary.

Extinction of the guarantor's liability—*Statute of Limitations.*—An action upon a guarantee must be brought within six years next after the date when the cause of action arose. This means that the six years begin to run from the time when the principal debtor committed such a default as to make the guarantor liable. It need not begin to run from the time when the original indebtedness of the principal debtor first arose, even if that indebtedness was the subject matter of the guarantee, unless the peculiar circumstances of the guarantee made the guarantor himself then personally liable. Where the contract of guarantee is created by a deed, the law allows twenty years within which an action may be brought. As between co-sureties the statute does not begin to run until the claim of the principal creditor has been established against the surety who is seeking contribution. For the purpose of estimating in such a case the time from which the statute will run, it is immaterial at what time the statute began to run as between the principal creditor and the co-surety. *Extinction of the obligation of the principal debtor.* —As to the effect of a change in a partnership firm, see page 38. If the original debt is paid and satisfied, no action can be brought against the surety. And so also, generally, if the debt is discharged by the creditor accepting a composition from the debtor and agreeing to release him; but the creditor may agree to such a composition, and release the debtor, without also releasing the guarantor, if at the same time he *expressly reserves his rights against the guarantor.* But the surety will be discharged if, without his consent, the principal parties make a new agreement inconsistent with the terms of the original agreement, or if they agree to make any alteration, which is not self-evidently unsubstantial (*Holme* v. *Brunskill*), either in the terms of the original agreement or in the mode of performing them.

And the surety is also discharged if, without his consent, the creditor *agrees to give time* to the principal debtor by a binding agreement (*Clarke* v. *Burley*). In *Samuel* v. *Howarth* the plaintiffs signed the following guarantee:—"We engage to guarantee you the payment of any goods you may supply to Mr. Isaac Henry between the 2nd of April 1814 and the 2nd of April 1815." Here it should be noted that no particular credit was stipulated for, and accordingly credit was implied according to the usual course of trade, which was six months as to part of the goods supplied and nine months as to the rest, with a bill at three months. The bills given, however, were not paid, and the defendant having taken fresh bills at a new date, it was held that he had thereby discharged the sureties. The Lord Chancellor said that it was impossible for him to hold that the above guarantee was an engagement by which the surety had rendered himself liable for an indefinite time beyond the time fixed for the delivery of the goods. "It cannot be supposed that he meant to continue liable after the 2nd of April 1815, so long as the defendant might choose to renew the bills of the principal debtor. You cannot contend in support of such an extravagant proposition. It has been truly stated that the renewal of these bills might have been for the benefit of the surety; but the law has said that the surety shall be the judge of that, and that he alone has the right to determine whether it is or is not for his benefit. *The creditor has no right—it is against the faith of his contract—to give time to the principal, even though manifestly for the benefit of the surety, without the consent of the surety.*" It would seem, though, on the

authority of *Kearsley* v. *Cole* and *Petty* v. *Cooke*, that the creditor can enter into a binding agreement to give time if he at the same time reserves his rights against his surety. Only to take a new security from the debtor, without agreeing to give him time, will not discharge the surety; nor will it, to give time with the authorisation or ratification of the surety. But because a creditor has the advantage of a guarantor for his debtor's liability, he is not therefore bound to sue the debtor, in case of default, any more than he would be bound so to do if he had no other person to look to than the debtor. Until the guarantor calls upon him to sue, he may forbear to proceed against the principal debtor as long as he pleases; he cannot, however, as we have just seen, enter into an agreement for forbearance with the debtor except with the surety's consent. Mere voluntary and *bonâ fide* forbearance by the creditor, or a like acquiescence by him in the default of the debtor, will not discharge the surety.

A surety will also be discharged from his liability if the creditor should part with any security, or fund, to which he has a right of resort for payment of the debt, this being so because the creditor holds such a security or fund on behalf of the surety as well as on his own behalf. "I always understood," said the Lord Chancellor in *Mayhew* v. *Cricket*, "that if a creditor takes out execution against the principal debtor, and waives it, he discharges the surety on an obvious principle . . . that he is a trustee of the execution for all parties interested." And on the same principle where a creditor, through neglect, loses securities, or negligently fails to effectively maintain securities, to the benefit of which the surety is entitled, the latter will *pro tanto* be discharged from his liability. Very important is the rule which makes it the duty of a creditor, taking a guarantee for the solvency of another, to put the surety in possession of the real bargain between himself and the principal; if he neglects so to do it is at his own peril. In *Pidcock* v. *Bishop*, the defendant as surety had guaranteed the plaintiffs to the amount of £700 for pig iron to be supplied to one Tickell. Now Tickell, owing one of the plaintiffs an old debt, had agreed to pay ten shillings per ton more than the market price of the iron in liquidation of that debt, this agreement being concealed from the surety. As a result of the concealment the defendant was held not to be liable. "It appears to me," said Chief Justice Abbott, "that keeping back from the defendant the knowledge of the private agreement between the vendor and vendee was a fraud on the guarantee, and consequently this action is not maintainable." Where the contract of guarantee is one which intends the creation of an unlimited engagement, the surety cannot relieve himself from his obligation as such by giving notice to the creditor that he will not be answerable any longer. If, however, he stipulates in the contract that he shall be discharged from all future liability after a specified time after notice given, he will be entitled to relieve himself from his obligation according to the terms of that stipulation. The creditor is under a duty to inform the guarantor of all facts which come to his knowledge after the guarantee is given, and which would give the guarantor a right to withdraw his security. On the authority of *Ward* v. *The National Bank of New Zealand* it may be laid down that when a person is induced to be become a surety upon the representation that a certain other person will join in the

suretyship, the surety will be released from all liability if that other person does not in fact become a co-surety according to the representation.

With regard to the rules relating to APPROPRIATION OF PAYMENTS (*q.v.*), it should be noted that no exception is made thereto, nor is there any relaxation thereof in favour of sureties; but any appropriation made by the party entitled to appropriate, is binding alike on the surety as on the principal debtor; and the question in all cases is simply whether there has in fact been an appropriation.

Rights of surety against his principal.—If the surety has paid the debt of the principal debtor, he is entitled to demand a reimbursement. But this right of the surety to be reimbursed does not extend to payments made by him under an illegal engagement, to the illegality of which he was privy. In the case of *Bryant* v. *Christie*, which was an action on a bill of exchange, of which the plaintiff was the drawer and the defendant the acceptor, it appeared that the bill had been accepted by the defendant in consideration of a sum of money paid by the plaintiff to his brother, on behalf of the defendant, under the pretence of being the defendant's surety, but in reality as an inducement to the plaintiff's brother to accede to a composition which the defendant was making with his other creditors; and as the judge considered that this was only a circuitous mode of securing to the plaintiff's brother the full amount of his debt, contrary to good faith with the other creditors, the plaintiff was not allowed to recover.

A surety has a right of proof in the event of the *bankruptcy* of the principal debtor, provided he has paid or been called upon to pay the debt for which he was surety, and there is no probability of a double proof being made. Where the surety has paid the whole of the debt, before the debtor's bankruptcy, he has the right to stand in the creditor's place and prove for the whole in his place. And so if the creditor has already proved his claim, but been subsequently paid by the surety, the latter may stand in the creditor's place in the bankruptcy proceedings. He can even, in those circumstances, obtain the advantage of any securities which the creditor may have obtained after the contract of guarantee. But this general right to stand in the creditor's place may be excluded by express agreement, and is, moreover, a more limited one in the case of a merely limited suretyship. The surety for a debtor who becomes a bankrupt will not be discharged from his obligation by reason of the official discharge and release of the bankrupt debtor, nor by reason of any composition or scheme in bankruptcy. A surety for rent would appear to be released by the disclaimer of a lease In the recent case of *Stacey v. Hill*, the defendant had guaranteed the payment of rent which might from time to time be in arrears under a lease for twenty-one days, and the lessee having become bankrupt, the trustee in bankruptcy disclaimed the lease. The lessor thereupon sued the defendant for an amount which he claimed as rent in arrear in respect of a period subsequent to the disclaimer, but he failed to obtain judgment. The Court of Appeal held that the effect of the Bankruptcy Act, 1883, being that the lease was determined from the date of the disclaimer as between the lessor and the lessee, the liability of the defendant for rent in future was also determined, and therefore the action was not maintainable. A person who is guarantee for the payment of a composition by a bankrupt cannot be forced to pay it by the Bankruptcy

Court itself, but that Court can order the trustee to sue on the guarantee, provided the trustee is indemnified against the costs of the action.

Rights between surety and principal.—A surety is entitled to every remedy which the creditor has against the principal debtor; to enforce every security, and all means of payment; to stand in the place of the creditor, not only through the medium of contract, but even by means of securities entered into without his knowledge, having a right to have those securities transferred to him though there was no stipulation for it, and to avail himself of all those securities against the debtor, and proportionately against his co-sureties. The creditor is therefore bound to preserve the securities for the benefit of the surety, and on payment by the latter must also assign to him any judgment he may have recovered against the debtor.

The right of contribution.—With regard to the relationship of principal and surety, it has long been settled that where there are co-sureties, and the creditor calls upon either of them to pay the principal debt or any part of it, that surety, to the extent only of the amount he has paid beyond his proportion, has a right to call upon his co-surety for contribution. When sued by the creditor, a surety may bring in the debtor and his co-sureties as third parties, and even though one person becomes a surety without the knowledge of another surety, that circumstance introduces no distinction. But there is nothing to prevent any contract or provision between the sureties limiting or excluding altogether, as between themselves, the operation of this principle of contribution. The right to contribution rests upon a principle of law that the ultimate burden of co-sureties shall be borne by them in equal shares; and consequently a surety, directly he has paid anything whatsoever in excess of his proportion of liability, is entitled to sue his co-sureties for contribution in respect of that excess. A surety who claims contribution must give credit for anything he may have received by way of reimbursement, it matters not from what source it may have been derived. And if a co-surety should have become unable to meet his liability through bankruptcy or otherwise (*re Arcedeckne; Ellesmere Brewery Co.* v. *Cooper*), the number of co-sureties will, for the purpose of adjustment of contribution, be reckoned as though the bankrupt had never been one of their number. Where a surety has been induced to become surety at the instance of a co-surety, though he thereby renders himself liable to the person to whom the security is given, there can be "no pretence," said Lord Kenyon, "for saying that he shall be liable to be called on by the person at whose request he entered into the security." If a surety is sued, he is entitled to contribution for the costs of the writ, but not for the expenses of defending an action. He is not bound by any decision as to the liability of the principal debtor in any action to which he was not a party, and he is consequently entitled, but at his own risk and cost, to strict proof of the creditor's claim against him. If the creditor has obtained judgment against a surety, the latter, although he may not yet have actually paid his proportion, may require his co-sureties to pay theirs to the creditor. *See* CONTRACT; INDEMNITY.

GUARANTEE INSURANCE.—This is the name now generally given to an extensive branch of insurance formerly more usually known as *fidelity insurance*. Though during the period of the South Sea Bubble in 1720 there would appear to have been some attempt at the establishment of this class of

insurance, guarantee insurance cannot be said to have had any practical beginning in England until the year 1840. The first important modern guarantee insurance company was founded in that year, coincident with an academic essay towards the application of the principle of average to the subject of the resistance by man of temptation. When this company was first started, having as its object the insurance against loss by the dishonesty of clerks, it met with considerable opposition and objection. It was thought to be one of those vague and speculative undertakings of which England has always seen so many, and one which would necessarily fail, because a master would hesitate to take an assistant who could only give the security of a commercial company. "'The moral security is wanting!' was the explanation of all. It was vain to answer that this objection pointed both ways, as the relative would often give the desired bond, which a mercantile institution would refuse. Still the parrot reply was heard, and the solemn shake of the head was followed by 'the moral security—where is the moral security?' and was deemed sufficient to crush all argument derived from mere statistics." Time passed, and it was discovered that because a banker's clerk gave the security of a company he did not become a rogue, but he did become independent. It was found, too, that the master could make his claim good on the company with far more promptitude than he could on a relative. It was nothing to say to a board of directors, "I will have justice and my bond," but it was something to say to a broken-hearted parent, "Your son has ruined you as well as himself—discharge your obligation!"

The advantages of guarantee insurance may thus be summarised. *As regards the employer:*—A public company having a corporate existence, and known capital, and assets readily available, the extent of the security it affords is placed beyond doubt; while a private surety at the time of executing the guarantee may have been in a state of concealed insolvency, or may become unable to pay a demand under it should a claim arise. The contract with a company being one renewable every year, evidence of the existence and solvency of the company is ever kept fresh. It sometimes happens, in cases of private suretyship, that the surety is not heard of for a long series of years. Trouble is avoided in instituting inquiries as to the solvency of the sureties. The amount claimed is more readily recovered in case of default. *As regards the employed:*—The disagreeable necessity of applying to friends or relatives to become sureties, and all unnecessary personal obligations are avoided. The policy of the company being only granted after due inquiry into the character of the employed, forms in itself a kind of certificate as to his past good conduct.

Experience has now shown that guarantee insurance is a commercial enterprise of undoubted stability and utility. On the one hand, private suretyship has practically passed away in its favour in all relations with Government departments, public companies, and the more important financial and commercial houses and transactions; on the other hand, the profits are very considerable, for the working of a selected guarantee business will show that a comparatively small percentage of the premiums will more than meet the claims, leaving a substantial balance to meet the expenses, which are small and which decrease in proportion to the increase of income. Nor is the business of a company now limited to insurance against loss by the dishonesty of servants. This class of business is at the present day but typical of the

general volume of risks in the nature of guarantee and indemnity undertaken by any guarantee insurance company of position. Bonds are given to the Courts on behalf of administrators, auctioneers, bailiffs, trustees in bankruptcy, receivers in actions, and committees of lunatics. Security for costs in actions is provided. Annuities payable by insurance offices are guaranteed; and policies are issued providing for the replacement of the purchase price of leaseholds and annuities. Brewers and persons interested as mortgagees or otherwise in licensed premises may effect policies against the risk of loss of license. Policies are also issued against loss through calls on shares of banking and other companies; against loss through breach of covenants in leases; and against loss of trust funds invested on mortgage. Provision may be made for dilapidations on the expiration of a lease. Mortgages and loans are guaranteed, and sinking funds created.

Generally speaking, the principles of law applicable to other classes of insurance are applicable to guarantee insurance as well. As in fire, life, and marine insurance, questions of warranty, concealment, and representation are of essential importance, so also are they in the class of insurance the subject of this article. And, in particular, in respect to a guarantee against loss by dishonesty, does the contract of insurance depend for its validity upon candid disclosure of facts. The company cannot judge of a man's honesty by his appearance, or by the result of a medical examination; the only source of information, whereupon they may estimate the nature of the risk proposed to them, is to be found in the answers given to the questions placed before the person insured against, his employer, and his referees; these answers should therefore be substantially, if not absolutely, correct and candid.

Cases relating to Policies of Guarantee insurance have frequently come before the Courts. **Prosecution of wrong-doer.**—In the case of *The London Guarantee Company and Fearnley*, which came before the House of Lords in 1880, the facts were that F. had employed M. in a situation of trust, having first secured himself against the latter's dishonesty by effecting a policy with the company. M. subsequently embezzled some of F.'s money, and accordingly the latter made a claim therefor against the company. The company required F. to prosecute M. for the embezzlement, and as he would not do so, they refused to pay the claim. F. thereupon took action against the company, but the latter were held to be entitled to resist the claim in consequence of F.'s failure to prosecute. The chief reason for this decision is found in the wording of the policy, which in this respect is similar to the policies usually issued by guarantee companies. The policy stated that it was issued "subject to the conditions herein contained, which shall be conditions precedent to the right on the part of the employer to recover under this policy." Amongst the conditions was the proviso that "the employer shall if, and when, required by the company (but at the expense of the company, if a conviction be obtained), use all diligence in prosecuting the employed to conviction for any fraud or dishonesty (as aforesaid), in consequence of which a claim shall have been made under this policy, and shall, at the company's expense, give all information and assistance to enable the company to sue for and obtain reimbursement by the employed, or by his estate, of any moneys which the company shall have become liable to

BOND TO SECURE FIDELITY OF CLERK.]

Know all Men by these presents that we **Robert Arther Fuller** of 119 Russell Square London Gentleman and **Frederick Lee** of 16 Bernard Street London Clerk are bound jointly and severally to **James Kaye Barrett** of 128a High Holborn London Merchant for the payment to him of **One thousand pounds**

Sealed with our respective seals this 21st day of May 1910

R A. Fuller (L S)

F. Lee (L. S.)

Now the above written obligation is conditioned to be void should the said Robert Arthur Fuller and Frederick Lee at all times hereafter fulfill observe and do all that is required and prescribed of them respectively by and in the following paragraphs that

is to say

1 In case the said Frederick Lee shall whilst he shall remain in the employment of the said James Kaye Barrett as soon and as often as required deliver in writing a true and complete account of all monies of the said James Kaye Barrett which shall come into his possession or under his control or power and duly without delay pay over to the said James Kaye Barrett or as he shall direct all such monies

2 In the event of the said Frederick Lee making any default whatsoever whilst in the said employment if the said Robert Arthur Fuller shall indemnify the said James Kaye Barrett from any losses costs damages and expenses which he shall sustain or incur by reason thereof

Signed sealed and delivered by the said Robert Arthur Fuller and Frederick Lee in the presence of

R A. Fuller (L.S.)

F. Lee (L.S.)

James Burnett
Soliator
High Holborn

pay." This proviso is in the nature of a **condition precedent**, and wherever a policy contains a condition of that nature it is imperative that the person claiming under the policy shall have first fulfilled it. A general declaration in a policy that its conditions shall be conditions precedent has precisely the same effect as if a declaration of the same character had been repeated at the commencement of each separate condition. Other such conditions in a policy might be relative to the giving of a certain notice of the claim, or of proofs of the claim, or of certain acts done by the party whose conduct is insured against. Thus, in *Ward* v. *Law Property Society*, the policy contained a condition that notice should be given within six days of any liability being incurred. But in this case it was held that this meant notice of any criminal misconduct, whereby it was *clear* that a liability had been incurred, and that, therefore, no notice need be given until it is ascertained that a criminal liability has been incurred. Even if the condition does not go to the root of the contract between the parties, it may be a condition precedent if it appears that they intended it should have that effect. In the words of Lord Blackburn, "parties may think some matter, apparently of very trivial importance, essential; and if they sufficiently express an intention to make the literal fulfilment of such a thing a condition precedent, it will be one"—even in the case of a contract of insurance. But a condition in a policy, although expressly declared to be a condition precedent, will not be considered as such by a Court of Law if it is too capricious and unreasonable, or is by its nature incapable of being made a condition precedent. It should be noticed that the words of the proviso in the London Guarantee Company's case did not absolutely fix any limit of time within which the obligation of the insured to institute a criminal prosecution must be performed; but, on the other hand, it provides that F. should so proceed whenever required by the company, so that the contract leaves it entirely to the company to determine at what time criminal proceedings shall be instituted.

GUNPOWDER AND EXPLOSIVES.—The term "explosive" is defined by the Explosives Act, 1875 (which generally governs the subject of this article), as meaning gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires, and every other substance, whether similar to the foregoing or not, used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect. The term also includes fog-signals, fireworks, fuzes, rockets, percussion caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as just defined.

Law relating to gunpowder.—*Its manufacture and custody.*—Gunpowder can be manufactured only at a factory licensed under the Explosives Act, but this provision does not apply to the making of a small quantity for the purpose of chemical experiment and not for practical use or for sale. Any one who manufactures gunpowder at an unauthorised place is liable to a penalty of £100 for every day during which he manufactures, and upon his conviction the gunpowder will be forfeited. The only places in which gunpowder can be kept are a licensed factory, a licensed magazine or store, and premises regulated under the Act for keeping gunpowder. But notwithstanding the foregoing, any one may keep for his private use, and not for

sale, an amount not exceeding thirty pounds on the same premises; and no carrier or other person may keep gunpowder for the purpose of conveyance, when it is being conveyed or kept in accordance with the provisions of the Act with respect to the conveyance of gunpowder. Where any gunpowder is kept in an unauthorised place—(1) all or any part of it found in that place may be forfeited; and (2) the occupier of the place, and also the owner of, or other person guilty of keeping the gunpowder, will each be liable to a penalty of two shillings for every pound of gunpowder so kept. *Licensing of factories and magazines.*—A new factory or magazine for gunpowder can only be established on a site and in manner specified in a license granted under the Act. The applicant for a license must submit to the Home Secretary a draft of the license, accompanied by a plan to scale of the proposed building. The draft license must contain the terms proposed to be inserted in the license, and specify such matters as particulars of the boundaries of the intended site, the situation, character, and construction of the works, the nature of the processes to be carried on, the amount of gunpowder to be allowed on the premises, and the maximum number of persons to be employed. The Home Secretary may reject the application, or grant a license in a modified form. The applicant must also obtain the assent of the local authority, and for this purpose certain notices are required to be served, and an opportunity is afforded for objection, by any person, to the establishment of the works.

Regulation of factories and magazines.—A factory or magazine can only be used for purposes in accordance with the license; the terms of the license must be duly observed, and all work must be carried on in accordance with those terms; the premises must be maintained in their proper condition, and altered only in pursuance of an amending license. Penalties are incurred by any breach of the foregoing. But there will be no breach where, in case of emergency or temporarily, one building or part of a building, in which any process of the manufacture is carried on in accordance with the license, is used for another process, provided not more than one process is carried on at the same time, and the quantity of materials is not in excess of that allowed, and notice is given of the change to the Government inspector after the lapse of twenty-eight days from the commencement of the changed use. The following general rules must be observed in every gunpowder factory and magazine:—A magazine is to be used only for the keeping of gunpowder and of tools or implements connected with the keeping of the gunpowder; the interior of the premises must be constructed and arranged in accordance with the requirements of the Act; there must be attached thereto a sufficient lightning conductor; charcoal, oiled cotton, and other articles liable to spontaneous ignition can only be brought upon the premises for the purpose of immediate use, and must be removed directly the work ceases; certain precautions must be taken when repairing the premises, a notice posted up as to the quantities of gunpowder allowed on the premises, and copies of the rules affixed to the premises; suitable clothing is required to be worn by the workmen, and such articles as lucifer matches must not be brought into the place; nor may any person smoke on the premises; the gunpowder must be conveyed and removed in accordance with the rules; and a person under the age of sixteen years must not be employed in or enter any dangerous build-

ing, except in the presence and under the supervision of some grown up person.

Consumer's stores.—A license of the local authority is required to be obtained by a consumer of gunpowder who desires to keep a store thereof. Not more than two tons may generally be kept in a store, but the exact maximum quantity is prescribed from time to time by Order in Council. The general rules to be observed in a gunpowder store are on the same lines as those laid down as to factories and magazines.

Retail dealing.—Any one who desires to retail gunpowder must have his premises registered for the purpose by the local authority, the registration being valid only for the person registered, and is renewable annually. The following general rules must be observed with respect to registered premises:—(1) The gunpowder is to be kept in a house or building, or in a fire-proof safe, such safe, if not within a house or building, to be at a safe distance from any highway, street, public thoroughfare, or public place; (2) the amount of gunpowder on the same registered premises should not (*a*) exceed two hundred pounds: if it is kept in a substantially constructed building exclusively appropriated for the purpose and detached from a dwelling-house, or in a fire-proof safe outside a dwelling-house, and detached therefrom, and at a safe distance from any highway, street, public thoroughfare, or public place; and (*b*) exceed one hundred pounds: if it is kept inside a dwelling-house, or in any building other than as last aforesaid, exceed fifty pounds, unless it is kept in a fire-proof safe within such house or building; (3) an article or substance of an explosive or highly inflammable nature is not to be kept in a fire-proof safe with the gunpowder, and in every case is to be kept at a safe distance from the gunpowder or the safe containing it; (4) neither the building exclusively appropriated for the purpose of keeping the gunpowder nor the fire-proof safe should have any exposed iron or steel in the interior; (5) all gunpowder exceeding one pound in amount is to be kept in a substantial case, bag, canister, or other receptacle, made and closed so as to prevent the gunpowder from escaping. In the event of any breach, by any act or default, of the foregoing general rules in any registered premises—(*a*) all or any part of the gunpowder in respect to which, or being in any house, building, place, safe, or receptacle in respect to which the offence was committed, may be forfeited; and (*b*) the occupier will be liable to a penalty not exceeding two shillings for every pound of gunpowder in respect of which, or being on the premises in which, the offence was committed.

Restrictions on sale.—Gunpowder may not be hawked, sold, or exposed for sale upon any highway, street, public thoroughfare, or public place. For contravening this prohibition there is provided a penalty of forty shillings, and forfeiture of the gunpowder. It must not be sold to any child apparently under the age of thirteen years, under a penalty of five pounds. All gunpowder exceeding one pound in weight, when publicly exposed for sale or sold, must be in a substantial case, bag, canister, or other receptacle, made and closed so as to prevent the gunpowder from escaping. The outermost receptacle should have the word "gunpowder" affixed thereto in conspicuous characters by means of a brand or securely attached label or other mark; but this is not requisite on a sale to any person employed by or on the property occupied by the vendor for immediate use in the service of the vendor

or on such property. There is a penalty of forty shillings for a sale, or exposure for sale, of gunpowder not so marked, and the gunpowder will be forfeited.

Conveyance of gunpowder.—The following general rules are to be observed with regard to the packing of gunpowder for conveyance:—(1) If not exceeding five pounds in amount it must be contained in a substantial case, bag, canister, or other receptacle, made and closed so as to prevent the gunpowder from escaping. (2) If exceeding that amount it must be contained either in a single package or a double package. A single package is a box, barrel, or case, of such strength, construction, and character as may be approved for the time being by the Government inspector. If the gunpowder is packed in a double package the inner package must be a substantial case, bag, canister, or other receptacle, made and closed so as to prevent escape, and the outer package should be a box, barrel, or case of wood or metal or other solid material, and be of such strength, construction, and character that it will not be broken or accidentally opened, or become defective or insecure whilst being conveyed, and will not allow the gunpowder to escape. (3) The interior of every package, whether single or double, must be kept free from grit and otherwise clean. (4) No package, whether single or double, when actually used for the package of gunpowder, can be used for any other purpose. (5) There must not be any iron or steel in the construction of any single packet or inner or outer package, unless it is effectually covered with tin, zinc, or other material. (6) The amount of gunpowder in any single package, or if there is a double package, in any one outer package, is not to exceed one hundred pounds, except with the consent of and under conditions approved by a Government inspector. (7) On the outermost package there must be affixed the word "gunpowder" in conspicuous characters by means of a brand or securely attached label or other mark. The penalty for a breach is a fine of £20 and forfeiture of the gunpowder. Harbours, railway and canal companies, and owners of wharves are entitled to make bye-laws restricting and regulating the conveyance of gunpowder, and the Government authorities also make bye-laws as to conveyance by road or otherwise, and as to loading.

Other explosives.—Generally speaking, the foregoing provisions apply equally to explosives other than gunpowder; there are, however, certain modifications and extensions in special cases, and particularly with regard to explosives of a specially dangerous nature. There are provisions in favour of makers of and dealers in blasting cartridges, of makers of new explosives for experiment, of gunmakers who make cartridges, of owners of mines and quarries as to making charges for blasting, and of small firework manufacturers who have obtained a license from a local authority.

Generally.—A Government inspector has power to enter upon any factory and premises and inspect and examine them, and require the occupiers to furnish him with samples of any explosive or ingredient he may find therein. The occupier of such premises must remedy any dangerous practices carried on there and which the inspector has condemned. Whenever there occurs any accident by explosion or by fire in or about or in connection with any factory, magazine, or store, or any accident by explosion or by fire causing loss of life or personal injury in or about or in connection with any registered premises, the occupiers of the premises must forthwith send notice

MARKS ON GUN BARRELS.

1. London Provisional Proof Mark.

8. (New) Birmingham Marks.

2. Birmingham Provisional Proof Mark.

(a)

(b)

3. London: (a) Definitive Proof Mark accompanied by (b) the View Mark.

(a)

(b)

4. Birmingham: (a) Definitive Proof Mark accompanied by (b) the View Mark.

5. London Provisional Proof Mark of barrels proved in the state for Definitive Proof.

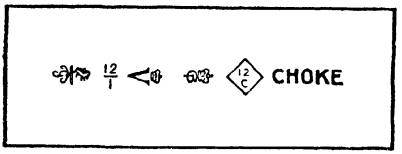
7. (New) London Mark.

6. Birmingham Provisional Proof Mark of barrels proved in the state for Definitive Proof.

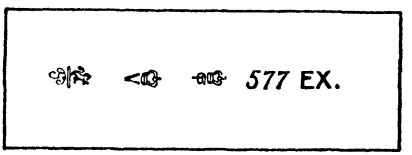
9. Mark of gauge size of barrel of breech-loaders of Fourth, Sixth, and Eighth Classes, the number varying according to gauge.

10. Example of the Gauge Mark of a smooth bore or choke bored barrel.

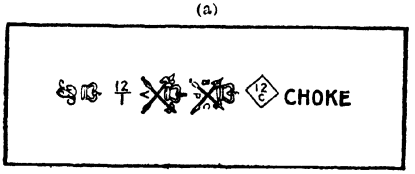
11. On barrels for arms of the Sixth Class the additional mark CHOKE is impressed following the chamber gauge. In the Eighth Class the letter R precedes the word Choke.



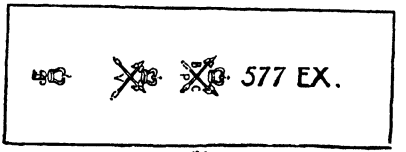
(a)



(a)



(b)



(b)

12. Illustrations of the marking of the Sixth Class: (a) London; (b) Birmingham.

13. Illustrations of the marking of the Seventh Class: (a) London; (b) Birmingham.

14. The L is inserted on the marks of certain breech-loaders, denoting that they have been proved with one-sixth more powder than the ordinary Definitive Proof Charge.

"EC" "Sch"

15. Marks denoting that the proof has been made with "E.C." or "Schultze's" powder.

16. The marks are generally impressed on the breech end of the barrel, and the View Mark on any chamber with which the barrel is connected.

of the accident and of the loss of life or personal injury (if any) occasioned thereby to the Secretary of State. And where, in, about, or in connection with any carriage, ship, or boat, either conveying an explosive or on or from which an explosive is being loaded or unloaded, there occurs any accident by explosion or by fire causing loss of life or personal injury; or if the amount of explosive conveyed or being so loaded or unloaded exceeds, in the case of gunpowder, half a ton, and in the case of any other explosive, the prescribed amount, and there occurs any accident by explosion or by fire, the owner or master of such carriage, ship, or boat, and the owner of the explosive conveyed therein, or being loaded or unloaded therefrom, or one of them, must forthwith send notice of the accident and of the loss of life or personal injury (if any) occasioned thereby to the Secretary of State. The penalty for non-compliance herewith is £20. The Secretary of State is empowered to make an inquiry into accidents, and to formally investigate serious cases. Government inspectors, the police, or any officer of a local authority have power to search suspected premises for explosives kept there in contravention of the laws, and a penalty of £50 is incurred by those who resist such a search. The search may be made upon a magistrate's warrant or a written order of a superintendent or other officer of police of equal or superior rank to a Government inspector. Upon taking a sample of any explosive the inspector or other officer must pay for, or tender payment therefor, to such amount as he considers to be the market value thereof. A trespasser upon a gunpowder factory, magazine, or store may be forthwith removed therefrom and be fined £5; and any person, other than the occupier of or person employed on such a place, who is found committing any act which may tend to cause an explosion or fire is liable to a penalty of £50. Persons found committing dangerous offences may be arrested without a warrant; and any one guilty of a wilful act or neglect endangering life may be imprisoned. If any person throw, cast, or fire any fireworks in or into any highway, street, thoroughfare, or public place he will be liable to a penalty of £5. Where any offence under the Explosives Act, for which the occupier of a factory, magazine, store, or registered premises is liable to a penalty or forfeiture, has in fact been committed by some one else, the latter will be liable to a penalty of £20. And where the occupier is charged with an offence so committed by some other person, the occupier will be exempt from punishment upon proving that he had supplied proper means and issued proper orders for the observance, and used due diligence to enforce the provisions of the Act, and that the offence in question was actually committed by some other person without his connivance, and if the actual offender is alive, that he has taken all practicable means in his power to prosecute such offender to conviction. There are also other provisions exempting the occupier, carrier, or owner from penalty upon proof of another person being the real offender.

GUNS.—Small arms, for the purpose of "proof," are divided into eight classes. The first class comprises single-barrelled military arms of smooth bore, not being breech-loaders or revolvers; the second class, double-barrelled military arms of smooth bore and rifled arms of every description, except Express rifles, and arms of the eighth class, whether of one or more barrels, or constructed of plain or twisted iron, not being revolvers; the third class, every description of single-barrelled birding, "Danish," "Dutch,"

"Carolina," and "Spanish" arms, not being breech-loaders or revolvers; the fourth class, every description of double-barrelled fowling-pieces for firing small shot, and breech-loading small arms of every description and system, not being rifles or revolvers, or choke-bored; the fifth class, revolving small arms of every description and system; the sixth class, all small arms, except those comprised in the eighth class, having one or more barrels choke-bored, *i.e.* barrels whereof the diameter of the bore at the muzzle is less than the diameter of the bore at the same point behind the muzzle other than the chamber or recess which contains the charge; the seventh class, Express rifles, *i.e.* rifles intended to be fired with a larger charge of powder than ordinary rifles, and which must be so declared in writing when sent for definitive proof; the eighth class, choked-bored barrels, having all or a portion of the smaller diameter of their bore rifled.

There are two companies in which are vested the exclusive right of proving and testing all barrels of small arms made in England, other than military barrels made for the use of his Majesty's forces, while the barrels are the property of his Majesty. These companies are the *Gunmakers' Company*, or "the Master, Wardens, and Society of the Mystery of Gunmakers of the City of London," and the *Guardians*, or "the Guardians of the Birmingham Proof House." The Gunmakers' Company have their proof house in London, and the Guardians have theirs at Birmingham. The subject of the testing of gun barrels is chiefly dealt with by the Gun Barrel Proof Act, 1868, but since that time such improvements have been made in small arms, and so many new explosives have been invented for use, as to have rendered the more technical provisions of that Act both insufficient and inapplicable. The possibility of such changing circumstances was wisely provided against by the framers of the Act, for power was thereby given to the Gunmakers' Company and the Guardians to issue from time to time, as occasion required, more appropriate rules and regulations. This power having been exercised, the rules and regulations will be found in the *London Gazette* as from time to time they are made.

There are two kinds of proof provided for by the Act. The first of these, "Provisional Proof," is the proof of a barrel liable in any subsequent stage of manufacture to be reduced in strength before it forms part of a small arm in a finished state; the second, "Definitive Proof," is the proof of a barrel not liable in any subsequent stage of manufacture to be reduced in strength before it forms part of a small arm in a finished state. The Company and Guardians are bound to receive and test the barrels, but are entitled to require payment of certain fees and expenses. Unless proved and marked as such, no small arms may, under heavy penalties, be sold, exchanged, or imported, or kept or exposed for any of such purposes; nor may they be pawned or pledged. There is provision for exemption from a penalty if the person charged discloses the original offender. Any barrel reduced so that the mark does not correctly represent the proof is deemed to be unproved; and so is a barrel whose marks are defaced or removed; and so are double barrels provisionally proved and reduced in strength. Converted barrels with provisional proof marks remaining are still regarded as provisionally proved, but other barrels when converted are deemed to be unproved. The conversion of a barrel of one sort into a barrel of another may be instanced

by the conversion of a flint into percussion, or muzzle-loader into breech-loader, or *vice versâ*. A penalty of £20 is incurred by any one who fraudulently erases, obliterates, or defaces from a barrel any mark of any stamp used by the Company or the Guardians for marking barrels; and also for fraudulently causing any such erasion, obliteration, or defacing. It is a criminal offence, amongst other things, to knowingly forge or counterfeit a stamp, or a part of one; sell or part with the possession of such a forgery or counterfeit; mark a barrel with a forged or counterfeit stamp, or with a part of one; make up a barrel so marked; have in possession or sell or part with the possession of a barrel so marked; imitate a stamp; or transpose or remove a mark or stamp from one barrel to another, or from one part of one barrel to another part of the same. There are other offences provided against, and it may be generally taken that any attempt at fraud in connection with the marking of gun barrels will bring the offender within the grasp of the criminal law; and though the gist of an offence is that the person charged has "knowingly" done the act complained of, yet it is expressly provided that knowledge on his part will be presumed until the contrary is shown.

The Company and Guardians are required to keep a register of foreign proof marks, and such marks will take the place of English marks provided the barrel is not marked as of English manufacture. Barrels with foreign proof marks converted in England are deemed to be unproved barrels; but foreign barrels imported for conversion, and forthwith exported, are exempt from penalties. A barrel having a foreign proof mark which is not registered will be deemed to be unproved; and so also will a foreign barrel not having a foreign proof mark at all. The proof of the exemption of a barrel of foreign manufacture lies upon the party charged with the offence. Forged barrels and stamps may be seized and destroyed or sold for the benefit of the proof houses. *See* MARKS ON GUNS; PISTOLS.

H

HALL-MARKING.—There are now existing about forty effective and unrepealed statutory enactments relating to the manufacture and marking of gold and silver goods. The first of these is a statute of the reign of Henry VI. It is doubtful if there is in any other department of the law so pressing a need for a digest and consolidation; a great confusion most certainly reigns supreme therein and makes almost impossible a short, and at the same time adequate, account of the regulations now in force. In the present article, therefore, only a slight résumé can be given. In the first place, it should be pointed out that though the assaying and marking of certain gold and silver articles is compulsory, yet its control is in the hands of private bodies, and has been so from the initiation of the system. In this country the system has existed substantially in its present form since the reign of Edward I. Without speculating on its origin, and while making due allowance for its defects, it may be affirmed as an undoubted fact that the system has resulted in the creation and maintenance of a high standard of excellence for all British assayed wares, which has not only raised the reputation of British workmanship at home and abroad, but has also created a large amount of private wealth capable of easy realisation by reason of the

guarantees of value the hall-marks afford. As far as could be ascertained by a Select Committee of the House of Commons in 1878, every British manufacturer, and by far the largest number of the dealers, cling to the maintenance of the system with marked tenacity. Nor do the public complain of it. That the foreigner appreciates it is shown by the fact that, rejecting the theoretical advantage of private marks and personal reputation, foreign watch cases are sent to this country to be hall-marked in ever increasing numbers. Nor should the antiquarian or sentimental aspect of the question be altogether disregarded. At any rate this should prevail to the extent of throwing the entire burden of proof on those who propose the abolition of a system which has worked well for 500 years. The above-mentioned committee, in its report, expressed the opinion that no case had been made out for abolition of a legal assay; on the contrary, they considered that, on the whole, the benefits of the present system outweighed the inconveniences which might result from it, and that it might possibly be extended with advantage. Nor did they consider that a voluntary or optional system of hall-marking would be satisfactory. All sales are required to be made by the ounce troy.

The standards.—The standards of gold and silver are as follows:—For *GOLD*—In the *United Kingdom*, 22 carats and 18 carats, and any lower standards, not containing less than one-third of pure gold, that may be fixed by Order in Council; such lower standards have at present been fixed at 15, 12, and 9 carats. In addition there is a standard in *Ireland* of 20 carats. For *SILVER*—In *Great Britain*, 11 ozs. 10 dwts. per lb, and 11 ozs. 2 dwts. per lb troy. In *Ireland*, 11 ozs. 2 dwts. per lb. For *SILVER WIRE*—In *Great Britain*, if not gilt, 11 ozs. 15 dwts. per lb., but if gilt, 11 ozs. 8 dwts. per lb., and 4 dwts. of gold.

Compulsory Marking.—No gold or silver goods, except such as come within the exemptions to be presently mentioned, are allowed to be sold or exported unless they are of the foregoing standards, and are marked as follows:—*Marks for Gold.*—Of 22 carats: in England, with a crown and the number 22; in Scotland, with a thistle; and in Ireland, with a harp and 22. Of 20 carats: in Ireland, with three feathers and 20. Of 18 carats: in England, with a crown and 18; in Scotland, with a thistle and 18; in Ireland, with a unicorn's head and 18. Of 15 carats: in the United Kingdom, with the separate numbers 15 and ·625. Of 12 carats: in the United Kingdom, with 12 and ·5. Of 9 carats: in the United Kingdom, with 9 and ·375. A power appears to have been conferred upon the Commissioners of Taxes, and their present representatives, to alter the marks in Ireland. *Marks for Silver.*—Of 11 ozs. 2 dwts.: in England generally, with a lion passant; in Scotland, with a thistle and Britannia. Of 11 ozs. 10 dwts.: in England generally, with the figure of Britannia. In Ireland the marks for silver do not seem to be determined by the statutes, but are those in use in 1807, or as determined by the Commissioners of Taxes. *Marks for Silver and Gold.*—In addition to the above marks, called the *standard marks*, all gold and silver ware must bear the following marks, viz.:—(1) The maker's mark and his initials, introduced in the reign of Edward I.; (2) a mark, added later, denoting the year in which the article is made; (3) in England, if marked in London, a

LONDON HALL MARKS ON PLATE.

A	1796	a	1816	A	1836	a	1856	A	1876	a	1896
B	1797	b	1817	B	1837	b	1857	B	1877	b	1897
C	1798	c	1818	C	1838	c	1858	C	1878	c	1898
D	1799	d	1819	D	1839	d	1859	D	1879	d	1899
E	1800	e	1820	E	1840	e	1860	E	1880	e	1900
F	1801	f	1821	F	1841	f	1861	F	1881	f	1901
G	1802	g	1822	G	1842	g	1862	G	1882	g	1902
H	1803	h	1823	H	1843	h	1863	H	1883	h	1903
I	1804	i	1824	I	1844	i	1864	I	1884	i	1904
K	1805	k	1825	K	1845	k	1865	K	1885	k	1905
L	1806	l	1826	L	1846	l	1866	L	1886	l	1906
M	1807	m	1827	M	1847	m	1867	M	1887	m	1907
N	1808	n	1828	N	1848	n	1868	N	1888	n	1908
O	1809	o	1829	O	1849	o	1869	O	1889	O	**1909**
P	1810	p	1830	P	1850	p	1870	P	1890	p	**1910**
Q	1811	q	1831	Q	1851	q	1871	Q	1891	q	**1911**
R	1812	r	1832	R	1852	r	1872	R	1892		
S	1813	s	1833	S	1853	s	1873	S	1893		
T	1814	t	1834	T	1854	t	1874	T	1894		
U	1815	u	1835	U	1855	u	1875	U	1895		

Example of the London Marks on Silver Plate (11 oz. 2 dwt. standard), omitting the Maker's Mark.*

Lion.† Leopard.‡ Letter.§ Duty.‖

* The initials of his Christian and surnames.
† Standard Mark. A lion's head and a Britannia when the silver is of 11 oz. 10 dwt. quality.
‡ The Mark of Goldsmiths' Hall, London. Before 1821 the head is crowned.
§ Denotes the year 1878-9.
‖ Sovereign's head. Discontinued in 1890.

Example of the London Marks on 18-carat Gold, omitting the Maker's Mark.*

Duty.‖ Crown.† 18† Leopard.‡ Letter.§

*, ‖, ‡, §. As in the Silver Marks.
† Standard Marks. The figures vary according to the quality of the gold. On 22 carat the figures are 22; on 15 carat, 15 and an additional shield with .625; on 12 carat, 12 and .5; on 9 carat, 9 and .375.

leopard's head. The mark of the Birmingham Company is an anchor; that of the Sheffield Company, a crown; Edinburgh, a castle; Dublin, Hibernia. Before the abolition of the duty, a fourth mark was also necessary in respect of the duty: this mark was, in England, the king's head; in Ireland, the figure of Hibernia. Gold wedding-rings are not within the exceptions, and must consequently be always marked as gold plate. *Marking altered goods.*—If marked gold or silver ware is altered, so that its character and use are changed, or if it is added to in a greater proportion than four ounces to the pound, it must be assayed and marked afresh.

Exemptions.—In England, jeweller's work is exempt from the obligation to comply with the standards. By *jeweller's work* is meant, in this connection, any gold or silver in which stones are set, other than mourning rings, jointed night earrings of gold, and gold springs of lockets. The following articles in *gold* are, in England, exempt from compulsory marking:—Rings, collets for rings or other jewels, chains, necklace beads, lockets, hollow or raised buttons, sleeve-buttons, thimbles, coral sockets and bells, ferrules, pipe-lighters, cranes for bottles, very small book-clasps, any stock or garter clasps jointed, very small nutmeg-graters, rims of snuff-boxes whereof tops or bottoms are made of shell or stone, sliding pencils, toothpick cases, tweezer cases, pencil cases, needle cases, any filigree work, any sorts of tippings or swages on stone or ivory cases; any mounts, screws, or stoppers to stone or glass bottles or phials; any small or slight ornaments put to amber or other eggs or urns; any wrought seal or seals, with cornelian or other stones set therein; or any gold or silver vessel, plate, or manufacture of gold or silver, so richly engraved, carved, or chased, or set with jewels or other stones, as not to admit any assay to be taken of, or a mark to be struck thereon, without damaging, prejudicing, or defacing the same; or such other things as, by reason of the smallness or thinness thereof, are not capable of receiving the marks hereinbefore mentioned, or any of them, and not weighing 10 dwts. of gold or silver each. And the following articles in *silver*:—Chains and necklace beads, lockets, any filigree work, shirt buckles or brooches, stamped medals, or spouts to china, stone, or earthenware teapots of any weight whatever; also tippings, swages, or mounts, or any of them not weighing 10 dwts. of silver each, except necks and collars for castors, cruets, or glasses appertaining to any sorts of stands or frames; also silver wares not weighing 5 dwts., except necks, collars, and tops for castors, cruets, or glasses appertaining to any sorts of stands or frames, buttons to be fixed to or set on any wearing apparel, solid sleeve-buttons and solid studs not having a bisselled edge soldered on; wrought seals, blank seals, bottle tickets, shoe clasps, patch boxes, salt spoons, salt shovels, salt ladles, teaspoons, tea strainers, caddy ladles, buckles (shirt buckles or shirt brooches, before mentioned, excepted), and pieces to garnish cabinets, or knife-cases, or tea-chests, or bridles, stands, or frames. There are exemptions of a similar character in Scotland and Ireland. But, notwithstanding the above exemptions, *gold wedding-rings* are required to be assayed and marked throughout the United Kingdom.

Foreign plate, gold and silver, and not battered, must, if imported, be of the same standards as those required for British plate, and be assayed and

marked in the same manner. Ornamental plate, made before 1800, of which proof lies on the seller, is exempted. Foreign plate is required to be marked with an F, in addition to the marks on British plate.

Assay offices—*Goldsmiths' Companies.*—The bodies empowered to assay gold and silver are the Goldsmiths' Companies in London, Birmingham, Sheffield, Chester, Newcastle-on-Tyne, Edinburgh, Glasgow, and Dublin. At York, Norwich, Exeter, and Waterford companies appear to have been incorporated, but nothing is now done in those cities. The Sheffield Company has power to assay and mark silver only. The Goldsmiths' Company in London act under two Acts of Parliament of George II. and Victoria respectively. The wardens and assayers have power to reject plate on which there is too much solder, or which is not sufficiently forward or put together; or to break up plate found deficient after three assays. Provision is made by these Acts for weighing, assaying, marking, and returning the plate to the maker, and also for certain charges to be made by the company. The Acts relating to the different provincial bodies differ in some respects as to the constitution of the companies and otherwise; but generally speaking they provide for the following objects:—The election into the body of the goldsmiths and silversmiths of the place and neighbourhood; the appointment of wardens and of an assayer; the reception, weighing, assaying, marking, and returning of goods of proper standard; the rejection of goods imperfectly finished or put together, or too much soldered; the calling open of goods suspected to contain base metal; the retention of a certain proportion of "scrapings," of which a part, "the diet," is carefully preserved for the purpose of being tested by some independent authority; the breaking of goods found below the standard; the levying of certain fees. The companies and their assayers are made subject to penalties for marking below the standard. Secrecy is imposed on the wardens and assayers. All workers and dealers in gold must register their names, works, and addresses with some of these companies, but they may select whichever they choose.

Penalties and prohibitions.—In all parts of the United Kingdom a maker or dealer who sells gold or silver goods, other than those excepted as above, without the requisite marks thereon, is liable to a penalty. In Ireland it would appear that the buyer also is liable to the penalty. *See* METAL BUTTONS; MERCHANDISE MARKS; PLATE; WATCHES.

HANGING SIGNS.—*In London* the County Council, under the London Building Act, 1894, makes bye-laws for the regulation of lamps, signs, or other structures overhanging the public way, not being within the City; these bye-laws are administered by the local authorities. Under the Metropolitan Police Act, 1839, a penalty of forty shillings is imposed upon any one who, in any street or public place within the metropolis, "shall set up or continue any pole, blind, awning, line, or any other projection from any window, parapet, or other part of any house, shop, or other building, so as to cause any annoyance or obstruction in any thoroughfare." The Metropolis Local Management Act, 1855, has also an important provision on the subject of lamps, signs, showboards, and projections placed in front of buildings, and which are an annoyance "in consequence of the same projecting into or being made in or endangering or rendering less commodious the passage along any

street." The owners of such projections must remove or alter them when so required by the local authorities; if they do not a fine will be incurred.

In the Provinces signs and projections are generally affected by the provisions of section 69 of the Public Health Act, 1875. If the sign or projection is "an obstruction to the safe and convenient passage along" the street, the owner or occupier of the premises to which it is attached may be required by the local authorities to remove or alter it; in default he will incur a fine, and the authorities may remove it themselves and charge the expenses to the person making the default. It is specially provided that, "except in the case in which such obstructions or projections were made or put up by the occupier, such occupier shall be entitled to deduct the expense of removing the same from the rent payable by him to the owner of the house or building." There are also usually some clauses relating to hanging signs and similar erections in local Acts which relate only to certain places.

Apart from statute, the owner of premises with a projection or hanging sign does not lose his right to preserve it as such simply because the road in front of the house becomes a public highway or street; but in no case can the right exist if the condition of the projection is such as to be likely to injure passengers.

HARDWARE AND CUTLERY.—The manufacture of certain hardware goods and articles of cutlery has for many years past been regulated by a statute of George III. The Act purports to deal especially with such articles made of wrought steel and iron and steel, as knives, forks, razors, scissors, shears, and other cutlery wares, and with edge tools and hardware requiring a cutting edge. This branch of manufacture has always been one in which England has excelled, and even in the early days of the reign of George III. the fact was so recognised, and the necessity for the state regulation of the trade so appreciated, that the above-mentioned statute recites as the reason for its enactment that the foregoing articles "have for many Years been a great Branch of Trade in *England;* and such Articles being esteemed in Foreign Countries for their superior Quality, great Quantities thereof have been sent to Foreign Markets;" and that "a Practice prevails of casting or forming in a Mould from Cast Iron, Knives, Knife Blades, Forks, Razors, Razor Blades, Scissors, Shears, and other Articles of Cutlery, Edge Tools, and Hardware requiring a cutting Edge, and some of such Articles are, by a Chemical Process, previous to the finishing and polishing thereof, made to resemble so nearly the like Sort of Articles wrought of Steel, and Iron and Steel, even by Persons skilled in the Manufactory of Cutlery, Edge Tools, and Hardware." The statute was accordingly passed in order to protect purchasers by conferring upon manufacturers of wrought articles the privilege of marking their goods with *the figure of a hammer*, the manufacturers of cast articles being prohibited from the use of that mark. At the same time the manufacturers of wrought articles thereby acquired a valuable protection against unfair competition.

The statute commences by making provision for the foregoing mark in very precise terms. It directs that where any articles are formed or manufactured by the hammer of wrought steel, or iron and steel, the manufacturers shall be at liberty to mark or stamp them with the figure of a hammer at any time after the forging and previous to their being ground or polished. The

mark must not be affixed at any other time except as the statute provides. The object of the mark is to denote that the articles have been forged by the hammer and are made of wrought steel, or iron and steel, and to distinguish them from articles cast in a mould or otherwise than by hammer. No one may mark with the figure of a hammer any of the above-mentioned articles but which are cast or formed in a mould, or otherwise than by means of the hammer, either at the time of casting or forming them, or subsequently thereto and previously to the *bonâ fide* sale thereof to the user, nor are such articles to be marked with any symbol or device resembling a hammer. And no one may have in his possession for sale, nor may he sell or expose for sale, any such articles not made by the hammer having such false marks upon them. The penalty attached to any of these offences is a fine of £5 for any number of the articles not exceeding one dozen, and for a quantity exceeding one dozen, £5 for every dozen. There is a like penalty for marking any articles of cutlery, forged with the hammer of wrought steel or of iron and steel, or cast in a mould at any time previous to the sale thereof to the user, with any words indicating the quality to be any other than it really is; or for having in one's possession, for the purpose of sale, or exposing for sale, such articles improperly marked.

There is also a provision that no person shall mark or stamp on any articles the words "London," or "London made," nor shall have in his possession, or sell or expose for sale such articles so marked, unless they have actually been manufactured in the city of London, or within a radius of twenty miles thereof; the penalty for an infraction of this provision is the forfeiture of the articles so marked, with the sum of £10 for any quantity less than one dozen and £10 for every dozen exceeding that number. The Act directs that all informations must be preferred within six months; one-third of any penalty is to go to the poor, the other two-thirds to the informer. There is a special exemption from penalties under the Act in favour of any one having articles marked contrary to the foregoing statutory provisions, who can satisfactorily prove that he purchased them with the marks thereon, without knowing that they were marked contrary to law, and who discloses to the magistrates the names of the persons from whom they were purchased, so that they may be prosecuted.

The Cutlers' Company of Sheffield, or to give it its proper designation, "The Master, Wardens, Searchers, Assistants, and Commonalty of the Company of Cutlers in Hallamshire in the County of York," is composed only of cutlers who carry on the trades of makers of knives, sickles, shears, scissors, razors, files, and forks within six miles of Hallamshire. A seven years' apprenticeship may be a condition precedent to the freedom of the company, and any person who so receives the freedom has granted to him the exclusive right to use a special mark on his manufactures, a penalty being incurred by any member of the company who counterfeits the mark of another. This mark, on the death of the freeman intestate, passes to his next-of-kin like personal property, and may be bequeathed by will in the same manner as any other form of personal property; but whether there is a will or an intestacy, the freeman cannot alienate his widow's life estate therein, which will even continue through a subsequent marriage; but the widow may herself sell her life-interest in the mark. Besides freemen of the com-

pany, any other person who, within the above-mentioned locality, carries on the above-enumerated trades, or the "trades of manufacturers of steel and makers of saws and edge tools and other articles of steel, or of steel and iron combined, having a cutting edge," may demand to be received as a freeman of the company and to have a mark assigned to him. Certain fees, however, must be first paid.

Sheffield marks.—The Cutlers' Company are required by the Trade Marks Act, 1906, to establish and keep at Sheffield a register of trade marks, the register being officially known as the Sheffield Register. Therein must be registered all trade marks on metal goods belonging to persons carrying on business in Hallamshire or within six miles thereof. Application for this registration must be made to the company, who will notify to the Comptroller of Trade Marks in London in order to invite objection; and, in like manner, any application for registration of a trade mark on metal goods by a person not within the foregoing local limits, and which must consequently be made direct to London, will be notified to the Cutlers' Company. A body of persons, corporate or not corporate, may (notwithstanding any of the above-mentioned peculiar incidents of a Sheffield trade mark) be registered in the Sheffield Register as proprietor of a trade mark or trade marks. Any one who is aggrieved by a decision of the Cutlers' Company in respect of anything done or omitted to be done in respect to the registration of a trade mark may appeal to the comptroller in London. "The expression 'metal goods' means all metals, whether wrought, unwrought, or partly wrought, and all goods composed wholly or partly of any metal."

The Factory and Workshop Act has also a special interest to the hardware and cutlery manufacturer. Where grinding is carried on in a tenement factory, the owner is responsible for the observance of the following regulations:—(1) Boards to fence the shafting and pulleys, locally known as drum boards, must be provided and kept in proper repair; (2) hand rails must be fixed over the drums and kept in proper repair; (3) bell guards, locally known as "Scotchmen," must be provided and kept in proper repair; (4) every floor constructed on or after the 1st January 1896 must be so constructed and maintained as to facilitate the removal of slush, and all necessary shoots, pits, and other conveniences must be provided for facilitating such removal; (5) every grinding-room or hull established on or after the 1st January 1896 must be so constructed that, for the purpose of light grinding, there will be a clear space of three feet at least between each pair of troughs and, for the purpose of heavy grinding, a clear space of four feet at least between each pair of troughs, and six feet at least in front of each trough; (6) the sides of all drums in every grinding-room or hull must be closely fenced; (7) by a special exemption of the Home Secretary, now in force, but which may be revoked, a grindstone is allowed to run before a fireplace or in front of another grindstone; (8) a grindstone erected on or after the 1st January 1896 must not be run before any door or other entrance. In every tenement factory it is the duty of the owner and occupier respectively to see that such part of the horsing chains, and of the hooks to which the chains are attached, as are supplied by them respectively, are kept in efficient condition. Where grinding of cutlery is carried on in a

tenement factory, the owner must provide an instantaneous and constant communication between each of the rooms in which the work is carried on and both the engine-room and the boiler-house. A tenement factory in which there is a contravention of the foregoing will be deemed not to be kept in conformity with the Factory Act, but, for the purposes of any proceeding in respect of a provision for the observance of which the owner of the factory is responsible, that owner will be substituted for the occupier of the factory.

HAWKERS.—A hawker is defined as a person who travels with a horse or other beast bearing or drawing burden, and goes from place to place or to other men's houses carrying to sell or exposing for sale any goods, wares, or merchandise, or exposing samples or patterns of any goods, wares, or merchandise to be afterwards delivered. The definition in the Hawkers' Act, 1888, also includes in the meaning of the term, "any person who travels by any means of locomotion to any place in which he does not usually reside or carry on business, and there sells or exposes for sale any goods, wares, or merchandise in or at any house, shop, room, booth, stall, or other place whatever hired or used by him for that purpose." A hawker must take out, and obtain from an Inland Revenue officer, an annual excise license, which costs £2, and expires on the 31st day of March in each year. But it is not necessary for the license to be taken out in the following cases, that is to say—(*a*) by any person selling or seeking orders for goods, wares, or merchandise, to or from persons who are dealers therein, and who buy to sell again; (*b*) by the real worker or maker of any goods, wares, or merchandise, and his children, apprentices and servants usually residing in the same house with him, selling or seeking orders for goods, wares, or merchandise made by such real worker or maker; (*c*) by any person selling fish, fruit, victuals, or coal; (*d*) by any person selling or exposing for sale goods, wares, or merchandise in any public mart, market, or fair legally established. Except in the case of the renewal of a license for the year immediately preceding, a license will only be granted upon a certain condition. This condition is that upon application to the Inland Revenue officer for the license, the applicant must produce a certificate that he is a person of good character and is a proper person to be licensed as a hawker. The certificate must be signed by a clergyman or minister of the parish or place in which the applicant resides, and two householders of that parish or place. It will be sufficient, however, if it is signed by a justice of the county or place, or superintendent or inspector of police for the district in which the Inland Revenue officer resides to whom application is made for grant of the license. To forge or counterfeit any such certificate, or produce or make use of any forged or counterfeited certificate or license, knowing the same to be forged or counterfeited, is to incur a fine of £50; and any license obtained on a forged or counterfeited certificate will be void. A fine of £10 is incurred by the contravention of any of the following provisions:—(1) Every hawker must keep his name and the words "licensed hawker" visibly and legibly written, painted, or printed upon every box or other package and every vehicle used for the carriage of his goods, and upon every room or shop in which his goods are sold, and upon every handbill or advertisement which he distributes or publishes. (2) A hawker must not let to hire or lend his license to any person; but a servant may travel with his master's license and trade for his master's benefit.

If any one, not having in force a hawker's license, in his own real name, (*a*) uses the words "licensed hawker" or any words importing that he carries on the trade of a hawker, or is licensed so to do; or (*b*) trades with or under colour of a license granted to any person other than his master, he will for every such offence incur a fine of £10. And in addition to any other penalties to which he may be liable, any one will also incur a fine of £10 who does any act for which a license is required—(*a*) without having a proper license in force; or (*b*) without immediately producing, upon demand by any person, a proper license granted to him or to his master, and which is then in force. An Inland Revenue or police officer may arrest a person found committing either of the last-mentioned offences. For any one, whether a licensed hawker or not, to hawk gunpowder in a highway, street, public thoroughfare, or public place is to incur a fine of 40s. and a forfeiture of the gunpowder. And the fine is £100 for hawking spirits elsewhere than in a place for which the hawker is licensed to sell spirits; and there is provided a similar fine for hawking tobacco or snuff in like circumstances. And *see* PEDLAR; and as to the regulations for hawking PETROLEUM, see under that title.

HAY, CORN, AND STRAW DEALERS should have particular regard to three Acts of Parliament of the reigns of George III., William IV., and Victoria respectively, which regulate in many of its details the buying and selling of hay and straw. And of some practical importance are the provisions of the Chaff Cutting Machines (Accidents) Act of 1897. The former three Acts apply only to the cities of London and Westminster, and to a radius of thirty miles thereof, and it is consequently to transactions effected in those cities and limits that the first part of this article has reference. Nor do the Acts extend to hay and straw delivered on special contract or agreement. It is provided, in the first place, that no hay or straw shall be sold except in trusses, and to this provision, as well as to the others, penalties are imposed in case of breach. The weight of trusses of hay are required, between the last day of August and the first day of June in the following year, to be 56 lbs. at least; and betwen the first day of June and the last day of the following August, 60 lbs. at least; unless the hay is of a former year's growth, when the weight need only be 56 lbs. A truss of straw must contain 36 lbs., and a load of hay or straw is required to contain thirty-six bundles or trusses. But where trusses are sold together to the same person, and the weight of the whole is consistent with a legitimate average weight of each truss, the seller will not be guilty of an offence in the event of some of the trusses being found to be deficient in weight. A seller must always, at the time of sale or delivery, hand to the buyer a ticket containing the number of trusses sold, and the Christian and surnames and address of the owner for whom he sells. Between the first day of June and the last day of December in the same year, any hay of the growth of any former year can be legally sold only as old hay. Trusses must always be of one quality throughout; and no pair of bands with which any truss is bound may exceed 5 lbs. in weight. Attention should be paid to the provision, "that no common salesman, factor, or agent, within the cities or limits aforesaid, shall buy and sell on his own account or of any person or persons in trust for him any hay or straw whatsoever, or any grass of any kind or description growing or making into hay," for

attached to its breach are serious penalties; and also to the penal provision that every salesman, factor, or agent must send to the owner for whom he sells, within seven days after the sale, a written account of the place, time, and price of the hay or straw sold, and of the name and residence of the purchaser thereof. A register, in which are required to be correctly entered the sales of hay and straw, is kept in every market, and this book is open for public inspection. A clerk of a market, toll-collector, or deputy is not allowed to buy or sell hay or straw.

Disputes as to weight.—Public scales and weights are kept at the office of the clerk of the market, and are also provided by the local authorities. If there is any doubt as to whether any hay or straw sold within the above-mentioned limits is not of the proper weight, their buyer, on the delivery of the goods at his premises or other agreed place of delivery, may weigh them in the presence of the seller or his agent. Should either of the parties be then dissatisfied with the result of the weighing, the buyer is expected at once to take the hay or straw to the market or local public scales, where it may be weighed by the official in charge. The buyer may there be required to pay a weighing fee at the rate of three shillings per load, but, if the result is in his favour, that sum must be repaid to him by the seller. The penalty for selling hay or straw under weight, or of bad quality, will not be incurred unless the hay or straw is weighed or complained of by the buyer in the presence of the seller or his agent, at or before the time of delivery; unless the non-weighing is caused by the seller's or his agent's refusal or neglect to attend and watch the weighing.

Generally.—Hay and straw in course of conveyance to be sold within the above-mentioned limits cannot, during that time, be both bought and sold again; nor can any hay and straw be bought in a market-place in order to be sold again therein. Buying agents must be careful to comply with the law and not charge their principals any more than they have actually paid. A seller is expressly prohibited from delivering anything other than the hay or straw actually sold. He must not mix water, sand, or other matter with the hay or straw he sells or tries to sell; nor may he fraudulently increase the weight, or deliver less than the number of trusses sold; nor may either seller or buyer give or receive false receipts for the price of hay or straw sold. There is also a penalty for not bringing to the market on the ensuing market-day any hay or straw which had been exposed, but not sold, on the previous market-day, or had been brought for sale between two market-days and lodged near the market. A salesman who has been convicted of a breach of any of the foregoing provisions, and thereby become subject to penalties, may lodge an information against the farmer or other person for whom or on whose account he has sold the hay or straw, and on account of which the salesman has been so convicted; and if the offence is found to be imputable to such farmer or other person, the latter will be made to pay to the salesman the amount of the penalty and costs he had so incurred. But the convicted salesman must lodge his information within fourteen days after the date of his conviction.

Chaff-cutting machines.—The feeding mouth or box of every chaff-cutting machine, which is worked by any motive power other than manual labour, is required (so far as is reasonably practicable and consistent with the due and

efficient working of the machine) to be of such construction or fitted with such apparatus or contrivance as will prevent the hand or arm of the person feeding the machine from being drawn between the rollers to the knives. The fly-wheels and knives of such a machine must also, so far as is reasonably practicable, be kept sufficiently and securely fenced at all times during the working thereof. No one, under a penalty of £5, may permit a machine to be worked which does not comply with the foregoing provisions; nor may he, during the working of the machine, unnecessarily, and without due cause, remove any guard or thing provided in compliance with these provisions. In the case of a prosecution it will lie upon the person charged, in order to escape conviction, to prove that he took all reasonable precautions to ensure such compliance. A constable may enter upon any premises for the purpose of inspecting a machine, provided he is acting upon the orders of a superior officer not below the grade of an inspector. The husband or wife of the person charged is competent as a witness.

British corn returns.—Weekly returns of the purchases of British corn are made under the direction of the Board of Agriculture from not less than one hundred and fifty and not more than two hundred towns selected by the Privy Council; and the average price of British corn is from time to time ascertained therefrom and published. Every buyer of corn in such a selected town must make a return every week, on the last market-day in the week in that town, or on any other appointed day. By the expression "British corn" is meant wheat, barley, and oats, the produce of the United Kingdom, the Channel Islands, or the Isle of Man. The return is made in writing, signed by the buyer, to the inspector of corn returns for that town. It specifies, with respect to the seven days ending on and including the day on which the return is made, the amount of every parcel of each sort of British corn bought by him in the town, whether from the producer or otherwise, its price, the weight and measure by which it was bought, the name of the seller, and if it was sold or bought on account of any other person, then the name of that person also. Particulars may also be required as to where, or by whom, and in what manner any British corn has been delivered to the buyer. The expression "bought" means the agreement to buy, whether made by sale, note, or otherwise, and irrespective of actual delivery in pursuance thereof. The following persons would come under the denomination of buyers of corn in a selected town:—(*a*) Every person who deals in British corn in the town; (*b*) any one who, in that town, carries on the trade of a contractor, miller, maltster, brewer, or distiller; (*c*) the owner or part owner of any carriages carrying goods of passengers for hire to and from or within the town; and (*d*) any person who, as a merchant, clerk, agent, or otherwise, purchases in that town any British corn for sale or for the sale of meal, flour, malt, or bread made or to be made thereof.

From these returns the local inspector ascertains the total quantity and the total and average price of each sort of British corn returned to him during the week, and forwards a summary thereof to the Board of Agriculture. A copy of this weekly summary, containing all details, other than the names of persons, is published in the town from which it is drawn. The chief publication of it is made in the *London Gazette*, wherein are also periodically published a quarterly, yearly, and septennial summary. A buyer who fails

to make his return or who makes a false return is liable to prosecution. In the city of London, and within an area of five miles from the Royal Exchange, the foregoing is subject to the following modifications:—(1) The return is to be made weekly on a Wednesday, unless another day is officially appointed; (2) the buyers of corn who are required to make the return are those persons who within the city and area deal in British corn, or carry on business as contractors, or buy British corn in the Corn Exchange in Mark Lane, or in any other building or place which may be used for the same purposes as the Corn Exchange.

HEALTH AND SAFETY OF FACTORIES—Health.—A *factory* is required by law to be kept in a cleanly state and free from effluvia arising from any drain, watercloset, or other nuisance. Nor must it be so overcrowded while work is being carried on therein as to be dangerous or injurious to the health of those employed there. It is also necessary for it to be ventilated; and this ventilation should be sufficiently effective to render harmless, so far as practicable, any injurious gas, vapour, dust, or other impurity generated in the course of the process of manufacture. To secure cleanliness the inside walls of all its rooms, and all the ceilings, and passages, and staircases are required to be lime-washed once in every fourteen months. But if any of these parts of the premises have been oiled or varnished within the past seven years, it will be sufficient if they are washed with hot water and soap instead of lime-washed. A *workshop* is under practically the same regulations in favour of sanitation as is a factory, but they are imposed by the Public Health Act, 1875. The owner or occupier must comply with any notice served upon him by the local authorities, and supply any defects in sanitation which may be therein specified. *Overcrowding.*—A factory or workshop will be overcrowded if the number of cubic feet of space in any room therein bears to the number of persons employed at one time in that room a proportion less than 250 cubic feet, or during any period of overtime 400 cubic feet of space to every person. A notice should be affixed to the premises specifying the number of persons who may be thus legally employed in each room. The Home Secretary has power to modify the foregoing proportion under special circumstances. *Temperature.*—Adequate measures must be taken to secure and maintain a reasonable temperature in each room in which any person is employed; but these measures are not to interfere with the purity of the air. Thermometers may be ordered by the authorities to be provided and kept in working order. And likewise in every room there should be sufficient *ventilation*, and in this respect special orders may be made by the authorities. If the occupier of the factory or workshop considers that the owner thereof should meet the expense of ventilation, he has a right to bring the matter before a magistrate, who has power to apportion the expense. Whenever any process is carried on which renders the floor liable to be wet to such an extent that the wet is capable of being removed by *drainage*, adequate means are then to be provided for the draining of the wet.

Safety.—The *doors* of a factory or workshop must not, during work and meal times, be locked or fastened in such a manner that they cannot be easily and immediately opened by those within. They must also all open outwards if more than ten persons are employed in the rooms to which they belong, and the premises themselves were commenced to be built after the

1st January 1896. Sliding doors are not subject to the foregoing rule *Fencing machinery.*—The following provisions should be carefully noted:—(*a*) Every hoist or teazel and every fly-wheel directly connected with the steam or water or other mechanical power, whether in the engine-house or not, and every part of any water-wheel or engine worked by any such power, must be securely fenced; and (*b*) every wheel race not otherwise secured must be securely fenced close to the edge of the wheel race; and (*c*) all dangerous parts of the machinery and every part of the mill-gearing must either be securely fenced, or be in such position or of such construction as to be equally safe to every person employed or working in the factory as it would be if it were securely fenced; and (*d*) all fencing must be constantly maintained in an efficient state while the parts required to be fenced are in motion or use, except where they are under repair or under examination in connection with repair, or are necessarily exposed for the purpose of cleaning or lubricating or for altering the gearing or arrangements of the parts of the machine. A *steam boiler* (other than one of a locomotive belonging to a railway company, or than one belonging to or exclusively used in the service of the king) must, whether separate or one of a range—(*a*) have attached to it a proper safety-valve and proper steam-gauge and water-gauge to show the pressure of steam and the height of water in the boiler; and (*b*) be examined thoroughly by a competent person at least once in every fourteen months. The boiler, safety-valve, and gauges should be kept in proper condition; and a report of the foregoing examination is to be entered into or attached to the general register of the factory, and duly signed. *Self-acting machines* are regulated as follows when in a factory erected on or after the 1st January 1896. The traversing carriage is not to run out within a distance of eighteen inches from any fixed structure not part of the machine, if the space over which it runs out is a space over which any one is liable to pass. But this regulation is not to prevent any portion of the traversing carriage of a self-acting cotton-spinning or woollen-spinning machine being allowed to run out within a distance of twelve inches from any part of the head-stock of another such machine. A factory employee must not be in the space between the fixed and traversing parts of a self-acting machine unless the machine is stopped with the traversing part on the outward run; the space in front of a self-acting machine is not such a space. A woman, young person, or child is not allowed to work between the fixed and traversing part of a self-acting machine while the machine is in motion by the action of steam, water, or other mechanical power.

Cleaning machinery in motion by the aid of steam, water, or other mechanical power is excluded from the work which may be lawfully entrusted to a child. And a child must not be allowed to clean any place under any such machinery other than overhead mill-gearing. A young person cannot clean any dangerous part of such machinery; and those parts are to be deemed dangerous which are notified as such by an inspector to the occupier of the factory. A woman or young person cannot clean such part of the machinery in a factory as is mill-gearing, while the machinery is in motion for the purpose of propelling any part of the manufacturing machinery. Upon the local authorities is cast the duty of seeing that adequate means of escape in case of *fire* are provided and effectively main-

tained in every factory or workshop. And here, as in the matter of ventilation, the occupier of a factory has recourse to a magistrate in case he feels that the owner of the premises should contribute to the expenses he has incurred in complying with the requirements of the authorities in this respect. The magistrates have power to prohibit the use of dangerous machinery, or to order its repair or alteration, and prohibit its use in the meanwhile; and, in like manner, they may deal with even the premises of a factory or workshop.

Accidents.—*Notice* in writing is to be sent forthwith to the local factory inspector whenever there occurs, in a factory or workshop, an accident which either—(*a*) causes loss of life to a person employed in the factory or workshop; or (*b*) causes to a person employed therein such a bodily injury as prevents him on any one of the three working days next after the occurrence of the accident from being employed for five hours on his ordinary work. If the accident causes loss of life, notice must also be forthwith sent to the certifying surgeon for the district. And a similar notice to the surgeon is required if the accident "is produced either by machinery moved by steam, water, or other mechanical power, or through a vat, pan, or other structure filled with hot liquid, or molten metal, or other substance, or by explosion, or by escape of gas, steam, or metal," unless notice is required by the Explosives Act, 1875, to be sent to a Government inspector. The notice is to state the residence of the person killed or injured and the place to which he has been removed. The occupier of the factory is the person whose duty it is to send the notice; and if the accident occurs to a person employed in an iron mill or blast-furnace or other factory or workshop where the occupier is not the actual employer of the person killed or injured, the actual employer must immediately report the accident to the occupier. Upon receipt of the notice the certifying surgeon must, with the least possible delay, proceed to the factory or workshop and make a full *investigation* as to the nature and cause of the death or injury. A report embodying the result of this investigation should be sent by him to the inspector within the next twenty-four hours. For the purpose of the investigation, the certifying surgeon has the same powers as an inspector; he can also enter any room or building to which the person killed or injured has been removed. *Inquest.*—In the case of a death the coroner must advise the inspector of the inquest. If the latter does not attend, the inquest is to be adjourned and another notice sent to the inspector. But if the accident has caused only one death, and the coroner has sent to the inspector twenty-four hours' notice of the inquest, there need be no adjournment if the majority of the jury think it unnecessary. Any relative of the deceased may attend the inquest; and so may an inspector, the occupier of the factory, and any person appointed by the order in writing of the majority of the workpeople employed in the factory. Subject to the orders of the coroner they may there, either in person or by counsel, solicitor, or agent, examine any witness. *Formal investigation.*—If the Home Secretary considers a special investigation expedient, he may direct that such an investigation shall be held. Any competent person, with or without skilled assessors, may be appointed to hold the investigation, and the proceedings are to take place in open court. The court or investigators may enter and inspect any premises they think fit; require the attendance of witnesses;

order the production of books, papers, and documents; administer oaths, and require witnesses to sign their testimony. Every person, unless he can give a reasonable excuse, must comply with any order or requisition made against him, or forfeit a penalty; his expenses will be paid. The court of investigation will make a report to the Home Secretary, which will be published if thought necessary. And *see* FACTORIES.

HEDGES, DITCHES, and FENCES.—There is no obligation, as a general rule, upon the owner of land to erect a hedge in order to divide his property from that of his neighbour. The boundary, or dividing line, is marked by the "fence," and this latter may exist so much in imagination as to have no visible or actual existence; a fence is nothing but the ideal invisible boundary which exists in contemplation of law, and which bounds every man's land. A desire, however, to prevent trespassing has caused the general adoption of something more substantial than that invisible line of division. And where there is any hole or work on land near a street so as to be a source of danger to passengers, the local authorities may fence the street for the protection of the passengers; the owner of the land cannot himself be forced to erect the fence, though once he has done so it must be maintained by him in such condition as not to obstruct the free passage along a street, or interfere with ventilation. A penalty of £2 is incurred by any person who by making on a road a hedge, ditch, or other fence, encroaches on a carriage-way or cart-way within fifteen feet from the centre. The prosecution must take place within six months from the completion of the fence; it will fail if the person proceeded against can show that the fence has been erected upon his own land. A hedge is a very common form of fence, but where it is accompanied by a ditch it does not itself mark the boundary line. The boundary is defined by the ditch, which belongs to the owner of the hedge, and adjoining the ditch will be the land of the neighbour. In default of evidence to the contrary, the presumption is that both hedge and ditch belong to the owner of the land *on whose side of the hedge the ditch is not.* But if the hedge is in the centre of two ditches, the question of ownership can only be decided from the facts of the particular case; the adjoining owner who can prove acts of ownership will be *primâ facie* the owner of the hedge or ditches, though should both owners be in a position to prove acts of ownership, they must be content to remain only tenants in common. In a particular case, however, it may be possible to prove the exact line of boundary, under which circumstances each owner will have a separate property in the hedge or ditch to the extent indicated by the boundary. No one when making a ditch can cut into his neighbour's soil; he usually cuts it to the very extremity of his own land. "He is, of course," said a learned judge, "bound to throw the soil which he digs out upon his own land, and often, if he likes, he plants a hedge upon it; therefore, if he afterwards cuts beyond the edge of the ditch, which is the extremity of his land, he cuts into his neighbour's land and is a trespasser." Any local idea that the owner of a bank or hedge with a ditch on the outside is entitled to four feet of width for the base of the bank and four feet of width for the ditch should be disregarded as erroneous. No such rule has anything to do with the matter; for a man may cut his ditch as wide as he pleases, provided he enlarges it into his own land. It may be that either

by express agreement or by prescription a man may become liable to fence off his land from his neighbour's, and when this is so he incurs the incidental obligation to maintain and repair the fence, and would be liable for damage resulting from non-fulfilment of that obligation. He is, of course, under no legal obligation to keep up fences between adjoining lands of which he is the owner; and even where adjoining lands, which have once belonged to different persons, one of whom was bound to repair the fences between the two, afterwards become the property of the same person, the pre-existing obligation to repair the fences is thereby destroyed. Should the latter person afterwards part with one of those adjoining lands, the obligation to repair the fences will not revive, unless express words, imposing that obligation, are introduced into the deed of conveyance.

HIGHWAY RATE.—As a general rule the cost of repairing highways is paid out of the general district rate. But by sub-sections 2 and 3 of section 216 of the Public Health Act, 1875, it is provided, in the case of urban districts, that:—

> Where parts of the district are not rated for works of paving, water-supply, and sewerage, or for such of these purposes as are provided for in the district, the cost of repair of highways in those parts shall be defrayed out of the Highway Rate to be separately assessed and levied in those parts by the Urban Authority as Surveyor of Highways, and the cost of such repair in the residue of the district shall be defrayed out of the General District Rate. Where no public works of paving, water-supply, and sewerage are established in the district, the cost of repairs in the district shall be defrayed out of a highway rate, to be levied throughout the whole district by the Urban Authority as Surveyor of Highways.

This rate is levied on all property liable to poor rate. In the case of small tenements the owners may be rated instead of the occupiers; and in the case of agricultural land the rate must be only one-half in amount of the rate imposed upon buildings and other hereditaments. In order to be legal the rate must be allowed by two justices, and published at the parish church, or in some other conspicuous place if there is no such church. Failing evidence of this publication—and the production of the rate will not be sufficient evidence—the authorities would be unable to recover the rate. There is a right to appeal to the Quarter Sessions against this rate. A highway rate has been quashed in a case wherein it appeared that there had been public paving and other works in the district, which facts would make it necessary to defray the highway expenses out of the district rate; but in another case, where only a small quantity of paving had been executed, a highway rate was upheld. If the justices are satisfied as to the poverty of a ratepayer they may discharge him from payment of this rate. *See* GENERAL DISTRICT RATE.

HIGHWAYS.—A highway is a way or road over which the public have a right of passage; it need not be a thoroughfare. Five kinds of ways may be noted: a footpath, for persons passing on foot only; a bridle path, which includes a footpath and is for persons passing on horseback; a drift-way, for driving cattle; a carriage-way, for leading or driving carts and other carriages, always including a foot and bridle path, and usually, but not necessarily, including a drift-way; a water-way for ships and boats. A highway may

also be one of two classes: either a main road, or a road or way other than a main one. A main road is usually one which runs between two or more important towns or centres of population, and is also, as a rule, a road which was formerly a turnpike road; but an old turnpike road does not necessarily become a main road. The authority having control of a main road, and under an obligation to keep it in repair, is the county council, unless that body has arranged with a district council to undertake the responsibility. The management and repair of all other roads are vested in the district councils. The parish council has a voice, however, in the question whether or no a particular highway shall be abandoned; and so also is it necessary to have the consent of a parish council before a footpath can be closed or diverted. The parochial electors possess in this matter a very important power. The legislature has vested in a district council certain very advantageous rights in aid of its performance of the duty to repair. It may take for this purpose, without being required to make any payment or compensation, any material useful for road-making from any common, waste land, river, or brook in the parish in which the road undergoing reparation is situated. And subject to a liability for any damage caused by carts, it may take stones off any person's land, provided one month's previous notice of the intention so to do has been given to that person. And for the same purpose it may, without the consent of the owner of the land, enter thereon and open gravel pits and quarries; but it must pay him for the materials taken away and also for the damage caused by haulage, must keep the pits or quarries sufficiently fenced, and when abandoned must either slope them down or fill them up. Bushes or trees growing within fifteen feet of the centre of the road may be ordered to be removed, and any other trees or hedges pruned or lopped.

A highway is created either by statute or by dedication to the public. The latter method is the most usual, and consists in the owner of the soil declaring his intention by words, writing, or acts, that the public shall have the use of a way over such soil. Whether there has been such a dedication in a particular case is often a very nice point to decide; but, on the other hand, the action of the owner may be so clear as to its intention as to make the whole fact of the dedication absolutely certain. When there is no express dedication, the presumption of an intention to dedicate, arising out of the conduct of the owner, may be rebutted; as by showing that when the public were first admitted a bar or chain was occasionally placed across the road, so that passengers might at times be excluded; although it should also appear that the bar or chain had long been omitted to be used, or that it had been suffered to fall into decay, or had been actually broken down, and that no attempt had afterwards been made to restore it. But in a case where there was some evidence of an express dedication, the owner was precluded from successfully contending that the way was a private one, for it also appeared that he had acquiesced in its general public use for a period of eighteen months. The local authorities are not liable to maintain and repair a new highway until, the owner having first given three months' notice of the intending dedication to the district council and to the local bench of magistrates; and the council being satisfied that the road is useful and properly made, and the magistrates having certified, and enrolled their certificate at

the next Quarter Sessions, that it is thirty feet wide and properly made; the public have then used it for twelve months, the owner during all this time having himself kept it in repair. But the time and expense of this procedure may be obviated by agreement, before the completion of the road, between the owner and the district council.

The property in the soil of a highway always continues in the original owner so far as he remains the owner of the adjoining land; but if there are various owners on each side of the road, each one of them is presumed to own such part of the highway as fronts his property and extends therefrom to the middle of the road; and an adjoining owner has always the right to erect a gate from his property on to the highway. Unless there is a special statutory enactment to the contrary, as in an Inclosure Act which may have created a particular highway, the grazing on the sides of the road belongs to the adjoining occupiers. It should be noted that the public have no other right in a highway than to use it merely as a "way"—for passing over. They have no right to use it for games, for example; nor can any member of the public stand in the highway in order to prevent a person who owns the land on each side from shooting at his game across it. The old maxim used to be, "Once a highway, always a highway," but now a highway may be stopped by the mere fact of such legal acts being done at either end of it as will cause it to cease being a place to which the king's subjects can have access, whereby it necessarily loses its character of a highway. The highway extends in width from one extreme boundary to the other, and the public have a right to pass over any portion of it within those boundaries. Even the grassy strips which so often fringe a country road, and may be so delightful for horse exercise, are available for public use, and any growth of shrubs or trees or any other obstruction thereon may be removed. How far, however, the heaps of stones so frequently and constantly placed there by the authorities, with a view to the reparation of the road, are improper obstructions has not yet been decided, but it is probable that the reason for their presence would be a sufficient justification. The highway is primarily for the use of foot passengers, and vehicular traffic should therefore, strictly speaking, attend the convenience of those who walk. And should any person drive a vehicle over a highway, which, being heavier than those usually driven thereover, causes damage to the road, he will be personally liable to repair that damage; traction engines drawing waggons loaded with stone may be examples of such a class of vehicle. Any person who obstructs a highway may be indicted therefor, and he will also be liable for any damage caused by the obstruction. A man who once left an agricultural implement by the wayside, at which a passing pony shied, with the result that a lady in the trap was killed, had to pay damages to her husband. To use a traction engine and trucks on a highway, so as to create a substantial obstruction, is to become liable to prosecution upon an indictment; but the obstruction must be such as occasions delay and inconvenience to the public substantially greater than that which arises from the use of carts and horses.

HIRE-PURCHASE SYSTEM.—The principle of this system is that an intending purchaser of goods may obtain their possession before he has paid the price, but on the condition that if he makes default in that payment the vendor of the goods is to be entitled to retake them. In the contract

which expresses this agreement the vendor of the goods is usually called the owner, and the purchaser the hirer. In fuller detail the contract requires the hirer to pay a certain specified total sum, equal to the price of the goods, by certain fixed periodical instalments, it being expressly agreed that until the total sum has been fully paid, each instalment is to be considered as merely rent for the use of the goods during the period intervening between two consecutive instalments. But it is also agreed that when all the instalments have been met and the total sum accordingly paid, that sum shall be considered to be the price of the goods, and the hirer shall become the absolute owner of them. And it is further agreed, as a rule, that during this hiring the owner shall have power to retake possession of the goods, not only upon default of payment of any instalment, but also if the hirer shall fail, when called upon, to produce the insurance and rent receipts of the premises where the goods are, allows the goods to be taken in execution for a debt, removes the goods to other premises without the consent of the owner, or in any way attempts to part with the possession of the goods. The exact wording of these agreements may vary in different cases, and even the rights and obligations incident to one form of agreement may be very materially different to those incident to another form. This is a necessary result of the present general application of the system to dealings in so many diverse classes of goods and with all kinds of trades and occupations. But however much the agreements may vary amongst themselves in detail, it may be taken as a rule of general application that each hire-purchase agreement is primarily a mere agreement for hire. If the hirer pays the rent in accordance with the terms of his contract, and complies with all the conditions contained therein, he is entitled to possession of the goods during the term created by the agreement. On the other hand, the owner, not having himself committed any breach of contract, is entitled to payment of the agreed rent during the term; and, apart from the terms of any special agreement, the hirer cannot absolve himself from the obligation to pay the rent by declining to continue his possession of the goods until the expiration of the agreed term. The respective legal positions of the parties to such a hire-purchase agreement may be generally summed up as follows: that the owner has an absolute property in the rent payable thereunder, and the hirer a qualified property in the goods. But as opposed to this view of the primary nature of a hire-purchase agreement must be mentioned the view that would make it primarily an agreement for sale. According as the parties wish a particular agreement to be primarily one of hire or one of sale, so must they carefully determine the details of its terms. Should a person who has hired goods on the hire-purchase system sell them, without the knowledge of the owner, before he has paid for them, he will be guilty of larceny as a bailee.

There is no doubt that a prejudice has existed against the hire-purchase system from the time of its general introduction into commercial practice; but there is equally no doubt that this prejudice, though widespread, is so superficial as not to prevent all classes of the community—the capitalist and the wage-earner, men of business and of leisure—from taking advantage of it in very many transactions. The manufacturer finds in the system an easy and profitable method of purchasing his machinery, and his employee finds therein the means by which to furnish a home. Nor does the manufacturer

always overlook the possibilities of the system when furnishing his own home. And not only to the manufacturer and his employee do these remarks apply, for, as examples, the social magnate will buy a carriage on the hire-purchase system, an artiste a piano, and a student some books. In almost every branch of trade in which the hire-system prevails, such as furniture, carriages, pianofortes, &c., there is usually a recognised society composed mostly of the members of the particular branch of trade, whose object it is to see that the system is honourably kept up, and that a mere fortuitous failure to pay an instalment is not made the means of depriving the hirer of the benefit of his contract altogether. Provided a percentage of the number of instalments has already been paid, the rule imposed by the society on the trade is that, on default in payment of an instalment, the owner may remove the goods to a place of safety and keep them there three months at least before resuming absolute ownership. During that time the hirer has the option of taking up the contract at the point at which it was broken off by liquidating the arrears and the expenses of removal. But even this rule is in practice subject to much modification in favour of the hirer in any case where the latter has a comparatively respectable character and position, and there is reason to believe that his default is in the nature of a temporary suspension of payment only. And there is no need to seek for philanthropic motives on the part of the owner in order to discover his reasons for these modifications. Probably the leading motive is that it pays him better to conclude the sale with the hirer, even with an extended credit, than to take back goods in a second-hand condition and to seek a new purchaser for them; and certainly a reputation for harshness would be fatal to his success in business in any restricted locality. In this connection, however, it will be useful to remember that however harsh may be the special circumstances under which an owner may have retaken possession of hired goods under a hire-purchase agreement, the hirer, provided the seizure has been legal, has no means of recourse to the court for relief: he must put up with the consequences of his default. The owner of the goods may assign his interest in the benefit of a hire-purchase agreement, and the assignment does not require to be registered as a bill of sale. The assignee can acquire the right to receive all instalments unconditionally due at the time of the assignment, but he cannot by any means obtain a transference to him of the owner's right (if any) to seize and resume possession of the goods hired.

Wrongful disposal of hired goods by hirer.—It is very important to dealers in goods on the hire-purchase system to know their position in case the hirer should wrongfully sell the goods to a third party before all the instalments have been paid. If the third party bought the goods knowing that they were not the property of the hirer, there would then be no doubt as to the right of the owner to recover them. The doubt arises when the third party bought them from the hirer *bonâ fide* believing that they were the latter's own property; and whether the owner can recover the goods from the third party under such circumstances will depend entirely upon the form of the hire-purchase agreement. The general rule is that where the hirer is under a legal *obligation* to buy the goods hired, then a *bonâ fide* purchaser from him can retain any of those goods he may have bought, even as against the owner; but where the hirer is under no legal obligation to buy, but has only

an *option* either to return the goods or to become their owner by payment in full, the owner is entitled to recover the goods even from a *bonâ fide* purchaser to whom the hirer may have sold them. The distinction contained in the rule is a result of section 9 of the Factors Act, 1889, which provides that where "a person, *having agreed to buy goods*, obtains with the consent of the seller possession of the goods, the delivery by that person of the goods under *any 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, shall have the same effect as if the person making the delivery were a mercantile agent in possession of the goods with the consent of the owner." The dealer is therefore in the curious position that, if he uses in his business an agreement which places his customers under an obligation to buy, he cannot recover any goods hired if they are disposed of by the customer to a *bonâ fide* third party; but he can do so if the agreement is one which only binds his customers to hire. Appended to this article are two forms of agreement: the first is an agreement merely to hire, the second is an agreement to purchase. With these two agreements before him, the dealer can decide upon which position to rely. In the House of Lords case of *Helby* v. *Matthews*, the dealer on the hire-purchase system finds a satisfaction not only in the settlement there effected of the law on this point, but also in the remarks made by Lord Macnaghten in the course of his judgment: "The learned counsel for the respondents spoke of dealings of this sort with an air of righteous indignation, as if they were traps for the extravagant and the impecunious—mere devices to tempt improvident people into buying things which they do not want, and for which at the time they cannot pay. I think that is going too far. I do not see why a person, fairly solvent and tolerably prudent, should not make himself the owner of a piano or a carriage, or anything else, by means of periodical payments, on such terms as those in question in the present case. The advantages are not all on one side. If the object of desire loses its attractions on closer acquaintance, if faults are developed or defects discovered, if a coveted treasure is becoming a burthen and an incumbrance, it is something, surely, to know that the transaction may be closed at once without further liability, and without the payment of any forfeit. If these agreements are objectionable on public grounds it is for Parliament to interfere. It is not for the court to put a forced or strained construction on a written document, or to import a meaning which the parties never dreamed of, because it may not wholly approve of transactions of the sort." The first form of agreement appended to this article is taken from that before the court in this case.

In considering the effect of a particular hire-purchase agreement in the light of the above rule, there are one or two points which may usefully be referred to. Because the hirer may in certain cases have entered into a contract for sale and purchase, the owner is not thereby precluded from retaking possession of the goods and terminating the agreement in the event of the hirer committing a breach of the conditions he should observe. There is also the case of *Shenstone & Co.* v. *Hilton*, wherein the plaintiffs had let a piano to one Nye upon a hire-purchase agreement, it being therein provided that the piano should become the property of the hirer on payment of all instalments. But before the instalments had been all paid, the hirer

delivered the piano to the defendant, an auctioneer, to be sold by auction; and the defendant received the piano in good faith, without any notice of the interest therein of Messrs. Shenstone & Co, sold it, and handed over the proceeds to Nye. Thereupon Messrs. Shenstone sued the auctioneer for damages for conversion, or, as they alleged, for wrongfully selling the piano and paying the proceeds to the hirer. They failed, however, in their action, for it was held that the hirer had, by the terms of the particular hire-purchase agreement in the case, *agreed to buy* the piano, and had obtained possession of it with the consent of the owners; and that, therefore, the delivery by the hirer to the auctioneer had the same effect as if the hirer were a mercantile agent. It was also held that the words "delivery . . . under any agreement for sale" in section 9 of the Factors Act were not confined to delivery to the person receiving the goods pursuant only to a sale or pledge by the person delivering them, and that such a delivery as this one was an "other disposition" of the piano within the meaning of the section. And to sum up, it was held that the words "agreement for sale, pledge, or other disposition" included a delivery of goods to be sold, by the person receiving, for the benefit of the person delivering, and therefore, that the defendant was protected from liability by the above-mentioned section of the Factors Act. And a case of pledging is *Thompson* v. *Veale*, wherein the particular hire-purchase agreement having been construed by the court as an agreement for sale, and the hirer being actually in possession of the goods, it was held that a pledge by the hirer to the defendant, who received the goods in good faith and without notice of the claims of the owner, was valid.

But if the hire-purchase agreement is one really of hire, and the hirer in possession of the goods unlawfully disposes of them to a *bonâ fide* third party, the owner of the goods can proceed against the third party for their value if and when he has first obtained the conviction of the hirer.

And by way of further comment upon the phrase "other disposition" in the Factors Act, it will be useful to draw attention to the ruling in *Kitto* v. *Bilbie*, wherein it was held that the mere passing of a gas engine into the possession of the hirer's trustee under a deed of assignment in favour of creditors did not confer upon the trustee a valid title to the engine as against its owner; such an assignment is not a "sale, pledge, or other disposition."

A bill of sale being void and of no effect unless registered in accordance with statute, many of those persons who desire to borrow or lend money, without publicity, upon a security which would properly be the subject of a bill of sale, are often attempting to evade the law, and they just as frequently fail to do so. One of the most common efforts at evasion is the adoption of a hire-purchase agreement in the place of a bill of sale. The borrower sells his goods to the lender for the amount of the loan, continues in possession of the goods, and enters into a hire-purchase agreement with the lender in respect of those goods, the price and terms of payment being adjusted according to the terms upon which the lender has agreed to make the advance. But the inevitable result of such an arrangement is that the dealings with the goods are void, and the lender loses his security, and may be liable for damages if he attempts to enforce it. The object of the legislature in the Bills of Sale Acts is to protect borrowers against lenders as well

as to protect other persons who might be creditors of borrowers; and to carry out this object the court will decide any particular case according to the real truth and substance of the matter by means of the forms and documents adopted by the parties as a disguise of the transaction and to prevent the court from getting at the true facts. The court will not let a sham document, drawn up for the purpose of evading an Act of Parliament, prevent it from getting at the truth of the matter.

In the case of *Madell* v. *Thomas*, the plaintiff had executed an absolute assignment of goods to the defendants, and also a hiring agreement by which he hired the goods from the defendants. The intention of the parties was to create a security for money, but the documents were not registered as required by the Bills of Sale Acts. Wherefore, the defendants having seized the goods for breach of the conditions of the hiring agreement, the plaintiff was allowed by the court to maintain an action against them for damages in respect of the seizure. In cases of this character the facts are generally very similar, but the case of *Beckett* v. *The Tower Assets Company* may prove interesting. There the plaintiff being in arrear with his rent, and being generally hard up, arranged with the defendants that he should get his landlord to levy a friendly distress upon his goods, and that the defendants should buy the goods from the broker at a price less than half their value, and then let them on hire to the plaintiff's wife upon such terms that she would be able to purchase them upon payment by instalments to the defendants of a sum nearly equal to twice the amount they had paid for the goods. In this case, as in the former one, the defendants seized the goods for non-performance by the hirer of the terms of the hiring agreement, with the result that the plaintiff was held entitled to maintain an action against them for damages for a wrongful seizure. It is hopeless, therefore, to attempt to evade the Bills of Sale Acts by means of a hire-purchase agreement.

On the other hand, if a hire-purchase agreement is a *bonâ fide* one, and upon its true construction the property in the goods hired does not pass to the hirer during the continuance of the agreement (although the agreement may be in effect an agreement for sale), but remains in the owner, the transaction will not come within the Bills of Sale Acts; and in the event of the bankruptcy of the hirer during the continuance of the agreement, the owner would therefore be entitled to an order of the Bankruptcy Court for the delivery of the goods to him. This last proposition is based upon the judgment in *M'Entire* v. *Crossley*, and the second form of agreement appended hereto is mainly founded upon the agreement before the court in that action. A hire-purchase agreement requires a sixpenny stamp if its subject matter is of the value of £5; if below that value no stamp is necessary. And *see* BAILMENT; BILL OF SALE; DEFEASANCE; and FACTOR.

I.—*Agreement for Hire.*

THIS AGREEMENT, made the day of 19—, **Between** A. B. of &c. (hereinafter called "the owner"), of the one part, and C. D. of &c. (hereinafter called "the hirer"), of the other part, **Witnesseth** that the owner

agrees, at the request of the hirer, to let on hire to the hirer a pianoforte, No. 896, maker .

And in consideration thereof the hirer agrees as follows:—

1. **To** pay to the owner, on the day of 19 , a rent or hire instalment of *one* pound, and the sum of *one* pound on the day of each succeeding month.

2. **To** keep and preserve the said instrument from injury (damage by fire included).

3. **To** keep the said instrument in the hirer's own custody at the above-named address, and not to remove the same (or permit or suffer the same to be removed) without the owner's previous consent in writing.

4. **That** if the hirer do not duly perform this agreement, the owner may (without prejudice to his rights under this agreement) terminate the hiring and retake possession of the said instrument. And for that purpose leave and license is hereby given to the owner (or agent and servant, or any other person employed by the owner) to enter any premises occupied by the hirer, or of which the hirer is tenant, to retake possession of the said instrument without being liable to any suit, action, indictment, or other proceeding by the hirer or any one claiming under the said hirer.

5. **That** if the hiring should be terminated by the hirer (under clause A below), and the said instrument be returned to the owner, the hirer shall remain liable to the owner for arrears of hire up to the date of such return, and shall not, on any ground whatever, be entitled to any allowance, credit return, or set-off for payments previously made.

The owner agrees:—

A. That the hirer may terminate the hiring by delivering up to the owner the said instrument.

B. If the hirer shall punctually pay the full sum of *Thirty-seven* pounds, by *one* pound at the date of signing and by thirty-six monthly instalments of *one* pound in advance, as aforesaid, the said instrument shall become the sole and absolute property of the hirer.

C. Unless and until the full sum of Thirty-seven pounds be paid, the said instrument shall be and continue to be the sole property of the owner.

As witness the hands of the said parties the day and year first before written.

Witness:—
E. F.,
of &c.

(Signed) { A. B.
C. D.

II. *Agreement for Sale.*

THIS AGREEMENT, made the day of 19—, **Between** A. B., of &c. (hereinafter called "the owner"), of the one part, and C. D., of &c. (hereinafter called "the hirer"), of the other part, **Witnesseth** that the owner hereby agrees to let on hire to the hirer, and the hirer hereby agrees to take on hire from the owner [*here set out the goods let on hire specifically, or as follows:* the goods and chattels specified in the schedule hereto] on the following terms and conditions:—

1. **The** hirer shall and will pay to the owner at his address, as and for rent of the said [goods and chattels, *or as the case may be*], the following sums (that is to say), £10 in cash before delivery, and the balance in eleven equal and con-

secutive monthly payments, which said sums so agreed to be paid as aforesaid amount in the aggregate to the sum of £120.

2. **And** the hirer agrees to keep and preserve in good and substantial order and take all proper care of the said [goods and chattels], and so long as any of the said sums remain unpaid to punctually pay the rent payable by him in respect of the premises upon which the said [goods and chattels] may from time to time be, and on demand will produce to the owner the receipt in respect of the same.

3. [*And this clause if appropriate:*] **And** will allow plates to be fixed and any number or mark to be put on the said [goods and chattels], with the name of the owner thereon, and will allow such plates, numbers, and marks to remain so fixed and put thereon.

4. **And** the hirer will during the hiring permit the owner or his agents at all reasonable times to have access to the said [goods and chattels] if he or they should so require, and to enter the premises upon which the same may from time to time be.

5. **And** the hirer will not during the hiring in any way sell or offer for sale, assign, sublet, pledge, mortgage, or otherwise part or attempt to part with the possession of the said [goods and chattels] or assume the ownership thereof, or remove the same or cause or permit the same to be removed from one building to another without first informing the owner of such intended removal and receiving his consent in writing so to do, and will not make any alteration or addition to the said [goods and chattels] or allow the same to be made without the like consent of the owner.

6. **And** that upon payment by the hirer of the several sums aforesaid, then this agreement shall be at an end, and the said [goods and chattels] shall thereupon become the sole and absolute property of the hirer as purchaser thereof for the said sum of £120, so to be paid as aforesaid, but until the said several sums shall have been fully paid, together with insurance, repairs (if any), and other costs and expenses, legal or otherwise, connected therewith, the said [goods and chattels] shall remain the sole and absolute property of the owner, it being hereby expressly declared and agreed that the said [goods and chattels] are only let on hire to the hirer until all sums of money under this agreement are paid.

7. **And** in case of failure in payment of any of the above-mentioned sums, or if during the continuance of this agreement a receiving order in bankruptcy is made against the hirer, and he shall make a composition with or any assignment for the benefit of his creditors, or suffer his effects to be distrained upon or taken in execution, or give a bill of sale, or allow any judgment against him to remain unsatisfied, or in the event of a breach of any of the covenants and conditions herein contained, the hiring shall immediately determine, and the full balance of the said sum of £120 required for the purchase of the said [goods and chattels] shall at the election of the owner at once become payable to and be recoverable by him.

8. **Provided always** that the owner may, if he thinks fit, instead of seeking to recover such balance himself or by his agents or servants, enter upon any premises occupied by the hirer or of which the hirer is tenant and seize, take away, and resume absolute possession of the said [goods and chattels], and sell the same in such way as he may think fit, and the several sums which shall have been paid by the hirer shall be forfeited to the owner, and out of the purchase money to arise from any sale of the said [goods and chattels] the owner may reimburse himself and pay all the costs and expenses incurred in such seizure and sale or in connection therewith, and after retaining the difference between the instalments so actually paid by the hirer under the provisions aforesaid and the said sum of

£120, pay the surplus (if any) unto the hirer, his executors, administrators, or assigns, or to whom he or they shall direct.

9. **Provided** also, and it is hereby agreed and declared that in case the owner shall see fit to resume the possession of the said [goods and chattels] under this agreement without proceeding to a sale, then the loss occasioned to him by reason of the non-performance of the provisions of this agreement on the part of the hirer shall be borne by the hirer, and in case of bankruptcy the owner shall be entitled to prove against his estate for the same as and for liquidated damages.

10. **And** lastly, it is hereby agreed that the owner shall insure the said [goods and chattels] against damage by fire for the sum of £120 for his own security, the premium for the same being paid by the hirer, but in case of fire, if the sum received shall be over the balance of the said sum of £120 then remaining unpaid to the owner, the surplus shall be paid by the hirer.

As witness the hands of the said parties the day and year first above written.

The Schedule.

Witness:—
E. F.,
of &c.

(Signed) A. B.
C. D.

HOME OFFICE.—This is the name generally given to the Government department presided over by the Secretary of State, who has the administration of home affairs, and who is usually called the Home Secretary and taking rank as his Majesty's principal Secretary of State. The Home Secretary is a Cabinet minister, and in Parliament he may be called upon for information on any matters within his province. Following the arrangement of Sir William Anson, his duties may be grouped into three main divisions as follows:—(*a*) Communications passing between Crown and subjects, or, one may say, the expression of the king's pleasure; (*b*) enforcement of public order, or, one may say, the maintenance of the king's peace; and (*c*) enforcement of rules made for the internal well-being of the community. In Scotland similar duties are performed by a Secretary for Scotland, who is not usually a Cabinet minister, and in Ireland by the Chief Secretary to the Lord-Lieutenant, who has a seat in the Cabinet when the Lord-Lieutenant is not a member of the Government. The office of the Home Secretary is therefore generally confined to England and Wales, the Channel Islands, and the Isle of Man. In the first of the above divisions of his duties he is the channel of communication of State intelligence, receives petitions to the Crown and arranges for their answer, and he also has generally to countersign the signature of the king to formal documents. In the second division he is the head and centre of the police system, though the local authorities have a full responsibility of their own in respect to the police; he deals with the naturalisation of aliens and with extradition cases; he also appoints borough recorders and stipendiary magistrates. He has been said to have a common law authority to commit for treason, and he has supreme control of the convict prisons. As representing the king he has acquired a position analogous to that of a Court of Criminal Appeal, for it is within his functions to remit and revise punishments where expedient, and to advise the Crown to pardon convicts. It is thus that with him lies the power of remitting the penalty of

death, though in considering a particular case he always acts in consultation with the judge who presided at the trial. In the last division his duties are exceedingly miscellaneous. Reference to most of the articles in this work will show how important a part the Home Office plays in the control and regulation of the manufactures and trades of this country. Mines, factories, employers' liability, explosives, vivisections, anatomy, public health, local bye-laws, sewers, burials, building societies, markets, and inebriates are examples of the very many and varied possible subjects of the Home Secretary's activities.

HOME-WORK.—This subject now receives little attention except from those whose speciality it is to consider the conditions of labour generally. The almost universal impression is that domestic industries saw the approach of their last days at the time of the industrial revolution, when machinery and the factory system, organised and developed with all the resources of our capital, created new methods of production. But such an impression is most certainly a mistaken one, for though the factory system did in fact very largely wipe out most of the domestic industries existing at the end of the eighteenth century, there still remained a considerable remnant which has persisted to this day—to say "flourished" would be perhaps to use that word in a connection not generally suggestive of the meaning properly attached to it. Official and reliable statistics on this subject are scanty and inadequate, and this fact, amongst others, has doubtless tended to create the impression that the small trades may be reasonably considered as a negligible quantity in any estimate of the industrial forces and conditions of the country. The facts, however, distinctly negative this position. Apart from the remnant of domestic industry already referred to, it must be recognised that the family or home workshop is yet, and always will be, generally the birthplace and nursery of new industries; such are invariably the offspring of the individual, or of a small class, and it is not until they have developed to some considerable extent, and acquired a need for, and association with, capital, that they take their place in the ranks of the more highly organised industries of the factory and large workshop. They also exist and develop as a necessary complement of the factory system itself; some incidental part of the factory machinery connected with a particular manufacture is found to be more economically and efficiently produced and supplied by outside and independent enterprise; or some part of, or process in, the manufacture of a certain factory may be handed over to the care of outside labour. These conditions all tend to initiate and maintain domestic industry. And particularly have the large stores and shops a like effect; the tailor, the dressmaker, and the furniture dealer, for examples, prefer to execute their orders and keep up their stock, so far as possible, with the productions of individual small contractors who work at home.

Conditions apparent to any observer of modern life readily corroborate this. In some towns the greater part of the working-class population are always at work in their own homes or in the small workshops attached thereto. In Birmingham one finds that the manufacture of guns and rifles is mainly so carried on; in Sheffield, that of cutlery. A walk through the residential working-class quarter of a town engaged in the manufacture of boots and shoes, for example, will disclose the fact that almost each house is a miniature

factory supplying the needs of the larger distributing factories; the occupier of each house designates himself a manufacturer, and his great ambition is to be able himself to sell goods to the shopkeeper and to let out some part of the work to his neighbours. In every considerable town at every turn may be discovered a so-called bicycle manufacturer, who, assuming to make his own bicycles, devotes a part of his house to the putting together of parts and so producing a saleable machine. Many other examples may be readily furnished: the chain-makers of Cradley, the saddlery-ironmongers of Walsall and Wolverhampton, the nail-makers of the Black Country, the hosiery workers of Derbyshire and Nottinghamshire, the furriers, cabinetmakers, and silk weavers of London, and the strawplaiters in many parts of the country.

Work given out from factories.—In certain trades, specified from time to time in Special Orders issued by the Home Office, the occupiers of factories and workshops and all contractors employed by them are required to keep lists of their outworkers. These lists must be kept in the prescribed form and contain certain particulars. The employer must therein give "the names and addresses of all persons directly employed by him, either as workmen or as contractors, in the business of the factory or workshop outside the factory or workshop and the places where they are employed." Copies and extracts are to be furnished to the inspector as and when required; but regularly, on or before every 1st February and 1st August, complete copies of the lists must be sent to the district council of the district in which the factory or workshop is situate. Having this information before it, the council will communicate with the authorities of the districts in which the outworkers live; inspection will be made of their work-places; and when any such places are found to be unwholesome the employer will be notified of the fact and that he will be liable to a fine if, after the expiration of a month from the notice, he gives out work to the outworkers affected. An employer will incur a fine if he causes or allows wearing apparel to be made, cleaned, or repaired on any premises whilst an inmate of a dwelling-house occupied therewith is suffering from scarlet fever or smallpox; he can only escape liability by proving that he was not aware of the existence of the illness in the dwelling-house, and could not reasonably have been expected to become aware of it. Certain home-work is prohibited in places where there is an infectious disease. Such work is the making, cleaning, washing, altering, ornamenting, finishing, and repairing of wearing apparel and any work incidental thereto, and any other work specified by a Special Order of the Home Secretary. An order is made by the local authority forbidding any work to be given out to any person living or working in the place specified. The order will be made even though the person suffering from the infectious disease has been removed; and it will be made either for a specified time, or subject to a condition that the premises are disinfected or that other reasonable precautions are adopted.

Domestic factories and workshops.—In this class is comprehended a private house, room, or place which, though used as a dwelling, is by reason of the work carried on there a factory or workshop. But there must be no steam, water, or other mechanical power used in aid of the manufacturing process carried on there; nor may any other persons be employed there than members of the same family dwelling there. The regulations of the Factory Act with respect to the hours of employment of women, young persons, and children do

not apply to this class of work-place. But the following regulations must be observed:—(*a*) A young person can only be employed therein between the hours of 6 A.M. and 9 P.M., except on Saturdays, when 4 P.M. is the hour to stop work; during these hours the employee must each day be allowed four hours and a half for meals and absence from work, except on Saturdays, when two hours and a half is to be allowed. (*b*) The period of employment for a "child" on every day is either to begin at 6 A.M. and end at 1 P.M., or begin at 1 P.M. and end at 8 P.M., or on Saturday at 4 P.M. For educational requirements a child is considered to be employed in a morning or afternoon set according to circumstances. A child cannot be employed before 1 P.M. in two successive periods of seven days, nor after that hour in two like successive periods; and a child is not to be employed on Saturday in any week before 1 P.M. if on any other day in the same week he has been employed before that hour, nor after 1 P.M. if on any other day of the same week he has been employed after that hour. No child may be continuously employed for more than five hours without an interval of at least half-an-hour for a meal. Certain entries and reports may be required. Certificates of fitness for employment are as much needed in a domestic as in an ordinary factory or workshop. The following provisions of the Factory Act do not apply to domestic factories or workshops:—As to meal hours being simultaneous, and as to the prohibition of employment during those hours; as to affixing notices and abstracts and as to specifying certain matters in those notices; as to holidays; as to notices of accidents; as to means of ventilation, drainage of floors, and thermometers; as to keeping a general register; and as to the sanitary condition of a factory. But if any manufacture carried on in a domestic factory or workshop is certified as dangerous, all the provisions of the Factory Act will apply. A family, or some of its members, by merely carrying on in their private house or room, by manual labour, the trade of straw-plaiting, pillow lace-making, or glove-making will not thereby constitute the place a workshop within the meaning of the Factory Act. Nor, if the labour is exercised at irregular intervals, and does not furnish the whole or principal means of living to the family, by (*a*) making any article or part of an article; or (*b*) altering, repairing, ornamenting, or finishing any article; or (*c*) adapting any article for sale. *See* FACTORIES; SWEATING; TRADE-BOARDS.

HOP-TRADE.—Every owner or grower of hops, before he packs any hops into a bag or pocket, is required to mark or caused to be marked on the outside of every such bag or pocket his name and the parish and county in which the hops intended to be packed therein were actually grown. The marking must be in large, plain, and legible letters of three inches in length and half an inch in breadth at the least, with durable ink or paint. To put hops in a bag or pocket without having first so marked the bag or pocket is to incur a penalty of £20; so also is it to falsely mark a bag or pocket. A "bag" or "pocket" includes any package used for containing hops, or in which hops are packed and sent from the grower or producer to any factor, merchant, or brewer or other person, either before or after a sale thereof. Hops cannot legally be bagged in any pocket the weight of which latter is greater in proportion to the gross weight of the pocket and the hops contained therein than 10 lbs. for every 112 lbs. of the gross weight of the pocket and hops contained in it. The year in which the hops were actually grown,

the true progressive number of each and every pocket according to the number of pockets of hops grown and weighed by the owner or grower during the then current year, and the true gross weight in hundredweights, quarters, and pounds, of each and every pocket, must also be marked on the outside of every pocket containing hops. This must be done within one month after any pocket has been packed, and in the same manner as the name and parish are required to be marked. The penalty for default is £20 for each pocket. There is also a like penalty in case the marking is false. And any one who puts, or allows to be put, any hops of different qualities or value in the same pocket, so that a sample will not correspond with and truly represent the bulk, or who sells or exposes for sale any such hops in such pocket, will also be liable to forfeit a penalty of £20. But no person will be liable to this penalty who can prove that he did the acts charged against him *bonâ fide*, and without intent to defraud.

Any person who sells or exposes for sale any hops in a pocket not marked or improperly marked will be liable to forfeit, for every such offence, a sum of money equal to the then market value of the pocket of hops so sold or exposed for sale, and a further sum of money not exceeding £10. If, however, he so sells or exposes for sale *bonâ fide* believing, and having good reason for believing (proof of which will be upon him), that the marks were genuine and according to statutory provisions, he will escape the foregoing penalty. To import foreign hops and rebag them in British pockets, in order to sell, dispose of, or export them as British hops, is to incur a penalty of £10 for every hundredweight, and after that rate for a greater or lesser quantity; and to wilfully deface or obliterate, add to, or alter the prescribed mark is to incur a penalty of £20. Whoever sells hops falsely or improperly marked is bound to give to the purchaser, or any person who has subsequently become a purchaser, full information in writing of the name and address of the person from whom he himself has purchased or obtained the hops. But demand must first be made of him by the purchaser or his solicitor or agent requiring such information. The demand must be in writing and delivered to the vendor or left for him at his last known dwelling-house, office, or place of abode, and the information must be given within forty-eight hours after the demand has been made. There is a penalty of £5 for refusing to comply with the demand; and the refusal will be deemed conclusive evidence as against the person so refusing that he sold the hops with full knowledge that the marks were contrary to the requirements of the law. A magistrate, upon receipt of information on oath, may order a search to be made for bags or pockets improperly marked, and may order any of such that may be found to be seized and detained. Because a person prejudiced through improper marking, or by reason of any other offence under the statutes relating to hops, has proceeded against the offender and obtained his conviction, he is not thereby precluded from any civil remedy he may have against the offender, nor is that remedy in any way diminished or prejudicially affected. One half of any penalty or sum of money recovered by summary proceeding will be taken as money payable to his Majesty, but the other half must be paid by the magistrates to the complainant.

Hop-plantations.—By the Malicious Damage Act of 1861, it is enacted

that "whosoever shall unlawfully and maliciously cut or otherwise destroy any hop-binds growing on Poles in any Plantation of Hops shall be guilty of Felony, and being convicted thereof shall be liable, at the Discretion of the Court," to penal servitude or imprisonment. To set fire to a hop-oast, or any building or erection used in carrying on the business of a hop-grower, whether it is in the possession of the offender or not, is to become liable to penal servitude.

HORSEFLESH is a term which, for the purposes of the Act of 1889 regulating the sale of horseflesh for human food, also includes the flesh of asses and mules, and means horseflesh cooked or uncooked, alone or accompanied by or mixed with any other substance. The Act extends to *Scotland*, and provides that no one shall supply horseflesh for human food to any purchaser who has asked to be supplied with meat other than horseflesh, or with some compound article of food which is not ordinarily made of horseflesh. But there is not, however, any absolute prohibition against the sale of horseflesh for human food, for the Act only regulates the sale and makes special provision for signs on horseflesh shops. The wording of the important section of the Act is that, "No person shall sell, offer, expose, or keep for sale any horseflesh for human food, elsewhere than in a shop, stall, or place, over or upon which there shall be at all times printed, posted, or placed in legible characters of not less than four inches in length, and in a conspicuous position, and so as to be visible throughout the whole time, whether by night or day, during which such horseflesh is being offered or exposed for sale, words indicating that horseflesh is sold there." Such words as HORSEFLESH SOLD HERE must therefore be placed over a shop in order that horseflesh can be lawfully sold therein for human food. A medical officer of health and certain other officials have power to inspect and examine at any reasonable time any meat which they believe to be horseflesh, and which is exposed for sale, or deposited for the purpose of sale, or of preparation for sale, and intended for human food, in any place other than a shop, stall, or place where horseflesh is lawfully sold. If the meat appears to them to be horseflesh it may be seized and carried away in order to be dealt with by a magistrate. And a magistrate can grant a warrant for the search of a place other than a horseflesh shop with a view to the seizure of any horseflesh there kept with the object of being sold, or prepared for sale, as human food. Any horseflesh so seized may be disposed of as the magistrate thinks fit. A penalty of £20 is incurred by any person who commits a breach of the foregoing regulations; and to obstruct an officer in the performance of his duty under these regulations would be considered as a breach. But the person in whose possession or on whose premises the meat is found will not be deemed to have committed an offence if he can prove that it was not intended for human food contrary to the provisions of the Act. If, however, the horseflesh is proved to have been exposed for sale to the public in any shop, stall, or eating-house other than a place where horseflesh is lawfully sold, without anything to show that it was not intended for sale for human food, the burden of proving that it was not so intended will rest upon the person exposing it for sale.

HORSE-RACES held within ten miles of Charing Cross are only lawful when licensed under the Racecourses Licensing Act, 1879. It is a horse-race, within the meaning of this Act, to run one horse in competition with another;

or to run it against time, or for a prize of any kind, or for any bet or wager which may depend upon it or its rider. Such a race, if unlicensed, is a "nuisance"; and every one who takes part in it, and also the owners and occupiers of the ground upon which it is held, are liable to heavy penalties. The term "horse" includes a mare and gelding.

HORSES.—Generally speaking, the law relating to the sale of horses is the same as that concerning the sale of other chattels, and accordingly it may be found summarised by statute in the SALE OF GOODS Act. Some special points relating to warranties on the sale of horses will be reserved for the article on HORSE-SALES, and in the present article attention will be first paid to some unique provisions relating to stolen horses. But before proceeding to notice this subject, it will be useful to note, in relation to the subject of the sale of horses, the effect of the statute of Charles II. "for the better observation of the Lord's Day." *Sunday dealing.*—It has been expressly held by the courts that a horse-dealer cannot maintain an action upon a contract for the sale and warranty of a horse made by him upon a Sunday; but where neither of the parties to the contract are horse-dealers, such a contract would be valid even though made upon a Sunday. And though no one can properly sue on a breach of warranty if it was taken on a Sunday from a person he knew to be a horse-dealer, yet the latter would not be allowed to set up a defence of Sunday trading if the purchaser did not know at the time of the deal that he was in fact a horse-dealer.

Recovery of Stolen Horses.—It is a general rule of law that a sale of goods in MARKET OVERT, or "open market," is not only valid and binding as between the parties thereto, but also operates so as to preclude any other persons who may have any rights of property in the goods there sold from exercising those rights and reclaiming their property. Accordingly, the true owner of stolen goods would, generally speaking, be unable to reclaim them from an innocent purchaser thereof in market overt. But the general rule does not apply to the sale of horses, unless the sale has been in accordance with two statutes of the reigns of Philip and Mary and Elizabeth respectively, and then its operation is subject to certain expressly reserved provisions on behalf of the true owner. By these statutes it is provided that a horse which is for sale in a fair or market overt must be openly exposed during the time of that fair or market, for one whole hour, between ten in the morning and sunset, in the public place used for such sales, and not in any private yard or stable. As soon as sold it must be brought by both the buyer and seller to the bookkeeper of the fair or market, and the toll (if any) then paid to him, or if there is none a fee of one penny. The bookkeeper must thereupon enter down the price, colour, and marks of the horse, with the names, addresses, and descriptions of the buyer and seller, it being also necessary that the latter, if not personally known to the bookkeeper, should be vouched for to him by "one sufficient and credible person." A full and perfect memorandum of the transaction, whether it is a sale, gift, or exchange, must be then given by the official to the party who buys or otherwise receives the horse. If the foregoing requirements are not complied with the transaction will be void. The provision in favour of the owner of a horse stolen from him is that he may redeem it from the person

who has purchased it, in accordance with the above regulations, provided he pays that person the price he gave for the horse, and that he does so or offers to do so within six months after the date that the purchaser actually paid the price. But this power of redemption only exists when the horse has been stolen within six months before the rightful owner makes his claim to redeem, though he will then have a further forty days wherein to prove his title to the horse, and the theft thereof. The claim should be made before a magistrate of the place where the horse is found, and the proof of title is required to rest upon the oath of two witnesses. If a stolen horse is sold under other circumstances than the foregoing, the owner has generally a right to maintain an action for its recovery or its value from any one who has bought it from the thief; but it is necessary for him to first prosecute the thief to conviction, or, if circumstances prevent this being done, he must be prepared to satisfy the court before which the action is brought that he has done all things possible to bring the delinquent to justice. But the owner cannot recover the horse from a person who has *bonâ fide* purchased it from the original purchaser at the fair; and in this connection it is immaterial whether the foregoing regulations have been observed or not.

A *horse-breaker* has a lien for his charges upon a horse which he has broken in, and he is liable to the owner of the horse for any injury he may cause it through his negligence or lack of skill. On the question of lien, it should be mentioned that in one case a *trainer* was found entitled to a lien, on the ground of his having expended labour and skill in bringing the animal into condition to run at races; but it does not appear to have been present to the mind of the judge, nor was the usage of training explained to him, that when horses are delivered for that purpose, the owner has always a right during the continuance of the process to take the animal away for the purpose of running races elsewhere. The right of a trainer to lien, therefore, must be subservient to this general right which overrules it. It is accordingly doubtful if a trainer's lien extends to the case of a race-horse, unless, perhaps, it was delivered to the trainer to be trained for the purpose of running a specific race. The owner of a *stallion* has a specific lien over the mare for the stallion fee.

Special Provisions.—It is a common law nuisance to bring a *glandered* horse into the market or fair, and for so doing the offender may be proceeded against criminally. To *steal* a horse is a felony; so also is it wilfully to kill one with intent to steal its carcase, or skin, or any other part of its body. It is also a felony to maim or wound a horse, the punishment therefor being imprisonment or a fine; to maim is to inflict an injury of a permanent character, a temporary injury constituting a wound. No one may administer to a horse, or cause to be administered to it, any poisonous or *noxious drug* or substance, unless he has a reasonable cause or excuse for doing so, or a punishment of hard labour will be incurred. This prohibition does not extend, however, to the owner of the animal or to any person who acts by his authority. And *see* ANIMALS (Appendix); FARRIER; JOBMASTER; VETERINARY SURGEON; HORSE-RACES; HORSEFLESH; GLANDERS (Appendix). As to the exportation and shipment of horses, *see* HORSES (Appendix).

HORSE-SALES—WARRANTIES—VICE—UNSOUNDNESS.—It is a very usual custom in horse-dealing for the seller to either expressly warrant the condition of the horse, or to expressly decline to warrant it. If he

abstains from giving a warranty, there is no occasion for him to state, in so many words, that he does not warrant the horse, for the law does not, as a general rule, imply a warranty by the seller of the quality of the article he is selling. If, however, there are circumstances connected with the sale which lead to the inference that a warranty would, in the ordinary course of things, be incidental to the contract of sale, the law will imply the warranty. Such circumstances would exist, in the first place, (*a*) where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the horse is required, so as to show that the buyer relies on the seller's skill or judgment. But, for this rule to apply, the selling of horses must be a natural incident in the course of the seller's general business. And the warranty which the law in this case will imply is that the horse will be reasonably fit for the purpose made known, as before mentioned, by the buyer to the seller. In the second place, these circumstances would exist (*b*) where the horse is bought "by description" from a seller who deals in horses, and particularly in horses of the particular description. The warranty here implied is that the horse is in a "merchantable" condition; but if the buyer has examined the animal, there will be no implied warranty as regards defects which the examination ought to have revealed. In the third place, the circumstances would exist (*c*) if an implied warranty or condition as to quality or fitness for a particular purpose is annexed by the usage of trade.

A warranty need not be in writing, nor is any special form of words requisite to its validity. The word "warrant" itself is not necessary; for there will be a sufficient warranty if the seller simply says, "This horse is sound." A horse being naturally different to a manufactured article, the quality and condition of which can generally be ascertained by its appearance and examination, and the seller of a horse being usually the only person who can have any real knowledge of its condition and character, it is not surprising that the subject of warranty is so intimately connected with horse-dealing as it always has been. And as even the seller himself may have only a slight knowledge of horseflesh in general, and of the nature and condition of the horse he is selling in particular, it may be readily believed that there is generally as much hesitancy on the part of the seller to give a warranty as there is eagerness on the part of the buyer to obtain one. The result is that throughout the course of a deal the seller is careful to commit himself as little as possible to precise and definite statements, and the buyer is equally careful to remember and emphasise anything at all definite that the seller may say. When, some time after the sale has been concluded, the buyer discovers some defect in the horse, he at once recalls to his memory those definite words, and as often as not exaggerates their terms as well as excludes any accompanying and modifying observations of the seller. The memory of the seller, on the other hand, when approached by the buyer on the subject of a breach of warranty, undergoes a curious phase of restriction. The moral of all this is that if any warranty at all is intended, it should be reduced into writing at the time of the sale; and the parties, if they do have a dispute, will find the field of discussion considerably narrowed, to their mutual profit. But if the warranty is reduced into writing, care should be taken that all its terms are contained in the document, for no conversation which may have surrounded it can be received in evidence either to extend or restrict its

import. On the other hand, if the warranty relied upon is a verbal one, all the conversation surrounding the contract will be taken into consideration in determining its real terms; mere "dealing talk," casual and vague appreciation of the quality and condition of the horse, will not, however, constitute a warranty.

Where there is a breach of warranty by the seller, or where the buyer elects, or is compelled, to treat any breach of a condition on the part of the seller as breach of warranty, the buyer is not by reason only of the breach of warranty entitled to reject the horse he has bought. The buyer's position is:—(*a*) If he has already paid for the horse, he should sue the seller for damages for the breach of warranty; or (*b*) if he has not paid for the horse, he should wait for the seller to sue him, whereupon he will be able to set up the breach of warranty in diminution or extinction of the price. By thus setting up the breach of warranty in diminution or extinction of the price, the buyer is not thereby prevented from maintaining an action for the same breach of warranty if he has suffered further damage. In Scotland the buyer under such circumstances has a certain right of rejection. In England and Ireland, however, the buyer can only in special cases return the horse to the seller and sue for the return of the price if he has paid it, or refuse to pay the price if it has not already been paid. He can thus return the horse if the warranty was fraudulent, as, for example, if the seller in his warranty wilfully and knowingly misrepresented the character and condition of the horse in a material particular, at the same time designedly concealing the defects from the buyer or preventing him from discovering them. So also can the horse be returned if it was delivered and received upon a condition that it should be returned if found to be unsound or unsuitable for the purpose for which it was intended, or if it was sold subject to a trial or to a certain approval. As a rule, the terms of rejection in such cases are strictly defined in the conditions of sale; and if it should happen that the time by which the horse may be returned is specified therein, and emphasised as being of the essence of the contract, the seller need not take back the horse if it is tendered after the expiration of that time. Where the seller has given a warranty, and the condition of the horse turns out to be such as the warranty provided against, the buyer should as a matter of precaution at once communicate with the seller. Even though the seller is not bound to take back the horse and return the purchase-money, it is always advisable for the buyer to write to the seller specifically pointing out the defects complained of, and offering to return the horse to him upon the price being repaid. Should this proposal not be agreed to by the seller, the buyer should then give the seller an opportunity to examine the horse, and so be in a position to corroborate or correct the buyer's allegations; the buyer should then sell the horse by auction, and claim damages for breach of warranty. These damages will be the difference between the price given by the buyer for the horse and that which he has obtained upon the resale; they will also include his incidental expenses, and any further necessary damage he may have suffered.

There are two expressions, one or both of which are invariably used in any warranty on the sale of a horse; in fact, the general form of warranty, **that the horse is sound and free from vice,** contains them both. Each of

these expressions has received judicial interpretation, and their meaning may be now said to be settled beyond question. The term *sound* was the subject of a judgment in the case of *Kiddell* v. *Barnard*, wherein the plaintiff claimed damages for the breach of a warranty of the soundness of three bullocks, and the words therein of Baron Parke are so clear that it will be useful to set them out at some length:—

"The rule I laid down in *Coates* v. *Stevens* is correctly reported; and I am there stated to have said, 'I have always considered that a man who buys a horse warranted sound must be taken as buying him for immediate use, and has a right to expect one capable of that use, and of being immediately put to any fair work the owner chooses. The rule as to unsoundness is, that if at the time of the sale the horse has any disease, which either actually does diminish the natural usefulness of the animal, so as to make him less capable of work of any description, or which in its ordinary progress will diminish the natural usefulness of the animal; or if the horse has, either from disease or accident, undergone any alteration of structure, that either actually does at the time or in its ordinary effects will diminish the natural usefulness of the horse, such horse is unsound. If the cough actually existed at the time of the sale as a disease, so as actually to diminish the natural usefulness of the horse at that time, and to make him less capable of immediate work, he was then unsound; or if you [the jury] think the cough, which in fact did afterwards diminish the usefulness of the horse, existed at all at the time of the sale, you will find for the plaintiff.' That is the rule I have always adopted and acted on in cases of unsoundness. . . . I think the word 'sound' means what it expresses, namely, that the animal is sound and free from disease at the time he is warranted to be sound. If, indeed, the disease were not of a nature to impede the natural usefulness of the animal for the purpose for which he is used, as, for instance, if a horse had a slight pimple on his skin, it would not amount to an unsoundness; but even if such a thing as a pimple were on some part of the body where it might have that effect, as, for instance, on a part which would prevent the putting a saddle or bridle on the animal, it would be different. An argument has, however, been adduced from the slightness of the disease and facility of cure; but if we once let in considerations of that kind, where are we to draw the line? A horse may have a cold which may be cured in a day, or a fever, which may be cured in a week or month, and it would be difficult to say where to stop. Of course, if the disease be slight, the unsoundness is proportionably so, and so also ought to be the damages."

The same judge was called upon to give a definition to the term *vice* in the case of *Scholefield* v. *Robb*. Here the horse, though bought under a warranty that it was sound and free from vice, subsequently turned out to be a *crib-biter* and *wind-sucker*, whereupon the buyer claimed damages for breach of warranty. Baron Parke, after hearing the evidence, then told the jury that to constitute unsoundness there must be some alteration in the structure of the animal, whereby it is rendered less able to perform its work, or else there must be some disease; but neither of these facts had been proved. If, however, the jury thought that at the time of the warranty the horse had contracted the habit of crib-biting, he thought that was a vice.

The habit complained of might not, indeed, like some others (for instance, that of kicking), show vice in the temper of the animal; but it was proved to be a habit decidedly dangerous to its health, and tending to impair its usefulness, and came, therefore, in his lordship's opinion, within the meaning of the term "vice," as used on such occasions as that before the court.

Some special warranties.—The above two cases, besides affording definitions of the terms "soundness" and "vice," have also a great value as illustrating the mode in which the courts deal with warranties; every one, therefore, who has occasion to deal in horses should carefully study the terms of the judgments therein. Some further cases on warranties will also be of interest. In *Wood* v. *Smith*, the warranty being in the terms that, "I believe the mare to be sound, but I will not warrant her," it was held that it could be understood as meaning that the mare was sound to the best of the seller's knowledge; that the words "but I will not warrant her" did not qualify the warranty except so far as thereby to make the seller say that he would not give a *general* warranty. In *Budd* v. *Fairmaner*, the seller gave to the buyer a receipt as follows: "Received of B. £10 for a grey four-year-old colt, warranted sound:" held that the warranty was confined to soundness, and that, without proving fraud, it was no ground of action that the colt was only three years old; the seller made himself responsible for the soundness alone, the rest of the matter in the receipt being merely a representation for which he could not be liable unless it was shown to be false within his knowledge. This case was followed in *Anthony* v. *Halstead*, where the warranty was contained in the following receipt: "Received from C. Anthony, Esq., the sum of £60 for a black horse, rising five years, quiet to ride and drive, and warranted sound up to this date, or subject to the examination of a veterinary surgeon. Edward Halstead." The horse not being quiet to ride and drive, Mr. Anthony took proceedings for breach of warranty. He failed, however, as the warranty was restricted to the soundness of the horse, and not to its quietness to ride and drive. The judge saying, "If this is a warranty of anything besides soundness, it is a warranty of its age and colour as well as its quietness. The collocation of words in the document shows to any one reading it that the warranty does not extend to the being 'quiet to ride and drive.' Supposing the words were altered and were put in this position, 'a black horse rising five years, warranted quiet to ride and drive and sound,' could it be said that that was a warranty of the horse's colour and age? The warranty here is as to the soundness alone; the rest of the document being mere matter of description. If it were not so, why should the words 'quiet to ride and drive,' have preceded the word 'warranted'?" The buyer of a horse should therefore be careful that the warranty he receives with it has the word "warranted" placed before the matters intended to be warranted. In the case of *Holyday* v. *Morgan* it appeared at the trial that the defendant had sold a horse to the plaintiff on an express warranty that it was "sound"; the horse was found to shy on going through the streets, and a veterinary surgeon gave evidence that the horse had an unusual convexity in the cornea of the eye which caused short-sightedness, and that the habit of shying might arise from this, but that there was no disease in the eye, the peculiar formation being congenital. The judge directed the jury, that if they thought that the habit of shying arose from

defectiveness of vision caused by natural malformation of the eye, this was unsoundness. The jury found a verdict for the plaintiff, whereupon the defendant appealed But on the appeal he failed, for the judges expressed the opinion that the direction to the jury of the learned judge in the court below was "wholly unexceptionable"; and they not only expressly approved the judgments of Baron Parke, as set out above, but even extended their principle to include congenital defects. It was also urged by the seller that the defect was of such a nature that the buyer should be expected to himself discover it, and the reply of the court to this contention is of great importance, for they held on that point that "there being an express warranty, he [the buyer] was not bound to examine so closely as to ascertain whether the cornea were so formed as to produce short sight; the most prudent man could not be expected to do that. He had a right to rely on the warranty."

Auctioneers' conditions. — In the case of *Hinchcliffe* v. *Barwick*, the plaintiff bought a horse by public auction at a repository, warranted to be a good worker, subject to the condition that "horses warranted quiet in harness, or quiet to ride, or good workers, or in any other respect (whether sold by private treaty or public auction), not answering such warranty, must be returned before five o'clock the day after the sale, shall then be tried by a competent person to be appointed by the proprietors of this establishment, and the decision of such person shall be final. . . ."

The plaintiff alleged that the horse was not a good worker, and brought his action for breach of warranty; he had not, however, returned the horse before five o'clock the day after the sale, in compliance with the conditions. It was held that he could not maintain the action, for he was bound by the conditions. "It is well established," said Lord Justice Thesyer, "that where a warranty has been given, the only remedy, if the horse proves unsound, is an action for breach of the warranty. A buyer cannot return the horse unless there is some special bargain between the parties. But at public sales by auction at a repository, sales are made between parties unknown to one another, and it is an object of such sales that the dealings should be carried out in such a way as to ensure as little litigation as possible. The mode in which this is carried out at all horse repositories is that where a warranty is given, which is not complied with, the horse is to be returned within a certain time, he is examined by a competent person, who gives a final decision, and if the horse is found to be unsound the auctioneer takes him back, and the purchaser's money is returned to him. The consequence of this mode of dealing is that few disputes occur. . . . The purchaser agrees that the return of the horse in the manner provided for is to be his only remedy." But the courts do not allow the doctrine in this case to be pushed to an unreasonable extent, and that this is so was discovered by the defendant in the case of *Chapman* v *Withers*. There the plaintiff had bought a horse at a sale by auction at "Aldridge's," it being warranted "quiet to ride," and a condition imposed similar to that in the previous case, except that the return was to be before five o'clock P.M. on the second day after the sale. The horse was removed by the plaintiff, and while being ridden, fell, and was so injured that it could not safely be returned within the stipulated time; but the plaintiff gave notice to the defendant, within that time, that the animal was not according to warranty, which in fact was the case. The plaintiff

thereupon sued for damages, and the defendant relied upon the condition; but the plaintiff won his case, for it was held that, under the special circumstances, the non-return of the horse within the period stipulated by the condition was no bar to an action for breach of the warranty. The result of the accident was to reduce the horse to a mere mass of flesh and bones, and to send back a carcase reduced to that state would have been futile; it might as well have been contended by the defendant that, if the horse had been killed outright by the accident, the dead body must nevertheless have been returned.' And the position in this last case would not have been altered even if the plaintiff had had reason to believe, before he took the horse away, that it was not in accordance with the warranty (*Head* v. *Tattersall*). And *see* CONTRACT OF SALE; WARRANTY.

HOSIERY MANUFACTURERS should have special regard to the provisions of the Hosiery Manufacture (Wages) Act, 1874. By this Act it is provided that in all contracts for *wages* the full and entire amount of all wages earned in or connected with hosiery manufacture must be made payable in net, in current coin, and not otherwise, without any deduction or stoppage whatever, except for bad and disputed workmanship. All contracts to stop wages or for frame rents and charges, made between an employer and his employees engaged in such manufacture, are illegal and void. For bargaining to deduct, or for deducting from the wages of such an employee any frame rent or standing or other charges, the employer will incur a forfeiture of £5, for which the employee may sue him in the local county court; and so also for refusing or neglecting to pay wages or any part thereof in current coin. On the other hand, an employee may become liable to penalties, for it is also provided that if any frame or *machine* is *entrusted* to an employee by his employer for the purpose of use in the course of the employment, the employee will incur a forfeiture of 10s. per day if he uses the frame for the benefit of any other person than his employer without the consent in writing of the latter.

By the **Hosiery Ticket** Act it is provided that tickets containing particulars of the price, description of the work, and other matters must be furnished by the master to a hosiery workman when materials are given out to the latter; but this enactment does not apply to cases in which workmen work in the shops of their masters, it only refers to those in which the materials are taken away by the workmen to their own premises.

And there is also a statute called the Hosiery Act, 1843, which aims at the **prevention of fraud** and abuses by persons employed in the woollen, worsted, linen, cotton, flax, mohair, and silk hosiery manufactures, and which also secures the property of the manufacturers and the wages of the workmen. Persons who are convicted of pawning or embezzling materials or tools thereby incur a forfeiture of their value, as well as a penalty and costs; those who neglect to return materials or tools within a prescribed time are subject to the same punishment as for embezzlement; and for knowingly purchasing, receiving, selling, pawning, or otherwise disposing of embezzled materials or tools the offender is punishable as for a misdemeanour. A magistrate may grant a search warrant, and constables may apprehend persons suspected of having any embezzled materials or tools, or conveying any such things between sunset and sunrise. Any one so apprehended will

be punished unless he can prove that the property is honestly come by. The owner of materials and tools has power to inspect the shops of persons employed. It is also expressly provided that frames, tools, and other apparatus and materials which do not belong to a workman are not liable to be seized for rent or debt, unless the same is due from the owner thereof, and in case of illegal distress or seizure a magistrate has power to order the property to be restored, and that any damage done thereto shall be recovered. A penalty is provided for obliterating a mark on a machine. In proceedings before magistrates, one of them at least must not be engaged in any manufacture or employment to which the Act extends. *See* FACTORIES; TRUCK ACT.

HOURS OF WORK.—Employment of women, young persons, and children in factories.—The hours of such employment are strictly defined by the law, and in respect of labour outside those hours an employer incurs very heavy penalties. First, as to *women* * *and young persons.* For these, the period of employment in a factory or workshop, except on Saturday and unless the law makes any special exception, is either from 6 A.M. to 6 P.M., 7 A.M. to 7 P.M., or 8 A.M. to 8 P.M.; but the last-mentioned hours are not lawful in the case of employment in a textile factory. On Saturday, subject to special statutory exception, the period is from 6 A.M. to 2 P.M., or 7 A.M. to 3 P.M., or 8 A.M. to 4 P.M. But in respect to Saturday labour in textile factories, it is provided that the hours for beginning work shall only be 6 A.M. and 7 P.M.: and (1) where the employment begins at 6 A.M., that period, (*a*) if not less than one hour is allowed for meals, is to end at noon, as regards employment in any manufacturing process, and at 12.30 P.M. as regards employment for any purpose whatever; and (*b*) if less than one hour is allowed for meals, is to end at 11.30 A.M., as regards employment in any manufacturing process, and at noon as regards employment for any purpose whatever; and (2) where the employment begins at 7 A.M., that period is to end at 12.30 in the afternoon as regards any manufacturing process, and at 1 P.M. as regards employment for any purpose whatever. The allowance for meals during a period of employment is to be not less than half-an-hour on a Saturday; and on every other day not less than one hour and a half (two hours in a textile factory), of which one hour at the least, either at the same time or different times, must be before 3 P.M. No woman or young person in a factory, or a young person in a workshop, can be employed continuously for more than five hours (four hours and a half in a textile factory) without an interval of at least half-an-hour for a meal.

The hours for the employment of *children* * are defined with equal precision, and certainly with an adequate regard for their youth and health; and, as in the case of women and young persons, those who do not comply with the regulations imposed by the law will incur penalties far exceeding any profit made through the illegal employment. The first regulation as to the hours of employment of children is, that they shall not be employed except either on the system of employment in morning and afternoon sets, or (in a factory or workshop in which not less than two hours are allowed for meals on every day except Saturday) on the system of employment on alternate days only. This regulation, as it thus stands, applies exclusively to non-textile factories

* These regulations are amended and extended by the Employment of Children Act, 1903, as to which *see* CHILDREN (EMPLOYMENT OF), and, as regards employment of women and children in flax scutch mills and about coal-mines (aboveground), by the Employment of Women Act, 1907.

and workshops; but omitting the words in brackets, it will apply to textile factories. The more special regulations can be more conveniently set out separately for these two classes of factories. In textile factories the morning set, except on Saturday, begins at the same hour as if the child were a young person: it may end either at 1 P.M.; or, if the dinner-time begins before 1 P.M., at the beginning of dinner-time; or, if the dinner-time does not begin before 2 P.M., at noon. In non-textile factories or workshops this set begins on every day, including Saturday, at 6 or 7 or 8 A.M., and may end at the times provided in the case of textile factories. An afternoon set: in textile factories, except on Saturdays, begins either at 1 P.M., or at any later hour at which the dinner-time terminates, or at noon if the dinner hour does not begin before 2 P.M. and the morning set ends at noon. In non-textile factories and workshops, including Saturday, the hour at which a period of employment must begin is either 1 P.M. or any hour later than 12.30 P.M. at which the dinner-time terminates, or at noon if the dinner-time does not begin before 2 P.M. and the morning set ends at noon. In the latter class of factories and workshops any employment in an afternoon set is specifically required to end on Saturday at 2 P.M., and on any other day at 6 or 7 or 8 P.M., according as the period of employment for children in the morning set began at 6 or 7 or 8 A.M. In a textile factory no child can be employed on a Saturday for any other period than that during which a young person can be lawfully employed. In no class of factory or workshop can a child be employed in two successive periods of seven days in the morning set, nor in two like successive periods in an afternoon set. It is also provided that a child cannot be employed in a textile factory on two successive Saturdays, nor on Saturday in any week if on any other day in the same week his period of employment has exceeded five hours and a half; in a non-textile factory or workshop, on Saturday in any week in the same set in which he has been employed on any other day of the same week.

With regard to the alternate-day system, it is provided that in a textile factory the period of employment and the time allowed for meals are to be the same as those of a young person, but no child is to be employed on two successive days, nor on the same day of the week in two successive weeks. In the case of employment on this system in non-textile factories or workshops, the regulations are more detailed, and may briefly be stated as follows:—(*a*) Except on Saturday, the period of employment must run from 6 A.M. to 6 P.M., or 7 A.M. to 7 P.M., or 8 A.M. to 8 P.M.; (*b*) on Saturday the period is from 6 or 7 A.M. to 2 P.M., or from 8 A.M. to 4 P.M.; (*c*) two hours for meals must be allowed in each period of employment, except on a Saturday, when half-an-hour only need be allowed; (*d*) the child is not to be employed in any manner on two successive days, nor on the same day of the week in two successive weeks. On whatever of these systems a child may be employed, the employment will be illegal if continuous for more than five hours (four hours and a half in a textile factory) without an interval of at least half-an-hour for a meal. And all women, young persons, and children employed in any class of factory or workshop must have the times allowed for meals at the same hour of the day; and must not, during any part of the meal-time, be employed on the premises, or be even allowed to remain in any room therein in which a manufacturing process or handicraft is then being carried on.

Women's workshops.—In a workshop conducted on the system of the non-employment of either children or young persons, the period of employment of a woman is not to exceed a specified period of twelve hours. This period is to be reckoned between 6 A.M. and 10 P.M.; on Saturdays the period is limited to eight hours, reckoned from 6 A.M. to 4 P.M. And during the specified period the woman is entitled to an allowance of not less than one hour and a half for meals and absence from work; on Saturday this allowance is only half-an-hour. The occupier of such a workshop should give notice to the inspector that he is conducting the same as a woman's workshop, and then until he gives notice to the contrary the employment therein of children and young persons will be illegal. Unless for a special cause, he cannot change the system oftener than once a quarter. Where a woman or young person has not been actually employed for more than *eight hours* on any day in a week, in a non-textile factory or workshop, that employee may work on the Saturday in that week from 6 A.M. to 4 P.M., with an interval of not less than two hours for meals; but notice of the non-employment must have been first affixed in the premises, and also served on the inspector. *Inside and outside work.*—Only during his lawful period of employment can a child be employed, on the same day, in the business of a factory or workshop outside that factory or workshop; and the same restriction is imposed upon a similar employment of a woman or young person. A woman, young person, or child, to or for whom any work is given out, is entitled to the benefit of the restriction; as also is one who is allowed to take out any work to be done by him or her outside. If a woman or young person is employed on the same day both in a factory or workshop and in a shop the following regulations apply:—(*a*) The whole time of the employment must not exceed the time permitted for her or his employment in the factory or workshop on that day; and (*b*) if the employment in the shop is outside the specified period of employment in the factory or workshop, an entry must be made in general register. The foregoing specified period has reference to the hours of employment which may, within certain limits, be fixed by the occupier of every factory and workshop, but which must always be specified in a notice affixed to the premises. The notice is bound to state the period of employment decided upon by the occupier; the times allowed for meals; and whether the children are employed on the system of morning and afternoon sets, or of alternate days. These fixtures will thereupon be the only lawful periods and conditions of employment in that factory or workshop; can only be changed after notice to an inspector; and should not be changed oftener than once a quarter. A public clock, or other clock open to public view, may be named by the inspector as the criterion of time.

Holidays.—To the above provisions, as also to those now about to be set out, the Factory Act has made certain specific exceptions, as well as authorised the Home Secretary to make further exceptions under special circumstances. Thus in certain non-textile factories and workshops the period of employment may be limited to the hours between 9 A.M. and 9 P.M. There are also statutory modifications to the above hours in the case of male young persons above sixteen in lace factories; and with regard to bakehouses; and textile factories used for the making of elastic web, ribbon, or trimming. And special provision is made for different meal-times for different sets, and

for employment during meals in blast-furnaces, iron mills, paper mills, glass works, and letterpress printing works. Again, the provisions of the Act do not apply, generally speaking, to young persons and women engaged in fish and fruit preserving, or in creameries. The Home Secretary has power to substitute another day for Saturday where the customs or exigencies of a special trade make the substitution reasonable, as in the case of newspaper printing offices; and in like manner the annual and half holidays may be fixed on different days for different sets, and employment inside and outside on the same day permitted. The Jews are also specially provided for in the matter of the time of their employment. Save for any special exception, no woman, young person, or child can be employed in a factory or workshop on a Sunday.

Subject to these and any other special exceptions, the occupier of a factory or workshop is bound to allow the following holidays in each year to every woman, young person, and child employed in the factory or workshop. In England there must be given as whole holidays—Christmas Day, Good Friday, and every Bank holiday, unless, in lieu of any of those days, another whole holiday or two half-holidays, fixed by the occupier, are allowed. In Scotland the holidays are—(*a*) In burghs or police burghs, as whole holidays, the two days set apart by the Church of Scotland for the observance of the Sacramental Fast in the parish, or, if those fast-days are abolished or discontinued, two days, not less than three months apart, to be fixed by the town council; elsewhere, two whole holidays, not less than three months apart, fixed by the occupier; (*b*) eight half-holidays, fixed by the occupier, but a whole holiday, fixed by him also, may be allowed in lieu of any two half-holidays. In Ireland the holidays are—(*a*) Christmas Day; (*b*) any two of the following days, fixed by the occupier, namely, 17th March (when it does not fall on a Sunday), Good Friday, Easter Monday, and Easter Tuesday; (*c*) six half-holidays, fixed by the occupier, but a whole holiday, fixed by the occupier, may be allowed in lieu of any two half-holidays. And generally, as to all the foregoing holidays, it is provided that at least half of the whole holidays or half-holidays are to be allowed between 15th March and 1st October.

A notice of every whole holiday or half-holiday must be affixed in the factory or workshop during the first week in January; and unless a copy thereof is sent to the inspector, it will not be considered by the authorities to be a holiday or half-holiday, as the case may be. This does not apply, however, in England or Wales, to whole holidays on Christmas Day, Good Friday, or a Bank holiday. The notice may be changed by a subsequent notice, if done not less than fourteen days before the holiday or half-holiday to which it applies. A *half-holiday* is defined as comprising at least one-half of the period of employment for women and young persons on some day other than Saturday, or a day substituted for Saturday. A woman, young person, or child will be deemed to be employed contrary to the provisions of the Factory Act if she or he (*a*) is employed in a factory or workshop on a whole holiday; or (*b*) is so employed on a half-holiday during the portion of the period of employment assigned for that half-holiday. The occupier of a factory or workshop incurs a penalty of £5 for not fixing the requisite holidays.

Young persons in shops.—The hours of employment of young persons

"in or about a shop" is restricted, by the Shop Hours Act, 1892, to not more than seventy-four hours, including meal-times, in any one week. By the word "shop" is meant any retail or wholesale shop, market, stall, or warehouse "in which assistants are employed for hire, and includes licensed public-houses and refreshment-houses of any kind." "Young person" means a person under the age of eighteen years, and other words and expressions in the Act have the same meanings as in the Factory Act. But nothing in the Act now being dealt with applies to a shop where the only persons employed are members of the same family, dwelling in the building of which the shop forms part, or to which the shop is attached. Nor does it apply to members of the employer's family so dwelling, or to any person wholly employed as a domestic servant. No young person can be employed in or about a shop who has previously on the same day been employed in a factory or workshop for the number of hours permitted by the Factory Act; nor for a longer period than, together with the time of such previous employment, completes that number of hours. In every shop in which a young person is employed the employer is required to conspicuously affix a certain notice to the premises. This notice must refer to the provisions of the Act, and state the number of hours in the week during which a young person may lawfully be employed in that shop. Should the employer employ any young person in or about his shop contrary to the foregoing provisions, he will be liable to a fine of £1 for each person so employed. Proceedings are taken against him in the local police court. Upon the hearing of the case he is entitled to have any other person whom he charges as the actual offender brought before the court, but he must have first laid an information against him for that purpose. The actual offender being thus before the court, the employer may escape the fine, although the commission of the offence may have been proved. To do so he must prove to the satisfaction of the court that he had used due diligence to enforce the execution of the Act, and that the "other person" committed the offence in question without his knowledge, consent, or connivance. The other person will then be summarily convicted of the offence. *See* FACTORIES; SHOP.

HOUSE-TAX.—This tax, which would be more correctly referred to as the **Inhabited Dwelling-house Duty,** is the modern development and representative of the old hearth-money and the later window-tax. The tax was first imposed, in its modern form, during the course of the war of American Independence, and instead of being reduced or withdrawn when that war had run its course, it was retained and increased in order to contribute towards the necessities of the subsequent war with France. Since then it has been temporarily abandoned, but in 1851 it was re-established and has remained a constant source of public revenue, though from time to time its rates have been varied and many alterations made in its general working.

Rules for charging the duties.—They are charged annually on the occupier for the time being of every inhabited dwelling-house which, with the household and other offices, yards, and gardens therewith occupied and charged, is worth the annual rental of £20 or upwards; payment can be enforced from the executors or administrators of a deceased occupier. In the event of change of occupation after an assessment has been made, the duties are payable

by the occupier, landlord, or owner according to their times of possession of the premises. Where, after the assessment has been made, a tenant is about to quit on the termination of a lease or demise, even though the quitting will not take place on the actual determination, he should give notice to the assessor; he will then be discharged from payment of the duty for the remainder of the year, if the premises remain unoccupied during that period. In England the period meant by the term "year," in this connection, runs from one April 5 to the following April 5; in Scotland, from May 24 to the following May 23: in all cases the tax is required to be paid on January 1 in that year.

Amongst the premises subject to this duty are: (*a*) Every coach-house, stable, brew-house, wash-house, laundry, wood-house, bake-house, dairy, and all other offices, and all yards, courts, and curtilages, and gardens, and pleasure grounds, belonging to and occupied with any dwelling-house; and all the foregoing are valued together with the dwelling-house, except that not more than one acre of such gardens and pleasure grounds shall be in any case so valued. (*b*) All shops and warehouses which are attached to the dwelling-house, or have any communication therewith, shall in charging the duties be valued together with the dwelling-house and the household and other offices belonging thereto; business premises are so liable, if they are under the same roof as the dwelling-house, even in the absence of any communication. But the following business premises are *exempt:* (i.) Warehouses and buildings upon or near adjoining to wharfs occupied by wharfingers, who have dwelling-houses upon the wharfs for the residence of themselves or servants employed on the wharfs; (ii.) such warehouses as are distinct and separate buildings, and not parts of dwelling-houses or the shops attached thereto, but are employed solely for the purpose of lodging goods, wares, and merchandise, or for carrying on some manufacture, and this is so notwithstanding such warehouses adjoin or have communication with a dwelling-house or shop; (iii.) it is also provided that no market-garden or nursery ground occupied by a market-gardener or nurseryman *bonâ fide* for the sale of the produce thereof, in the way of his trade or business, is to be included in the valuation of any dwelling-house or premises. (*c*) Chambers and halls of colleges, and all public halls and offices which are liable to any other taxes or parish rates. In addition to the foregoing, there is special provision for the assessment of dwelling-houses divided into different tenements in distinct ownerships, every such tenement being subject to the same duty as if it were an entire house, payment of the duty to be made by the occupier. But where any house is let in different stories, tenements, lodgings, or landings, and is inhabited by two or more persons or families, it will be subject to and charged with the same duties as if it were inhabited by one person or family only; and in this case the landlord or owner is considered by the law to be the occupier of the premises, and is charged with the duty. Should, however, the landlord not reside within the limits of the collector, the duties, with the payment of which he is charged, may be levied upon the occupier or occupiers of the tenement house. And so also may the collector fall back upon the occupiers if the tax remains unpaid by the landlord for the space of twenty days after it has become due. When the occupier has been made to pay such of these duties as are properly payable by his landlord, the

payments are to be deducted and allowed out of the next payment on account of rent. But a person who may be so chargeable as an occupier should give a certain notice to the local surveyor of taxes, whereupon he will be entitled to a certain relief. This opportunity is only available in the case of a house (being one property) divided and let in different tenements, any of which are occupied solely for the purposes of a trade or business, or of a profession or calling by which the occupier seeks a livelihood or profit, or are unoccupied; the notice should be in writing stating these facts; the relief granted is the confining of the amount of duty to that payable on the value according to which the house should have been assessed, if it had been a house comprising only the tenements other than such as are occupied as aforesaid, or are unoccupied.

Further exemptions.—Besides the properties already referred to as exempt from the payment of this duty there should be mentioned: (*a*) Any houses belonging to his Majesty or any of the royal family, and every public office for which duties would be payable by his Majesty or out of the public revenue; (*b*) hospitals, charity schools, and houses provided for the reception or relief of poor persons; (*c*) every house whereof the keeping is committed or left to the care or charge of any person or servant, who does not pay any poor-rate and who resides therein for the purpose only of taking care; (*d*) every house, other than an occupied farmhouse, occupied solely for the purposes of any trade or business, or of any profession or calling by which the occupier seeks a livelihood or profit, and this exemption takes effect even though a menial or domestic servant, or other person of a similar description, not otherwise employed by the occupier, dwells in the house solely for its care or protection.

The rates of the duty per annum are as follows:—(1) On a dwelling-house occupied by a person in trade who exposes to sale and sells any goods, wares, or merchandise in any *shop or warehouse*, being part of the same dwelling-house, and in the front and on the ground or basement story thereof; and also where any such dwelling-house is occupied by a person licensed to *retail beer*, ale, wine, or other liquors therein, although the rooms wherein the drink is sold or consumed are not such a shop or warehouse as aforesaid; and also where any such dwelling-house is a *farmhouse* occupied by a tenant or farm-servant, and *bonâ fide* used for the purposes of husbandry only; and also where any such dwelling-house is occupied by a person who carries on therein the business of an hotel- or *inn-keeper* or *coffee-house keeper*, although not licensed to sell therein by retail any beer or other liquors: if the annual value of the premises does not exceed £40, an annual charge thereon of 2d. in the £; where it exceeds £40, but does not exceed £60, 4d. in the £; exceeding £60, 6d. in the £. (2) On any other dwelling-house, where the annual value does not exceed £40, an annual charge thereon of 3d. in the £; where it exceeds £40, but does not exceed £60, 6d. in the £; exceeding £60, 9d. in the £. A *lodging-house keeper* is entitled to be charged on the lower of the above two scales, if before the 1st July he registers his name in the list of lodging-house keepers kept by the clerk to the commissioners of the tax, and if, before the following 1st October, he applies to the commissioners that such reduced charge be allowed him. Only a person who occupies a house for the main purpose of letting furnished

Memorandum of an Agreement

made and entered into this twenty fourth day of June One thousand nine hundred and ten **Between** Arthur Baker of 3 Irelawny Road in the City of Manchester Grocer of the one part and Charles Davis of 15 Vaughan Terrace in the same City Clerk of the other part

The said Arthur Baker doth hereby agree to let and the said Charles Davis to take **All** that messuage and dwellinghouse situate and being No. 215 Vaughan Terrace in the Parish of St Luke in the City of Manchester for the Term of Three Years from the date hereof at and under the yearly rent of Thirty-six pounds payable without deduction except on account of the Landlords property and income tax in equal quarterly payments on the twenty-fifth day of March the twenty-fourth day of June the twenty-ninth day of September and the twenty-fifth day of December in each year, the first quarterly payment to be made on the twenty-ninth day of September next **And** the said Charles Davis doth hereby agree with the said Arthur Baker that he the said Charles Davis his executors or administrators shall and will from time to time, during the period that he or they shall continue to occupy the said premises under this agreement, keep repaired at his or their own expense all the windows, doors, locks, bells, and all other fixtures in and belonging to the said premises and all the internal parts thereof, and so leave the same at the end of the said Term (reasonable wear and tear, and accidents by fire, flood, and tempest only excepted) And also that he will not assign or underlet the said premises without the consent in

writing of the said Arthur Baker nor use the same other than and except as a private dwelling-house. And the said Arthur Baker agrees to keep all the external parts of the premises in good repair Provided always that the said term hereby agreed to be granted shall cease and determine, and the said Arthur Baker his executors, administrators or assigns shall have an immediate right of entry in case the rent hereby reserved shall (being demanded) be in arrear more than twenty days next after any of the said quarterly days on which the same is payable, or in case the said Charles Davis his executors or administrators, shall, after notice refuse to observe and perform the agreements and conditions hereinbefore mentioned or shall assign or underlet the said premises without such license as aforesaid or in case the said Charles Davis shall become bankrupt or shall permit any Writ of execution to be levied on his goods In witness whereof the said parties hereunto have set their hands the day and year above mentioned.

Witness-
James Ford
3. Lower Road
Salford

A Baker-

C Davis

lodgings therein as a means of livelihood is entitled to thus register himself. *Artisans and small rental dwellings.*—There is also a total *exemption* from the tax in favour of a house originally built or adapted by additions or alterations and used for the sole purpose of providing separate dwellings at an annual value for each dwelling of less than £20; but a certificate of the local medical officer of health, or a special medical officer, is to be produced to the commissioners before the exemption can be allowed: the certificate should be to the effect that the house is so constructed as to afford suitable accommodation for each of the families or persons inhabiting it, and that due provision is made for their sanitary requirements. In the case of a similar house, but one which provides the separate dwellings at an annual value not exceeding £40 for each dwelling, the commissioners will confine the assessment to the annual value of the house exclusive of every dwelling therein of an annual value below £20 (if any), and will reduce the rate of duty to 3d.; a similar medical certificate to the foregoing is also here requisite.

The procedure regulating the assessment and levy of this tax is prescribed by the Taxes Management Act, 1880, but the management is in the hands of the Commissioners of Inland Revenue. Outside London the assessing bodies are the local commissioners of INCOME TAX.

HUMID FACTORIES and rooms, sheds, workshops, and factories in which the weaving of cotton cloth is carried on are subject to certain special regulations imposed by the FACTORIES ACT (*q.v.*), and by the Orders made from time to time thereunder by the Home Secretary. The Act provides that a certain standard of temperature and humidity is not to be exceeded in such places except so far as the Orders may vary that standard. It also requires the provision and effective maintenance of thermometers and provides for an official inspection. There are regulations, in considerable detail, which have in view the protection of the health of the employees, and penalties are imposed for non-compliance therewith.

HUNTING.—A man may go upon the land of another, without thereby committing a trespass, if he does so whilst hunting, and in pursuit of, vermin, such as a fox or otter; but this must be done in the course of a pursuit, for he will be committing a trespass if he goes on to that land in order to search for the vermin or to dig it out. Moreover, he must not be hunting for his pleasure or his profit, but only for the good of the common weal and in order to destroy injurious vermin for the public benefit; he must also conduct his operations without causing unnecessary damage to the property he passes through, or otherwise he will commit a trespass. Hunting on the property of another is undoubtedly a trespass if done without the owner's permission and the before-mentioned justification; and that justification would be no excuse in the case of a number of people following a solitary fox. Where the defendant in an action for trespass by hunting contended in defence that his act was not committed for the purpose of diversion and amusement of the chase merely, but as the only way and means of killing and destroying the fox, Lord Ellenborough said, "If you were to put it upon this question, Which was the principal motive? Can any man of common sense hesitate in saying that the principal motive and inducement was not the killing of vermin, but the enjoyment of the sport and diversion

of the chase. And we cannot make a new law to suit the pleasures and amusements of those gentlemen who choose to hunt for their diversion. These pleasures are only to be taken where there is the consent of those who are likely to be injured by them, but they must be necessarily subservient to the consent of others. There may be such a public nuisance by a noxious animal as may justify the running him to his earth, but then *you cannot justify the digging for him afterwards*; that has been ascertained and settled by the law. But even if an animal may be pursued with dogs, it does not follow that fifty or sixty people have therefore a right to follow the dogs and trespass on other people's lands." A Master of Hounds is liable for any trespass committed by those whom he has invited to follow the hunt, provided he has not expressly required them to abstain from the particular trespass; and the fact of his not being himself present at the hunt will not relieve him from this liability; and in like manner a huntsman is liable for damage done by those following him.

HUSBAND AND WIFE.—By the common law of England a wife is treated as the subject of her husband, so far as her separate existence is recognised at all; in many respects her identity is actually merged in that of her husband. But to this common law rule there are many important exceptions arising out of equitable doctrine, statutory enactment, and the modern judicial interpretation of the common law. The whole subject of the legal incidents of the marriage relation would be too wide for treatment in such a work as this, though an outline having a practical value will not be impossible. This will accordingly be presented to the reader; and under such headings as MARRIAGE, DIVORCE, and PARENT AND CHILD will be found a more special treatment of certain characteristic incidents in the relationship. Husband and wife have for centuries been known to the law under the terms baron and feme, the latter being more technically referred to as a feme covert and her condition as coverture. As soon as a woman marries, her nationality and domicile become the same as those of her husband. This fact should always be borne in mind by every Englishwoman who proposes to marry a foreigner, and she should be careful, before marriage, to have a settlement of her property. Where the parties to the marriage are both English there is little need for this, as the Married Women's Property Acts are in effect more than a substitute for a special settlement. The necessity for caution in the case of a mixed marriage is startlingly apparent in the case of the marriage of a propertied Englishwoman to a domiciled Frenchman, when, if there is no valid settlement to the contrary, the personal property of the wife becomes *ipso facto* subject to the French law, and in particular to what is called the régime of community, whereby the husband, though technically but an administrator of the property, yet becomes sufficiently its owner to exclude the wife's native right of disposition, and to himself acquire the power of dissipating it.

A husband is entitled to his wife's society, and, in theory, has a right to her residence with him. In practice, however, the right is of little value, as the law now declines to aid him in its enforcement; and should he take the law into his own hands he would be punished. And though he has the right, and is even under a moral and social obligation, to restrain her from improper behaviour, yet it would be exceedingly unwise for any man, under even

extreme circumstances, to rely and act upon the right. In **criminal law** the doctrine of the identity of a married couple has very important results. Neither one of a married couple can generally be a witness against the other, nor can he or she be compelled to give evidence at all, where that other party is the person charged, without her or his consent. A wife cannot be convicted of any larceny, burglary, forgery, or for uttering forged notes, if the offence is committed in the presence of her husband, on the presumption that she so acted under the coercion of her husband. In some circumstances, however, the presumption may be rebutted. But, generally, in respect to other crimes and offences the presumption of coercion is not allowed, and especially in cases punishable by magistrates summarily.

A wife may proceed against her husband, by way of criminal proceedings, for the protection and security of her own separate property; but no criminal proceedings can be so taken while the parties are *living together* as to or concerning any property claimed by the wife; nor while they are *living apart*, as to or concerning any act done by the husband while they were living together concerning property claimed by the wife, unless that property has been wrongfully taken by the husband when leaving or deserting, or about to leave or desert his wife. This is a provision of the Married Women's Property Act, 1882, which also enacts that "a wife doing any act with respect to the property of her husband, which if done by the husband with respect to the property of the wife under this Act, shall *in like manner* be liable to criminal proceedings by her husband." The husband or wife of the offender is a competent witness for the prosecution or defence in either of the above two cases, whether the offender consents or not.

Maintenance.—So long as the marriage relationship is undetermined the husband is bound to maintain his wife. This obligation cannot be escaped by a plea of want of means, for it is personal to the husband and has no relation to his property; but he is absolved therefrom if the wife has misconducted herself. A wife is also bound to maintain her husband, but the obligation in her case is dependent upon her having separate property wherewith to fulfil it.

Contract.—A married woman is now in all cases of property in the legal position of a feme sole, or unmarried woman, and as such her husband no longer has any control over or right to her earnings or her property. And this is equally true in cases of contract, for she can now contract as freely as if she were unmarried; but the statute has limited her liability under a contract, so that it is presumed to be "in respect of and to the extent of her separate estate." A judgment against a married woman is therefore limited to her separate estate, and execution thereof is limited accordingly. If the possessor of separate estate she is now liable for the maintenance of her parents.

Torts.—She is also now liable for damages for torts, or wrongs independent of contract, and may also, by herself, sustain an action for wrongs she may suffer. If a wife has committed a tort before marriage, her husband may be sued by the person injured, but as he is only liable so far as he has acquired property from his wife through the marriage, there is usually but little advantage in joining him as a defendant. But where the tort has been committed by the wife during the marriage, and though the wife is primarily liable therefor, yet the husband is also personally liable, without any property

limitation (*Seroka* v. *Kattenberg*). In appropriate cases, therefore, both husband and wife should be sued for damages for a tort. This liability of the husband is founded on the theory that the wife is his agent; an illustrative case will make it clearer. In *Miell* v. *English* a wife, while acting as forewoman in her husband's business, ordered a servant to use a certain cart which was defective, and in using it the latter sustained an injury; on these facts the judge directed the jury that the husband was as liable as if he had himself been present and given the order. When a husband commits a tort against his wife, the latter can only maintain an action against him therefor when the proceedings are necessary for the protection of her separate property. But a husband cannot under any circumstances take proceedings against his wife for tort. And neither one can sue the other for a merely personal tort, as an assault for example. Instances of torts for which a wife can successfully maintain an action against her husband are wrongful interference with her business, libelling her in her trade or business, and trespassing upon and injuring her property. A husband will not be liable for any breach of trust committed by his wife unless he has acted in or intermeddled with the trust.

With regard to **loans** made by a wife to her husband, particular notice should be taken of the terms of section 3 of the Married Women's Property Act, 1882, which provides that "any money or other estate of the wife lent or entrusted by her to her husband, for the purpose of any trade or business carried on by him, or otherwise, shall be treated as assets of her husband's estate in case of his bankruptcy, under reservation of the wife's claim to a dividend as a creditor for the amount or value of such money or other estate after, but not before, all claims of the other creditors of the husband for valuable consideration in money or money's worth have been satisfied." The net effect of this enactment is to postpone the creditor-wife of a bankrupt to all other of his creditors for valuable consideration, so that she is not entitled to recover any portion of her loan until the debts due by her husband to those other creditors have been paid in full. It is remarkable that in the converse case of a husband lending money to his wife for the purposes of her trade, there is no like statutory provision postponing his claim to the claims of other creditors in the event of her bankruptcy. But whether the loan is by the husband or wife, it will always come within the similar postponing operation of the Partnership Act in case the loan has been granted upon a written agreement that the lender receives a share of the profits, or a rate of interest varying with the profits. If a married woman, during cohabitation, should contract a loan from a third party without the authority of her husband, even for the purposes of obtaining necessaries not provided for her by her husband, the latter is not liable for its repayment.

Wife agent for husband.—Of very great importance to the business man is the determination of the question whether in a particular case the husband or the wife, or both of them, are liable in respect of a *contract made by the wife alone*. Since the Married Women's Property Act, the law is settled that, *primâ facie*, a contract so made is one in respect of which the wife is alone liable. The effect of the Married Women's Property Act, 1882, as supplemented by the Act of 1893, is to provide that a contract entered into by a married woman is deemed to be with a view to her separate

estate, both what she has at the time and what she may thereafter acquire, so that she may bind her separate property which she is possessed of or entitled to at the date of the contract, and also that which she may thereafter acquire. Judgment may be obtained against her, though at the date of the contract she had no separate estate, and it may be enforced against property she may acquire after she has ceased to be a married woman. The true position is therefore made up of (1) her statutory *primâ facie* personal liability founded upon her separate estate; and (2) her ordinary condition in practical life as *primâ facie* the agent of her husband. A married woman is accordingly, from a contractual point of view, a startling contradiction, and herein a cynic might say that she does not depart from the more general characteristic of her sex. The party with whom she contracts is always faced with the problem whether she does so as *primâ facie* principal or *primâ facie* agent. In some cases the necessity for dealing with this problem is obviated by the contract expressly determining her position in the matter, and in other cases its solution is simplified by the particular circumstances of the case. She may specifically stipulate that the party with whom she contracts shall only look to her for its performance. Or, as in a case of goods sold to a married woman, delivery may be ordered to be made at some place other than her husband's address, and so there may arise the presumption that credit was to be given to the woman only. Or the trader may know that she has a separate estate, and may therefore elect to give credit to her alone in respect of goods which would naturally be intended for her own use or consumption.

On the principle that a wife imposes a liability upon her husband in respect of her contracts, only so far as she is authorised by her husband to enter into contracts on his behalf, it follows that if she has not that authority her husband has no liability. But the husband is in the disadvantageous position of being presumed by the law to have vested her with that authority by the mere fact of living with her in the matrimonial home. To escape liability he must therefore give notice that he will not pay any debts which the wife may incur. This notice is not, however, generally necessary, but if and when it is necessary, it should be specific and actual; a general newspaper advertisement would be no notice to any one who had been hitherto accustomed to deal with the wife and who had not seen it. Or again, if sued in respect of debts incurred by his wife, it will be sufficient if the husband can prove that he provided her with means ample to satisfy all her wants and those of the household. And whether these means are so ample or not will always depend upon the position in life of the husband. The means which a dock labourer can place at the disposal of his wife are certainly not a criterion of the means with which a millionaire may be reasonably expected to supply his wife, nor *vice versâ*. So long as a husband has reasonably, according to his position, fulfilled his duty in furnishing his wife with means to supply her wants and those of the household, he may regard with complacency any action brought against him by a creditor in respect of a debt incurred by his wife without his special authority; he will satisfy the court as to the facts of his particular case, and the result will be the dismissal of the creditor's action.

Some well-known cases well illustrate and emphasise the above. The facts in *Manby* v. *Scott* were that the defendant's wife had left him without

his consent and had returned after a twelve years' absence; "but he then would not receive her nor allow her any maintenance, and discharged or forbade tradesmen, particularly the plaintiffs, from trusting her with any wares." The plaintiffs, however, supplied the wife with goods, according to her station in life, in spite of the husband's warning, and thereupon sued him for the price. The proceedings resulted in the tradesmen losing the day, for the court laid it down, once for all, that a wife can only contract, so as to bind her husband, when she does so pursuant to his authority. This was more than 250 years ago, and since then there has been no doubt as to the legal principle involved in such cases. The next case is *Montague* v. *Benedict*, in which the defendant was held not to be liable for the price of certain expensive articles of jewellery supplied by the plaintiff to the defendant's wife, on the ground that these articles were not necessaries, and were of a more expensive character than her station in life warranted. It was fortunate that this defendant was a sharp man as well as a good lawyer—and probably the extravagance of his wife tended to sharpen him—for a few years later Mrs. Benedict was again the cause of his enforced appearance in court in the character of a defendant. Fashionable millinery were now the goods for the price of which the action was brought of *Seaton* v. *Benedict*, and in this case also was the defendant successful, for he proved that he had always supplied his wife with sufficient suitable millinery, and knew nothing of her dealings with the plaintiff. A fashionable milliner must therefore make some previous inquiry of an intending married customer who desires to open an account in her husband's name, in order to discover whether she has the requisite authority of her husband to pledge his credit. These cases were followed, in 1863, by *Jolly* v. *Rees* and, in 1880, by *Debenham* v. *Mellon*, and in the latter case the principle was finally maintained by the supreme authority of the House of Lords. It matters not that the goods supplied to the wife were necessary for her personal and domestic and family wants, or even if they were used or consumed by the husband himself; the latter is not liable to pay for them when he has already supplied her with the means to pay for them, and has forbidden her to pledge his credit. When the married couple are not living together there is no presumption that the wife has any authority to pledge the husband's credit; but nothwithstanding this absence of presumption, the husband will be liable for her debts if they have been incurred in respect of necessaries with which he has failed to supply her, or for which he has not afforded her the means. Should the wife have left her husband against his will, he not having caused her so to do by his bad conduct, the husband is not liable for necessaries supplied to her, even if he refuses to afford her the means to obtain them; and still less is the husband liable if the wife misconducts herself whilst so living apart from him. But if a wife who lives separately from her husband has separate means of her own, sufficient for her appropriate needs, it may be taken as a general rule that she cannot pledge her husband's credit even for necessaries.

The word "necessaries" may be taken to mean those expenses and things which can be reasonably considered as essential for the maintenance and comfort of the wife to the extent and on a scale appropriate to her social position and to any special circumstances in which she may be placed by the conduct of her husband. Consistently with this view a husband may be liable for the

costs of legal proceedings which a wife may be forced by his conduct to take against him. It is a general principle of agency that the death of the principal revokes the authority of the agent, and accordingly, in the special case of husband and wife, the authority of the latter to bind her husband as his agent determines forthwith upon his death. And this would be so although at the time of entering into a contract neither the wife nor the party with whom she contracts is aware of the husband's death. In the case of *Smout* v. *Ilberry*, a butcher sued a woman for the price of meat he had supplied to her for her own use and that of her family. The curious part of the case was that the woman's husband had some time before gone to sea and there died, and that the goods, for the price of which the action was taken, had been supplied to the woman as his wife after the date of his death, but before either she or the butcher had received news of it. The butcher therefore failed in his action and was unable to recover from the woman the price of those goods, for they had contracted with one another only on the footing of the woman being an agent, whereas her agency had in fact been determined by the death of her husband, the principal. And the butcher's position was not altogether a pleasing one, for on the authority of an older case, he was also debarred from proceeding against the executors or administrators of the husband. The lunacy or insanity of the husband does not of itself determine the agency of the wife; but if it should be known to the person with whom she contracts, it is probable that he would have a difficulty in enforcing his claim against the husband's estate. Certainly lunacy does not increase the authority of the wife. Nor, strictly speaking, is it increased by the sickness of the husband or his absence from home. But in the latter circumstances she may often find herself thrust into a position which necessarily entails the general management of his affairs. When this is so she would have such powers, as her husband's agent, as persons in such positions of trust usually exercise. Thus she can not only do all things relating to the family and the home that wives usually do, but, generally speaking, she can throw open the house in usual and appropriate hospitality; employ labourers and workmen for her husband's farm or business; repair his property and do all things necessary to preserve it; employ legal assistance to protect his interests; and generally carry on his business in the usual way. But at the most she would only have the usual and customary powers; she cannot, as a rule, make a contract for him out of the ordinary course of his business, and at special rates; nor can she sell his property unless, perhaps, this course is necessary in order to procure support, or her husband has abandoned all his rights in it to her; nor can she give a license which he cannot revoke.

If an unmarried couple are cohabiting as husband and wife, a presumption is thereby raised, but which may be rebutted, that the woman is the man's manager, and his domestic agent to buy necessaries. Evidence very useful to a creditor in such cases, as well as in cases of actual marriage, will be found in previous payment by the man of the woman's bills, his acceptance of the benefits of her acts, or his permitting her to keep goods he knows he is expected to pay for. If a man lives with a woman, allows her to assume his name, and treats her as his wife, he cannot escape liability for her contracts as his agent by merely showing that the creditor knew they were not married.

Agency of husband for wife.—There is nothing to prevent a husband acting as his wife's agent; indeed this is a position very generally filled by a husband. To lawfully act as her agent, however, he must have her prior authority, or she must contemporaneously assent to his acts or subsequently ratify or adopt them. If she allows her husband to use her goods as his own she will be bound by his dealings with it, but probably not if those dealings are wrongful or in fraud of her. She may generally employ him as she can any other man, as, for example, her clerk, collector of her rents, general manager of her separate property business, or special agent to sell; and in such cases she is entitled to the benefits and bound by the liabilities resulting from his acts within the scope of his employment, whether with respect to himself or to third parties; and his admissions may be evidence against her. As has been already pointed out, she may be liable for his torts as her servant or agent. And as in any other instance of agency, the husband cannot exceed the scope of his employment and so bind her against her instructions. If, for example, his authority is merely to collect her rent, he would not generally have any power to waive her right to a distress, and so prevent her distraining. And *see* ACT OF BANKRUPTCY; CONTRACT; AGENCY.

HYPOTHEC is a term in **SCOTS LAW** which has been defined as "a preferable right in security over movable property, which differs from pledge and lien in this, that the subject is not in possession of the person who has the right of security over it, but remains in the hands of the proprietor." Hypothecs can only be created by custom, and cannot be constituted by special contract, except in the contracts of bottomry and respondentia. The customary or tacit hypothecs are constituted by the mere relationship of parties and without any stipulation. The principal of these is the **landlord's hypothec.** It is the security which the landlord has for payment of rent, over and above the tenant's obligation. In *agricultural leases* of agricultural and pasture land not exceeding two acres in extent, this hypothec extends over every individual portion of the produce of the ground, but only generally over the tenant's live stock. The result of this distinction is to give the landlord, in the exercise of his hypothec, the power to deprive the tenant of the commercial use of products, but not to deprive the tenant of his ordinary right to manage, dispose of, and otherwise deal with the live-stock in the ordinary course of his business, though he must not do so collusively. Nor need there be any rent actually due in order to give the landlord his right of hypothec, for he can, even when no rent is due, prevent a sale of growing crops until the tenant finds security for payment of the rent when it becomes due. In respect of leases of land exceeding two acres in extent, let for agriculture or pasture, the landlord's hypothec is abolished. If the tenant sells any part of his products the landlord is entitled to recover it from the purchaser, or, at least, the purchaser is liable to pay to the landlord its value so far as that does not exceed the amount of the rent due. But if the purchaser has bought it in bulk in the open market, innocent of the fact that the seller was dealing with it wrongfully, he will not be liable to the landlord, nor will he be so liable if the sale is by public auction after notice to the landlord; though should even an innocent purchase have been effected by sample, that liability will be incurred by the purchaser. The hypothec is available

only in respect of one year's rent; and this year's rent, in regard to products, is limited to the year of which they were the crops; and proceedings in pursuance of the hypothec must begin within three months after the last term of payment of each year's rent. With regard to *shops*, the stock and goods therein are subject to a hypothec to the same extent as is the live-stock of the farmer. These may be freely sold and disposed of by the tenant so long as he does not act in collusion with the purchasers and others to whom they may be transferred, with a view to depriving the landlord of his rights. Cash, bonds, bills, and such like articles are excluded from the hypothec. And in *dwelling-houses*, though all the furniture therein is subject to hypothec, even that which is there on hire, and in some cases, on deposit, the tenant has still the right to dispose of any part of it which is not needed by him, provided the transaction is a fair and *bonâ fide* one, and there is no sequestration. Plate, pictures, books, instruments of manufacture, and machinery are all the subjects of hypothec; but this hypothec will not extend to articles sent to a commission agent for exhibition as samples. To make his hypothec effectual as a security for current rent, the landlord must proceed by way of sequestration for the attachment of specific articles. This must be done within three months after the last term of payment. Proceedings for the sequestration are taken in the Sheriff's Court, where all sequestrations are now registered, and once the order is granted it becomes a quasi-criminal offence for the tenant to deal with the sequestrated goods in breach of the sequestration. If the rent is not then paid the goods are sold, and after deducting the amount of the landlord's claim and the costs, the proceeds are paid to the tenant. Crown debts, certain wages, and funeral expenses of the tenant have always a priority to the landlord's claim.

HYPOTHECATION, Letter of.—It frequently happens in the course of an export trade, say from Calcutta to London, that the exporter desires to raise money on the goods he has sold directly he has effected their shipment. He does this by drawing a set of bills upon the importer for the price of the goods, and which bills he takes for discount to a Calcutta banker having a London branch. To secure payment to his bank in the event of the acceptor suffering the dishonour of the bills either by non-acceptance on presentation or by non-payment, the exporter delivers to the bank, at the time of the discount, the invoice of the goods shipped, the bill of lading therefor, and the policy of their insurance. This delivery of documents, being in the nature of a pledge or mortgage, is accompanied and evidenced by another document called a letter of hypothecation. The letter is signed by the exporter and directed by him to the bank. After informing the latter that he has negotiated, through its London office, the bills in question, and that he has delivered therewith the above-mentioned documents as collateral security, the exporter proceeds in the letter to authorise the bank to deliver up the documents on payment of the bills. The letter also authorises the bank in the event of dishonour to sell the goods at their discretion and at the expense and for the account of the exporter, and provides for payment of the bills out of the proceeds of the sale; any surplus is usually made subject to the general lien of the bank, and any moneys which may be received under the insurance is made to abide the event of the honour or dishonour of the bills. This letter is usually found in a printed form with spaces available

for the insertion of particular details; and the Calcutta bank will forward it to its branch at London at the same time that it sends the bills for collection. Bills so dealt with are also referred to as *Document Bills.* *See* MARGINAL CREDITS.

I

IMMIGRANT ALIENS were, until the passing of the Aliens Act, 1905, subject on their arrival in the United Kingdom, as also were the masters of the ships in which they arrived, to the provisions of an Act of William IV. By this Act, which was repealed by the Aliens Act, aliens could be compelled to undergo an inspection by the Customs authorities at the port of debarkation, and make a written declaration, giving full information about themselves and their movements. The actual administration of the law modified very materially the requirements of the statute, for it only caused the alien immigrant to give informally the necessary information to the Customs boarding officer. In view of the greater attention recently given to the subject of alien immigration, the more stringent Act of 1905 was passed. The information obtained under the old Act was transmitted to the Board of Trade for statistical purposes, and the officers were even warned against any endeavour to search the persons of the aliens in connection with their inquiries, as thereby they would render themselves liable to an action for assault. The master of every ship bringing steerage passengers to the United Kingdom is required to furnish a list of such passengers to the appropriate officer at the port of arrival. The list must be delivered within twenty-four hours of arrival and should contain certain specified particulars. There is a penalty of £50 in case of neglect or false statement, and it would seem that in regard to this the law is very strictly enforced; careful precautions are taken to ensure accuracy and to check the particulars given by the master. *See* ALIEN, in which article the Act of 1905 is set out, and IMMIGRATION.

IMMIGRATION.—From the time of the Norman Conquest down to the present day the subject of the immigration of the alien has in England been constantly the subject of attention and dispute by all classes of the community. Even at the time of writing there is sitting a parliamentary committee whose purpose is the investigation of the facts connected with immigration and a report of the result to the Government. Alien immigration may be said to have had its beginnings in the incursions into England, in the Middle Ages, of the Jews, the Templars, and the Lombards; its latest typical phase is found in the contemporary constant incursion of such alien peoples as the Russians and Poles, and the inhabitants of Eastern Europe—mostly Jews—and the Germans and Italians. The characteristics of these two incursions —the first and the last—are essentially different; broadly speaking, the first was an immigration of capital and financiers, whilst the last is one of labour and workers. But apart from merely racial and religious prejudice, the conditions that determine the view taken of alien immigrations are practically the same whether the problem is presented in the Middle Ages or at the commencement of the twentieth century. If there exist together a

dearth of capital and commercial enterprise and also a superfluity of available material and labour, there is potent reason for a ready reception to an immigration of capital and financiers. Any opposition thereto must always be only fitful and ineffective; and more than that, it may be reasonably assumed that, in view of the modern conditions of the money market and of the modern development of productive and manufacturing centres like the United States, there is unlikely to occur again an immigration into England such as that it first experienced after the Norman Conquest. Capital can now be moved from one centre of commerce to another without the necessity for any accompanying movement of its owners and controllers. *See* FOREIGN BILLS AND EXCHANGE.

On the other hand, an immigration of labour may under many circumstances excite an opposition which cannot always be stigmatised as unreasonable. The immigrants may arrive destitute, knowing no industrial craft, accustomed to a much lower standard of comfort than are the lowest of the working-classes in the invaded country, habituated to a life of unjust oppression, and consequently filled with a cunning foreign to the experience of people brought up in an atmosphere of justice; and influenced, by their religion, nationality, and ignorance, in the direction of a life of exclusive isolation in the midst of their adopted country. All these circumstances, as well as many others, will tend to create this opposition; they assert themselves in such a manner as to make the working-classes in particular the enemy of the immigrant alien. Destitution and industrial ignorance combined give to the alien immigrants a rare capacity for working at the lowest possible wage; their low standard of comfort fixes that wage at once without even the need of competition with the lowest paid native workers; their characteristic cunning develops into an unscrupulous disregard for the industrial and social conventions of their adopted country; and their isolation is in itself a standing political and social menace and a cause of jealousy and hatred on the part of others, inevitably tending to such social rancour and persecution as is expressed, for example, in an anti-Semite agitation. There is, therefore, some reason for an economic and political prejudice against alien immigrants whose only personal resource is an unlimited and "unscrupulous" desire to work. This prejudice claims, moreover, a further reason for its existence in the fact that whilst immigration continues to import people of this class, a higher class of British worker is as continuously emigrating.

But there is another view of this question, and a consideration of it will show how difficult it is to solve it summarily and with due regard to the general commercial interests of the country. This view perhaps appeals in particular to the capitalist and employer of labour, but it is, at the same time, a necessary and important outlook for the community generally. The influx of foreign and very cheap labour decreases the cost of production, and consequently the price, of the most easily manufactured goods, which are also, as a rule, those most necessary to the people at large. Subsequently the alien worker, as soon as he has acquired some special skill, proceeds to give attention to a particular industry, either recreating it in a new form or developing it as a domestic trade. Meanwhile the influx of immigration continues, and though the specialised alien applies himself to higher forms of industry the new comers continue to absorb the lowest forms and so keep

down the rate of wages. To the alien immigrant must be credited the fact that England has been able to hold its own, to a great extent, in competition with foreign manufacturers in the ready-made clothing, boot, and fur trades, and others of a like character. And in this connection, with regard to even the competition between the different industrial centres in the country, it is an advantage to a manufacturing town to have its colony of alien immigrants.

Where, however, the alien is the master of a special art or trade, there can be no doubt that his addition to the industrial army of any country is an incalculable benefit. It generally means that the adopted country is able to enter upon a new enterprise hitherto the monopoly of some rival power. England attained its industrial supremacy very largely as the consequence of periodical, and generally welcomed, alien immigrations—the Flemings and the Huguenots for example. To-day England is probably, at the best, no more than indifferent to the immigration of specialised aliens; she does not make any effort to encourage it, nor does she specially encourage the alien to remain; on the contrary, the general sentiment is often one of restrained dislike to and contempt for the stranger within her gates and all his works.

This is an anti-social and indefensible position to adopt. Even those countries we are accustomed to account so exclusive and antipathetic to foreigners are quick to see the advantage of an immigration of aliens who bring with them the knowledge of new and valuable industries. Germany and France, we know, are always ready to welcome them. But it is equally so in Poland and Russia. Lodz—the Manchester of Poland—is quite a German city, and the Russian trade directories are full of English and German names. The English and Germans have planted within Russia the improved cotton manufactures of their mother countries; they are busy now in improving the woollen industries and the production of machinery; while Belgians are rapidly improving the iron trades in South Russia. In a space of twenty-two years from the year 1872 the imports from Great Britain into Russia fell nearly two-thirds. With regard to most of the great industries, their growth in Russia has been so great as to surely indicate her speedy absolute independence of Great Britain and the rest of the manufacturing world. Thanks to the English and French element in Russia, she need no longer import any part of her railway plant; her agricultural machinery is the best in the world. With the aid of English initiative, Russia will in a short time be largely independent of outside nations for her textile goods.

Having said this about Russia, the imagined country of despotism and exclusion, it would seem needless to turn to the United States, the imagined country of almost superhuman industrial activity. But it may show that the encouragement of an appropriate alien immigration may even be the object of a well-defined and persistent policy. After the Civil War in 1866 it was recognised that the coal resources of that country were immeasurably greater than those of Great Britain; that her soil was so rich and extensive that it could nearly feed the world, and that her mountains could produce gold, her fields were white with cotton, while every product of Europe could find congenial climate there—the grape of France, the silk-worm of Italy, or the merino sheep of Spain. The policy adopted in view of these conditions was that of the encouragement of immigration. The mining populations of

Europe have been brought into Pennsylvania and the other great mineral districts of the country; agriculturists have been attracted and settled; engineers and iron, steel, and cutlery workers have been drawn from Great Britain, and spinners and weavers are there found whose origin and school were the specialised centres of Great Britain and France. To-day, alert as ever, the United States, as a country, may be likened to a clever man of business—for ever seeking to attract into his employ the best outside labour. In other words, one great element in the industrial success of the United States has been her judicious encouragement of alien immigration.

It follows, therefore, that in England the problem of alien immigration can only be satisfactorily solved after an enlightened regard has been had to the many far-reaching and complicated factors therein. A racial or national prejudice must not be allowed to dominate. It must not be forgotten that the alien immigrant has always been a most important element in the commercial progress of the country, and that, generally, his influence in that progress has been creative, or at least accelerative. To a country such as ours—rich in capital and the means of manufacture, and with a population, some part of which is always drained away by the colonies and foreign countries—an immigration of those who can contribute to our labour power should always be welcome. Absolute closure against immigrants would be commercially a suicidal policy; a restriction of immigration will be beneficial or harmless only when imposed with extreme care and reason.

IMPERIAL STANDARDS.—The units of the measures and weights in customary use in this country have been for centuries the subject of stringent statutory enactments, the statutes requiring, amongst other things, that standards thereof should be kept at various public places available for reference. The object of thus standardising the units was probably not so much the protection of traders, as the prevention of frauds on the customs revenue. The frauds were perpetrated in various manners, as, for example, by varying the size of the measures; thus, as the duty per chaldron of sea-coal was from time to time increased, so was increased the size of the chaldron itself.

The following standards have been constructed under the direction of the Treasury, and take the place of the former imperial standards destroyed some years since in the fire at the Houses of Parliament. The unit of *length* is the yard; that of mass or *weight*, the pound.

The imperial standard for determining the length of the imperial standard *yard* is a solid square bar, thirty-eight inches long and one inch square in transverse section, the bar being of bronze or gun-metal. Near to each end a cylindrical hole is sunk (the distance between the centres of the two holes being thirty-six inches) to the depth of half an inch; at the bottom of this hole is inserted in a smaller hole a gold plug or pin, about one-tenth of an inch in diameter, and upon the surface of this pin there are cut three fine lines at intervals of about the one-hundredth part of an inch transverse to the axis of the bar, and two lines at nearly the same interval parallel to the axis of the bar. The measure of length of the imperial standard yard is given by the interval between the middle transversal line at one end and the middle transversal line at the other end; the part of each line which is employed is the point midway between the longitudinal lines. These points are referred to in the Weights and Measures Act, 1878, as "the centres of the

said gold plugs or pins." The bar is marked "copper, 16 oz.; tin, 2½; zinc, 1. Mr. Baily's metal. No. 1 standard yard at 62°·00 Fahrenheit. Cast in 1845. Troughton & Simms, London."

The imperial standard for determining the weight of the imperial standard *pound* is made of platinum. Its form is that of a cylinder nearly 1·35 inch in height and 1·15 inch in diameter, with a groove or channel round it, whose middle is about 0·34 inch below the top of the cylinder, for insertion of the points of the ivory fork by which it is to be lifted. The edges are carefully rounded off, and it is marked, "P.S. 1844, 1 lb."

Parliamentary copies.—Copies of the above-mentioned standards were also made at the same time. They are of the same construction and form, but are specially marked. These copies are deposited at the Royal Mint, the Royal Society of London, the Royal Observatory of Greenwich, and the New Palace at Westminster.

Board of Trade Standards is the name applied to the standards of weights and measures in use under the direction of the Board of Trade. These standards include all the measures of length, capacity, and weight now lawfully in use, and which are dealt with in the article on WEIGHTS AND MEASURES. And in this class of standards are also the

Coin Weights.

Denomination of Coin.	Standard Weight.		Least Current Weight.		Standard Fineness.	Remedy Allowance.		
						Weight per piece.		Millesimal Fineness.
	Imperial Weight.	Metric Weight.	Imperial Weight.	Metric Weight.		Imperial.	Metric.	
GOLD—	Grains.	Grams.	Grains.	Grams.		Grains.	Grams.	
Five pound	616·37289	39·94028	612·50000	39·68035	Eleven-twelfths fine gold, one-twelfth alloy; or millesimal fineness, 916·66	1·00000	0·06479	0·002
Two pound	246·54895	15·97611	245·00000	15·87574		0·40000	0·02592	
Sovereign	123·27447	7·98805	122·50000	7·93787		0·20000	0·01296	
Half-sovereign	61·63723	3·99402	61·12500	3·96083		0·10000	0·00648	
SILVER—								
Crown	436·36363	28·27590	..	..	Thirty-seven-fortieths fine silver, three fortieths alloy; or millesimal fineness, 925	1·81818	0·11781	0·00
Half-crown	218·18181	14·13795	..	..		0·90909	0·05890	
Florin	174·54545	11·31036	..	..		0·72727	0·04712	
Shilling	87·27272	5·65518	..	..		0·36363	0·02356	
Sixpence	43·63636	2·82759	..	..		0·18181	0·01178	
Groat or fourpence	29·09090	1·88506	..	..		0·12121	0·00785	
Threepence	21·81818	1·41379	..	..		0·09090	0·00589	
Twopence	14·54545	0·94253	..	..		0·06060	0·00392	
Penny	7·27272	0·47126	..	..		0·03030	0·00196	
BRONZE—								
Penny	145·83333	9·44984	..	..	Mixed metal copper, tin, and zinc	2·91666	0·18899	None
Halfpenny	87·50000	5·66990	..	..		1·75000	0·11339	
Farthing	43·75000	2·83495	..	..		0·87500	0·05669	

IMPORTATION and EXPORTATION.—The **CUSTOMS FORMALITIES** upon **Importation** into the United Kingdom, as well as those upon exportation, are regulated by the Customs Consolidation Act, 1876, the subsequent amendments thereof, and by the general and other orders from time to time issued by the customs authorities. Imports are either subject to import duties or free. Those which are subject to these duties, and are

not prohibited from entry into the country, may upon their importation be placed in bonded warehouses without payment of duty on their first entry; but to this rule the authorities may make exceptions. In view of the frequent introduction of new duties and the variation or withdrawal of the old, an importer should know precisely the rule that determines the time of an importation. This time has been defined by statute as that at which the ship importing the particular goods "actually came within the limits of the port at which such ship shall in due course be reported, and such goods be discharged." Goods are considered to be imported from only that place where they were actually laden on the importing ship, either as a first shipment of the goods, or after they had been landed there for a time. This rule explains why certain countries do not find a place in the official statements of trade which purport to set out all the countries from which we import goods. It is a matter of common knowledge that there is a large import trade from Switzerland, and yet that country is altogether overlooked in those statements. The reason is that goods from Switzerland are usually shipped from French, Italian, Dutch, and Belgian ports, and in accordance with the rule they are considered as imported from those countries and not from Switzerland. In like manner goods about to be exported are frequently accounted for as only proceeding to the country of the port at which they will be landed. Statistics on the subject of our international trade can only therefore be properly appreciated when some regard is had to the working and effect of this rule. *See* INTERNATIONAL COMMERCIAL STATISTICS. In the article on CONTRABAND will be found particulars of those goods the importation of which has been prohibited or restricted.

Whether importing ships are carrying dutiable or free goods they are all bound, under a penalty, to come up quickly on their arrival to the place of unlading, and there they must remain and provide accommodation under the deck for a customs officer. It is the duty of this officer to see that all dutiable goods are declared and not removed before the duty has been paid, and for this purpose he boards the ship on her arrival and stays on board until all the cargo has been duly unladen, or until her departure; he has free access all over the ship, may fasten hatchways and secure and seal any goods on board; concealed goods will be forfeited, and any one who breaks open any part of the cargo which has been so secured, or secretly takes it away, will thereby incur heavy penalties. There are certain fixed times and conditions during which the cargo may be landed, these being set out in the article on LANDING; and the master of the ship is under certain obligations with regard to a REPORT OF CARGO (*q.v.*).

Entry of Dutiable Goods for Home Use.—The first thing to be done on the landing of dutiable goods intended for home use, without being warehoused, is to make what is called a **prime entry** thereof. This is a task of the importer or his agent preparatory to the unshipment of the goods; it is effected by filling up a form, such as the following, estimating therein the duty payable, and delivering it to the collector of customs or other proper officer. This entry and the ship's report are then checked one with another, with a view to obtaining an absolutely accurate return of the imported cargo. Special officers, called "jerquers," subsequently review this check.

H.M. CUSTOMS

ENTRY FOR HOME USE EX-SHIP

Port of Importation _____ *Dock or Station* _____

Merchant Paying the Duty _____

(If Post) Prime Entry dated _____ 19—

Ship's Name.	Date of Report.	Master's Name.	Port or Place whence.

Marks.	Numbers.	Place and Country of Destination in United Kingdom for Unmanufactured Tobacco and Spirits only.	Number of Packages, Quantity, and Description of Goods, in accordance with the requirements of the Official Import List.	* Value.	£	s.	d.
			Total amount of Duty payable on Entry . £				

I declare the above particulars to be true.

Dated this day of 19—. (*Signed* _____

Merchant or Agent.

* (1) In the case of goods which are invoiced at a quoted price, the value to be stated in the Customs Entry should be the prime cost with the freight and insurance added "c.i.f." value).

(2) When the goods are consigned for sale, the value to be given should be the latest sale value of such goods.

The next thing to be done by the importer or consignee is to pay the duty to the collector; and the entry, when signed by him, will be the warrant for landing and delivery, and should be transmitted to the officer in charge of the cargo as his authority to release the goods. Below will be found some further information as to the entry, which, except for the important details of the ascertainment of duties and their payment, is practically the same for free as for dutiable goods. An importer who pays his duty upon a prime entry will find that when the goods have been landed they will be examined by the customs officers, and his estimate in the prime entry checked; if it is found to be below the correct quantity and amount, a **post entry** will be required for the difference, and the extra duty paid before delivery; if it is found to be too high, an **over entry** certificate will be issued and the difference repaid.

Entry for warehousing.—In most cases the importer does not intend to pay the duty forthwith upon importation, but prefers to wait till he has sold the goods or requires them for use. He accordingly takes advantage of the bonded warehouse system, and arranges to have the goods warehoused without paying duty on their first entry. The bill of entry will accordingly vary slightly from the one used in the previous case, but is dealt with generally in the same manner. When signed by the officer it becomes a warrant for the due warehousing of the goods, and not for their delivery into the possession of the

importer. Upon the entry for home consumption or sale of goods already warehoused, a **Home Consumption warrant** must be passed. The merchant may weigh and sample his goods while they are in the warehouse, but he cannot take them away unless and until he has paid the duty. He of course takes a receipt for the goods from the warehouse-keeper, and, if he desires it, the receipt will be given to him in the form of a dock warrant; this latter document he can deal with as a negotiable instrument, and thus the goods in bond may be freely transferred between sellers and buyers. But the customs authorities themselves never consider these dock warrants as transferring any obligation to pay the duties; these latter are expected to be paid by the person who gave the bond to secure their payment. Entry by BILL OF SIGHT is dealt with under that separate title; and under the heading of BILL OF STORE will be found some account of the regulations and conditions concerning the entry of British goods brought back from abroad.

Entry of Goods Free of Duty.—Such goods are entered by what is generally known as a **free entry**, in a form similar to the following:—

H.M. CUSTOMS

This space is for the use of the Officers of Customs.

ENTRY FOR FREE GOODS.

Port

Dock or Station

Importer's Name (No.)

Examination.	Ship's Name.	Master's Name.	Rotation No.	Date of Report.	Port or place whence.

Marks and Nos.	No. of Packages and Description of Goods, in accordance with the Official Import List.	Quantity.	Value.* £

I enter the above Goods as free of Duty, and declare the above particulars to be true.

Dated this day of 19— } (Signed)

Importer or his Agent.

*(1) In the case of goods which are invoiced at a quoted price, the value to be stated in the Customs Entry should be the prime cost with the freight and insurance added ("c.i.f." value).

(2) When the goods are consigned for sale, the value to be given should be the latest sale value of such goods.

This form, when filled up with particulars of the marks, numbers, quantity, description, and value of the goods, and accompanied by a **landing order** signed by the collector or other proper officer, should be transmitted to the examining officer on board the ship or where the goods are landed, and will become his warrant for the delivery of the goods mentioned therein. If the entry is

incorrect in any particular, the importer or his agent will be required to give a full and accurate account within fourteen days after the landing of the goods.

Generally as to Entries in any of the foregoing cases.—Upon the entry of any goods, two or more duplicates of the entry are required, and these should be furnished by either the importer, his agent, or the consignee of the ship. In the duplicates all sums and numbers may be expressed in figures; but the goods must be described according to their official description in the official Import List, and if they should happen not to be named in that list they must be described, according to their nature, as manufactured and *un*rated, or *un*manufactured and *un*rated, as the case may be. It is for the customs officer to decide how many duplicates are to be delivered, and he may also require the production of the invoice, bills of lading, and other documents relating to the goods. The original, in which the number of packages is set out in words, is called the **warrant**, and the duplicate is known as the **bill**. The former, as stated above, becomes with the landing order the authority to the examining officer to deliver the goods; the latter is subsequently forwarded by the collector or registrar to the statistical department, and is there used for compiling the general statements of the British Import and Export trade. All goods found concealed in any way whatsoever or packed in any package to deceive the officers, are promptly forfeited; and so also are any goods taken or delivered out of a ship or out of a warehouse which have not been duly entered. But no entry is required in respect of passengers' baggage, this being examined, landed, and delivered under special regulations. Forfeiture is also the penalty for importing goods of one denomination concealed in packages of goods of any other denomination; or packages containing goods not corresponding with the entry, if such goods are dutiable, or are subject to the provisions of the Merchandise Marks Act; or generally fraudulently evading payment of duty. To the forfeiture is added a penalty of £100, or treble the value of the goods contained in the package. But in the case of Free Goods the customs officers may allow any reasonable alteration or amendment to be made in the import papers. It should be noticed that in case of forfeiture the package itself is taken as well as the article it contains. A very valuable dressing-case, for example, may be forfeited as a consequence of an endeavour to smuggle a valueless bottle of scent. Surplus ship's stores, not being merchandise or excessive in quantity, may be entered for private use or warehouse, even though they could not have been legally imported as merchandise; or may be warehoused for use again as ship's stores only, or may be transferred to another ship as stores, or the duty may be paid at once. Whoever applies to a customs officer to transact business as the agent of another person, may be required to produce a written authority from his principal, and in default of the production of such an authority, he may refuse permission to transact his business. An importer, agent, or other person entering goods who does not comply with the regulations, so far as they are applicable to the goods entered by him, incurs a penalty of £20 and forfeiture of the goods with which he is dealing.

Entry of Warehoused Goods for Home Consumption and Exportation.—Warehoused goods for exportation will only be delivered from the warehouse upon a bond being given for their export or removal to another warehouse; or for home use, upon a Home Consumption warrant being passed, and all duties thereon paid. To this rule are excepted certain goods for ship's stores.

Upon the entry of any goods to be cleared from the warehouse for home use, it is necessary to fill up and deliver a Home Consumption warrant in the same manner as on the landing of the goods; the full duties must also be paid, these not to be less than the amount ascertained on the landing. In the case of such goods as tobacco, wine, spirits, figs, and currants, the duties payable on clearance from a warehouse may be reduced in proper cases of depreciation from the amount originally ascertained.

Exportation.—No warehoused or dutiable goods can be exported in a ship of less than forty tons burden; and this rule also applies to the transhipment of goods liable to duty and to the exportation of goods entitled to drawback. The master of an exporting ship, before any goods are taken on board, is to deliver to the collector a certificate of **clearance inwards** or coastwise of the ship of her last voyage. At the same time he must deliver an **entry outwards** of the ship in the following form:—

H.M.CUSTOMS

ENTRY OUTWARDS.

*Port of*_____

Ship's Name and Port of Registry. If foreign, name of Country to which she belongs.	Master.	Destination.

_____ Tons. _____ Men.

Lying at_____
Date of Report_____
Part of inward cargo still on board_____
If Ship shall have commenced her lading at any other Port, name of such Port }

Brokers_____ Signed_____
Master or Agent.

*Date of Entry*_____

I certify that the following is a correct statement of the distance in feet and inches between Centre Maximum Load Line Disc and upper edge of Line indicating the position of the

First Deck above it.		Second Deck above it.	
Ft.	In.	Ft.	In.

Dated this day of 19 .

*

* The Certificate may be signed by any person coming within the definition of Shipowner as interpreted in Section 492 of the Merchant Shipping Act, 1894.

This form should contain the particulars indicated in or required thereby, and be signed by the master and the shipowner. If the ship has commenced her lading at some other port, a clearance of the goods from that port should also be delivered. No goods can be taken on board at a port before the ship has been there entered outwards, or the master will forfeit £100. But what is called a **stiffening order** can be obtained which will authorise the lading of heavy goods for exportation on a ship which has not been entered outwards if the ship's safety requires the load as ballast. Moreover, under special circumstances, a ship will be allowed to be laden for exportation before her imported cargo has been fully discharged. But no goods can be shipped for exportation on Sundays or public holidays, except by the special permission of the Commissioners of Customs; nor from any place which is not a legal quay, wharf, or other place duly appointed for the purpose; nor without the presence or authority of the proper officer of customs; nor, as before mentioned, before due entry outwards of the ship and due entry of the goods; nor before due clearance· forfeiture is the penalty for contravention.

Certain conditions must be complied with before the exportation of warehoused or dutiable goods, or goods entitled to drawback or exportable only under particular rules. The exporter or his agent must give a **bond-note**, or account of the goods, to the proper officer; and also a security, called a **bond**, for the performance of a condition that within a reasonable time the goods will be duly shipped and exported, and landed at the place for which they are entered outwards, or otherwise accounted for. The bond is signed by the importer or his agent, and a substantial surety, and imposes a penalty, equal to twice the amount of the duty, in case the conditions are not complied with. The bond-note, when examined and certified by the Customs Bond Clerk, constitutes the export entry for the goods enumerated therein. Because of this formality such goods are referred to as "bonded goods." To save the necessity for separate bonds for each exportation an exporter is allowed to give a general bond, but he will still be bound to give certain notice in respect of each exportation, which notice, if it relates to goods other than spirits, must have attached to it an adhesive stamp equal to the stamp duty which would have been payable if there had been a separate bond. On the back of the bond-note are two forms, one of which gives the particulars of the goods exported, and the other constitutes an order upon the warehouse-keeper for delivery of the goods.

Before shipping any goods for exportation the exporter is required to deliver a **shipping bill** in accordance with the form set out below. The person whose name appears on the bill of lading as the consignor of goods for exportation is deemed by the law to be the "exporter" of those goods. The shipping bill, when filled up and signed by the exporter or his agent or the consignee of the ship, as the case may be, in such manner as the customs officer may require, and countersigned by him, is the "clearance" for all the goods enumerated therein. A shipping bill for goods shipped for drawback, or for goods removed from other ports or places, or from excise warehouses, must always be stamped and signed by the officer.

H.M. CUSTOMS

Port of
* Erase the words that do not apply.

SHIPPING BILL FOR *DRY / WET GOODS AS MERCHANDISE

Under Inland Revenue Bond.	Under Customs Bond.
Collection	Warehouse
District	
Station	Number
Date	Month and Year 19

Export / Ship — Master for

Entered Outwards — Bond given

Station — Lighterman

Conveyance — Carman

Exporters or Agents.

Shipping Marks and Numbers.	Number of Packages.	Description of Packages.	DESCRIPTION AND TOTAL QUANTITY OF GOODS.	Value.
			* _____ Officer.	
			_____ Date.	
			* For Goods ex-Customs Warehouse at Port of Shipment the Shipping Bill must be signed by the Officer in charge of the accounts.	

declare that the quantity, description, and value of the goods entered in this Shipping Bill, correctly stated,* *and claim Drawback on*

* Strike out words in italics if not required.

_____ Exporter or Agent.

Received the above-mentioned Packages on Board this Ship 19 . _____ Master or Mate.

_____ Countersignature of Officer of Customs.

Particulars of Examination and Certificate of Shipment to be inserted here.

Export Examining Officer.

N.B.—The Lightermen or Carmen are particularly required to give immediate notice to the Export Examining Officer if any of the above-mentioned Goods be shut out of the Vessel, and on no account to take them to any other Ship than the one above-named without his permission.

This should be accurately filled up with all the particulars indicated in or required thereby, and should have the claim and declaration at its foot. A

shipping note may be also necessary, but this is only a document in the nature of an advice to the customs officer on board the ship that the goods are sent for shipment, and is only used if the goods are conveyed wholly or in part by a lighter or a licensed carman. The goods are examined on the quay, and if found to be inaccurately described in the shipping bill, or of less value for home use than is therein claimed, they will be forfeited, and the exporter will also incur a penalty. Upon being found correct the goods can be shipped. To obtain payment of the drawback notice must be first given to the excise officer, who will hand over a document which should be produced to the customs officer at the time of clearing the goods, and the latter officer will return it to the excise officer duly certified as correct. Generally speaking, all provisions applying to the exportation of warehoused goods apply also to the transhipment of dutiable goods and to goods exported on drawback. The law with regard to the exportation and shipment of *horses* is set out in the article on ANIMALS in the Appendix.

Specifications for free goods.—Within six days after the final clearance outwards of the exporting ship, the exporter of free goods delivers to the customs officer at the port of shipment a document called a **specification.** The exportation of free goods being naturally a less complicated matter than that of dutiable goods, the customs formalities in connection therewith are accordingly very simple. There is practically no other document required than the specification; the above-mentioned documents in connection with the exportation of dutiable goods have no relation to free goods. This specification varies in form according to whether the goods about to be exported are (*a*) produced or manufactured in the United Kingdom; or (*b*) goods imported from abroad and about to be re-exported. The following is one of these forms:—

* SPECIFICATION

For *Foreign* Goods Free of Duty, or on which all Duties have been paid.

Port of London.

Ship's Name_____ _____Master, for_____

Date of Final Clearance of Ship_____

* The Specification of Goods exported must be delivered to the proper Officers of Customs within six days from the time of the final clearance of the Ship, as required by the Customs Laws.

Marks.	Numbers.	Number and Description of Packages.	Quantity and Description of Foreign Goods, in accordance with the requirements of the Official Import List.	Value.* (f.o.b.)	Final Destination of the Goods.

The form should contain all the particulars indicated in, or required thereby; and the exporter, or his agent, must sign the declaration at its foot, and on demand of the proper officer produce the invoice, bills of lading, and other documents relating to the goods in order that the accuracy of the specification may be tested. The goods must be described in the specification strictly in accordance with the description applied to them in the Official Export List; thus oysters are entered under the denomination of "Fish, unenumerated." Before shipping salmon for export it is necessary to make a previous entry in accordance with the provisions of the Salmon Fishery Acts for the time being in force; bullion and explosives also require special and separate entries. If the exporter does not actually ship goods as stated in his specification he should inform the customs officer, and correct his specification, within six days after the final clearance outwards of the ship. A special notification must be made of transhipment goods, and the certificate thereof of the export officer always accompanies the ship. If the exporter requires a similar certificate in respect of goods shipped for exportation, the export officer will certify one upon having it presented to him for that purpose. Only a licensed lighterman or carman can lawfully carry to a ship any export goods cleared for drawback or from the warehouse. The customs authorities may remit duties on any goods entered for delivery from the warehouse for removal or exportation, if the goods are lost or destroyed by unavoidable accident, either in the delivery from the warehouse or the shipping thereof.

Debentures for drawback.—In order to compute and pay any DRAWBACK (*q.v.*), a debenture is prepared by a customs officer shortly after a due entry has been made. This document certifies in the first place the entry outwards of the goods; then, after exportation, and when particulars of the goods have been delivered by the exporter to the export officer, the shipment and exportation are also certified on the debenture; the debenture is thereupon computed and passed with as much despatch as possible. Upon the debenture the exporter or his agent must make a declaration that: the goods have been actually exported; have not been relanded, and are not intended to be relanded in any part of the United Kingdom; at the time of entry and shipping the person entitled to the drawback (who must be named), was and continued to be so entitled. The receipt of the person so named signed on the debenture, and countersigned by the holder of the debenture if it has been transferred in the meantime, will be the discharge for the drawback when paid. Payment should be claimed within two years from the date of the shipment of the goods, or it will be lost.

Clearance outwards.—When the ship is completely loaded and ready to sail, but before she can lawfully commence the voyage, the master must "clear" her "outwards" by satisfying the customs authorities as to the character of her cargo. And before the ship can be so cleared, the master, or other person authorised in writing by him, attends before the collector or other proper officer, in order to answer any questions of the officer concerning the ship, cargo, and voyage. At this interview there is to be delivered to the customs officer a document called the **content** of the ship, and which is to the effect of the following form:—

MASTER'S DECLARATION AND STORES CONTENT FOR VESSELS OUTWARDS WITH CARGO.

Sailing Vessel / Steam Vessel — Official No. / No. of Register / Date of Registry — Rot^n. No.

Port of

Ship's Name and Destination.	Number of Tons.	If British, Port of Registry; if Foreign, the Country.	Number of Crew.	Name of Master.	With or without Passengers or Troops.

I, , Master of the above-named Vessel, do declare that the particulars set forth above are true and correct, and that all the requirements of the Merchant Shipping Acts respecting Outward-bound Ships have been duly complied with.

I hereby nominate and appoint , of to be and act as my Agent in all matters relating to the Clearance of the said Ship required of me in that respect by the Customs Acts, holding myself responsible for his acts in such matters. } To be struck out if not applicable.

Signed and declared this day of 190 , in the presence of

Master.

pro Collector of Customs.

Broker

Address

(Signed)

Date of Clearance 19

Agent for the Master.

Clearing Officer.

(*For Stores Content see back.*)

The content contains the particulars therein required as far as the master can make them known, and at the foot there is a declaration to be subscribed by him. Other documents, such as the **report inwards**, are delivered up at the same time. The report inwards is a certificate of any goods in the ship which were a part of the inward cargo, but are intended to be exported in the same ship. An additional content is required in respect of goods shipped at any other port, and this is delivered to the collector at that port. In case any goods, for the exportation of which a bond has been given, are not shipped before the ship's departure, they will be forfeited unless notice of the non-shipment is at once given to the proper officer. Those goods are also forfeited which are shipped contrary to regulations; and the master of a ship that departs without being cleared incurs a penalty of £100. The

certificate of due clearance takes the form of a bundle of documents attached to a signed and sealed label which is handed over to the master of the ship; these documents are now the victualling bill, transhipment certificate, and the report inwards.

After clearance, a customs officer may board any ship within a league of the coast of the United Kingdom, and may demand the clearance of the ship.

Disputes and complaints.—In case of dispute between an importer and the customs officer as to the proper rate of *duty* payable on any goods, the importer must deposit the amount of duty demanded by the collector; the importer has then three months within which to commence an action against the collector, in order to ascertain whether any and what duty is payable on the goods. Upon payment of this deposit, and passing the proper entry, the importer is entitled to delivery of the goods; and if he should not proceed against the collector within the specified time, the deposit will be taken to be the proper duty payable. *Other disputes* between merchants or others and the customs authorities are determined by the Commissioners, who have full power to mitigate or remit any penalty or forfeiture they may find to be incurred. Such disputes would generally occur over the seizure or detention of a ship or goods; or over some apparently accidental omission, inadvertency, or non-compliance with the laws and regulations relating to the customs. In case any one is aggrieved by the determination of the Commissioners, he may, if he wishes it, state his case personally to one of that body; so also may any person, if he so wishes, who has a complaint against a customs officer as to anything done or omitted by him in or about the execution of his duty. Application should be made at the custom-house, personally or in writing, stating the grievance or complaint. The Commissioner must then hear the matter in the presence of the parties and of any persons interested or desirous of attending; he may compel the attendance of witnesses, and must reduce the evidence into writing, in narrative form, and lay it before the Commissioners; the latter have then power to make a decision, and an order, and enforce it as though they were justices in petty sessions, and they may also direct a prosecution. In cases of disputes elsewhere than at the port of London, the investigation is made by a collector or other person deputed by the Commissioners. In addition to the articles referred to in the text, *see* also CONSULAR INVOICE; CUSTOMS; INTERNATIONAL TRADE; TRANSHIPMENT; RUMMAGING; SAMPLES; SMUGGLING.

INCOME-TAX.—This tax now stands at 1s. 2d. in the £ for unearned incomes; and 9d. in the £ for earned incomes up to £2000, and 1s. in the £ for earned incomes between £2000 and £3000. A person with an income exceeding £160 but not exceeding £500 is entitled to a relief equal to the amount of income-tax upon ten pounds in respect of each of his children (and step-children or illegitimate children where the parents have subsequently married each other) under the age of sixteen years. Incomes exceeding £5000 pay a *super-tax* of 6d. in the £ of the amount by which the total income exceeds £3000. Where an income subject to the super-tax is derived partly from the wife's income, the part of the super-tax so derived may be assessed and recovered from the wife, if the Special Commissioners consider that they are unable to obtain a satisfactory return of that income from the husband (Revenue Act, 1911, section 11). A species of income-tax is found as far back as the fourteenth century; its operation, however, was temporary and limited in scope, and the results were not by any means satisfactory. It may

therefore be said that the tax really originated, though in a less complete form than at present and as an experiment, in the year 1788, when its purpose was to be an aid and contribution for the prosecution of the then waging revolutionary war. "It was in the crisis of that war," said Mr. Gladstone, "when Mr. Pitt found the resources of taxation were failing under him, his mind fell back upon the conception of the income-tax." In the following year it found definite shape as an income-tax, and in 1803 was rendered more generally effective by becoming, as it still remains, a tax which sought out and charged property and profit at their original source. In the year 1816 the income-tax ceased, but only to be revived in the year 1842. Its object was not then the contribution of funds for warfare, but to aid the Government to meet its general liabilities, and to encourage commerce and manufactures. The Act of 1842 imposed the tax for only three years and through Great Britain only, but it was continued from time to time, and eventually, in 1853, was permanently established, and extended to Ireland, thus taxing equally all parts of the kingdom. Since the latter year, many and important alterations have been made from time to time, extending the limits of exemption and abatement and allowing deduction for repairs in the assessment of the incomes of owners of lands and houses.

Income-tax is not by any means a peculiar characteristic of British public finance. It has been levied in the United States. In Italy there is a tax on all income except that derived from land, but the rate of the tax varies according to the nature of income out of which it may be payable. Switzerland, Germany, Austria, and Holland have also taxes which in many respects partake of the nature of an income-tax.

The properties, profits, and gains chargeable in Great Britain to income-tax are, for the purposes of classification, placed in five *schedules*, to each of which specific attention will presently be paid. The tax, except the super-tax, is *assessed* and *collected*, as a general rule, by *General* or *District Commissioners* of Taxes. These gentlemen receive no salary or reward for their services, and must have, unless in exceptional cases, an annual private income of at least £200. Their duties include the appointment of officers, such as their clerk, the assessors, and parochial collectors; the allowance of all the income-tax assessments, and hearing of appeals. They cannot, of course, hear appeals against any assessment made by themselves, or in which they are personally interested. There are also additional commissioners, whose powers are limited to the examination of returns, and to assessments under the very important schedule D; *Special Commissioners* and Commissioners are appointed for public offices. The Special Commissioners receive a salary, and upon them rests the responsibility of hearing appeals, and of assessing the super-tax, and also such incomes as those of railway companies, and those derived from dividends payable in this country out of foreign and colonial revenues, or on the stocks, funds, or shares of foreign and colonial companies.

A tax-payer should always remember that if he does not care to have his income assessed by the District Commissioners, who may be composed of local men, he has the right to have his assessment made by the official Special Commissioners. The *Commissioners of Public Offices* assess the incomes of persons employed by the Government.

With regard to the officers appointed by the District Commissioners, it is sufficient to say as to the *clerk* that he is generally a solicitor, and advises and manages the business of the District Commissioners. The *assessors* are officers

whose duty it is to serve each tax-payer with the official forms and notices; these forms must be returned to them by the tax-payer properly filled up, with full statements of the annual value of the property and profits chargeable; and if the assessors are not satisfied with those statements, or if no returns are made, it becomes their duty to make their own estimate of the annual value of the property. When the returns are all in, the District Commissioners sign and allow the assessment, after satisfying themselves that the assessments are "made truly and without fraud, and so as to charge the properties and persons contained therein with the full duty which ought to be charged." The duty of the *collector* is to obtain payment of the tax, and for this purpose he is invested with all necessary power for its recovery and for giving effectual receipts. Another official should be referred to; he is the *Surveyor of Taxes*, and is to be found in all the principal centres of population. He is a Government official independent of the District Commissioners, and his principal duties, with a view to the interests of the revenue, are the examination of returns and assessments both before and after they have been signed and allowed by the District Commissioners. It is this official who deals with and interviews the tax-payer whose return and assessment is not satisfactory.

One of the strongest of the objections to an income-tax is the inquisitorial nature of the investigation into the affairs of every one, which is necessary to secure a return of every income. Even if the exposure of a man's affairs can do him no injury, yet as an offence to his feelings, or even caprice, it is a hardship which is not involved in the payment of other taxes. If the assessment is left in the hands of the Additional Commissioners, it means an exposure to neighbours, and even competitors in business, of one's means, sources of income, and profits derived from business; the application of capital, the rate of profit realised, the trade connections and credit are all disclosed to those whom it would be wiser to keep ignorant of them. Every one who desires secrecy should therefore make his return to the official Special Commissioners, and avoid the inquisition of his neighbours and competitors. It must be mentioned, however, that all persons concerned in the assessment of the tax are bound by law to secrecy, but this, of course, cannot prevent the knowledge of the Commissioner himself.

The tax is payable in one sum on the 1st January in every year; and the year's tax is in respect of a period running from April 6th in one year to April 5th in the succeeding year; but though the tax is thus generally payable in one instalment, it is nevertheless always deducted periodically or half-yearly when a deduction is required to be made by those entrusted with payment of income. The tax may be recovered from a defaulter by a distress upon his goods, or the District Commissioners may order him to be imprisoned. The distraint has priority over the claim of a landlord for rent.

Scope of the tax.—It has already been mentioned that income for the purposes of this taxation is divided into five classes, each of which is distinguished by its own appropriate schedule. *Schedule A* and *B* each comprehend "all lands, tenements, herditaments, and heritages in the United Kingdom, and to be charged for every twenty shillings of the value thereof." The assessment is in each case made every three years in comparison with the poor-rate assessments and previous income-tax assessments, but in case of

appreciation or depreciation of value during any such period the original assessments may be adjusted. In London the assessment is made on the basis of a special valuation list. The term *annual value* is understood to be the yearly rent at which the land and tenements are "let at rack-rent, if the amount of such rent shall have been fixed by agreement commencing within the period of seven years preceding the 5th April next before the time of making the assessment, but if the same are not so let at rack-rent, then at the rack-rent at which the same are worth to be let by the year." The difference between the two schedules is that schedule A imposes the tax upon the annual value of that property in respect of the *ownership* of it, whilst schedule B imposes a like tax in respect of its *occupation*. Under schedule A, the owner is taxed whether the property is, or is not, in his own occupation; under schedule B, known as the "farmer's schedule," the occupier is intended to be taxed only on the profits he may make from the exercise of his capital and skill in husbandry.

Schedule A.—Under this schedule all real property is liable to income-tax; so also are tithes in kind; ecclesiastical dues; compounded tithes; manors and other royalties, including all dues and other services, or other casual profits, on an average of the seven preceding years; all fines received in consideration of any lease, on the amount so received within the preceding year; and all other profits arising from lands and tenements not in the actual possession or occupation of the party to be charged. All lands and tenements are assessed whether they are occupied at the time of assessment or not; but the tax is not levied on any unoccupied *house* in respect of the period during which it remains unoccupied—the commissioners, upon appeal, will discharge or diminish the tax on proof of the time during which the house has remained unoccupied. Lands, both cultivated and uncultivated, and also tenements are taxed at their gross annual value. Though, strictly speaking, the owner of unoccupied houses is entitled to discharge from or diminution of the tax charged thereon, yet, in practice, relief is granted in the case of untenanted and wholly unproductive farms; and in Ireland the tax is collected on the amount of rent actually collected, without regard to the annual value. By section 69 the Finance Act, 1910, where the cost of maintenance, repairs, insurance, and management, on the average of the preceding five years, exceeds, in the case of land, one-eighth of the annual value, or, in the case of houses, one-sixth, the owner is entitled, subject to the conditions specified in the section, on making a claim, to repayment of the duty on the excess, not exceeding in the case of land one-eighth part, and in the case of houses one-twelfth part, of the duty on an amount equal to the annual value. The term "maintenance" here includes the replacement of farm houses, farm buildings, cottages, fences, and other works where the replacement is necessary to maintain the existing rent. Except in the cases of houses of an annual value of less than £10, the tax payable under this schedule is charged upon the occupier, who is required by the law to pay it on his landlord's behalf. He may deduct the amount from the next payment of rent; the amount he should so deduct is that amount of the rate which was chargeable during the period when the rent was accruing due; but no tenant can deduct or retain out of the rent any greater sum than the tax which has been assessed and charged upon the property, and actually paid by him. The stoppage or deduction must be made at such times in each year as the rent is payable, and may now (under the Revenue Act, 1911, section 14) include a deduction on account of tax for any income-tax year which

he has failed to make previously to the passing of the Act for that year. It is no concern to the tenant whether his landlord is exempt or not from payment of the rent; his only concern is to pay it when payable and to deduct it. The landlord must himself recover it from the authorities if he is not liable for its payment. Apart from any special agreement between the landlord and tenant as contained in the lease or tenancy agreement, the tenant will be unable, by any form of action, to recover the tax he may have paid if he has failed to deduct it from his next payment of rent. In Ireland this tax is by law charged upon and made payable by the landlord or immediate lessor, and not upon and by the occupier in the first place; and in Scotland this is by custom the ordinary practice. Certain property is exempt from this tax, and amongst such property may be mentioned—(*a*) Crown property, including public offices, law courts, prisons, and police stations; but tenants of Crown property are rateable, even if the tenancy is gratuitous, as apartments at Hampton Court. (*b*) And so also are certain exemptions or allowances provided for in the case of colleges and halls in universities, public schools, hospitals, almshouses, and friendly societies, and the rents and profits of property belonging thereto; and a friendly society or duly registered trade union is exempt in respect of its interest and dividends applicable and applied solely for the purpose of *provident benefits*. But this exception in favour of friendly societies and trade unions does not extend to a trade union by the rules of which the amount assured to any member exceeds the total sum of £300, or the amount of any annuity granted to any member exceeds the sum of £52 per annum. By the expression "provident benefits" is meant any payment made to a member during sickness or incapacity from personal injury, or while out of work; or to an aged member by way of superannuation; or to a member who has met with an accident or who has lost his tools by fire or theft. And the expression also includes in its meaning a payment in discharge or aid of funeral expenses on the death of a member or the wife of a member, or as a provision for the children of the deceased member, where the payment in respect whereof exemption is claimed is a payment expressly authorised by the registered rules. Other exceptions are:—(*c*) Public parks or recreation grounds; (*d*) Quarries, mines, gasworks, ironworks, railways, and so forth, are only charged for as such so far as they are a source of income or profit beyond that included in the general income or profit of the owners.

Schedule B.—The tax under this schedule is chargeable in addition to Schedule A on the same properties, and is calculated on the full amount of the annual value; but there are excepted from this charge:—(*a*) Any dwelling-house, and domestic offices belonging thereto which are not occupied, by one and the same lease, with a farm or lands for the purpose of farming those lands, and (*b*) any warehouses or other buildings occupied for the purpose of carrying on a trade or profession. A farmer, or any other person who occupies lands for the purposes of husbandry only, may elect to be assessed under Schedule D in lieu of assessment under Schedule B. The election is signified by notice in writing delivered personally, or sent by post in a registered letter, to the surveyor of taxes within two calendar months after the commencement of the year of assessment; and after the receipt of this notice the charge for income-tax during the year will accordingly be under Schedule D; this means that the tax-payer will pay his tax in respect of profits or gains of trade instead of those arising out of the occupation of land. The profits arising from lands occupied as nurseries and market-gardens are

estimated under Schedule D, though charged under Schedule B; but lands occupied for the growth of hops are always estimated under Schedule B. The income arising from the occupation of property chargeable under this schedule is taken as being equal in England to one-half and in Scotland and Ireland to one-third of the full annual value thereof; and where the tax-payer is the proprietor as well as the occupier, the amount of such income arising from occupation is added to the amount of the full annual value, and the total sum represents his income as both proprietor and occupier. Where lands in England are not subject to tithes, or any modus in lieu thereof, the occupier is entitled to a deduction out of the duties charged under this schedule of a sum not exceeding one-eighth part thereof. Should a farmer or any person occupying lands as tenant or owner, for the purposes of husbandry only and obtaining his living principally from husbandry (an owner need not obtain his living "principally" from husbandry), have been assessed under this schedule, but find that his profits during that particular year have fallen short of the sum on which the assessment was made, he may obtain an abatement or repayment of duty proportionate to the deficiency. But to obtain this abatement it is necessary for him to apply within six calendar months after the expiration of that year, and also to give written notice of the application to the local surveyor of taxes. Farmers and agriculturists are particularly affected by this schedule, for its provisions were devised to specially meet their case as it stood at the beginning of the last century; they were not supposed to keep trading and profit and loss accounts so systematically as traders, and accordingly the revenue authorities adopted the principle of ascertaining their profits mainly by reference to the annual value of their holdings; but, as we have seen, the agricultural classes can now elect to be assessed under Schedule D in the same manner as are the trading and commercial classes of the country.

Schedule C is a charge "for and in respect of all profits arising from interest, annuities, dividends, and shares of annuities payable to any person, body politic or corporate, company or society, whether corporate or non-corporate, out of any public revenue, and to be charged for every twenty shillings of the annual amount thereof." This part of the tax must be paid by all those who are entrusted with the payment of such interest and annuities; but such payment is made on behalf of the persons entitled to receive the interest and annuities; and the assessment is made by certain authorised commissioners. The rule and method of deduction and payment extends to all British public annuities and dividends and shares thereof, except in the following cases of *exemption*:—(1) The stock, dividends, or interest of any legally established friendly society, provided the insurance and benefit business of the society are not of greater extent than those allowed to trade unions under Schedule A. A registered industrial and provident society is not chargeable unless it sells to non-members, and the number of shares of the society is limited either by its rules or its practice; but none of its members or employees is exempt from any assessment to which he would otherwise be liable. (2) Savings-bank stock or dividends. A penny or other savings-bank is exempt in respect of the income of its funds so far as it is applied in the payment or credit of interest to any depositor not exceeding £5 in the year for which the exemption is claimed; but where interest or dividends are paid or credited without reduction of income-tax to a depositor

whose income exceeds £160, the interest or dividends are charged under Schedule D. (3) Stock or dividends of any charitable society or institution. (4) Stock or dividends in the name of the Treasury or of the Commissioners for Reduction of the National Debt. (5) Stock belonging to his Majesty or to any of his accredited ministers.

In order to make a tax fall equally upon all, the assessment must be equal. The case of *annuitants* is one of the instances of the peculiar inequality of the income-tax. One person invests his money in permanent securities and retains his capital, but derives a small income, and therefore contributes a proportionally small rate of tax. Another purchases an annuity and parts with his capital; but as his income is much larger than that of the capitalist, he pays a higher tax. At first sight this might appear a just arrangement; but, as a matter of fact, not only is the income of the annuitant taxed, but also his capital. That which is taxed as his income is partly derived from the interest of his purchase-money and partly from an annual repayment of a portion of his income. And this inequality undoubtedly mainly falls upon a part of the community that, all things considered, can least afford any improper drain on its income.

Schedule D is perhaps the most important and extensive in application of all the schedules of the income-tax; it is essentially a tax on trade and professional profits, and is accordingly felt by the largest number of taxpayers in the community. It is also probable that it is this schedule which is most disliked by the people and which mainly engenders a general opposition to the principle of a tax upon income. In the year 1816 the Court of Common Council of the City of London held a number of meetings for the purpose of considering the propriety of petitioning Parliament against the continuance or renewal of the tax, and as an evidence of the strong feeling on the matter there may be found a long series of resolutions upon the subject. The following resolution is typical of them all: "Resolved unanimously, that nothing can be more evidently partial and unjust than taxing in the same proportion incomes of a short duration arising from personal industry and temporary and uncertain sources, and those arising from fixed and permanent property." Nor was the City Council alone in its opposition, for it was really but joining in with a general expression of opinion voiced persistently and most powerfully by the *Times* newspaper. In 1863, Mr. Gladstone, whilst renewing the tax, denounced it on its merits in the most pronounced terms. On one occasion he said that "the income-tax tends more than any tax to demoralise and corrupt the people, not from the extent of its levy nor from the fault of those who levy it, but from the essential nature of the tax itself." In 1871, in consequence of a wholesale and most unjustifiable system of surcharge, public indignation meetings were held throughout the country, many pamphlets on the subject published, and many associations formed with the object of pressing for the abolition of this schedule in particular. Such illustrations as the following are frequently met with in the propaganda of that period, and their pertinence certainly warrants a reference to them. Two next-door neighbours are supposed, who are in receipt of £500 a year each. The income of one is derived from land or from the funds, and neither fluctuates during his lifetime nor ceases at his death, but remains a permanent provision for his family; the other, a surgeon, derives his income from a laborious practice, and by dint of sheer hard work

realises the same amount of £500 per annum, which, however, may cease any day by his death, leaving his wife and children in want and penury. His profession, too, renders life more precarious than his neighbour's. Until lately, the income-tax exacted from both precisely the same amount, although the one was a comparatively rich man and the other comparatively poor. "This monstrous inequality is seen still more glaring" if the two incomes are capitalised and then placed in juxtaposition. A medical journal stated that a medical practice must be a very good one to be worth two years' purchase. Admit that the practice just referred to is a first-class one and can be disposed of to the best advantage, yet it is only worth £1000; whereas the income of the landowner or fundholder may realise £20,000, so that the medical man is forced to contribute to the taxes of his country twenty times as much as the freeholder or stockholder. The case is still stronger if the profession of an author, artist, actor, or a barrister be cited, because here there can be no sale whatever, and if the individual be incapacitated by disease or old age, his income is altogether lost. Should it be urged, on the other hand, that the professional man may secure a provision for his family by a life insurance, the reply is, that to secure a sum at his death equal to that of the landowner, he would thereby be deprived of about half his income. "To tax the precarious earnings of the author, doctor, and tradesman," says a pamphlet of the period, "as heavily as the interminable income of the landowner whose property is permanent and indestructible and capable of transmission from generation to generation, may, in the opinion of the present House of Commons, be perfectly just, fair, and equitable; but this is not the opinion of the nation, who regard with strong disapprobation the burking of this question in the House of Commons on a recent occasion by a 'count out.'" The count out thus referred to occurred on the occasion of a motion respecting the income-tax by Mr. Sheridan, who then stated that "the country having declared its irreconcilable hostility and war to the knife against Schedule D, no modification or rearrangement will satisfy the public. Nothing less than the repeal of that part of the Act will content them." In view of this long-continued and strenuous opposition in the past, it is certainly a curious fact that at the present day there would seem to be no form of taxation so available as the income-tax upon which the statesman in financial difficulties can fall back; not only is there now apparently no real antagonism to the income-tax as a whole, but there seems to be a positive acquiescence in the principle of even Schedule D.

Perhaps this change in feeling is due to the increase of professorial or academic influence which has been so marked during the life of the present generation. Our fathers were accustomed to approach the solution of business problems with principles and methods derived from their practical business traditions and experience; but this generation, moulded in the abstract atmosphere of the university extension class, finds its mind warped by the impracticable dicta of arm-chair philosophers. Were it not so, authors claiming to speak as of authority could not state, as does Professor Bastable in his *Public Finance*, that inequalities are "removed by the comprehensiveness of the tax." And certainly that statement is discounted very largely by his own recognition that the present system can only be defended on two admitted facts; viz. (1) that no ingenuity could avoid some injustice, and (2) that any alterations would mean the destruction of the tax. It may

be an "admitted" fact that "some" injustice can never be avoided, but it is equally an "admitted" fact that ingenuity can materially lessen the injustice now actually done in this matter. The second "admitted" fact appears to be based upon a not quite *à propos* extract from a speech of Mr. Gladstone, that "the real tendency of all these exemptions is the breaking up and destruction of the tax." But the professor cannot really himself have much belief in this "admitted fact," for he had written, only a page or two before, that an advantage of the income-tax "is the opportunity that it offers for fairly distributing the burden of taxation." It would have been far more useful to the public if, instead of so readily adopting the "admitted" fact, and supporting it by merely alleging that the working of the differentiating Italian tax is "confusing," and too rough to give satisfaction or to realise "justice," he had carefully considered the "opportunities" of the English tax and directed his efforts to finding ways and means for the utilisation of those opportunities. Surely it is obvious that the struggling annuitant, small man of business, or artist, for example, can be relieved from some part of the gross inequality by which he is pressed down without thereby dealing a death-blow to the income-tax altogether. And so the Select Committee on Income Tax, reporting in 1906, recognized and appreciated very fully the example, now before this country, of a great number of foreign countries and British colonies in which some measure of differentiation, although on widely different plans, has been adopted. Prussia, Saxony, the Netherlands, and Australia may be mentioned. And while insisting upon the interdependence of graduation and differentiation, the Committee believed differentiation to be best accomplished in the upper portion of the scale by graduation. Now, as a consideration of the present rates of the tax will show, a differentiation has at length been introduced by the legislature, and the inequalities just referred to have been very materially lessened.

The merits of Schedule D having occupied so much attention, it is only reasonable that its scope should be set out at length with some emphasis on its particular applications. The tax under this schedule is: "For and in respect of the annual *profits or gains* arising or accruing to any person *residing in the United Kingdom* from any kind of property whatever, whether situate in the United Kingdom or elsewhere: And for and in respect of the annual *profits or gains* arising or accruing to any person *residing in the United Kingdom* from any profession, trade, employment, or vocation, whether the same shall be respectively carried on in the United Kingdom or elsewhere, and to be charged for every twenty shillings of the annual amount of such profits and gains: And for and in respect of the annual *profits or gains* arising or accruing to any person whatever, whether a subject of his Majesty or not, although not resident within the United Kingdom, from any property whatever in the United Kingdom, or any profession, trade, employment, or vocation *exercised within the United Kingdom*, and to be charged for every twenty shillings of the annual amount of such profits and gains: And for and in respect of all interest of money, annuities, and other annual *profits and gains not charged by virtue of any of the other schedules* contained in this Act, and to be charged for every twenty shillings of the annual amount thereof."

Profits and gains.—For the purpose of their estimation it is a general rule not to charge upon the amount of doubtful debts but upon their value; in the case of insolvency of a debtor it is the reasonably anticipated dividend which is taken as the value of such debts. There are six cases under one of

which the duties payable by the tax-payer are ascertained for the purposes of this schedule.

First Case.—Any trade, manufacture, adventure, or concern in the nature of trade, not contained in any other schedule. The duty is here computed on a sum not less than the full amount of the balance of the profits of the business; but these profits are ascertained by taking an average of the profits during the three years preceding the year of assessment; unless the accounts of the business are regularly balanced up to any other fixed yearly dates, these three years of average must run up to the 5th April preceding the year of assessment. If the business has only been commenced within that period of three years, the computation for the one year is made on the average of the balance of profits from the time of the commencement; and where the business has only been commenced within the year's assessment, the computation is made according to the rule in the Sixth Case. Lord Herschell has defined profits in this connection as being "the surplus by which the receipts from the trade or business exceed the expenditure necessary for the purpose of earning those receipts." If a gain is made by realising an investment at a larger price than was paid for it, the difference must be reckoned as a profit. It should be noted that nothing can ever be deducted from profits on any of the following accounts:—Money spent in repairs of premises occupied for the purpose of the business; money spent for the supply, repair, or alteration of any implements and utensils employed in the business beyond the sum usually expended for such purposes according to the average of the preceding three years; losses not connected with or arising out of the business; capital withdrawn from the business; capital employed or intended to be employed in the business; capital employed in the improvement of premises occupied for the purposes of the business; interest which might have been made on such sums if laid out at interest; debts other than bad debts; average loss beyond the actual amount of loss after adjustment; moneys recoverable under an insurance or contract of guarantee.

There have been a number of judicial decisions on points arising out of the foregoing, and a reference to some of the most important may be useful. Should a trader open and fit up additional premises with a view to the extension of his business, but, upon finding the extension prove unprofitable, close the additional premises and continue them on a smaller scale, he will be unable to deduct the loss incurred by him over this venture, as it will be held to be in the nature of a loss of capital and not of income. If a business man occupies leasehold premises at a certain rent, but for which premises he had originally to pay a premium, he can only charge against his profits, for the purpose of income-tax, the annual value of the premises as ascertained for the purposes of Schedule A; it makes no difference that the premium was a very heavy one, and that correct business finance would warrant his annually debiting in his balance-sheet a sum on account of depreciation in the value of the lease; and this would even be so if the premium were so heavy as to make the real annual value of the premises to him and his business much greater than that fixed under Schedule A. This being so, it easily follows that nothing can be deducted in respect of the depreciation in value of the business premises, other than the deductions allowed in respect of repairs for

the purposes of the business. No deduction can ever be made on account of any interest, annual payment, or annuity payable out of the profits of a business. But in respect of *machinery*, it should be noted that a deduction is allowed for diminished value, by reason of wear and tear, during the year; but the machinery must be used for the purposes of the business; it should also be the property of the owner of the business, and a person will be considered to be the owner for this purpose even though he is merely the hirer of it, provided he is under an obligation to maintain it in good condition and so deliver it up at the end of his term. If the person who really owned the machinery mentioned in the last case, has let it out on hire on terms that he is the one to maintain it in good condition, then he, and not the hirer, is entitled to the deduction in respect of its diminished value; but he must claim the deduction within twelve calendar months after the expiration of the year of assessment.

Second Case.—The duty to be charged in respect of *professions*, employments, or vocations, not contained in any other schedule. This would meet the case of the profits of a betting-man or the regular gifts received by a clergyman. This is the professional tax, and it extends to every employment by retainer in any character whatever, whether the retainer is annual or for a longer or shorter period; it extends to all profits and earnings of whatever description. The duty to be charged is computed at a sum not less than the full amount of the balance of the profits and emoluments upon a fair and just average of three years. The rules as to deductions in the first case may be taken as applying generally to this case, but in respect to ministers of religion there is a special rule applicable. This is that they may deduct from their profits any monies or expenses paid or incurred "wholly, exclusively, and necessarily in the performance" of their duties or functions as ministers of religion; and if the deduction has not been made, the minister concerned may obtain back the tax he has therefore overpaid.

First and Second Cases.—There are also some special rules which apply to both of these cases. In estimating the balance of profits no deduction therefrom can be made in respect of disbursements and expenses not exclusively laid out and expended for the purposes of the business or profession; nor for the maintenance of the tax-payer, his family, or establishments; nor for the rent of their dwelling-house, except the part used for the business or profession (deduction in this respect must not exceed two-thirds of the rent *bonâ fide* paid); nor for any other domestic or private purposes, distinct from the purposes of the business or profession. The duty is computed exclusively of any profits which may arise out of lands and tenements occupied for the purposes of the business or profession. In the case of a *partnership*, the duty in respect of the profits of the firm is charged to the partners jointly in one sum, and separately and distinctly from their individual incomes. If a partner is entitled to exemption he may be separately assessed for that purpose. In the case of a change in the constitution of a firm the duty is charged on the profits antecedent to the change. Unless a person is engaged in different partnerships, or in different trades or professions carried on in various places, his statement of profits under this schedule must include every source of income in respect of which he is chargeable.

Third Case.—The duty to be charged in respect of profits of an uncertain value not charged in Schedule A. This is computed at a sum not less than

the full amount of the profits arising within the preceding year, and is payable on the actual amount of those profits without any deduction; and this also is the rule in respect of incomes derived from discounts and interests not payable annually. *Dealers in cattle or milk* who occupy lands estimated and charged on the rent or annual value are dealt with in a special rule. If the Commissioners find that such lands are not sufficient for the keep of the cattle brought thereon, so that the rent or annual value is not a just estimate of the dealer's profits, they may require a special return of his profits; they may then charge such further sum thereon as, together with the charge in respect of the occupation of the lands, will make up the full sum with which he ought to be charged in respect of the like amount of profits charged according to the computation first above-mentioned in this case.

The *Fourth* and *Fifth Cases* deal with incomes derived from Irish, and foreign and colonial securities and property; and the *Sixth Case* with profits not already dealt with.

Special provisions.—Any one who carries on two or more distinct trades, either solely or in partnership, is entitled to deduct or set against the profits acquired in one or more of them the excess of loss sustained in any other of them; such a deduction or set-off should be made on the same principles as deductions or sets-off in an estimate of the profits of a single business; the benefit of this provision extends to any concern in the nature of trade. All annual interest, annuities, or other annual payments, not otherwise charged, are chargeable under this schedule. Every one who is liable to pay rent, yearly interest, or an annuity or other annual payment, either as a charge on property or as a personal debt or obligation by virtue of a contract, is under a statutory obligation, on making the payment, to deduct and retain thereout the amount of the rate of duty in force during the period through which the payment was accruing due. This provision is important to *mortgagors*, payers of ground-rent, and others. The person to whom the payment is made will incur a forfeiture of £50 if he refuses to allow the deduction. But these deductions must be made at the times when the sums are payable—quarterly, half-yearly, or otherwise as the case may be. The tax is not to be deducted in dealings between merchants on bills of exchange, nor upon payment of interest to a banker upon a loan for less than a year; and, generally speaking, there can be no deduction where the transaction involves an interest or similar payment which is not "yearly." Once the interest or other payment is "yearly" or annual, it does not matter at what period of the year it becomes payable. Certain charitable, friendly, and provident societies are exempt from this tax; and it should be particularly noticed that any one who has effected an *insurance* upon his life, or that of his wife, is entitled to deduct the amount of the annual premium from the profits or gains in which he is liable to be assessed under this schedule or Schedule E; if he has over-paid his income-tax on account of not claiming this deduction he is entitled to recover the amount of the over-payment. A like deduction is allowed in favour of any one who is liable, under an Act of Parliament, to the payment of an annual sum, or to have an annual sum deducted from his salary or stipend, in order to secure a deferred annuity to his widow, or a provision for his children, after his death. But no abatement or repayment in respect of insurance premiums can exceed one-sixth part of the whole amount of the profits of the tax-payer; and there is the further limitation

that he cannot obtain exemption or relief from the tax on the ground that his profits are reduced below £150 by reason of insurance premiums. It should also be remembered that the provisions in favour of insurance are only operative when the insurance is effected with a company which is duly registered in England; they will not apply in the case of a foreign insurance company which does not conform to the insurance law of this country. Insurance with a duly registered friendly society will be within the benefit of these provisions if the premiums are not made payable for shorter periods than six months; and so also will deferred annuities granted by the National Debt Commissioners.

Schedule E imposes a tax "in respect of every public office or employment of profit, and upon every annuity, pension, or stipend payable by his Majesty or out of the public revenue of the United Kingdom, except annuities charged to the duties under the said Schedule C." It does not extend to include profits and annuities enjoyed by workmen or artisans like engine-drivers, porters, and labourers. Public employment is of its essence, and its peculiar incident is that the tax-payer is liable, or entitled, to direct assessment upon the amount of his salary. In most cases there can be no doubt whether the employment of a particular person is public or not, but in many cases there may be room for doubt. It has been held that a college bursar, a bank agent, and a national schoolmaster, are each holders of public employments for the purposes of income-tax assessment. Railway company officials are also assessed under this schedule. The profits of an employment may be estimated for the purposes of income-tax either (*a*) on the profits of the preceding year, or (*b*) on the average of the profits of the three preceding years; in either of these cases the years of estimate end on the 5th April in each year, or on such other day in each year that the accounts of the profits have been usually made up. In the case of salaries paid in public departments the tax is deducted by the department from the salaries at the time of their payment. All expenses necessarily incurred, wholly and exclusively, in the performance of the duties of a public office, may be deducted from the amount of the profits or salary for the purposes of assessment and charge; thus an official's expenses of travelling, or of keeping and maintaining a horse, or of otherwise laying out and expending money, will be allowed.

Exemptions.—In addition to the special exemptions and abatements already referred to in connection with the schedules to which they are specially applicable, there is the one great and general exemption from payment of this tax of all persons resident (unless within the proviso referred to at the end of this section) within the United Kingdom whose income is under £160, and the general abatement allowed those whose incomes are under £700. Such persons whose total incomes are less than £160 per annum are absolutely exempt from any payment of income-tax; when any annuities, dividends, interest, rent, or other annual payments from which they derive their income have been paid to them, less a deduction in respect of this tax, they are entitled to recover the amount of any such deductions from the authorities. The claim must be made before the General Commissioners of the district in which the claimant resides. Any person whose total income from all sources, although exceeding £160, does not exceed £400, is entitled to relief or abatement as follows:—(*a*) If his total income does not exceed £400, to relief from so much of the duties assessed upon or paid by him as an assessment or charge upon £160 of his income would amount to; and (*b*) if his total income

exceeds £400, and does not exceed £500, to the relief from so much of the duties assessed upon or paid by him as an assessment or charge upon £150 of his income would amount to; exceeding £500 and not exceeding £600—£120 abatement; and exceeding £600 and not exceeding £700—£70 abatement. The proviso above referred to is contained in section 71 of the Finance Act, 1910, as amended by the Revenue Act, 1911. It includes in the exemption certain classes of person who may reside outside the United Kingdom. Such are those who are or have been employed in the service of the Crown, or who are employed in the service of any missionary society abroad or in the service of any of the native states under the protectorate of the British Crown, and residents in the Isle of Man or Channel Islands, and those resident abroad who can satisfy the Commissioners that they are so resident for the sake of health; and widows resident abroad in respect to pensions granted in consideration of the employment of their late husbands in the service of the Crown.

Married Couples.—Where the total joint income of a husband and wife charged to income-tax, by way either of assessment or deduction, does not exceed £500, and that total income includes profits of the wife derived from a profession or vocation chargeable under Schedule D, or from any office or employment chargeable under Schedule E, a claim should be made for exemption, relief, or abatement. The claim will be considered and allowed as a claim by the wife in respect of her income, and as a further separate claim by the husband in respect of the rest of the total income.

Earned Incomes.—A person whose total income from all sources does not exceed £2000 is entitled to pay his tax at the rate of 9d. in the £, or where it exceeds £2000 but does not exceed £3000 at the rate of 1s. in the £, in respect of such of his income as is "earned" or derived from a pension for past services, provided that in the first case he claims relief before 30th September in the year for which the tax is charged, and in the second case before the 31st July.

The relief in respect of *children* and the *super-tax* on incomes exceeding £5000 are referred to at the commencement of this article.

Appeals.—Meetings of the District Commissioners for the purpose of hearing appeals are regularly held after a parish assessment has been made; due public notice of these appeal meetings is always given. Any person who is aggrieved by any assessment made upon him has the right of appeal, provided he appeals within twenty-one days from the date of the notice of the assessment, and that he has given within that time ten days' written notice of his objections to the local surveyor. After he has given due notice he will receive from the Commissioners an intimation of the date fixed for hearing his appeal, on which occasion he should attend fully prepared with evidence of the facts he intends bringing to their notice. Great care should be taken in the preparation of this evidence, and in the manner it is presented to the Commissioners, for the surveyor can also bring forward evidence in opposition and in support of his assessment. No lawyer, whether barrister or solicitor, has a right to be heard by the Commissioners on such an appeal. This is undoubtedly a hardship upon the tax-payer, as he has to meet and combat on this occasion the trained and expert evidence of the surveyor, and he is himself naturally at a disadvantage in that he is not acquainted with any of the rules of evidence and the method of handling a disputed case to the best

advantage. If his appeal is at all an important one he should take legal advice as to the method of prosecuting it, and generally this advice will include a recommendation to also obtain the assistance of a professional accountant or surveyor. But by the Revenue Act, 1903, it is now provided that in case the Commissioners refuse to hear a barrister, solicitor, or accountant, the appellant may, in lieu of proceeding with the appeal before them, appeal to the Special Commissioners, who must hear the barrister, solicitor, or accountant. Accountant here means a member of an Incorporated Society of Accountants. An appeal is final, once it is determined by a majority of the District Commissioners present at the hearing; and thereafter the determination or assessment can only be altered by an order of the High Court. The tax-payer should therefore have some knowledge of the practice relating to *Cases for the Opinion of the High Court*, for it is thereby that orders of the High Court are obtained. The first important point is that immediately upon the determination of the appeal he must, if dissatisfied with their decision as being erroneous in point of law, declare to them his dissatisfaction therewith. Then within twenty-one days he should require them, by notice in writing addressed to their clerk, to state and sign a case for the opinion of the High Court. The case must set forth the facts and the determination, and the appellant should transmit the case, when stated and signed, to the High Court within seven days after receiving it; he must also at the same time send a copy of the case to the local surveyor, and give that official written notice that the case was stated on his application. Before the appellant is entitled to have the case stated he must pay a fee of twenty shillings to the Clerk to the Commissioners. On a subsequent occasion the High Court will hear and determine the question or questions of law arising out of the case, and will thereupon reverse, affirm, or amend the determination in respect of which the case has been stated, or remit the matter to the Commissioners with the opinion of the High Court thereon, or make any other order as to the matter or to costs which to the Court may seem fit. From the High Court there is an appeal to the Court of Appeal, and thence to the House of Lords. The fact that an appeal is pending will not operate as a postponement of payment of the tax appealed from; this must be paid in the ordinary course.

(INCORPORATED) LAW SOCIETY.—This society, now known as the Law Society, was incorporated by Royal Charter in the year 1845, and is composed of solicitors practising in the United Kingdom. Its object has ever been, primarily, the protection of the interests of the solicitor branch of the legal profession, but, as will be noticed presently, it has incidentally frequently and consistently undertaken the furtherance and protection of public interests in affairs with which it has a peculiar acquaintance. Considered as the protector of the interests of solicitors it is often, and very accurately, referred to as the most powerful "trade-union" in the world. Though chartered in the year 1845 it really exists as the successor of a society, established in 1739, called "The Society of Gentlemen Practisers in the several Courts of Law and Equity," and which society, at its first meeting, "declared its utmost abhorrence of all male and unfair practice," and took measures to detect and discountenance such practice. And herein the modern society is undoubtedly a worthy successor of its parent society, for to the Law Society has the legislature handed

over the important duty of investigating all complaints of malpractice made against solicitors, and of reporting thereon to the Court. There can be no doubt that, on the whole, the society has faithfully fulfilled this difficult duty; its efforts are always directed towards impartial investigation in necessary cases, and towards the maintenance of a high standard of conduct amongst solicitors generally. Towards the great expense the society necessarily incurs in the performance of this disciplinary duty, it receives an annual grant from the State. The society also acts as registrar of solicitors, and has in its charge the education and examination of those who aspire to enter that profession.

We have already hinted that the general public owe something to the society in respect of matters which are not altogether the sole concern of solicitors. Perhaps first and foremost of the society's efforts in the public interests was its strenuous and powerful agitation for the abolition of the various national courts scattered throughout London and Westminster, and their re-establishment in one central building. During forty years did the society sustain this agitation, with the result that, in 1882, the present Royal Courts of Justice were opened to the country by her late Majesty the Queen. But it is in the field of parliamentary legislation that the society has exercised some of its most beneficial efforts. The Judicature Acts, County Courts Acts, Bankruptcy Acts, and Trustee Acts are all standing witnesses to its influence—an influence none the less important because of its unobtrusive direction. The general public certainly does not appreciate the Law Society as it should, though in the foregoing statutes, as well as in many others, its influence was ever at work for the common good. All bills presented to Parliament are passed in review by the society, and recommendations in respect thereof are placed in the proper quarters. And it need hardly be said that these recommendations are carefully considered, for they emanate from the one body of men in the country who combine in themselves, as a whole, a legal training and knowledge, a general and business experience, and an intimate connection with all the varied interests in the country. The Conveyancing Acts, which amended the law of real property, constitute a remarkable example of the many reforms in which the society has co-operated with the legislature in even a spirit of initiation.

But the public always regards the society as its resource in cases of the malpractice of solicitors. Then the secretary, at the hall of the society, in Chancery Lane, London, is the official with whom those with grievances communicate. To those the following extract from the calendar of the society will have some interest: "The investigation, already referred to, of cases of malpractice, varying in degree and kind, has ever since formed a most necessary and important—but by far the most painful—duty of the committee and council in succession. While it is eminently desirable that the honour of the profession should be jealously maintained, it is equally important that the society should not be made use of as a mere instrument for private revenge, or for the recovery of money; nor its process called into action unless when sufficient cause for judicial inquiry is established." And *see* SOLICITOR.

INCREMENT VALUE DUTY. *See* LAND VALUES DUTIES in Appendix.

INDEMNITY.—There is often need to know precisely the distinction between an indemnity and a guarantee. If the contract is one in the nature of an indemnity it will be valid though made verbally, but if it is in fact a guarantee it will only be valid when in writing, according to the provisions of the Statute of Frauds. In *Guild* v. *Conrad* it was said by Lord Justice Lopes that "a promise to be liable for a debt conditionally on the principal debtor making default is a guarantee, and is a promise to make good the default of another within the statute. On the other hand, a promise to become liable for a debt whenever the person to whom the promise is made should become liable, is not a promise within the Statute of Frauds, and need not be in writing." Here the distinction is made very clear, the former promise being in the nature of a guarantee, whilst the latter is an indemnity. In the same case Lord Justice Davey said that "there is a plain distinction

between a promise to pay the creditor if the principal debtor makes default in payment, and *a promise to keep a person who has entered, or is about to enter, into a contract of liability indemnified against that liability independently of the question whether a third person makes default or not.*" The facts in that case were, in a few words, that the defendant verbally promised the plaintiff that, if he, the plaintiff, would accept certain bills for a firm in which the defendant's son was a partner, he, the defendant, would provide the plaintiff with funds to meet the bills; the defendant did not fulfil his promise, and when sued by the plaintiff he defended the action on the ground that his promise was not binding, as it was a guarantee and should have been in writing under the Statute of Frauds; but the defendant's contention failed for the reasons above set out.

The above is not by any means new law; on the contrary it has its foundations very deep in English jurisprudence. In 1828, in the case of *Thomas* v. *Cook*—where A., at the request of B., entered into a bond with him and C. to indemnify D. against certain debts due from C. and D., and B. promised to save A. harmless from all loss by reason of the bond—it was held that B.'s promise was binding, although not in writing, and that A. might recover his loss from B. And so, in 1868, in the case of *Wildes* v. *Dudlow*, where A. at the request of and on a verbal offer by B. to indemnify him against loss, joined with C. in a joint and several promissory note which he was afterwards compelled to pay, it was held that the verbal offer to indemnify A. was not an agreement within the Statute of Frauds, and need not be in writing, and that therefore A. was entitled to recover his loss from B. There Vice-Chancellor Malins said, "I accordingly decide that where one person induces another to enter into an engagement, by a promise to indemnify him against liability, that is not an agreement within the Statute of Frauds, and does not require to be in writing."

If any one who has given an indemnity to another has had to pay thereunder, he is entitled to stand in the shoes of that other person and recover, if he can, the amount he has thus paid from the third party whose act has been the original cause of the payment. The law implies a contract of indemnity between a principal and his **agent**, so that the latter is entitled to recover from the former any expenses and disbursements he may have reasonably and in good faith incurred and paid, without any default on his part, in the course of his agency. There is also an implied agreement between an original lessee and each successive assignee of the **lease**, that the original lessee shall be indemnified by the latter against liability in respect of any breaches of the covenants in the lease committed during the possession of the property by the assignee for the time being. In order to escape the operation of this implied indemnity the mortgagee of a leasehold property should take his security in the form of a sub-demise, or under-lease, instead of by way of an assignment of the whole of residue of the term granted by the original lease. In the article on the PROSPECTUS of a limited company it will be seen that section 4 of the Directors' Liability Act, 1890 (now incorporated in the Companies Act, 1908), provides for an indemnity where the name of a person has been improperly inserted as a director. There are also cases of other statutory provisions for indemnity. Thus, in the case of **partnerships**, it is provided by section 24 of the Act of 1890 that, subject to any express or implied agreement between the partners, the firm must indemnify every partner in respect of payments made and personal liabilities incurred by him—(*a*) In the ordinary and proper conduct of the business of the firm; or (*b*) In or about anything necessarily done for the preservation of the business or property of the firm. And as to **trustees**, it is provided by section 24 of the Trustee Act, 1893, by way of a limitation of the implied indemnity of trustee, that "a trustee shall, without prejudice to the provisions of the instrument, if any, creating the trust, be chargeable only for money and securities actually received by him notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects, or defaults, and not for

those of any other trustee, nor for any banker, broker, or other person with whom any trust moneys or securities may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his own wilful default; and may reimburse himself, or pay or discharge out of the trust premises, all expenses incurred in or about the execution of his trusts or powers."

A policy of **fire or marine insurance** is a popular example of a contract of indemnity, and it furnishes at the same time a striking example of the rule of law that the party who pays a loss against which he has indemnified is entitled to be put in the place of the person to whom the indemnity has been paid. Thus, if after a loss by fire, and the payment thereof by the insurance company, the insured receives a further compensation from other sources for the loss sustained by him, the insurance company may recover from the insured any sum which he may have received in excess of the loss actually sustained by him. This was the ruling in *Darrell* v. *Tibbits*, which was a dispute arising out of a fire to a house; this case, however, rested upon the earlier one of the *North British and Mercantile Insurance Co.* v. *London, Liverpool, and Globe Insurance Co.* In that case goods had been deposited with an absolute obligation on the part of the bailees to protect them from fire, and as a consequence to pay to the bailors the value of those goods in the event of their being destroyed by fire. The bailors, notwithstanding that they had the benefit of this liability on the part of the bailees, thought fit to further secure and protect themselves by an insurance made in their own names and for their own benefit. A fire having occurred, the question was raised whether the insurance company that had insured for the bailees was entitled to have contribution for the damage from the insurance office that had insured for the bailors. It was then held that the contracts of insurance were entirely independent, and that there was no right of contribution, and further, that the bailors and their insurers were to be looked upon as one person, and the bailees and their insurers were to be looked upon as another. The rights of the parties were accordingly, in the view of Lord Justice Thesiger (in *Darrell* v. *Tibbits*), to be regarded as follows: "That as the bailors themselves would have a right directly against the bailees in respect of the goods consumed by the fire, and therefore indirectly against their insurers, so the bailors' insurers would be in the same position; and if before what is called the primary liability had been fulfilled through the payment by the bailees or their insurers, the bailors' insurers had paid the amount of the insurance, they would have had a claim to be subrogated to the rights of their assured, and to claim against the bailees and their insurers; and if before the bailors' insurers had paid the money secured by the policy, the bailees or their insurers had fulfilled their primary obligation, and had paid the value of the goods destroyed, the bailors would have had no claim upon the insurers."

Third party procedure.—It frequently happens that a person is sued in respect of a claim against which he is entitled to be indemnified by a third party. He finds that he is the sole defendant in the action. Accordingly, if he claims to be entitled to contribution or indemnity over against any person not a party to the action he may, by leave of the Court, issue against that person a process called a *third party notice*. This notice, together with a copy of the statement of claim in the action (or if there is no statement of

claim, then with a copy of the writ), must be served upon that person. The latter, who is called a "third party," may then dispute the plaintiff's claim in the action as against the defendant on whose behalf the notice has been given, or he may only dispute his own liability to the defendant. In default of his so doing, he will be deemed to admit the validity of the judgment obtained against the defendant, and his own liability to contribute or indemnify. A defendant should generally adopt this procedure whenever there is some person not a party to the action who is under an obligation to contribute to his liability in the action, or to indemnify him against the claim made therein; by so doing he may save the necessity for separate trials, as the third party may appear at the trial of the original action and take an appropriate part therein. In order that a defendant may be in a position to take advantage of this procedure, it is not enough that if the plaintiff succeeds the defendant will have a claim for damages against the third party; a defendant must have a direct right to contribution or indemnity arising—generally speaking—out of an express or implied contract. *See* GUARANTEE.

INDIA COUNCIL REMITTANCES.—There are two remarkable permanent conditions in the relationship between India and Great Britain. India has always to make certain payments in England in gold, and Great Britain is always indebted to India in respect of payments in silver. But while the payments due from India are made by the Indian Government to the British Government, those due from Great Britain to India are payable by and to merchants. The Indian Government has to provide for the payment in gold in England of interest upon its sterling debts, and for salaries, pensions, and materials. These payments amount to as much as £16,000,000 per annum. On the other hand, since the days of the American Civil War, when the British cotton manufacturers had to seek and find in India a source for their supply of cotton, the Indian exports to England have constantly been in excess of the imports between the two countries. The result of this is found in the fact that British merchants are constantly making payments in India in respect of their consignments, and which payments naturally have to be made there in silver rupees. And, curiously, this balance between the imports and exports is, on the average, fairly equivalent to the moneys payable to Great Britain by the Indian Government. Such being the case, it is obvious that these two payments can in effect be set off one against the other, and so liquidation be effected in each country without the actual transmission of specie. This could be done by the ordinary methods of the foreign exchange, but the reader of the money article knows that a peculiar system is adopted, in this case, which is noticed each week in such a paragraph as the following:—

Remittances on India for 40 lakhs were to-day offered for tender by the India Council, and applications amounting to Rs. 11,66,00,294 were received at 1s. $3\frac{1}{16}$d. and 1s. $3\frac{31}{32}$d. The following amounts were allotted:—In bills, Rs. 20,65,000 on Calcutta, Rs. 19,09,000 on Bombay, and Rs. 26,000 on Madras, all at an average of 1s. 3·96d. Tenders at 1s. $3\frac{31}{32}$d. will receive about 65 per cent. Later the Council sold bills for Rs. 52,192 on Calcutta and Rs. 14,000 on Madras at 1s. 4d. Last week remittances for Rs. 40,92,500 were disposed of for £272,313, making the total sold between April 1 and last night Rs. 6,71,70,177, producing £4,458,636. Next week 40 lakhs will again be offered.

On the above paragraph it may first be remarked that a lakh of rupees is equivalent to 100,000 rupees, and the various sums of rupees mentioned are printed upon that basis. The next thing to remark is that this paragraph discloses the mode whereby the Indian Government and the British merchants take advantage of each other's indebtedness in order to effect their own payments as cheaply and easily as possible. The fact of the matter is that on each Wednesday in the year, the Indian Government having accumulated in India in rupees the revenues and other income it has collected during the week, offers to sell for gold in England that accumulation to those merchants who desire to make payments of rupees in India. With the gold the Government thus purchases it pays its debts in England, and with the rupees thus purchased with their gold the merchants pay their debts in India. The amount of rupees thus offered for sale by the Indian Government is generally about 40 lakhs every week, and at the end of each weekly paragraph there is usually a notice, as above, of the amount to be offered on the following Wednesday.

The sale is effected by means of bills of exchange, known as *Council bills*, or by telegraphic transfers. It will be seen in the above paragraph that some part of the allotment is made in bills on Calcutta, another part in bills on Bombay, and the balance in bills on Madras. These bills are tendered for by the merchants and bankers who desire to remit to India, and the amount they offer, so long as it is above the minimum allowed, is as much below the normal price of the rupee (1s. 4d.) as the state of the money market will warrant. It will be noticed that the tender for the above offer of council bills was very close to that normal price, for the average tender was 1s. 3·96d., and the tender that received the largest allotment was 1s. $3\frac{31}{32}$d. No telegraphic transfers were dealt in this week, though this form of remittance is often well taken up. As a matter of fact, though this is not stated in the paragraph, some Rs. 10,00,000 telegraphic transfers were tendered for, but the tenders were not accepted, and consequently no allotment was made in the form of telegraphic transfers. These remittances are always keenly tendered for, and in the week with which we are now dealing, it appears, from another source, that while only 40 lakhs or Rs. 40,00,000 were offered, yet Rs. 11,66,00,293 were tendered. And that there was such a considerable demand appears also from the above paragraph, which mentions that later on an additional Rs. 66,192 were sold at 1s. 4d., the full value of the rupee. It will also be seen that the paragraph gives some information as to past dealings in these bills, and particularly it mentions the total amount sold from April 1, the beginning of the financial year. This latter information affords a means whereby the reader who knows the average annual payments of the Indian Government can judge the financial position of the Government.

INDIAN RAILWAYS.—There are fifty to sixty different railway systems in the Peninsula of India, but of these only less than half have sufficient importance to obtain a position in *The Stock Exchange Official Intelligence*. There are two characteristic features in the Indian Railway system. The first is that the railways are generally either guaranteed by the Government, or have been constructed by companies with the assistance of State guarantees or subsidies. The second is that each railway, with few exceptions, works

separately and independently from the others; there is not, in India, that complicated network of railways with the accompanying mutual operation found in England and America.

Among the more important railways may be mentioned the following:—(1) *The Great Indian Peninsula* is now vested in the Secretary of State for India, who has become liable upon all its debenture stock and bonds; the latter, therefore, are now more appropriately classed as Indian Government stock. There are two classes of annuities on the market, the "A" and the "B." The former are required to be described in transfers as "Annuity, class A (being part of the annuity created by the Secretary of State in Council of India, under the provisions of the Great Indian Peninsula Railway Purchase Act, 1900), subject to the deductions thereby authorised in the case of annuities, class A." The deductions referred to consist of a 1d. in the £ per annum on account of expenses, and while the same deduction is made in respect of annuity B, the latter are also subject to a further deduction of 5s. 8d. in the £ on account of a sinking fund. This sinking fund constitutes the distinction between A and B, for both annuities expire in 1948. The necessary description in a transfer of B annuities is as follows:—"Annuity, class B (being part of the annuity created by the Secretary of State in Council of India, under the provisions of the Great Indian Peninsula Railway Purchase Act, 1900), subject to the deduction (as allowed by the said Act in that behalf) of the sum of 5s. 8d. in the £, in respect of the sinking fund created by the said Act, and to the other deductions thereby authorised, but with the benefit of such sinking fund." It is calculated that upon the termination of the annuity, the holder thereof will receive a sum of about £175 per £100 of the old stock of the company. Upon certain terms, the A annuities may be converted into B annuities. Amongst the other securities of this railway are its 3 per cent. guaranteed stock, irredeemable, 4 per cent. debenture stock, and 3 per cent., 2¾ per cent., and 2½ per cent. debenture bonds to bearer. With the foregoing company should be mentioned—(2) *The Indian Midland*, which in 1900 entered into an amalgamation (for working purposes) of the system of the Indian Peninsula with its own. Its stock is in shares of £20, and is entitled to a guaranteed interest at 4 per cent. and a share in surplus profits. There are also outstanding over £3,000,000 of bearer debentures at 4 per cent., 3¾ per cent., 3½ per cent., 3¼ per cent., and 3 per cent.; the principal and interest of these debentures are guaranteed by the Government. (3) *The Bombay, Baroda, and Central India* has an authorised and issued capital of £2,000,000, at a guaranteed 3 per cent. interest and a certain share in profits. In addition there are outstanding debentures to the amount of £1,000,000, bearing 3½ per cent. interest. Principal and interest on these debentures are guaranteed by the Government under a contract which exists for twenty-five years from the 1st January 1906, being terminable thereafter at intervals of five years, on twelve months' notice from either side. The present position is the result of the purchase by the Secretary of State for India of the railways and other properties of the company on the 31st December 1905 for £11,685,581.

(4) *The East Indian* is another of the most important railway companies. The line has now been purchased by the Government, and the capital of the old company is represented by annuities and annual capital; there are,

however, some millions of the old debenture stock still outstanding. There are three classes of annuities, A, B, and C, a separate class of Deferred Annuity capital, and another of "Deferred Annuity Capital, Class D." The railway is now worked by the holders of the deferred annuities. Transfers of A, B, and C annuities can only be made in amounts of £1 per annum and multiples, except in the case of odd amounts originally issued; deferred annuity capital is transferred in amounts of £10 and multiples.

Amongst other Indian railways of which some notice should be taken are those which, working their undertakings under contracts with the Secretary of State for India, have accordingly some Government guarantee of their dividends. Thus the Assam-Bengal, which may be taken over by the Government in 1921, has a Government guarantee of 3 per cent., half of the surplus profits being paid over to the Government. The Bengal-Nagpur, which may be bought out in 1913, has a guarantee of 4 per cent., retaining for itself only one-fourth of the surplus earnings; the Delhi, Umballa, Kalka, which may be bought out in 1916, is guaranteed 3¼ per cent., retaining for itself one-half of the surplus; and the Madras, which was taken over by the Government in 1907, the purchase being effected by the creation of two classes of annuities—A and B. Others of this class are the Burma, the Bombay, and Baroda already referred to, the Indian Midland also already referred to, the South Indian, and the Southern Mahratta.

Though the Government is entitled to take over the Bengal and North-Western, yet that company has no guarantee, and so its stockholders have to depend entirely upon its earnings. In recent years, however, this company has made steady progress, and its net profits have been growing. Including a second issue of preference shares, the total of the ordinary and preference stock or shares of the company amounted in 1908 to £6,000,000. The borrowing powers, except with the sanction of the Secretary of State, are limited to £800,000. In the case of another well-known line, His Highness the Nizam's Guaranteed State Railway of Hyderabad, there subsisted until 1904 a guarantee by His Majesty's Government of the interest on the capital stock.

Trustees' investments.—The Trustee Act, 1893, section 1 (i), (j), and (k), provides that a trustee, unless expressly forbidden by the instrument (if any) creating the trust, may invest any trust funds in his hands, whether at the time in a state of investment or not, in the following, amongst other, manners: "In the debenture stock of any railway company in India the interest on which is paid or guaranteed by the Secretary of State in Council of India." Also "In the 'B' annuities of the Eastern Bengal, the East Indian, and the Scinde, Punjaub, and Delhi Railways, and any like annuities which may at any time hereafter be created on the purchase of any other railway by the Secretary of State in Council of India, and charged on the revenues of India, and which may be authorised by Act of Parliament to be accepted by trustees in lieu of any stock held by them in the purchased railway; also in deferred annuities comprised in the register of holders of Annuity Class D, and annuities comprised in the register of annuitants Class C of the East Indian Railway Company." Also "In the stock of any railway company in India upon which a fixed or minimum dividend in ster-

ling is paid or guaranteed by the Secretary of State in Council of India, or upon the capital of which the interest is so guaranteed."

Trustees can accordingly invest in Eastern Bengal 4 per cent. debenture stock and B annuities; East India 4½ per cent. debenture stock and B, C, and D annuities; Great Indian Peninsula 4 per cent. debenture stock; South Indian 4½ per cent. debenture stock; and Scinde, Punjaub, and Delhi B annuities. They can also invest in Bombay, Baroda, and Central India Guaranteed 5 per cent., and Great Indian Peninsula Guaranteed 5 per cent. In consequence of these two latter companies paying a higher dividend than that guaranteed by the Government, the price has risen accordingly, and it is therefore doubtful whether trustees have a right to pay that extra price. The Bengal-Nagpur Guaranteed 4 per cent., redeemable in 1913, and the Indian Midland Guaranteed 4 per cent., redeemable in 1910, are also permissible for trustees' investments; but it must be noted by trustees that these stocks cannot be safely purchased by them at a higher price than 115. It should also be noted that no A annuities are authorised for investment by trustees, the reason being that there are no sinking funds connected with them. In the event of the Government purchasing other railways, other B annuities may be created wherein trustees could invest.

INDIAN STOCK comprises those securities which are issued by the Secretary of State in Council of India under the authority of Act of Parliament, and are charged on the revenues of India. They are known as Indian sterling loans, on account of the fact that the interest thereon is payable in gold payments and not in rupees. Under the Trustee Act, 1893, this stock is constituted an authorised investment for trustees. It consists of India 3½ per cent. stock, 3 per cent., and 2¾ per cent. The two former are redeemable in 1931 and 1948 respectively, and because they have so long a period to run are now most in favour with investors. Though Indian stock, and particularly the 3½ and 3 per cents., is so favourably regarded by investors, it is nevertheless of some importance to remember that the only security they afford is that of the Indian revenues; they are not guaranteed by the home Government. *See* INDIAN COUNCIL REMITTANCES.

INDICTMENT.—A bill of indictment is a document wherein a person is charged before a grand jury with the commission of a felony or misdemeanour. This document having been preferred to the grand jury, it becomes, when found by them to be a "true bill," an indictment of the person named with the crime charged. The person indicted must thereupon stand his trial before the petty jury. The only means by which a charge can come before a petty jury are, an indictment, information, or coroner's inquisition. The function of the grand jury is to hear evidence in support of the charge contained in the bill, and if they are satisfied that a *primâ facie* case has been made out, to send it for trial to the petty jury; if, however, they are not satisfied that there is such a *primâ facie* case their duty is to "ignore" the bill, which means that the person charged is free from the prosecution and will not be required to undergo a trial. The grand jury consists of twenty-three men of position, and their decisions must always be expressed by a majority of at least twelve. There is no doubt that this office of the grand jury is of the greatest value in the administration of criminal justice, for

their consideration of the evidence in support of the bill affords them an opportunity to relieve any one who has been committed for trial by a magistrate upon a too slight evidence of guilt from any further anxiety, and from the danger and publicity of another public investigation of the charge. And the very appreciable number of bills from time to time thus ignored is a weighty argument in favour of the retention of the grand jury system.

Subject to the provisions of the Vexatious Indictments Act, 1859, any one is entitled to prefer a bill before a grand jury against another charging him with any crime, however atrocious. And this can be done without previous proceedings before a magistrate, and even without any prior intimation to the person charged. The latter, and the possibilities of his defence, are not considered, for, as we have already seen, the grand jury arrive at their determination solely upon the evidence available for the prosecution. Thus this procedure by way of indictment may be easily turned into an engine of oppression or made the means of gratifying private malice. As a matter of fact there is not now any noticeable improper use of the procedure by way of independently initiated indictment, and the possibilities for it are much restricted by the above-mentioned Act. This Act applies to the following offences: perjury, subornation of perjury, conspiracy, obtaining money or other property by false pretences, keeping a gambling or disorderly house, indecent assault, certain offences under the Debtors and Bankruptcy Acts, libels, misdemeanours under the Criminal Law Amendment Act, 1885, and indictable offences under the Merchandise Marks Act, 1887. And the Act provides that, in respect of any of those offences, no bill of indictment is to be presented to or found by a grand jury unless the prosecutor, or other person presenting the indictment, has been bound by recognisance to prosecute or give evidence against the accused; or unless the latter has been committed to or detained in custody, or has been bound by recognisance to appear to answer to an indictment to be preferred against him for the offence; or unless a judge or one of certain other officials has authorised the presentment of the indictment. It is also provided that if a magistrate refuses to commit or bail for trial a person who is accused of any of the above offences, the prosecutor, if he desires to prefer an indictment and proceed with the charge, may require the magistrate to bind him over for that purpose, so that the indictment can be presented in the same manner as if the accused had been committed for trial by the magistrate. A prosecutor who thus elects to proceed with his charge, notwithstanding its dismissal by the magistrate, should bear in mind the provision of a later Act—30 and 31 Vict. c. 35—that whenever a person indicted under the Vexatious Indictments Act is "acquitted thereon, it shall be lawful for the Court before which such indictment shall be tried, in its discretion, to direct and order that the prosecutor or other person by or at whose instance such indictment shall have been preferred shall pay unto the accused person the just and reasonable costs, charges, and expenses of such accused person and his witnesses (if any) caused or occasioned by or consequent upon the preferring of such bill of indictment," . . . and in case of non-payment they can be recovered as a judgment debt.

The finding of a coroner's jury, or an *inquisition*, as it is called, is equivalent to the finding of a grand jury, and consequently any one may be indicted on

Photo: Barraud, London

LORD BURNHAM (SIR EDWARD LAWSON), the chief proprietor of the *Daily Telegraph*, one of the most valuable of the London daily papers, and the most widely circulated. His private estate, Hall Barn, Bucks, extends to over three thousand acres. Created Baronet in 1892, and a Peer in 1903. A Lieutenant of the City of London.

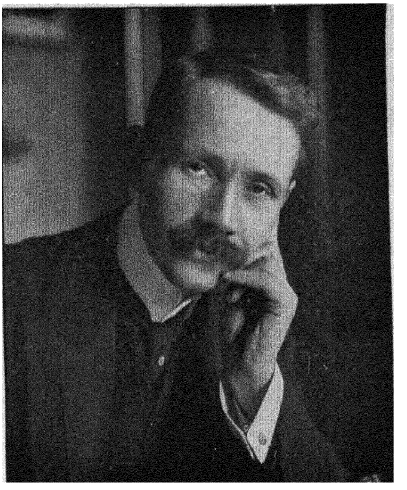


Photo: R. J. W. Haines

SIR JOHN WILLIAMS BENN, a successful journalist and newspaper proprietor. His public life has been largely associated with the London County Council. He has been a member since its creation in 1889, and was Chairman in 1904. Has represented Devonport in the House of Commons.

Photo: Elliott & Fry

LIEUT.-COL. JOHN GRETTON is a Director of Bass, Ratcliff & Gretton, Ltd., the world-famous brewers of Burton. Has been M.P. for Rutlandshire since 1907. Commands the 2nd V.B. North Staffs. Regiment. Was Conservative Member for Derbyshire (S.) from 1895 to 1906.

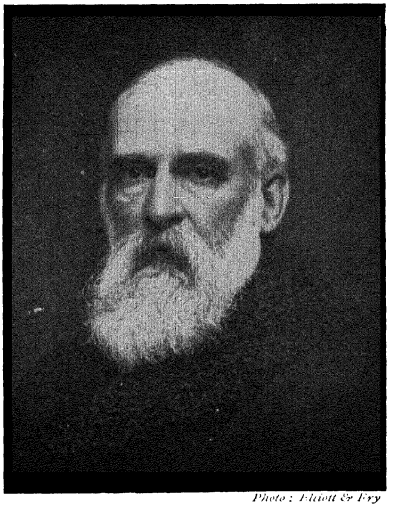


Photo: Elliott & Fry

SIR JOHN T. BRUNNER, Bart., who is Chairman of Brunner, Mond, & Co., Ltd., the great salt and alkali manufacturers of Cheshire, was born 1842. Apart from politics and commerce, is best known for munificent gifts to institutions, notably Liverpool University College, where he endowed a Chair of Economic Science with £10,000. Has lately retired from public life.

SUCCESSFUL BUSINESS MEN

that inquisition, notwithstanding the grand jury have thrown out the bill of indictment. And *see* INFORMATION.

INDUSTRIAL ASSURANCE.—Two classes of societies are recognised by the law as being in a position to carry on a certain class of life assurance business provided they comply with the provisions of the Assurance Companies Acts, 1909. One of these classes is composed of "collecting societies"; the other of "industrial insurance companies." But all such societies and companies are nevertheless required to be registered under the Friendly Societies Act, and are subject to the special provisions of the Collecting Societies and Industrial Assurance Companies Act, 1896, which extends to Scotland, the Isle of Man, and the Channel Islands. A "collecting society" is a friendly society or branch, whether registered or unregistered, that receives contributions or premiums by means of collectors at a greater distance than ten miles from its registered office or principal place of business; an "industrial assurance company" is any person or body of persons, whether corporate or unincorporate, that grants assurances on any one's life for a less sum than twenty pounds, and receives its contributions or premiums by means of collectors at a greater distance than ten miles from its registered office or principal place of business, at less periodical intervals than two months. The Act has no application whatever to an industrial assurance company that receives premiums at greater periodical intervals than two months. The expression "collector" means any paid officer, agent, or person, howsoever remunerated, who, by himself or by any deputy or substitute, collects contributions for a society or company, or who holds any interest in a collecting-book thereof. But the secretary or other officer of a branch of a society, who receives contributions on behalf of the society or any other branch, is not a collector; nor is any officer who is appointed to superintend and receive moneys from collectors within a specified area, not being himself a collector; nor is any agent appointed and remunerated by members, and not under the control of the society or company, or of one of its officers. It is important to know exactly what constitutes the office of a collector, for whilst he is such, he is unable to:—(*a*) be a member of the committee, or (*b*) hold any other office in the society or company except that of superintending collectors within a specified area; or (*c*) vote at or take part in the proceedings of any meeting of the society or company. A collecting society registered after the 31st December 1895 must always have "collecting society" appear as the last words in its name.

A collecting society is bound to deliver to every person, on his becoming a member of or insuring with the society, a copy of its rules, together with a printed policy signed by two of the committee and by the secretary, at a price not exceeding one penny for the rules and one penny for the policy. In the case of a family enrolled in one book or card, one copy of rules and one family policy is sufficient. A copy of the balance-sheet and annual return must be open for inspection at each one of the societies' offices during the period of seven days before it is to be presented to a meeting; it must also be delivered or sent by post to every member who demands it. Generally the provisions of the Friendly Societies Act relating to inspectors, special meetings, and dissolution, apply to all collecting societies. There are also certain regulations applicable only to *industrial assurance* companies,

and in particular the restriction of *assurances upon children's lives.* The provision on this head in the Friendly Societies Act extends to all of these companies that insure the payment of money on the death of children under the age of ten years. But such an assurance made by an industrial assurance company is not invalid under the Life Assurance Act, 1774, if it would have been valid if effected with a registered friendly society. This provision extends to industrial assurance companies which do not receive premiums by means of collectors at a greater distance than ten miles from their principal place of business, and to assurances with any such company whose premiums are receivable at greater periodical intervals than two months. And further, as to the powers now vested in industrial, assurance, and collecting societies by the Act of 1909, *see* the article COLLECTING SOCIETIES in the Appendix.

There are also certain provisions applicable equally to both collecting societies and industrial assurance companies. *Forfeiture.*—A forfeiture cannot be incurred by any member, or person insured, in consequence of default in payment of a contribution until after—(*a*) a notice has been served upon him stating the amount due by him, and informing him that in case of default of payment within a reasonable time, not less then fourteen days, and at a place specified in the notice, his interest or benefit will be forfeited; and (*b*) default has been made by him in paying his contribution in accordance with that notice. *Transfer.*—A member, or person insured, cannot become, or be made a member of, or be insured with any other society or company without his written consent, or, in the case of an infant, without the consent of his father or other guardian. But there are certain exceptions to this rule—(*a*) as respects a collecting society, in the case of an amalgamation, transfer of engagements, or conversion into a company under the Friendly Societies Act; or (*b*) as respects an industrial assurance company, an amalgamation or transfer of business under the Life Assurance Companies Acts. *General meetings* must be held at least once a year, and due notice thereof published. In all *disputes* between a society or company and a member or person insured, or any person claiming through either of the latter, recourse may be had to the local county court or court of summary jurisdiction; and this is so whatever the rules may say to the contrary. Amongst other *offences* specially provided against must be noticed the following: "If any person wilfully makes, orders, or allows to be made any entry, erasure in, or omission from a contribution or collecting-book, with intent to falsify that book, or to evade any of the provisions of this Act, he shall be liable to a fine not exceeding fifty pounds, recoverable at the suit of the chief or any assistant registrar, or of any person aggrieved."

INDUSTRIAL PROPERTY CONVENTION.—In 1883 an international convention concluded between certain of the Continental and South American states was signed in Paris. The object of the convention was the protection of industrial property, the latter term being understood as applying to (amongst other things) such forms of property as patents, industrial designs or models, trade marks, and trade names. In 1884 Great Britain formally acceded to the convention, and subsequently, in the same year, under the power reserved in section 103 of the Patents, Designs, and Trade Marks Act, 1883, an Order in Council was made whereby the provisions of that Act were declared to apply to the foreign countries parties to the convention. It is only under this Act that the convention derives any authority so far as

Great Britain is concerned. In addition to the forms of property already mentioned as being included in the term *industrial property*, that term also includes industrial products properly so called, and also agricultural products (wines, corn, fruits, cattle, &c.), and mineral products employed in commerce (mineral waters, &c.). The foreign countries who were originally, or who have since become, parties to this convention, are generally referred to as the Union for the Protection of Industrial Property. At present they are Belgium, Denmark, Brazil, Ecuador, France, Great Britain, Guatemala, Italy, Japan, Mexico, the Netherlands and their East Indian Colonies, Norway, Paraguay, Portugal, Salvador, San Domingo, Servia, Spain, Sweden, Switzerland, Tunis, Turkey, the United States, and Uruguay. Of these some are not strictly members of the Union, as they have never signed or acceded to the convention; but they have entered into such separate treaties with Great Britain as place them, so far as regards their own subjects and those of Great Britain, in much the same position as that occupied by countries members of the Union. Many of our colonies are the subject of like arrangements. We will now proceed to give an outline of the terms of the convention.

(*a*) The subjects or citizens of each of the states of the Union enjoy, in all other states of the Union, all the advantages afforded to them at home by their own laws; but this concession is limited to matters concerning patents, industrial designs or models, trade marks and trade names. They have therefore the same protection abroad as at home, and the same legal remedy against any infringement of their rights, but they are required to observe the formalities and conditions imposed by the internal laws of each state. And even persons who are not subjects or citizens of states in the Union are entitled to these privileges if they are domiciled or have industrial or commercial establishments in any of the states of the Union. (*b*) Any one who has applied for a patent, design, or trade mark or name, in one of the states of the Union has a certain interval allowed him for registration in the other states. This interval is twelve months for patents, and four months for industrial designs and models and trade marks; a month longer is allowed for countries beyond the sea. During this interval the original applicant is protected in the event of another registration, of publication of the invention, of the working of it by a third party, of the sale of copies of the design or model, or of the use of the trade-mark. (*c*) A patentee is bound to work his patent according to the requirements of the law of the country into which he introduces the patented objects; but no forfeiture is incurred until the expiration of three years from the date of application. (*d*) Trade-marks registered in the country of origin are admitted for registration, and so protected in all the other countries of the Union. That place where the applicant has his principal business establishment will be considered to be the country of origin of his trade-mark; but if his principal place of business is in a country not belonging to the Union, then the country to which he belongs will be considered to be the country of origin. Registration may be refused if the object for which it is required is considered to be contrary to morality or public order. The nature of the product upon which the trade-mark is to be affixed cannot, in any case, be an obstacle to registration. A trade name is protected in all the countries of the Union without need for registration, and this is so whether it forms part of a trade-mark or not. Any goods illegally bearing a trade-mark or name can be seized upon their importation

into those states of the Union in which the trade mark or name has a right to the protection of the law. The seizure is effected either at the request of the proper public official or of the person interested, according to the terms of the law of each state. And this power of seizure also exists in the case of goods falsely bearing the name of a place, as an indication of the place of origin, when that indication is joined to a fictitious trade name or one assumed with a fraudulent intention. Any manufacturer or merchant engaged in the manufacture or trade of those goods, who is established in the place falsely indicated as their place of origin, has a right to appear in the matter of their seizure as a "person interested." (*e*) Amongst other details, the convention provides for temporary protection to exhibits at official or officially recognised international exhibitions. There has also been established an International Office for the Protection of Industrial Property, the expense of which is defrayed by all the countries belonging to the Union, and the management and supervision of which is in the hands of the Central Administration of the Swiss Confederation. This office has its seat at Berne, and publishes a monthly journal called *La Propriété Industrielle*. The Convention also provides for conferences between the nations belonging to the Union.

INEBRIATE ACTS.—Under the general title of the Inebriates Acts, 1879 to 1898, are collected together certain Acts of the years 1879, 1888, and 1898. These Acts make provision for the establishment of retreats for habitual drunkards, and also give certain powers over the same class of people to the courts of summary jurisdiction in England and Ireland and to the sheriff or his substitute in Scotland. In a borough, the local authority is the borough council; and elsewhere, the county council. A retreat is inspected by an inspector, or assistant-inspector, at least twice a year. By the expression *habitual drunkard* is meant a person who, not being amenable to any jurisdiction in lunacy, is, notwithstanding, by reason of habitual intemperate drinking of intoxicating liquor, at times dangerous to himself or herself, or to others, or incapable of managing himself or herself and his or her affairs. The Acts not only provide for the establishment of *retreats*, but also for their regulation; they must be duly licensed by the local authorities, and the latter have an option to contribute to their maintenance. A licence to keep a retreat may be granted to any person, or to two or more persons jointly, for a period not exceeding two years, and this licence can be revoked or renewed at the discretion of the local authority. It is especially provided that one at least of the persons to whom a licence is granted shall reside in the retreat, and be responsible for its management, and if the licensee is himself a duly qualified medical man he may act as such in connection with his retreat, and need not, as another licensee would be required to do, employ an outside medical man. No one who is licensed to keep a house for the reception of lunatics can hold a licence under these Acts; the duty payable on a licence is set out in the table of EXCISE duties. Subject to the approval of the local authorities the licensee may appoint a deputy for a period or periods not exceeding in all six weeks in any one year; and subject to such approval his licence may be transferred. The local authorities, or the inspector of retreats, can order the discharge of patients from a retreat if it is found to be unfit for the habitation of patients or otherwise unsuitable for its purpose; and directly

the licensee receives notice of this order he must send a copy of it by post to the person by whom the last payment for each patient to be removed was made, or to one at least of the persons who signed the statutory declaration which accompanied the patient's application for admission.

Admission to retreat.—An habitual drunkard who desires admission into a retreat should apply in writing to the licensee of the retreat, stating therein the time during which he desires to remain there. This application is to be accompanied by the statutory declaration of two persons to the effect that the applicant is an habitual drunkard within the meaning of the Acts. The signature of the applicant is required to be attested by a justice of the peace, who can only lawfully do this after he has satisfied himself that the applicant is in fact an habitual drunkar dwithin the meaning of the Acts, and has explained to him the effect of his application for admission and of his reception into the retreat. The chief effect is that the applicant cannot leave the retreat until the expiration of the term he has proposed in his application, unless he is discharged before then by licence. This licence is obtainable from a magistrate in fit and proper cases. No one, however, can be detained in a retreat, on his original application, for a longer period than two years; but he may, upon a fresh application, have that period extended. Unauthorised absences from the retreat do not count in computing the term. Within two days after the receipt of a patient the licensee must send a copy of the application to the local authority and to the Home Office.

Escape and change of residence.—Should a patient escape from a retreat, the licensee may obtain a warrant for his apprehension from a magistrate of the district in which he is found, or in which the retreat is situated. If the patient desires a change of residence he can only obtain it by the licence of a magistrate granted upon the request of the licensee. This licence will permit him to live with any trustworthy and respectable person, named in the licence, willing to receive and take charge of him for a definite time for the benefit of his health; but, unless renewed, the licence will remain in force for only two months; during such an absence, unless the licence is revoked in the meanwhile, the time thereof will count in computing the patient's term. The licence will be forfeited if the patient escapes from his guardian, or refuses to abstain from indulgence in alcoholic liquors; in the event of such an escape the patient may be apprehended on a warrant.

Visits of friends.—A patient is bound to conform to the rules of the retreat; should he wilfully neglect or refuse so to do he may be fined or imprisoned. He is not, however, altogether at the mercy of the licensee and officials, for, under certain conditions, specified in the special regulations, he may be visited by his friends and those interested in his welfare, and engage in correspondence with them. If there is any difficulty in regard to a visit, the parties concerned should take note of section 18 of the Act of 1879, which provides that a judge of the High Court, on an application *ex parte* at chambers, or a County Court judge, within whose district the retreat is situated, may at any time authorise any one to visit and examine a patient, and to inquire into and report upon any matters which the judge may think fit in relation to the patient. On receiving the report, the judge has power to discharge the patient. There are also special official regulations upon matters of detail in the management of a retreat and the patients; these the

licensee is bound to conform to. If a patient should die in a retreat, the principal medical attendant must draw up and sign a certain statement. This statement should contain particulars of the cause of *death*, and copies thereof, certified by the licensee, are to be sent by him to the coroner and to the registrar of deaths for the district, and to the clerk of the local authority, and to the person by whom the last payment was made for the deceased, or to one at least of the persons who signed the above-mentioned statutory declaration; a penalty is incurred in the case of non-compliance with this provision. A similar statement is required in the case of the death of a patient who happens at the time to be living outside the retreat; this is to be drawn up and signed by a duly qualified medical practitioner, and he must send copies of it to the same persons as in the case of a death in a retreat.

Both the licensee and his patient are liable to penalties in cases of contravention of the law or of regulations for the time being in force relating to inebriates' retreats. But particular attention may be usefully drawn to *offences* by officers and servants in a retreat. By section 24 of the Act of 1879 an offence will be committed by any one who does any of the following things: (*a*) Ill-treats, or being an officer, servant, or other person employed in or about a retreat, wilfully neglects any patient detained therein; (*b*) induces or knowingly assists an habitual drunkard detained in a retreat to escape therefrom; (*c*) without the authority of the licensee or the medical officer of the retreat (proof whereof lies upon him) brings into any retreat, or without the authority of the medical officer of the retreat, except in case of urgent necessity, gives or supplies to any person detained therein any intoxicating liquor, or sedative, narcotic, or stimulant drug or preparation.

For the right of the husband or wife of an habitual drunkard to obtain a separation under the provisions of the Licensing Act, 1902, reference should be made to the article on SUMMARY MATRIMONIAL CAUSES.

Criminal Habitual Drunkards are especially provided for in the Act of 1898. Any one convicted of an offence punishable with imprisonment or penal servitude, committed under the influence of drink, or contributed to by drunkenness, the offender admitting that he is, or is found by the jury to be, an habitual drunkard, may be detained in a State inebriate reformatory for three years in addition to or in substitution for any other sentence. There are also certain offences specially provided for. If a person commits any one of these, and has, within the twelve months preceding the date of the commission of the offence, been convicted summarily at least three times of any of those offences, he will, if he is also an habitual drunkard, be liable on summary conviction to a similar detention of three years. The following is an enumeration of these offences:—(1) Being found drunk in a highway or public building or place, or on licensed premises; (2) being guilty while drunk of riotous or disorderly behaviour in a highway or public building or place; (3) being drunk while in charge, on any highway or other public place, of any carriage, horse, cattle, or steam-engine; (4) being drunk when in possession of any loaded firearms; (5) failing when drunk to quit licensed premises when requested; (6) failing when drunk to quit any premises or licensed refreshment house when requested; (7) being found drunk in any street or public thoroughfare within the Metropolitan Police District, and being guilty while drunk of any riotous or indecent behaviour; (8) being drunk in any street, and

being guilty of riotous or indecent behaviour therein; (9) being intoxicated while driving a hackney carriage; (10) being drunk during employment as a driver of a hackney carriage, or as a driver or conductor of a stage carriage in the Metropolitan Police District; (11) being drunk and persisting, after being refused admission on that account, in attempting to enter a passenger steamer; (12) being drunk on board a passenger steamer, and refusing to leave it when requested; (13) in Scotland, being found in a state of intoxication and incapable of taking care of himself, and not under the care or protection of some suitable person, in any street, thoroughfare, or public place; (14) in Scotland, being in a street drunk and incapable, and not under the care or protection of some suitable person; (15) in Scotland, being drunk while in charge in a street or other place of a carriage, horse, cattle, or steam-engine, or when in possession of loaded firearms; (16) in Scotland, being found drunk in a shebeen.

INFANTS.—Until a person attains the age of twenty-one years he is, in law, an infant, and as such his general rights and liabilities vary from those incident to the status of a person of full age. Generally speaking, he is incapable of entering into contractual rights and liabilities, and herein lies the prime distinction of an infant from one who, being of full age, is *sui juris*. An infant comes of full age, or attains his majority, on the day before his twenty-first birthday; this, though an important fact, seems not to be generally known. Chief-Justice Holt cites a case where A. was born on the 3rd of September, and on "the 2nd September twenty-one years after he made his will; and it was held a good will, because the Court would not make a fraction of a day; and consequently, being of the age of twenty-one years, he might devise his lands."

Contracts.—Except in respect of necessaries, an infant cannot bind himself by contract. This rule is strictly adhered to by the courts, and no one is allowed to evade it by turning a matter of contract into a matter of personal wrong or tort. But there is another rule, to be presently referred to, which limits the operation of the general rule in case the contract is for the infant's benefit. The general rule is also subject to the provisions of the Infants' Relief Act. An infant is generally liable, like other people, for the consequences of any tort he may commit; and there is consequently, in cases where the facts permit, a temptation to persons who have suffered from an infant's breach of contract to endeavour to obtain a recompense by proceeding against him for damages for a wrong. On the other hand, an infant might resist a claim for damages for a tort by trying to show that the matter out of which the claim arises is substantially one of contract and not of tort. But such a defence will not always succeed, as witness the following cases. In *Burnard* v. *Haggis* the infant hired a mare for riding on the road, and though he was told that she was not fit for leaping, put the mare to a fence and caused her death; it was held that he was guilty of an actionable wrong, and therefore liable irrespective of the question of necessaries. And so in *Walley* v. *Holt*, where an infant over-drove and ill-treated a hired mare, it was held that he had committed a separate and independent wrong, quite apart from the contract of hire, and that he was therefore liable for that wrong in an action for damages to which a defence of infancy would be of no avail. And so also, *in re Seaver*, where an infant who had wrongfully

received and retained his master's money, agreed, when he came of age, to repay it, the agreement was held to be binding, as when it was made the master was entitled to sue him in tort, and that therefore there was a good consideration for the agreement. An account stated by an infant is not, as such, binding upon him; not even if some of the items therein are in respect of necessaries; nor is it even evidence against him, when he comes of age, to show that he was supplied with the necessaries the subject of those items.

The contract of a *trading infant* is no exception to the general rule; in the words of Lord Kenyon, "the law will not allow an infant to trade." This does not mean, however, that it is illegal, in the extreme sense of the word, for an infant to trade and carry on business. In *Dilk* v. *Keighley* the plaintiff was a writing painter, the infant defendant being a glazier and painter, and the plaintiff's claim was for work done by the plaintiff in the way of his trade, in painting and gilding letters for the defendant's customers. It was contended that those things were to be deemed necessaries by which an infant gained his living: that in the present case the defendant carried on trade on his own account, and the work having been done for his customers, for which he himself had been paid, and whereby he lived, was to be deemed necessaries for which he should be liable. The contention failed, however, on the ground that the claim was one which assumed that an infant had a legal right to trade, which was an assumption the Court could not entertain. Infancy is no answer to a claim for any wages which may have accrued due after majority, the agreement for which was made during the infancy. Where an infant had during his infancy held himself out as being a member of a certain *partnership* firm, and had not repudiated the partnership when he came of age, he was held liable for goods supplied to the firm, after his coming of age, on the credit of his membership thereof. Money may be recovered back which has been paid by an infant, during his infancy, towards the purchase price of a partnership upon a mere agreement to enter into partnership; and this is so even if it is agreed that the money is to be retained by the other party in case the infant should fail to enter into the partnership. But a partnership premium paid by an infant cannot be recovered back if, before the repudiation by him of the contract, he has actually entered into the partnership and its profits. In *Everett* v. *Wilkins* an infant agreed to buy a one-half share in a certain business, and paid an instalment on account of the purchase price; it was also agreed that the seller should provide the infant with board and lodging, but that the latter should not receive any of the profits of the business until the whole of the purchase-money had been paid; upon rescinding this contract before completion the infant was allowed to recover back the instalment he had paid less the amount of expense incurred by the seller in providing him with board and lodging. Where one of the partners in a firm is an infant, a creditor can only obtain a judgment against the firm "other than the infant partner," and other further proceedings by way of execution or bankruptcy are restricted in a like manner (*Lovell and Christmas* v. *Beauchamp*).

Shares in a Company.—Notwithstanding their contractual disabilities, infants may be signatories to the memorandum and articles of association of a company; and it was held in *Laron's Case* that a subsequent avoidance by an infant of such a contract will not invalidate the registration of the com-

pany, or any intermediate dealings affecting the rights of third persons. But where an infant applies for shares, and the directors make an allotment to him knowing that he is an infant, those directors will be personally liable as for a misfeasance or breach of duty. According to *Mann's Case*, a transfer of shares to an infant is invalid, though difficulties might, indeed, arise as to the effect of such a transfer, for it would seem that the infant ought to have an option, after he comes of age, whether he will repudiate or ratify the transfer. The subject again came before the Court in *Capper's Case*, but there these difficulties did not arise, for no dividend had been paid or received; an order had been made for the winding-up of the company, and the infant was not then of age. There, Capper, who was a registered shareholder in the company, sold his shares to one Simonides, who, without the knowledge of Capper, inserted in the deed of transfer the name of his clerk, Amery, an infant, as transferee, and Amery was accordingly registered as holder of the shares. More than a year afterwards Capper, being then informed by the company that Amery was an infant, was called upon for payment of a call. This call was not paid by Capper, and he made no move for the rectification of the register; when sued he then resisted the claim, but to no purpose, for he was ordered to be placed on the list of contributories. In parting with his shares, Capper should have seen that he was handing them over to a person who could be effectually placed on the register. *See* JOBBER.

When any one is sued for calls upon shares which he took up when an infant, a plea of infancy will only be a defence if he can also prove that he repudiated the contract within a reasonable time after he came of age. To effectually repudiate the contract he should give specific notice of repudiation to the company within that time, and require his name to be struck off the register of shareholders, for continuing to hold the shares after he has attained full age will, in the absence of evidence of repudiation, be taken as *primâ facie* proof of a ratification of the contract. In *Hamilton* v. *Vaughan-Sherrin* an infant applied for shares, made a payment in respect thereof, and obtained an allotment. She afterwards repudiated the contract and had her name taken off the register, and the Court decided that she was entitled to the repayment of her money.

Liability of Parent.—Though a child is entitled to be maintained by its father, and the father is under the corresponding liability to maintain the child, that relationship is bound up solely between the parent and the child. In order that any one should be able to maintain another person's child and to obtain payment therefor from the parent, it is absolutely necessary that there should have been a contract to that effect between the parties. Such is the general rule, and it would seem that the only exception thereto would be—and this is doubtful—where the third party has maintained the child with necessaries in consequence of the parent's desertion. And this exception would certainly not arise if at the time of the desertion the parent had reasonable ground to suppose that the child would be provided for. The main question in cases of the alleged liability of a parent to a third party for the maintenance of the former's child, would be whether there was, in fact, a contract for payment. This contract need not be in writing, nor need it be express; it is sufficient, in order to saddle the parent with liability, if the contract can be implied from the whole facts of the case. But no such

contract was allowed to be implied in a case where the father had allowed his son a sufficiently reasonable sum for his expenses. And whether such a contract can be implied has been left for the decision of a jury in the following two cases—(*a*) where the infant had bought goods which were necessary and suitable to his situation in life; and (*b*) where the father had seen his son (a boy of fourteen) wearing the suit of clothes the payment for which the father was being sued. It will thus be seen that the question of contract or no contract is one of fact which must depend for its answer upon the special circumstances of each case. But if a tradesman or other person were to collude with an infant, and furnish him with clothes or other articles to an extravagant degree, then, without any question, he would certainly be unable to recover any demand for payment he might make of the father.

Necessaries.—Section 2 of the Sale of Goods Act, after declaring that a capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property, proceeds to adopt the common law rule "that where necessaries are sold and delivered to an infant or minor . . . he must pay a reasonable price therefor." In this section "necessaries" are explained as meaning "goods suitable to the condition in life of such infant or minor . . . and to his actual requirements at the time of the sale and delivery." But an infant is not liable upon a mere bill of exchange or promissory note under any circumstances—not even, as the case of *in re Soltykoff* decides, though the bill or note is given for the price of necessaries supplied to him during infancy. This doctrine is consistent with a long series of cases that an infant cannot make himself liable, by the custom of merchants, either by a bill of exchange or by a promissory note. But Lord Esher in the above case rested his decision upon the general principle that an infant can only make himself liable upon a contract for the supply of necessaries, and that it is not necessary for the protection of persons dealing with infants that they should be liable on bills. In Soltykoff's case the person who proceeded upon the bills was an indorsee of them; but there is nothing to prevent the original drawer of a bill from proceeding against the infant upon the contract in respect of which it was given. The real point is that no one can sue an infant upon his bill of exchange by virtue of the custom of merchants. An infant's covenant in a deed may give rise, however, under certain circumstances, to an action thereon against him. This appears from the case of *Walter* v. *Everard*, which was an action by a master against his apprentice, who had then attained full age, for the balance of premium due under the defendant's covenant in the apprenticeship deed. The circumstances which enabled the plaintiff to succeed in that action were, first, that he did not rely solely upon the apprentice's covenant as such, and second, that he could show that the covenant was in fact for the price of necessaries. In effect, the case was necessarily treated just as though there had been no deed. The Court inquired whether the things in question were in fact supplied to the infant, and whether, according to the ordinary rule, that which was supplied was necessary. It was finally held that the liability of the infant for necessary instruction, duly provided, stood upon the same footing as that for ordinary necessaries supplied to him, and that consequently the fact that he had entered into a covenant under seal for the

payment of the premium did not prevent him being liable for the amount claimed.

Whether or no the goods the subject of a claim against an infant are necessaries, is a question of fact to be determined by a jury subject to the direction of the judge; indeed, if the latter is of opinion that there is no evidence at all of them being necessaries he may dismiss the action and refuse to allow the question to go before the jury. The principle by which the question can be determined is set out in the above-quoted extract from the Sale of Goods Act. The social position of the infant is perhaps the determining factor; but there is another, perhaps equally important. That is whether he was at the time sufficiently well supplied with goods of the class sold to be absolved from the necessity of entering into a contract for credit. It does not matter whether the person who sold the goods on credit had or had not grounds for believing the infant to be not so supplied; the material fact, whether known by that person or not, is whether the infant was or was not actually supplied with the necessary goods. Some goods are obviously necessaries, and there is little difficulty in recovering their price from an infant. Of such necessaries may be mentioned food, board and lodging, clothing, medicine and medical attendance. When, however, the goods supplied are such as liveries, horses, cigars, and so forth, they are more obviously luxuries than necessaries, and one must carefully consider the social position of the infant before deciding under which head they should be classed. Even what were luxuries some years since may now have become necessaries of life; and certainly, what may be a luxury to a man of one social position may easily be a necessity to the man of another. It may, however, be laid down as a general rule that purely ornamental articles, not really requisite for any one, can never be necessaries, and the price therefor can never be recovered from an infant. If the goods are not strictly of this description, the question may then be raised whether they were bought for the necessary use of the infant in order to support himself properly in the degree, state, and station in life in which he moved. In 1840, a Cambridge infant undergraduate, the son of a rich member of Parliament, was held liable for the price of a watch, rings, and pins, which had some value in use apart from their ornamental characteristics. And in *Ryder* v. *Wombwell*, the defendant, who was an infant son of a baronet and was entitled to £20,000 upon attaining his majority, was allowed by the Court to successfully plead his infancy to a claim for the price of a fifteen-guinea silver-gilt goblet and a £25 pair of studs.

Though a tradesman or other person may safely give credit to an infant for necessaries, yet one who lends an infant any money wherewith to purchase them will be unable to recover back his loan. The point is thus stated in *Earle* v. *Peake*, a case of the reign of Queen Anne, "It may be borrowed for necessaries, but laid out and spent at a tavern. A feme covert [married woman] may buy necessaries, and her act shall make the husband chargeable; but she cannot borrow money to lay out for necessaries. So it is of an infant; he may buy necessaries, but he cannot borrow money to buy; for he may misapply the money, and therefore the law will not trust him but at the peril of the lender, who must lay it out for him, to see it laid out, and then it is his providing, and his laying out so much money for necessaries for him."

There is, however, some authority for the statement that an infant who borrows money and actually applies it towards payment of his debts for necessaries is, in equity, liable for the repayment of the loan. In the case of necessaries supplied to an infant's wife he is as much liable therefor as if they had been supplied to himself, provided, of course, that he has not been relieved of his general liability for the support of his wife. An infant widow is liable to pay for her deceased husband's funeral expenses. A trading infant is liable for the price of goods supplied to him for trading purposes when those goods have been consumed by him as necessaries, or were, in fact, necessaries for him; so where an infant rented a house and carried on therein his business of a barber, it was left to the jury to decide how far that rent came within the term of necessaries.

Misrepresentation as to age.—Where an infant obtained a lease of a house on the implied representation that he was of age, the lessor was allowed to regain possession and the lease was declared void, but the infant was held not to be liable for his use and occupation of the premises. Generally speaking, a false representation made by an infant that he is of age, whereby he induces any one to contract with him, has always been a fraud which equity will relieve the injured person against. And now, since the fusion of equity and law, such a false representation will overthrow a defence of infancy. The following cases are interesting in connection with such a misrepresentation. *In re Unity Banking Association* a partner entered into a joint and several bond to secure money lent to the firm. As part of the security he agreed to insure his life, and for that purpose signed a declaration that he was of the age of twenty-two. But he was an infant. When he attained his majority he became a bankrupt, and, because of that misrepresentation, was held liable in equity for the debt. The case of *Cornwall* v. *Hawkins* was in respect of an agreement in restraint of trade. An infant agreed with his employer not a carry on a business similar to that of the latter within a certain district for two years after quitting the employment. At the time of the agreement the infant falsely represented himself to be of age. Upon his leaving that employment the infant, relying upon his privilege of infancy, ignored his agreement and set up in business within the proscribed limits. But, because of the misrepresentation, his former employer obtained an injunction restraining the breach of agreement. This effect of misrepresentation can only be the outcome of an express false misrepresentation by the infant. If the latter makes no false assertion, and the other party to the contract believes him to be of full age and deals with him upon the mere supposition, for example, that only adults can enter into the particular contract, the infant will retain the privilege of his defence of infancy.

Agreements for benefit of infant.—There is a most important rule which varies the general rule of law relating to the contracts of infants; it is, however, not only perfectly consistent with the principle underlying that general rule, but is even a necessary conclusion of it. This rule is that an agreement made by an infant will be binding upon him if, at the time the agreement is made, it is for his benefit. The case of *Walter* v. *Everard*, already quoted, is a good illustration of the application of this rule; for if the jury in that case had found that the apprenticeship employment had not been a "necessary" for the infant—in other words, for his benefit—the plaintiff would

have been unable to have recovered the premium he there sued for. Not every contract for an infant's employment is beneficial and therefore binding upon him. This fact the employer discovered in *Reg.* v. *Lord*, where the infant's contract bound him to serve during a certain time for wages, but enabled the employer to stop the work whenever he chose, and retain the wages during stoppage; this contract was held to be wholly void, as not being beneficial to the infant. But in *Evans* v. *Ware*, the defendant, when an infant, agreed with his employer not to carry on a certain business within certain limits. The infant afterwards began to carry on business in breach of his agreement; but as he had entered into the agreement on consideration of the employment, which was a beneficial one, the Court enforced the agreement on the employer's behalf by granting an injunction. It must not be thought that this rule only applies to contracts of apprenticeship or service. Where a railway company contracted with certain passengers that, in consideration of reduced fares, the company should not be liable for negligence, and further, that their infants should indemnify the company against an action under Lord Campbell's Act, it was held that the contract was not binding upon an infant passenger as it was too prejudicial to his real interests. The rule has also been held to apply to an agreement between a master and his infant servant, whereby, for certain considerations beneficial to the servant, the latter contracted himself out of the benefits of the Employers' Liability Act. Where an agreement of this class was founded upon considerations which the Court did not think beneficial to the infant, it was held not to be binding upon him.

The following two contracts of service have been held to be unfair to the infant servant, invalid, and incapable of being enforced against him under the Employers and Workmen Act, 1875. In *Mcakin* v. *Morris* the infant was apprenticed by a deed which contained a provision that the master should not be liable to pay wages to the apprentice so long as his business should be interrupted or impeded by or in consequence of any turn-out, and that the apprentice might, during any such turn-out, employ himself in any other manner or with any other person for his own benefit. In *Corn* v. *Matthews* the apprenticeship deed contained stipulations of a similar nature. Another deed of apprenticeship worth notice is that one in *De Francesco* v. *Barnum*. This bound the infant apprentice for a term not to accept employment except from the master or with his consent, and while it imposed no corelative obligation upon the master to provide employment for the apprentice, was made determinable by the master only. The Court decided that the deed was unreasonable, and not for the benefit of the infant.

Ratification.—By section 2 of the Infants' Relief Act, 1874, it is provided that "no action shall be brought whereby to charge any person upon any promise made after full age, to pay any debt contracted during infancy, or upon any ratification made after full age of any promise or contract made during infancy, whether there shall or shall not be any new consideration for such promise or ratification after full age." A person of full age, therefore, who desires to make valid and effectual some contract into which he entered when an infant, can only do so by way of a new contract upon a fresh consideration; mere ratification of the original infant contract will not suffice. Such a new contract may be inferred from the conduct of the parties. In

May in one year an infant purchased some land from a building society, and in July of the same year he came of age; in consequence of continuing for four and a half years afterwards to pay monthly instalments of the purchase-money he was held to have thereby entered into a new contract and to be liable for the balance due. If a man accepts a bill of exchange, after he has attained his majority, for a debt incurred during his infancy (though not in respect of necessaries), he will be liable thereon, as on a new contract, to an indorsee for value of the bill. But, on the authority of *Smith* v. *King*, he would not have been liable upon the bill if the indorsee had taken it with notice of the circumstances; not even if the bill had been given as a compromise of legal proceedings. Should any one have advanced money to an infant upon the security of a mortgage, he will be able to make his security valid and effective when the infant attains his majority if, following *in re Foulkes*, he reconveys the property to the mortgagor, makes him a small additional advance, and takes a new mortgage from the mortgagor for both the original and additional advance.

An extension of the principle of the above section of the Infants' Relief Act is found in the Betting and Loans (Infants') Act, 1892. Section 5 provides that: "If any infant, who has contracted a loan which is void in law, agrees after he comes of age to pay any money which in whole or in part represents or is agreed to be paid in respect of any such loan, and is not a new advance, such agreement, and any instrument, negotiable or other, given in pursuance of or for carrying into effect such agreement, or otherwise in relation to the payment of money representing or in respect of such loan, shall, so far as it relates to money which represents or is payable in respect of such loan, and is not a new advance, be void absolutely as against all persons whomsoever. For the purposes of this section any interest, commission, or other payment in respect of such loan shall be deemed to be a part of such loan."

Generally.—An infant who has a right of action should not wait until he comes of age before proceeding, but should sue by his next friend or guardian *ad litem*. The Court will not compromise a claim in which infants are interested against the wishes of the next friend or guardian *ad litem*, who are acting under the advice of counsel. To allow a compromise of an action on behalf of an infant, the Court will require evidence that the proposed compromise has been advised by counsel and is to the infant's advantage. He cannot sue for specific performance, because the remedy is not equally available against him by the other party. If an infant has bought goods, not necessaries, and has consumed them and paid money therefor, he cannot afterwards recover back the money so paid, notwithstanding the fact that he could never have been forced to make the payment; and this rule has greater force, if possible, where the payment has been made on account of a contract for necessaries. Nor can it be recovered even when paid without a valuable consideration. In *Lawrie* v. *Bankes*, where reasonable sums of money had been advanced by army agents to an infant for his regimental expenses, the agents, there being no fraud in the transaction, were allowed a lien in respect thereof upon certain moneys of the infant that came into their possession. If a tradesman should obtain securities from extravagant infant customers, the Court will direct an inquiry into the transactions. Under the

provisions of 18 and 19 Vict. c. 43, an infant's *marriage settlement* is absolutely binding if, in the case of a male, the infant is twenty years of age, or in the case of a female, she is seventeen years of age, and in each case the High Court has sanctioned the settlement.

Torts.—It has already been said that infants are generally liable for their torts. Thus if a little boy should throw a stone and injure one's dog he may be sued for the damage. But notwithstanding this rule it is doubtful whether every infant would be liable for a tort of which a necessary ingredient is malice or wrongful intention. In such a case it would only be a reasonable defence for the child to plead that it did not know the nature and consequences of its act. This topic of an infant's position with regard to TORTS is more fully discussed in the article on that subject.

INFECTIOUS DISEASE.—Such, amongst others, would be croup, cholera, diphtheria, erysipelas, enteric, puerperal, typhus, typhoid, and scarlet fevers, or smallpox. By the various Public Health Acts and by the Infectious Disease (Notification) Act, 1889, and the Infectious Disease (Prevention) Act, 1890, provision is made for dealing with the person and property of people suffering from an infectious disease. It is here sufficient to note that any one so suffering must at once notify the fact to the local authorities; and must not expose himself in a public place unless he takes proper precautions against infecting the public; nor may he enter any public conveyance without first informing its owner, driver, or conductor of his condition. No one is allowed to dispose of any bedding, clothing, or similar property which has been exposed to infection, unless and until it has been disinfected or the authorities have given their consent to its disposal. Disinfection is necessary before a room, in which an infected person has been, can be lawfully used again; and a public conveyance which has been used by any one suffering from an infectious disorder must be disinfected at once. The head of the house to which the sick person belongs is the one primarily required to give the necessary notices; after him come the relatives or those in charge of the sick person or of the house. The medical attendant must also give notice. A penalty of £2 is incurred by any one who, knowing he is suffering from an infectious disease, engages in an occupation or business and thereby risks the spreading of the infectious disease. *See* CONTAGIOUS DISEASES; DAIRIES.

INFORMATION is a means by which a criminal charge may be brought before a petty jury without the intervention of the grand jury. It is a formal written statement of the offence alleged to have been committed, and can only proceed from the Attorney-General or the Master of the Crown Office. It is available in cases of misdemeanour only; and if a private person desires to proceed by way of information, he can only do so through the Crown Office and by leave of the Court. *See* INDICTMENT.

INITIALS.—With regard to wills, the question has on one or two occasions come before the courts whether affixing initials or marks is a sufficient compliance with the statutes requiring signature. The first case of any authority (*Baker* v. *Dening*) was one in which the testator had signed by making a **mark**, and it was held that this would be a sufficient signing, and that it would not be necessary to prove that the testator could not write his name at the time. The Court refused to even permit a doubt to exist as to the validity of the rule that no inquiry need be made as to the ability of the

party to write his signature. A person being thus able to sign by merely making a mark, it naturally results that he is equally able to sign by means of a mark in the form of his *initials*. And this view was taken in *Blewitt's Case*, where it was decided that the initials of a testatrix and of the attesting witnesses in the margin of the will opposite interlineations would be sufficient to render the interlineations valid, as having been executed in as regular a manner as that required for the original execution of the will. And *see*, as regards contracts generally, under the heading CONTRACT.

INJUNCTION.—This judicial process may be defined as one whereby the Court causes a party to do a particular thing or to refrain from doing a particular thing, according to the exigencies of the case. An injunction may be, as regards its particular nature, either restrictive or mandatory; and an injunction of either one of these classes may be interim, interlocutory, or perpetual. A *Restrictive* injunction is one that restrains the commission of an act, whilst a *Mandatory* injunction will compel the performance of an act. An injunction is usually obtained in the High Court; but in appropriate cases the County Courts have also a jurisdiction to grant injunctions. The application therefor should be supported by an affidavit verifying the facts complained of. It would be useless, however, in an article of this description to attempt to state the various rules which govern the practice of the courts as to granting or dissolving injunctions. They are laid down at length in the various books of practice, and do not admit of compression. An *Interim* injunction is one which may be obtained *ex parte* before even the writ is served upon the defendant; but such an injunction is granted only in cases of extreme urgency and necessity, and when the Court has all the facts before it, and is always limited to a short period, during which the defendant or party against whom the injunction is sought will have an opportunity to appear before the Court. An *Interlocutory* injunction is one which is granted before and until the trial of the action. On the application for this injunction the defendant has an opportunity to appear and oppose its being granted. The Court will not grant an interlocutory injunction unless it is satisfied that there is a serious question to be tried at the hearing of the action, and that on the facts before it there is a probability that the plaintiff is entitled to relief. When obtaining an interlocutory injunction the plaintiff is usually required to give an undertaking to answer any damages which the defendant may have suffered in case it should turn out that the injunction was improperly obtained against him. The interim and interlocutory injunctions are particularly useful in stopping or preventing wrongs or breaches of contract for which the ordinary legal procedure is too slow. A *Perpetual* injunction is one which forms part of the judgment given at the trial of the action upon its merits; by this injunction the defendant is perpetually inhibited from the assertion of a right, or perpetually restrained from the commission of an act which would be contrary to equity and good conscience.

An injunction is not by any means granted as a matter of course; it is a process in regard to which a judge has a wide discretion. No hard and fast principle can be laid down as to the exercise of this discretion, though individual judges have been always endeavouring to state a rule which shall approximate somewhat to such a principle. According to the great American jurist, Chancellor Kent, the granting and continuing of an injunction must always rest in sound discretion, to be governed by the nature of the case.

But there is one thing fairly certain, that the Court will, in many cases, interfere and preserve property *in statu quo* during the pendency of a suit in which the rights to it are to be decided; doing this, however, without expressing, and often without any means of forming, any opinion as to those rights, simply seeing that there is a substantial question to be decided and that it can preserve the property until that question is regularly disposed of; in granting an injunction for such a purpose the Court does not assume to decide upon the merits of the case in favour of the plaintiff. In one case a Vice-Chancellor said that "there are two points on which the Court must satisfy itself: first, it must satisfy itself, not that the plaintiff has certainly a right, but that he has a fair question to raise as to the existence of such a right; the other is whether interim interference on a balance of convenience or inconvenience to the one party and to the other is or is not expedient." Indeed, the comparative convenience or inconvenience of granting or withholding an injunction is a test most frequently resorted to. The Court would not, for example, stop a going trade; it will never adopt a course which would result in a very great difficulty in giving compensation on the one side or on the other. On the other hand, if one party is undoubtedly entitled to an injunction against another, the Court will not, except on account of serious considerations, refuse to grant the injunction and compel him to seek satisfaction in damages. The case of *Shelfer* v. *City of London Electric Lighting Co.* lays down the principle that if the injury to the plaintiff's rights is a small one, capable of being estimated in money and adequately compensated by a small payment, and the case is one in which it would be oppressive to the defendant to grant an injunction, the Court will then generally give damages in substitution for an injunction. Any one who has suffered a wrong should be careful that he does not acquiesce therein [*see* ACQUIESCENCE] or delay proceeding for his remedy, as thereby he may lose his chance of obtaining an injunction.

Injunctions are never granted to restrain threatened injuries, however serious and irreparable, unless the plaintiff's legal rights will be thereby invaded; nor will they issue to restrain the commission of legal acts, notwithstanding any malicious motive which may have prompted those acts. Subject to the rule excluding an injunction in a case where damages are a sufficient compensation, it may be taken that in order to protect private rights injunctions are freely granted to abate nuisances. An injunction has been granted against a circus, the performances in which were to be carried on for eight weeks near the plaintiff's house, and which created a noise that was a serious disturbance to the plaintiff's enjoyment of his home. So would one be granted against any one who carried on, not under statutory powers, an offensive trade which was a nuisance, injuring and destroying the surrounding trees and vegetation for example. And so in cases of breach of contract, as to restrain a former employee from setting up in business within a certain district when he had covenanted with his employer not to do so. And to restrain parties from negotiating notes or bills of exchange, to prevent the alienation of a specific chattel, and to prevent waste by felling timber or pulling down buildings. And so also in cases of infringement, as where any one manufactures goods protected by patent without the patentee's permission, or wrongfully publishes a book protected by copyright. And in the case of a trespass, as in *Goodson* v. *Richardson*, where the defendant

having laid water-pipes, without statutory authority, in the highway in front of the plaintiff's premises, the plaintiff being the owner of the freehold, a mandatory injunction was granted to remove the pipes. The Court held that while the soil under the highway was of no value to the plaintiff, yet the defendant by laying the pipes had violated his rights, and while the present damages were nothing, still, if the pipes were permitted to be there without objection for the statutory period the defendant would thereby acquire the right of continuing so to use them. Injunctions are also frequently granted in respect of ancient lights, party walls, lateral supports, and water privileges.

INLAND REVENUE.—By section 39 of the Inland Revenue Regulation Act, 1890, this term is declared to mean "the revenue of the United Kingdom collected or imposed as stamp duties, taxes, and duties of excise, and placed under the care and management of the commissioners." From this it will be seen that the inland revenue is derived from three distinct sources, and that it is managed by a body of officials known as Commissioners, or more fully, Commissioners of Inland Revenue. These three sources are (*a*) stamp duties, (*b*) taxes, and (*c*) excise duties. The first of these is dealt with in the articles on STAMPS, DEATH DUTIES, and POST-OFFICE; the second is dealt with in the articles on the HOUSE TAX, INCOME TAX, and LAND TAX; the third is the subject of the article on the EXCISE. This article concerns itself more particularly with the regulation of the inland revenue generally.

Commissioners and officers.—Certain commissioners, known as Commissioners of Inland Revenue, are appointed by the Crown for the collection and management of the inland revenue, and they hold office during his Majesty's pleasure. The appointment being by the Crown, by letters patent under the Great Seal, their office is naturally one of dignity and position. There are four of these officials at present. Every power is conferred upon them that may be necessary for executing the law relating to the inland revenue, but in the exercise of their duty they are subject and subordinate to the authority, discretion, and control of the Treasury and the Auditor-General, whose orders and instructions they must always obey. They are collectively known as the "board" of Commissioners, and have their chief office at Somerset House in London; it is by them that all inland revenue officers are appointed who are not required by law to be appointed by any other authority. Should they commit a breach of any of their statutory duties, they may be proceeded against by a writ of mandamus; but they are not bound by the acts of their subordinates, nor are they responsible therefor. They cannot be made to give any information as to the transactions of their department. It is a misdemeanour for an officer whose duties have relation to the excise to deal or trade in any goods subject to any excise duty, or to carry on or be concerned in any trade or business subject to the law of excise; on conviction he will forfeit his employment and be incapable of ever holding any office or employment in or relating to the excise. No commissioner or inland revenue officer employed under the authority of the Commissioners can be compelled to serve as a mayor or sheriff, or in a corporate or parochial or other public office or employment, or on a jury or inquest, or in the militia. The salaries and superannuation

allowances of such persons are not assignable, nor can they be taken under any legal process, unless they are commuted, or are dealt with under the Bankruptcy Acts. These officers are well protected in the execution of their duties, for a fine of one hundred pounds is imposed upon any person who by himself, or by any person in his employ, obstructs, molests, or hinders —(*a*) any officer or any person employed in relation to inland revenue in the execution of his duty, or of any of the powers or authorities by law given to the officer or person; or (*b*) any person acting in the aid of any officer or any person so employed. And hard labour is the punishment meted out to any one who, not being an inland revenue officer, takes or assumes the name, designation, or character of an officer for the purpose of thereby obtaining admission into any house or other place, or of doing or procuring to be done any act which he would not be entitled to do or procure to be done of his own authority, or for any other unlawful purpose.

No one may *bribe* an inland revenue officer. If any person employed in connection with the inland revenue directly or indirectly asks for or receives money or other recompense, or a promise or security therefor, to do or abstain from doing, or to conceal or connive at an act whereby the Crown may be defrauded, he will incur a fine of £500. And a similar fine is incurred by any like person who enters into, or acquiesces in, any collusive agreement with any other person with a view of defrauding the revenue. The same penalty is imposed upon the other person to any of the foregoing transactions, and who enters into them in order to corrupt the officer and to prevail upon him to do or abstain from doing or to conceal or connive at anything whereby the revenue may be defrauded, or to do or allow to be done or omitted any act contrary to his duty. But the great body of offences against the inland revenue laws are those special ones relating to stamps, income tax, excise, and other branches of the revenue.

Legal proceedings.—Certain legal proceedings can only be commenced by order of the Commissioners, and in the name of the Attorney-General for England, the Lord Advocate for Scotland, and the Attorney-General for Ireland. The proceedings referred to are those for the recovery of fines, penalties, or forfeitures, or for the condemnation of goods seized as forfeited. But this restriction does not prevent any summary proceedings under the Excise Acts for conviction on immediate arrest; nor a proceeding on information or complaint for the recovery of a fine or penalty incurred under the excise law when such a proceeding is specially authorised. The magistrates of courts of summary jurisdiction are now the only courts wherein these permissive proceedings may be taken, the old jurisdiction of the Commissioners having been recently taken away. Proceedings in the High Court for the recovery of a fine or penalty, or for the condemnation of goods seized as forfeited, must be taken within two years next after the fine or penalty is incurred or the seizure is made. *Evidence.*—The following special rules of evidence relating to the inland revenue are important. (1) All regulations, minutes, and notices purporting to be signed by a secretary or assistant secretary of the Commissioners and by their order shall, until the contrary is proved, be deemed to have been so signed and to have been made and issued by the Commissioners, and may be proved by the production of a copy thereof purporting to have been so signed. (2) In any proceeding the letter or

instructions under which a collector or officer or person employed in relation to inland revenue has acted shall be sufficient evidence of any order issued by the Treasury or by the Commissioners, and mentioned or referred to therein. (3) Evidence of a person being reputed to be or having acted as a Commissioner, or collector, or officer, or person employed in relation to inland revenue, shall, unless the contrary is proved, be sufficient evidence of his appointment or authority to act as such. Any proceedings before a magistrate in the United Kingdom, or a sheriff in Scotland, relating to inland revenue, may be conducted by any person employed by the Commissioners, even though he is not a member of the legal profession.

Seizures and their condemnation.—When goods seized as forfeited are returned into the High Court, their proprietor, if he desires to claim them, must do so in his own name, and within the specified time. The claim may be entered in person or by a solicitor, and either one of these is bound, within a specified time, to make oath that the goods were at the time of seizure the property of the person claiming them; two sureties, in £100 each, are also required to answer the costs occasioned by the claim. In default of the oath or security the goods will be adjudged to be forfeited, and will be condemned as unclaimed. In any trial arising out of the seizure, the information relating thereto will be sufficient evidence of the fact, form, and manner of the seizure. Goods seized as forfeited should always be claimed by their proprietor, by application in writing, within three months after their seizure; if this is not done they will be as absolutely forfeited as if they had been condemned by judgment of the High Court. The application should be addressed either to the Commissioners or to the officer who seized the goods or has the custody of them. This provision for claims does not affect, however, any goods seized which have been lawfully declared to be forfeited. In the case of the seizure, as forfeited, of horses, cattle, or goods of a perishable nature, the Commissioners have power to order the thing seized to be delivered up to the claimant upon his paying the appraised value thereof, or giving satisfactory security. If such things are not so claimed they may be sold by public auction at the expiration of fourteen days from the making of the seizure order, even though they may not at that time have been condemned. And there is a like power of sale in case the claimant does not pay the appraised value, or give security. It is provided, however, that if such things are afterwards ordered to be restored without any proceedings being instituted for their condemnation, the claimant is entitled to payment of their appraised value from the Commissioners on demand; if they are sold the claimant may choose to receive either their appraised value or the proceeds of the sale; in either case the Commissioners have a discretionary power to pay an additional sum by way of compensation for the seizure. The foregoing provision also applies in the case of things of the like character which have been ordered to be restored before they have been condemned; and also where, on a trial for the condemnation of such things, judgment is given for the claimant. If the claimant accepts the appraised value or proceeds of sale, with the additional sum by way of compensation, he will not be able to maintain an action on account of the seizure, detention, or sale.

Actions against officers.—There are special provisions in the Public Authorities Act, 1893, which apply to actions against Commissioners or

officers of inland revenue in respect of acts done by them in execution of their statutory duty: (*a*) The action will not lie unless it is commenced within six months next after the cause of action arose or the damage has ceased; (*b*) if the defendant succeeds he obtains costs as between solicitor and client; (*c*) the defendant may plead not guilty by statute, an old form of defence now abolished save in exceptional cases; (*d*) tender of amends before the action was commenced may in lieu of, or in addition to, any other defence, be pleaded. If the action was commenced after the tender, or is proceeded with after payment into Court in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he cannot recover any of the costs incurred after the tender or payment, and the defendant will be entitled to costs to be taxed as between solicitor and client as from the time of the tender or payment; (*e*) the defendant is also entitled to such costs if he has not been afforded, before the commencement of the action, a sufficient opportunity of tendering amend.

Where on the trial of an information or complaint for the condemnation of goods seized as forfeited the judgment is given for the claimant, no officer or person who made or assisted in making the seizure is liable to a civil or criminal proceeding on account of the seizure, or detention of the goods; but for the official to obtain this immunity it is necessary for the Court or judge to certify that there was probable cause for making the seizure. And where any civil or criminal proceeding is brought to trial against an inland revenue official on account of the seizing or detention of any goods, and a verdict or judgment is given against him, the plaintiff will not be entitled to any more damages than the goods seized or their value, nor to any costs, if the Court certifies that there was probable cause for the seizure; nor will the defendant be liable to any punishment.

Fines, penalties, and forfeitures.—Goods forfeited under the Inland Revenue laws can be seized by any officer or by any person employed in relation to inland revenue or acting in the aid and assistance of any such officer or person. Where goods are forfeited there will also be forfeited at the same time "every cask, vessel, case, or other package containing or having contained the same, and every ship, boat, cart, or other conveyance, and all horses or other cattle, and all things used in the removal or for the deposit or concealment thereof." Under this provision a valuable cart and pair of horses which might happen to be removing a few shillings' worth of illicit spirits would be forfeited together with the spirit. Goods seized as forfeited are, after condemnation, sold or destroyed or otherwise disposed of in accordance with the prescribed regulations. But dutiable goods upon which duty has not been paid are never sold for home consumption at a less price than the amount of duty payable thereon; and goods whose importation is prohibited are only sold, if at all, for exportation. Informers and those who assist in recovering fines can be rewarded by the Commissioners, but not with

more than £50 in one case without the consent of the Treasury. The Commissioners and Treasury have certain powers to mitigate fines, stay legal proceedings, and restore goods seized. The Commissioners may order the discharge of any person imprisoned for an inland revenue offence.

INLAND WATER-CARRIAGE.—As a consequence of the new start given to land-carriage by the institution of railways, this important department of activity was entirely lost sight of until the year 1883, when the subject of canals occupied the attention of a Select Committee of the House of Commons. The cause of its then obtaining such a prominence is to be found in the fact that after fifty years' experience it was beginning to be realised in other countries, especially in France, that railways cannot carry either cheaply or so largely, the quantities that a healthy development of the country needs. Since that date, however, the subject has again dropped out of public notice. But now, once more as the result of a sudden appreciation of the commercial operations of foreign countries—though this time more particularly those of the United States—the attention of men of business is directed to the question of water transport in England. But the Government departments afford very inadequate means for arriving at a fair idea of the present state of the inland waterways of this country. Only once in every ten years are the official returns published, and even then they are decidedly incomplete. And so accustomed are we to the railway system as the general mode of transport, and so seldom do we have occasion to take advantage of the facilities for transport afforded by our inland waters, that it is with something like a shock that we learn that one amongst the reasons why the United States and France, for examples, can produce certain commodities at a less cost than we can, and so successfully compete with us, lies in the fact that they are the possessors of important navigable inland waterways, maintained and developed with energetic intelligence, and used as much as possible. In 1906, however, a Royal Commission was appointed. Several reports and volumes of evidence have been issued.

The discovery of railways as a means of transport seems to have taken the civilised world so much by surprise as to have carried away the public mind like a torrent; and the few who ventured to deprecate the total abandonment of all other means of communication, and especially those who advocated the retention and upkeep of waterways, found themselves in a powerless minority. In England that minority remains to-day apparently as powerless as it was then left, and it would seem to be as inert as powerless. Excepting the Manchester Ship Canal there has been no canal constructed in England since the year 1830; and yet at that time there existed a perfect network of canal and other waterway throughout the country which could have formed the nucleus of a progressive system. The total length of canal navigation was then about 4135 miles, and all this had been constructed at a cost of about 14 millions. In 1898, the date of the last official return, the capital represented by canals was placed at 39 millions; but this estimate was obviously and admittedly very much too modest, for it left out of account the capital of all the canals which have passed under the control of the railway companies, as well as that of many other canals. The Royal Commission showed that in the year 1905 there were 4673 miles of canals in the United Kingdom, representing a capital outlay of £47,550,000, with a revenue of £2,680,000, and a net profit of £789,000. Nearly half the

mileage was owned or controlled by railway companies. It is one of the most remarkable features in general present-day progress, that while there is nothing in which such extraordinary improvement has been made as in ocean, railway, and road transit, yet internal water-carriage has been worse than absolutely stationary; it may even be said to have been persistently retrogressive. And this is so notwithstanding the great amount of capital still sunk therein. There is no doubt that had a hundredth part of the thought that has been applied to land-carriage within recent years been brought to bear upon internal water-carriage, the benefit to Great Britain and her trade would have been enormous. In a memorandum appended to the Report of the Committee, that benefit was then calculated at a sum of 40 to 50 millions sterling a year, not including the benefit derived therefrom by all our mineral produce and manufactures, which would have been considerable. And in the same memorandum it was also estimated that "a complete system of canals to connect all the great rivers, navigated by boats of 150 tons or so, worked, loaded at six or eight miles and empty at ten, with a charge of 1-12th of a penny per ton mile, would give England an entirely new start all over the world in her trade." Let this estimate be read in the light of up-to-date science, methods, and prices, and it will afford at least a valuable suggestion to those who can see no means whereby this country can continue effectively to compete with its neighbours. The fact is that British enterprise is always overlooking its obvious fields at home; it sees some mechanical and financial difficulties in the way, and the possibility of the disturbance of some vested interests, and it consequently prefers to disregard its closest obligations, save itself some trouble, retard home industries, and expend its energies abroad in doubtful but apparently brilliant exploits. The railway companies have been allowed to effectively stop the general use of canals, in order to create for themselves a monopoly of transport. Their own canals they keep practically out of use, and they endeavour as much as possible to prevent traffic on the other canals.

Nor is there any general economic reason why this policy should be continued, for in England and Wales the canals not belonging to companies earn a very material profit. The reason for this is obvious: the companies develop their land transport at the expense of their means for water transport, designedly to the prejudice of inland water-carriage generally. No wonder, therefore, that there was a strong feeling in the Committee that railway companies should not be allowed to obtain control over canals. They have in the past consistently encouraged their railway traffic at the expense and to the detriment of the community generally; and this policy of improperly driving out of competition the cheaper waterways is still at the present day being persistently pursued.

It is not only in the item of cheapness that canal carriage is superior, but it possesses many other advantages. It admits of any class of goods being carried in the manner and at the speed which proves to be most economical and suitable for it, without the slightest interference of any other class; loading and unloading may be effected by stoppages anywhere on the route, and not only at fixed stations as in the case of railways; the dead weight moved in proportion to the load is much less than in the case of a railway; the ordinary railway truck weighs nearly as much as the load put on it, whereas a cargo boat will carry four or five times its own weight. Moreover,

the maintenance and working expenses of canals and their traffic are less than those of railways and railway traffic.

In view of the strenuous foreign competition with which, from every quarter, British trade is now met, there is no doubt that the question of inland carriage, as a factor in the cost of the production and distribution of our merchandise, is one which must soon be seriously considered. If goods can be sold more conveniently and at a smaller price when moved over water than when moved on land, the canal system must be once more made effectively and generally available. The only question will be how it shall be done. To answer, or even to indicate an answer to the question is beyond the scope of this work. Any man of business, however, will be able to form some idea of an answer if he reads the evidence taken by the Committee and its Report thereon, and such a work on the subject as that of Mr. Jeans.

Canal boats are regulated in England by the provisions of the Canal Boats Acts, 1877 and 1884. In these Acts the expression "canal" includes any river, inland navigation, lake, or water being within the body of a county, whether it is or is not within the ebb and flow of the tide. A "canal boat" means any vessel, however propelled, which is used for the conveyance of goods along a canal as above defined, and which is not a ship duly registered under the Merchant Shipping Act; the Local Government Board have the power, however, to declare a vessel so registered to be deemed a canal boat within the meaning of the preceding definition. *Registration.*—A canal boat cannot be used as a dwelling unless it has been registered in accordance with the Acts. The owner may register it as a dwelling for only the number of persons of the specified age and sex allowed by the regulations for the time being in force; and the boat can be used as a dwelling only for the number of persons of the age and sex for which it is registered. To use the boat as a dwelling in contravention of the law is for its master to incur a fine of twenty shillings for each occasion on which the boat is so used; the owner of the boat is also liable if he is in fault. The expression "master" in relation to a canal boat means the person having for the time being command or charge of the boat; and the "owner" includes any one who, though only a hirer of the boat, appoints the master and other persons working it.

The regulations are made by the Local Government Board, and registration must be effected with one of the sanitary authorities appointed by the Board for that purpose, having a district abutting on the canal on which the boat is accustomed or intended to ply. Copies of the regulations may be obtained from any of these appointed sanitary authorities. They provide for the registration of the boats, certificates of registration, and the fees of registration; for lettering, numbering, and marking the boats; for fixing the number, age, and sex of the persons who may be allowed to dwell in a canal boat, having regard to the cubic space, ventilation, provision for the separation of the sexes, general healthiness, and convenience of accommodation of the boat; for the cleanliness and habitable condition of the boat; and for preventing the spread of infectious disease. Upon registry the sanitary authority gives to the owner of the boat two certificates of registry, identifying the owner and the boat and stating the place to which the boat is registered as belonging, and the number, age, and sex of the persons allowed to dwell in the boat. Of these two certificates one must be kept in the custody of the master. A boat when registered is conspicuously lettered and

marked, including the word "registered," and also the name of the place to which the boat is reported as belonging; and the registered number must conspicuously appear. A boat not properly lettered, marked, or numbered will be deemed to be unregistered. This lettering, marking, and numbering, in order to comply with the law, must appear on both sides of the boat or in some suitable position on the stern, so that the whole of the lettering, marking, and numbering is plainly visible from both sides of the canal whereon the boat may be. A certificate of registration ceases to be in force in the event of any structural alterations being made in the boat which affect the conditions upon which the certificate of registration was obtained. Should the master of the boat illegally detain the certificate of registration, he may be summoned before the magistrates; the latter, upon his conviction, will order him to deliver it up, and may impose a fine of forty shillings.

Infectious disease.—The master of a boat, or any other person knowing the facts, should inform the sanitary authority within whose district the canal is situate in case any person on the boat is suffering from an infectious disorder. The authority will then take any steps necessary to prevent the disorder from spreading, and it may, if need be, detain the boat, but such a detention can be for no longer a time than is necessary for cleansing and disinfecting the boat. If an infectious disease is suspected the authority may send an official to board and inspect the boat, who may detain the boat for the purposes of his inspection, and require the master to produce the certificate of registration and furnish such assistance and means as the official requires for the purpose of his entry and examination of and departure from the boat. A refusal to comply with the requisition of such an official will be deemed to be an obstruction, and the person obstructing will be liable to a fine. *Education.*—A child in a registered canal boat is, for the purposes of the Elementary Education Acts, generally deemed to be resident in the place to which the boat is registered as belonging, and is subject to the bye-laws in force under those Acts in that place. But if the parent satisfies the school-board or school attendance committee having authority in that place that the child is actually attending school or is under efficient education in accordance with the Education Acts in some other school district, the board or committee will grant a certificate whereby the child becomes liable to the bye-laws in force in that other district. This certificate may be varied or rescinded as occasion may require. *See* CANALS.

INN—INNKEEPER.—An inn has been defined as "a house where the traveller is furnished with everything which he has occasion for on his way." In accordance with this definition an innkeeper may be said to be a person who keeps such a house; it is not necessary for the house to have a sign in order to make it an inn. A house may be built for and used as an inn without the license or consent of any authority; there is no more restriction in the exercise of this trade than is imposed upon the exercise of any other lawful trade. A man who kept a house of public entertainment in London, furnishing beds and food to all who would pay, but keeping no stables, was held, eighty years ago, to be an innkeeper and subject to his privileges and liabilities. About the same time a coffee-house keeper was held not to be an innkeeper, within the contemplation of a particular fire insurance policy. When the innkeeper sells intoxicating liquors he thereby also becomes subject to the provisions of the licensing law, and must obtain a licence and

comply with the regulations for the time being in force relating to licensed premises and the sale of intoxicating liquors. In this article, however, we have no concern with the innkeeper as a licensed victualler; it is sufficient that he keeps an inn, even though it be a temperance inn or hotel. In the first place he must know that he is under a general liability, so long as his house is not full, to receive and accommodate all travellers; when so received and accommodated a traveller would become the innkeeper's guest. At one time the law would doubtless have construed this liability very extensively in favour of the traveller; so long as in the common room a table top, or even a portion of the floor, was vacant it would have been said that the inn was not full and that the traveller was entitled to demand accommodation. To-day the law has adjusted itself to modern ideas, and an innkeeper would now be entitled to refuse to take in a traveller if all the usual sleeping accommodation was occupied. It is hardly to be supposed that by merely labelling his house an inn, and himself an innkeeper, an enterprising man will be allowed by the law to compete with the registered common lodging-houses without submitting himself to and complying with the regulations that govern those "travellers' rests." An innkeeper is entitled to refuse to take in a traveller who is drunk, disorderly, acting in an obscene manner, or suffering with an infectious disease; but he cannot turn away a traveller who is merely sick, or who arrives at some unconscionable hour of the night, or who refuses to give his name and address, or who is travelling on a Sunday. Should a traveller be improperly refused entertainment at an inn he should call upon the constable of the place to force the innkeeper to take him in. But no traveller has the right to choose which particular room in an inn he will occupy; he must take the one, reasonably fit for its purpose, appropriated to him by the innkeeper; and he cannot require the landlord to let him a room for the purpose of exhibiting goods. As soon as a traveller has received the required accommodation and so become a guest, the innkeeper thereby incurs a liability for any harm which may come to the guest's property whilst in the inn, and at the same time requires a certain right of lien. In the article on BOARDING-HOUSE is set out the distinguishing features of an innkeeper's guest.

Liability.—The liability at common law may be stated in the old-world words of *Calye's Case:* "Although the guest doth not deliver his goods to the innholder to keep, nor acquaints him with them, yet if they be carried away or stolen, the innkeeper shall be charged, and therewith agrees 42 Edw. III., 11 a." And most consistent with this old doctrine is the modern pronouncement of Lord Esher: "The duties, liabilities, and rights of an innkeeper with respect to goods brought to inns are founded not upon bailment, or pledge, or contract, but upon the custom of the realm with regard to innkeepers." Did the law make an innkeeper a bailee, he would be in a somewhat similar position to a carrier in respect of his liability, and might be called an insurer of his guest's goods; the principle of the law upon which the innkeeper's liability is founded is practically the same as that upon which rests the carrier's, namely, that the innkeeper should be compelled to take care that no improper person is admitted into his house, and to prevent collusion between him and such person. This explains why it is that he is not relieved, at common law, from liability by exhibiting a notice in the guest's bedroom requesting visitors to use a night bolt, and that he will not

be responsible unless articles of value are left in the bar. He can never be liable, however, for a loss of property caused by the guest's own conduct, or even by the act of God.

The Innkeepers' Liability Act, 1863, affords a means whereby an innkeeper may limit this extensive common law liability, and the provisions thereof should be noted with care:—(1) No innkeeper is liable to make good to his guest any loss of, or injury to, goods or property brought to the inn to a greater amount than £30; but this exemption is not applicable to a horse or other live animal, or any gear appertaining thereto, or any carriage. His full and unlimited common law liability is preserved, however, in all cases where (*a*) the goods or property have been stolen, lost, or injured through his wilful act, default, or neglect of that of any servant in his employ; and (*b*) the goods or property have been deposited with him expressly for safe custody. But in the case of such a deposit the innkeeper is entitled, if he thinks fit, to require, as a condition of his liability, that the goods or property shall be deposited in a box or other receptacle, fastened or sealed by the person depositing them. (2) Should the innkeeper refuse to so receive for safe custody any of his guest's goods or property, he will not be entitled to the benefit of the Act in respect of them; nor will he if the guest is unable to make the deposit through any default of the innkeeper. (3) The innkeeper must cause at least one copy of the first section of the Act, printed in plain type, to be exhibited in a conspicuous part of the hall or entrance to his inn; he is entitled to the benefit of the Act only in respect of such goods or property as are brought to his inn while such copy is so exhibited. In the case of *Spice* v. *Bacon*, the defendant exhibited a notice in his hotel containing a copy of the first section which was incorrect through the accidental omission of the word "act" in the phrase "through the wilful act, default, or neglect;" because of this omission he was held to be disentitled to the benefit of the Act. But had the inaccuracy or omission been an immaterial one, that case would have resulted differently. Every innkeeper would do well, therefore, to compare the wording of the notice he exhibits with that of the Act as printed by the King's printers (Messrs. Wyman & Sons, Ltd.), which can be obtained at the cost of one or two pence. (4) For the purposes of the Act the word "inn" means any hotel, inn, tavern, public-house, or other place of refreshment, the keeper of which is by law responsible for the goods and property of his guests; and the word "innkeeper" means the keeper of such place.

A guest should always deliver his goods himself into the place of custody, for if he delivers them to some unauthorised person, as the boots, for him to deposit them, the innkeeper will not be liable for more than £30 in case of loss occasioned by the boots. In the case of a theft of a guest's jewellery in an hotel the fact that the hotel servants did not at once institute a search of the premises when they discovered a poker and knife in the guest's bedroom, was held not to constitute negligence on the part of the servants.

It must not be forgotten that the liability of the innkeeper only exists when there exists the relationship of host and guest. And as the innkeeper is responsible for the loss of property it follows that he is also responsible for damage to it. Over a hundred years ago the servant of one Mellor went into a Manchester inn kept by one Bennett, and asked if certain parcels he had with him could be left there until the following week; the innkeeper

said he could not then tell, as the house was very full of parcels, whereupon the servant sat down, placed his parcels on the floor just behind him, and had some refreshment; shortly afterwards the servant arose to depart, but found the parcels were missing. Upon the hearing of the ensuing action of *Mellor* v. *Bennett* which was brought against the innkeeper to recover the value of the lost parcels, it was held that during the time that the servant was in the inn taking his refreshment, he was the innkeeper's guest, and that therefore the innkeeper was liable for the loss. In the modern case of *Strauss* v. *County Hotel and Wine Company* it was held, on the contrary, that at the time of the plaintiff's loss the relationship of landlord and guest did not exist between him and the defendants, and that therefore the latter were not liable. The facts were as follows:—The plaintiff arrived at Carlisle, apparently intending to pass the night at the defendant's hotel, which adjoined the station, as, on his arrival, he handed his luggage to one of the hotel porters. Subsequently, however, he decided not to stay at Carlisle that night, but went for some refreshment into the railway refreshment-room, which was connected with the hotel by a covered passage, and was under the same management. He then went out after telling the porter to lock up the luggage, which was duly done. When he came back a part of the luggage was found to be missing. The reason for the decision in this case was that the plaintiff was unable to show at what point of time the relation of landlord and guest commenced. It was suggested that it was when the plaintiff gave his luggage to the porter; but at that time the plaintiff had not made up his mind to become a guest. The fact that he ordered his goods to be locked up, and that they were locked up, was no more than if he had said that he was uncertain whether he should stay at the inn, and that in the meantime he wished his goods to be locked up. In such a case there could be no liability. The essential difference between this case and *Mellor* v. *Bennett* is found in the fact that in that case the plaintiff had actually come within the house and had placed his goods near his chair. An innkeeper is not responsible to his guest for any loss or damage caused to the property of the guest by the latter's own servants or companions.

If a guest proposes to stay at an inn for an indefinite period of time, the innkeeper is entitled to give him notice to leave, and at the expiration of that notice the relationship of landlord and guest will have determined. The guest who has thus outstayed his welcome may be then refused further accommodation. Whilst staying at an inn a guest is entitled to be supplied by the innkeeper with necessary food. An innkeeper cannot refuse to take in with the guest any luggage or goods which he knows are not the guest's own property, unless, of course, he knows them to be stolen; but he may refuse to take in dangerous goods or animals, such as gun-cotton, or lions, or a ferocious dog; he may also refuse to serve a neighbour with refreshment if the neighbour insists upon bringing with him a ferocious dog, or one which is a nuisance, when the innkeeper has previously given him notice that he will not allow the animal on his premises. Should an innkeeper let to his guest a room which has been occupied by a person suffering from an infectious disease, and which has not been disinfected, that innkeeper will incur a criminal liability.

Lien.—The innkeeper's lien, like his liability, is founded upon the custom

of the land, and it extends to all luggage and goods brought into the inn by his guest, even if it is within the innkeeper's knowledge that the property does not belong to the guest. The law is thus stated in the old case of *Robinson* v. *Walter:* "This is a common inn, and the defendant is a common innkeeper, and this his retainer here is grounded upon the general custom of the land: he is bound to receive all guests and horses that come to his inn: he is not bound to examine who is the true owner of the horse brought to his inn; he is bound, as he is an innkeeper, to receive them, and therefore there is very great reason for him to retain him [the horse] until he is satisfied for his meat which he hath eaten; and that the true owner of the horse cannot have him away until he have satisfied the innkeeper for his meat." This case was quoted and approved in 1895 in the case of *Robins* v. *Gray.* There a commercial traveller in sewing-machines was staying at an inn, and whilst there machines were sent to him by his employers in the ordinary course of business, for the purpose of selling them to customers in the neighbourhood. Before the goods were so sent the innkeeper had express notice that they were the property of the traveller's employers, but he received them as luggage of the traveller, who shortly afterwards left the inn without paying for his board and lodging. The traveller's employers sued the innkeeper for wrongful detention, but failed in their action. An innkeeper cannot detain the person of his guest as security for payment of his bill. The lien does not exist in respect to money due to the innkeeper in a different capacity, *e.g.* that of money-lender (*Matsuda* v. *Waldorf*).

When any goods are thus detained, they can only be sold by the innkeeper in accordance with the provisions of the Innkeepers Act, 1878. By this Act it is provided that the innkeeper has, in addition to his ordinary lien, the right absolutely to sell and dispose by public auction any goods and horses deposited or left with him, where the person depositing or leaving them is indebted to him for board and lodging, or for the keep and expenses of any horse or other animals left with him, or standing at livery in his stables or fields. But the sale cannot be made until after the property has been six weeks on the premises without the debt having been paid; after the sale the innkeeper must deduct the debt and the expenses of the sale, and, upon demand, pay the balance (if any) to the debtor. The debt for the payment of which a sale is made must not be any other or greater debt than the debt for which the property could have been retained by the innkeeper under his lien. It should also be particularly noted that at least one month before the sale the innkeeper is required to insert in the newspapers a certain advertisement; this advertisement must contain a notice of the intended sale, and give shortly a description of the property intended to be sold, together with the name, where known, of the owner or person who deposited or left it; there are two newspapers necessary for the insertion of the advertisement, namely, any one London newspaper and a country paper circulating in the district where the property, or some of it, was deposited or left. *See* BEER-HOUSE; LICENSED VICTUALLER.

INSCRIBED STOCK.—Certain securities are known as "inscribed," to distinguish them from those which are represented by documents of title such as certificates. The holder of inscribed stock has no such document of title to his holding. His name and address are merely inscribed upon the register of the government or corporation issuing the stock as its holder. Upon his purchase of the stock he will have received a receipt, but this document does

not operate as a certificate or warrant, and cannot by transfer to another person effect a transfer of the stock it represents. To transfer inscribed stock the seller, or his duly appointed agent, must attend at the office where the register is kept and therein inscribe the transfer of ownership. This form of security is generally popular in England, affording as it does a very effective safeguard against fraud and forged transfers. British and colonial Government and corporation loans, and some others, are thus dealt with. In America and abroad, however, the system is not held in such favour, the reason being said to lie in the fact that there is a prejudice in such countries against the publication of the ownership of securities. But it is doubtful whether this is the real reason, for abroad and in America the system of registration of dealings with property is much more universally adopted than it is in England.

INSPECTION OF LIGHTS.—A surveyor of ships can inspect any ship, British or foreign, for the purpose of seeing that the ship is properly provided with lights and the means of making fog signals, in conformity with the collision regulations. If the surveyor finds that the ship is not so provided, he must give to the master or owner a written notice, pointing out the deficiency, and also what, in his opinion, is requisite to remedy it. The notice is also given to the customs officer at the port where the ship will require a clearance or transire; by this means the master will be forced to obtain a certificate of sufficient light provision from the surveyor before he can leave the port. Upon a refusal of such a certificate the owner may appeal to the court of survey for the port or district in which the ship is for the time being lying. The judge can order the surveyor to grant the certificate in a proper case. In making his inspection, a surveyor must be accompanied by some one appointed by the owner, if the latter so desires; if the surveyor and his companion agree, the owner has no right to the foregoing appeal.

INSPECTION OF MINES.—*Metalliferous mines.*—Inspectors of these mines are appointed by a Secretary of State, but no one can act as such an inspector who "practises or acts or is a partner of any person who practises or acts as a land agent or mining engineer, or as a manager, viewer, agent, or valuer of mines, or arbitrator in any differences arising between owners, agents, or managers of mines, or is otherwise employed in or about any mine," whether the mine is one to which the Metalliferous Mines Regulation Acts applies or not. An inspector has power to make such examination and inquiry as may be necessary to ascertain whether the provisions of the law are complied with. For this purpose he may enter, inspect, and examine a mine at all reasonable times by day and night, but not so as to impede or obstruct the working of the mine. His duty is also to examine into and make inquiry respecting the state and condition of any mine, and its ventilation, and the sufficiency of the special rules (if any) for the time being in force in the mine, and all matters connected with or relating to the safety of the persons employed in or about the mine or any mine contiguous thereto. It is a punishable offence for any one to wilfully obstruct an inspector in the execution of his duty; and so also for an owner or agent of a mine to refuse or neglect to furnish to the inspector the means necessary for making an entry, inspection, examination, or inquiry. Where a mine, or any matter or practice connected therewith, appears to the

inspector to be dangerous or defective, so as to threaten or tend to bodily injury, he must give written notice thereof to the owner or agent. The notice should state particularly the details in which the inspector considers the danger or defect to consist, and should also require the danger or defect to be remedied. If the matter is not forthwith remedied, the inspector should make a report to the Secretary of State. An owner or agent of the mine who objects to remedy the matter complained of in the notice should, within twenty days after the receipt of the notice, send his objection in writing, stating the grounds thereof, to the Secretary of State. The matter will then be determined by arbitration. Should he fail to comply with the notice or award on arbitration, and yet not send in an objection, he will be guilty of a punishable offence. But if, in any proceedings in respect of that offence, the Court is satisfied that the owner or agent has taken active measures for complying with the notice or award, but has not with reasonable diligence been able to complete the works, it may adjourn the proceedings, and, if the works are completed within a reasonable time, no penalty will be inflicted. It is important to note that no one can be precluded by any agreement from doing anything necessary to comply with the foregoing provisions; nor can he be liable under any contract to any penalty or forfeiture for so doing. An inspector has also power to enforce the keeping of accurate plans of mines.

Coal mines.—The foregoing provisions are generally applicable to the inspection of coal mines, but it should be noticed that in the appointment of inspectors of mines in Wales and Monmouthshire, among candidates, otherwise equally qualified, persons having a knowledge of the Welsh language will be preferred. The objections to an inspector's notice should be made within ten days instead of twenty. Where an explosion or accident causes loss of life or personal injury, the Home Secretary may direct an inspector to make a special report, and, where necessary, a formal investigation may be held. Such an investigation is held in open court, and full powers are conferred upon the Court for compelling the attendance of witnesses and requiring facilities for the inspection of documents and property.

INSPECTION OF PROPERTY.—In the course of an action in the King's Bench Division it may be desirable to obtain an order of the Court for the detention, preservation, or inspection of the subject-matter of the action, or for taking samples or making experiments. This order can be obtained from a Master under the provision of order 50 of the Rules of the Supreme Court, but it will not be made for the inspection of articles not in the possession of a party to the action. The order includes an authority to the persons mentioned therein to enter upon or into any necessary lands or buildings in the possession of a party to the action. Documents may be photographed. Where a plaintiff was endeavouring to obtain an injunction restraining the defendant from wrongfully discharging sewage into the plaintiff's drain, the plaintiff, in order to obtain a knowledge of the facts, was allowed to enter on the defendant's land, excavate soil, and inspect the defendant's drain. So the judge himself has power to inspect any property or thing concerning which any question may arise in the action he is trying. And, if necessary, a party to an action may obtain an order authorising the inspection of property by a jury.

INSPECTION OF SHIPS.—The Board of Trade has power, under the provisions of the Merchant Shipping Act, 1894, to appoint any one as an *inspector* to report to them—(*a*) upon the nature and causes of any accident or damage which any ship has sustained or caused, or is alleged to have sustained or caused; or (*b*) whether the provisions of the Act, or any regulations made thereunder, have been complied with; or (*c*) whether the hull and machinery of any steamship are sufficient and in good condition. Such an inspector has very wide powers. Thus he has power to go on board a ship and inspect it and its machinery, boats, and equipments, not, however, unnecessarily detaining or delaying her from proceeding on a voyage; to enter and inspect any premises, when the entry and inspection seems necessary for the purposes of a report; to compel by written summons the attendance of any one he thinks fit in order to examine him and obtain information; to enforce the production of all books and documents he thinks necessary; and also to administer oaths and obtain written and signed declarations. Any witness he calls is entitled to his expenses, which are on the same scale as those allowed to witnesses in the High Court. By refusing and failing to attend as a witness after expenses have been tendered, or by failing to subscribe to a declaration or produce documents, a fine of £10 will be incurred. And there is a like penalty for obstructing inspectors in the execution of their duties.

The Board of Trade also appoints *surveyors* of ships, and such an official is appointed either as a shipwright surveyor or as an engineer surveyor, or as both. There is also a surveyor-general of ships for the United Kingdom. These surveyors, being properly paid by the Government for their services, are strictly prohibited against demanding or receiving, directly or indirectly, any fee, remuneration, or gratuity whatsoever in respect of their duties, and should any one of them act in breach of this prohibition, he renders himself liable to a fine of £50. In order to be able to effectively exercise his duties, he has power to go on board any steamship at all reasonable times and inspect her, or any of the machinery, boats, equipments, or articles on board, or the certificates of the master, mate, or engineer. But he must not unnecessarily detain or delay the ship from proceeding on her voyage. If in consequence of an accident to the ship, or for any other reason, he considers it necessary to do so, he may require the ship to be taken into dock for the purpose of surveying her hull. Any one who hinders a surveyor from going on board a steamship, or otherwise impedes him in the execution of his duties, will be liable to a fine of £5. And a like fine will be incurred by any owner, master, or engineer who, on being duly applied to, fails without reasonable cause to give any information or assistance within his power which is needed by a surveyor for the purposes of his returns to the Board of Trade. These returns have reference to the build, dimensions, draught, burden, rate of sailing, room for fuel, and the nature and particulars of the machinery and equipments of a ship.

There are also *medical inspectors*, whose duty it is to inspect the medicines, medical stores, and anti-scorbutics with which a ship is provided, and in order to perform their duties they are invested with all the powers of a Board of Trade inspector. A medical inspector must make his inspection three clear days at least before a ship proceeds to sea, if reasonable written notice

for the purpose is given to him by the master, owner, or consignee. Where the result of the inspection is satisfactory, he is not to make another inspection before the ship proceeds to sea, unless he has reason to suspect that any of the articles inspected have been subsequently removed, injured, or destroyed. If he is of opinion that the articles inspected are deficient in quantity or quality, or are placed in improper vessels, he should give notice thereof. The notice should be in writing, and given to the chief officer of customs of the port where the ship is lying, and also to her master, owner, or consignee. Thereupon the master, before proceeding to sea, must produce to the chief officer of customs an official certificate that the default found by the inspector has been remedied, and if that certificate is not so produced, the ship will be detained until it is produced. Should the ship proceed to sea in breach of this regulation, her owner, master, or consignee will be liable to a fine of £20. Upon the application of the owner or master of a ship, a medical inspector must examine any seaman applying for employment in that ship, and give to the superintendent a report stating whether the seaman is in a fit state for duty at sea, and a copy of the report must be given to the master or owner.

INSTALMENTS.—Upon a *sale of goods* it is provided by the Sale of Goods Act, 1893, that unless otherwise agreed, the buyer of any goods is not bound to accept delivery thereof by instalments. And by the same Act it is also 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 a right to treat the whole contract as repudiated."

In respect to a *bill of exchange*, it is required by the Act of 1882 that the sum payable by a bill shall be a sum certain within the meaning of the Act, although it may be required to be paid by stated instalments, or by stated instalments with a provision that upon default in payment of any instalment the whole shall become due. It should be noted in this connection that the instalments must be specified clearly and definitely, or, in the words of the Act, "stated"; for, otherwise, the amount of the bill will not be a "sum certain," and the document will be invalid as a bill of exchange. Thus where, as in *Moffatt* v. *Edwards*, the document simply said, not specifying dates, that "I owe Mrs. A. B. £6, which is to be paid by instalments for rent, C. D.," it was held not to be a bill of exchange, as no time had been specified for the payment of the instalments. And, on the other hand, the document may be invalid as a bill merely because it goes into details outside the scope of a bill, and so becomes really an agreement. This was the case in *Davies* v. *Wilkinson*, where the document ran: "I agree to pay to D., or order, £695 at four instalments, viz. the first on, &c., being £200; the second on, &c., being £150; the third on, &c., being £150; the fourth on, &c., being £100; the remainder (£95) to go as a set-off for an order of R. to G., and the remainder of his debt from D. to him." A promissory note

payable by instalments should accordingly be substantially in accordance with the form set out in the article under the title of PROMISSORY NOTE. It is not so well known as it should be that the maker of a promissory note payable by instalments is entitled to three days of grace on the falling due of each instalment, and that, consequently, in the event of default, he cannot be sued by the holder until those three days have expired. It will never do to make instalments payable on some contingency, for in that case also will the note be invalid, as it was in *Worley* v. *Harrison*, where the document, though it contained a promise to pay by instalments, also contained a declaration "that it was thereby considered and fully intended by the receiver, as well as the giver of that note of hand, that all installed payments thereupon whatsoever, from and immediately after the decease of the plaintiff, should cease and become null and void to all intents and purposes against the executors."

Bills of Sale.—Where money was lent on the security of a bill of sale, the repayment thereof being agreed to be made by certain monthly instalments, it was held, *in re Wood*, that the granter was entitled to seize the whole of the goods on default of payment of one instalment, even though the bill of sale contained no express provision to that effect. A bill of sale is not void because it provides for the payment of principal and interest by instalments, or does not limit the number of instalments (*in re Bargen*). Nor, as held in *Linfoot* v. *Pockett*, would a bill of sale be void because interest as well as principal is included in any equal instalments by which repayment is to be made; nor because the period over which the instalments will extend is not stated; nor because the principal and interest cannot be exactly paid by means of instalments of the amount specified.

INSTANTER is a term meaning immediately, presently. It has also been said that it means that the act shall be done within twenty-four hours. A doubt, however, has been suggested by whom the account of the hours is to be kept, and whether the term, as applied to the subject-matter, may not more properly be taken to mean "before the rising of the court," when the act is to be done in court; or "before the shutting of the office on the same night," when the act is to be done there.

INSURANCE.—The term *assurance* has been defined as a contract dependent upon the duration of life, which must either happen or fail. *Insurance*, on the other hand, is a contract relating to any other uncertain event, which may partly happen or partly fail; thus, in adjusting the price of insurance of houses and shops, regard is always had to the chance of salvage arising from partial destruction. But these terms are now generally used as synonymous, the word "insurance" being the one of the two most frequently met with. One authority has expressed the opinion that "assurance" represents the principle; "insurance" the practice. Another explains the distinction to be "that a man *insures* himself or his property, while the office *assures* to him indemnity in case of loss." In the words of Professor de Morgan, insurance or assurance is, "in fact, in a limited sense and a practical method, the agreement of a community to consider the goods of its individual members as common. It is an agreement that those whose fortune it shall be to have more than average success shall resign the overplus in favour of those who have less. And though as yet" (the professor was writing this some years ago) "it has only been applied to the separation of the evils

EXPECTATION OF LIFE

EXPECTATION OF LIFE

THE expectation of life, at birth, has materially increased during the latter half of the nineteenth century. By the latest English life tables each male has at birth an expectation of 43.7 years, an increase of nearly 4 years since the forties; and each female has at birth an expectation of 47.2 years, an increase of nearly 5½ years.

The expectations at each fifth age throughout life are as follows:—

EXPECTATION OF LIFE.

Age.	Males.	Females.
	Years.	Years.
0	43.7	47.2
5	52.8	54.9
10	49.0	51.1
15	44.5	46.6
20	40.3	42.4
25	36.3	38.5
30	32.5	34.8
35	28.9	31.2
40	25.4	27.6
45	22.1	24.0
50	18.8	20.6
55	15.7	17.2
60	12.9	14.1
65	10.3	11.3
70	8 1	8 8
75	6 1	6.7
80	4.5	5.0
85	3.3	3.7
90	2.4	2.8
95	1.7	2 0

In both sexes age 3 is the age at which the expectation is greatest — 53.3 years for males, and 55.5 years for females— for, when age 3 is reached, the very hazardous years of babyhood are passed, and then the expectation is greater than it was at birth.

At every age of life the female expectation of future lifetime is greater than that of the male.

One great difficulty in the way of establishing a national system of old age pensions is the fact that many more persons survive to advanced age than is commonly supposed. For this reason the cost of pensions is very great.

Here is a table of the number of survivors at each tenth age throughout life out of every 100,000 born.

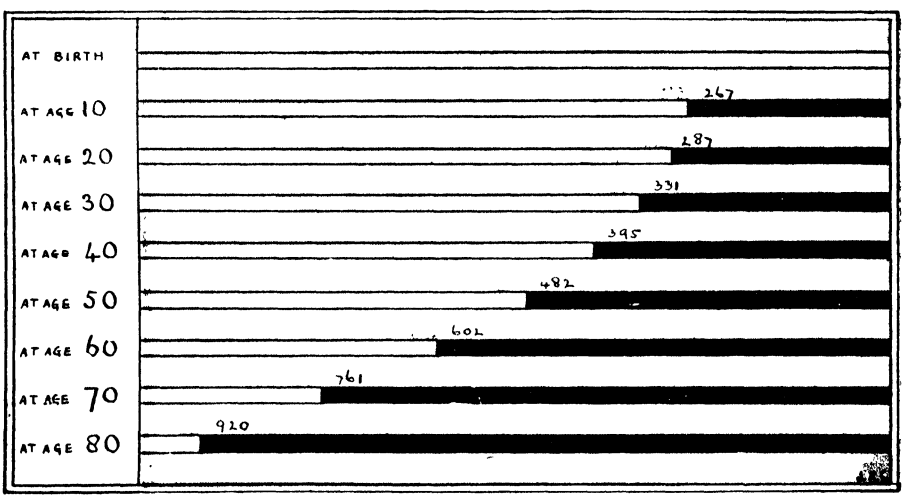
NO. OF SURVIVORS AT EACH AGE OUT OF 100,000 BORN.

Age.	Males.	Females.
0	100,000	100,000
10	73,348	76,615
20	71,256	74,432
30	66,928	70,005
40	60,492	63,891
50	51,764	56,430
60	39,840	45,768
70	23,863	29,922
80	8,002	11,454
90	679	1,342
100	3	16

We see that at age 50 more than half the original 100,000 born are still living; and at age 60, the earliest pension age, 39.8 per 100 of males are surviving, and 45.7 per 100 of females. Even at age 70, the latest pension age, there are living no fewer than 23.8 of the original 100 males born, and 29.9 per 100 of the females. And, as late as age 70, each of these many survivors will live on an average 8.1 years more for males, and 8.8 years more for females. The number of women who live to age 100 is more than five times as great as the number of men.

It is interesting to ascertain what is the chance of living at least one year more at various ages. At nearly all ages throughout life this chance is very great. The facts are as follows:—

For males, the chance is, at birth, 5 to 1 in favour of living one year more. For females, the chance is 7 to 1. At age 10, the chance of living one year more is very near to certainty, being 512 to 1 for males, and 598 to 1 for females. At age 20, the male chance is slightly greater than



No. Surviving—Red. No. Dead—Black.

Showing, from Birth to Age 80, the Number of Survivors at each Age, and the Number Dead, out of One Thousand Males born in England and Wales.

the female chance, owing to a transitory advantage in the male death-rate at ages 20–21.

At age 50, the chance of living one year more is no less than 50 to 1 for males, and 63 to 1 for females. Even at age 80, there is six times as much chance of living one year more than there is of dying within the year. An old man's chance is greater than that of a baby.

THE CHANCE OF LIVING AT LEAST ONE YEAR MORE.

Age.	Males	Females.
0	5 to 1	7 to 1
10	512 to 1	598 to 1
20	207 to 1	203 to 1
30	120 to 1	126 to 1
40	78 to 1	94 to 1
50	50 to 1	63 to 1
60	27 to 1	33 to 1
70	13 to 1	15 to 1
80	6 to 1	6 to 1
90	2.2 to 1	2.7 to 1
100	0.8 to 1	1.1 to 1

At age 100, the male chance of living one year is slightly less than the chance of death within the year; but the female chance of living one year more is still greater than the chance of dying, even at age 100.

The foregoing results relate to the whole of England and Wales, and great as the modern expectation of life is throughout the country, it is still greater if we regard only the healthy districts of the country, thus excluding the densely populated places which usually have a high death-rate. In 1897, an official Life Table was published which relates only to selected healthy districts, and the expectations of life by this table may be compared with those already stated for the whole country.

This Healthy Life Table relates to 263 registration districts, mainly rural, or small towns with rural surroundings; but a part of London itself is also included—the Lewisham district.

The population included in these selected healthy districts amounts to no less than one-sixth part of the whole population.

EXPECTATION OF LIFE: IN ALL ENGLAND AND WALES, AND IN SELECTED HEALTHY DISTRICTS ONLY.

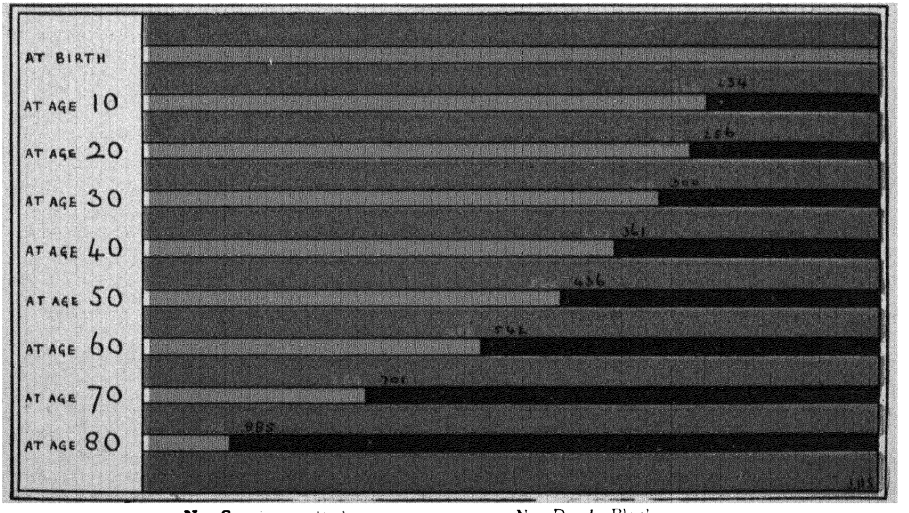
Age.	Males.			Females.		
	Selected Healthy Districts. (a)	All England and Wales. (b)	Excess of (a) over (b).	Selected Healthy Districts. (a)	All England and Wales. (b)	Excess of (a) over (b).
	Years.	Years.	Years.	Years.	Years.	Years.
0	51.5	43.7	7.8	54.0	47.2	6.8
10	53.1	49.0	4.1	54.0	51.1	2.9
20	44.4	40.3	4.1	45.6	42.4	3.2
30	36.5	32.5	4.0	37.9	34.8	3.1
40	28.9	25.4	3.5	30.4	27.6	2.8
50	21.5	18.8	2.7	22.8	20.6	2.2
60	14.7	12.9	1.8	15.6	14.1	1.5
70	8.9	8.1	0.8	9.5	8.8	0.7
80	4.7	4.5	0.2	5.2	5.0	0.2

NOTE.—The maximum expectation in healthy districts is at age 2, namely, 58.4 years for males, and 59.4 years for females.

As might be expected, the greatest increase shown in the above table is in respect of young lives, which, in large towns and cities, are exposed to a very high death-rate. The increase at birth is 7.8 years for males and 6.8 years for females. As regards age 2, at which age the expectation is greatest in these healthy districts, each male will, on the average, live 58.4 years more, and each female 59.4 years more—a truly remarkable illustration of the results of modern sanitary progress. We have indeed attained "Great Expectations."

J. HOLT SCHOOLING.

FEMALES.



No. Surviving—Red. No. Dead—Black.

Showing, from Birth to Age 80, the Number of Survivors at each Age, and the Number Dead, out of One Thousand Males born in England and Wales.

arising from storm, fire, premature death, disease, and old age, yet there is no placing a limit to the extensions which its application might receive if the public were fully aware of the principles and of the safety with which they may be put in practice." In view of the importance of the subject of insurance, its treatment in this work is divided amongst different articles, each of which deals with some separate form of insurance. Of such articles may be mentioned those upon LIFE, FIRE, GUARANTEE, and MARINE insurance. And in addition to these will be found articles upon incidental topics, such as INDUSTRIAL ASSURANCE; ANNUITIES; AVERAGE; ASSESSMENT; and PREMIUM. See also the articles on National Insurance in the Appendixes: Vol. I.—APPROVED SOCIETIES; Vol. III.—INSURANCE COMMITTEES.

INSURANCE AGENT is the name given to one whose business it is to represent an insurance company for the purpose of obtaining persons to insure with that company, he being rewarded, as a rule, by a commission paid by the company he represents.

The great body of insurance agents in this country represent either life or fire insurance companies, and very frequently both classes of companies at the same time. The other branches of insurance, such as accident, burglary, and guarantee, are generally taken up by agents as incidental to the main business of life and fire insurance. Insurance agents should be distinguished from insurance brokers, who are usually the intermediaries in matters of marine insurance. An agent is the representative of the insurance company, not of the person who insures with it. He is not a party to the contract of insurance, and is consequently under no general liability in respect of the premium any more than he would be in respect of any other liabilities or claims arising on the policy. An insurance BROKER, on the contrary, is generally an agent for the person who wishes to effect an insurance. It is he who goes to an insurance company on behalf of his principal and negotiates the insurance.

The profession of an insurance agent is one which properly requires a high standard of specialised knowledge and experience in order that it may be successfully practised. This may be said with the utmost confidence with regard to life insurance agency, and it is not far from correct when applied to fire insurance agency. The agent for a life insurance company has now to deal with a public whose interest in the subject has been so much awakened by the past efforts of agents that it has always some general knowledge of the technique of the subject, and of the principles which determine the value of life insurance generally and a specified company in particular. General education, and the facilities for special knowledge afforded by present-day insurance journals, pamphlets, and treatises, make it necessary for an agent to cultivate an applied knowledge and experience available for dealing with his prospective clients. Unless he does this he will be unable to compete against his brothers in the profession with any degree of success. To be able to glibly run off and refer to complicated tables of figures is not sufficient. The public have very little faith in figures when displayed by prejudiced parties for their own purposes. An explanation of the general principles which underlie, and have caused them, and which underlie and cause insurance figures generally, is far more effective. Once the principles of life insurance and their manifold practical applications are grasped and appreciated by the person from whom an insurance is solicited, the work of a skilled agent resolves itself into a practical co-operation with the intending assured. The agent must therefore obtain as thorough a knowledge as possible of these principles and their application in practice. He should acquire some information on such subjects as annuities, interest, probabilities, mortality tables, surrender

values, and bonuses; he should study some elementary manual, and, if possible, the older classical works and modern papers on actuarial subjects. And with regard to fire insurance the agent should be equally capable. There is not so much theory here as in life insurance, but there is certainly a mass of practical knowledge of which an intelligent agent should aim to be the repository. The question of tariffs, the merits or demerits of a tariff or non-tariff office, and the electric lighting rules, for examples, should be studied, and he should be able to make up his mind on such subjects and confidently advise his clients accordingly. In fact he should make it his special effort to obtain such a knowledge of the principles and practice of fire insurance as will enable him to obtain the best results for those who confide their interests to his care. Nor should he be unable, from want of knowledge, to give them assistance throughout all the proceedings consequent upon a loss.

The Law.—Insurance business being entirely carried on by companies or societies incorporated either by charter, special Act of Parliament, or under the Companies or Friendly Societies Acts, it necessarily follows that such business must be conducted by agents. Herein, generally speaking, insurance companies are not in any different position to other companies, and for that reason it may be taken that the general law of agency is as much applicable to insurance companies and their agents, as to the general relationship of principal and agent where the principal is a company. The need for this article lies therefore in the fact that in insurance business there are certain special circumstances which can be usefully considered in their special relation to the general law. It is necessary, in insurance agency, that both the company and its agent should clearly know an insurance agent's powers and duties, and should be careful that these are not exceeded in the course of business. The agent himself is always presumed to know the law, and the latter requires, in particular, that he should act in accordance with it and with appropriate skill and diligence for the benefit of his principal the company. Should he act unlawfully he may thereby involve his company in a serious liability. This was the case in *Pontifex* v. *Bignold*, where the secretary of an insurance company induced the assured to effect his insurance with the company by falsely representing to him the affairs and general management of the company. As a consequence the assured took proceedings against the company in respect of those false representations, although the actual damage he had suffered was no more than the amount of the premiums he had paid. And this is only consistent with the general doctrine of DECEIT (*q.v.*), and with the rights of the prejudiced parties thereunder.

It may be stated as a general principle that if any one is employed generally to act as an agent to procure insurances he is impliedly supplied with a right to do all subordinate and collateral acts incident to and necessary for the execution of his agency. But these can only be lawfully done, so as to bind the company, if done in the ordinary way of business, and not in excess of any limitation imposed upon him. Though if his powers are limited in respect of acts which are usually performed by an agent, and in effecting an insurance he has exceeded those powers, and the assured had no notice of the limitation, the company will be bound by the contract notwithstanding. An agent is therefore impliedly authorised, as being steps towards effecting an insurance. to take applications: and, as incidental

thereto, to fill up a formal application, explain its terms, and obtain the signature of the applicant. Insurance agents are, in effect, general agents in order to obtain applications for insurance, but they have no general power to do all acts of any kind whatsoever, in connection with insurance business. To do anything more than influence and obtain applications for an insurance they require the special authority of their principals. Accordingly, as it was held in *Linford* v. *Provincial Horse Insurance Co.*, an ordinary local agent of an insurance company, being impliedly employed only to negotiate insurances and obtain applications, is not, without special authority, authorised to bind his company by a contract to grant a policy.

But in addition to the foregoing functions of an agent precedent to the contract of insurance, it is usual for the agent, when the contract has been effected, to undertake the delivery of the policy to the assured, and, with the sanction of the company, to receive payment of the premiums. If the premiums are required to be paid direct to the company, the latter usually gives notice to that effect to the assured. The collection of premiums is, however, peculiarly within the province of an agent, for it is to their collection and to his commission on the amount he receives thereby that he hopes to gain his more substantial remuneration. And the natural efforts of the agent to keep policies in force, and obtain commission on the collection of the premiums, are a reason why companies prefer that premiums should be collected by agents. The agent has therefore generally full power to collect premiums and give to the assured binding receipts for them. The usual instructions given by a life insurance company to its agent are that the premium on every policy must be received by him within fifteen days, or other specified period, from the time of its becoming due; that if it is not paid within that time he is to give immediate notice to the company of the fact; and that in the event of his omitting to give this notice, his account with the company will be debited with the amount after the fifteen days have expired. On first consideration it might be thought that this arrangement would operate so as to preserve the validity of a policy in case the assured, having failed to pay his premium within the fifteen days, were to afterwards pay it to the agent and obtain his receipt therefor. But unless the company concurred in that payment, and specially authorised the receipt of the agent, the payment would be ineffectual and the receipt invalid. For this there is the authority of *Acey* v. *Fernie*, where the premium on the policy became due on the 15th March but was not paid until the 12th April to the agent, who, being in account with his company on the above lines, gave a receipt for it. The Court held that the mere debiting of the premium to the account of the agent could not constitute a payment by the assured to the company; nor was such debiting any evidence of a new agreement between the company and the assured. Consequently, the old policy having fallen through, the agent, whose powers were impliedly limited to merely negotiating insurances and collecting the premiums on effected insurances, had no power to contract a new insurance, and so could not assume to do so by giving a receipt for the overdue premium; and moreover, a policy is not necessarily maintained in force if the premium is in arrear merely because the agent debits himself as against the assured with the payment of the premium, if, in fact, the premium has not been paid. It has been held in

the case of a fire insurance effected through a *broker*, that such broker, if he has frequently in other insurances with the same company deducted his commission and handed over the balance of premiums to the company, is always the agent for the company to receive the premium, even if the policy contains such a clause as the following: "It is a 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 under any circumstances whatever, or in any transaction relating to this assurance."

But the mere fact of an agent having this implied power to receive premiums would seem, apart from any special conditions in the policy, to constitute him the agent of the company to receive certain notices. Thus an assured was covered by a policy which had a condition rendering it void if he should go beyond the limits of Europe without the consent of the directors of the company. But in spite of this condition he went out of Europe without that consent, and there he died. Upon an action being brought upon the policy by his executors, the company contended that the policy was void in consequence of the assured's conduct; but it was held to be valid and in force at the time of his death, because after his breach of the condition he had informed the local agent of the company at the place where the policy was effected that he was so living outside Europe, and had continued to pay the agent the premiums as they became due and had duly obtained the agent's receipts therefor. Here it will be seen that the agent had power to receive notice of a breach and, by accepting the premiums, to waive it as effectively as even the directors could. And if an agent once has power to receive notices, that power is retained by him even if the company he originally represented and which invested him with that power has, for example, transferred the particular policy to another company. But this would not be so as against an assured who knew of the transfer, and that the agent was not the agent of the new company. Thus in *Marsden* v. *The City and County Assurance Company*, the policy, which had been effected through an agent, was subject to a condition that "in case of loss or damage, an immediate notice must be given to the manager, or to some known agent of the company." The risk was afterwards transferred by the company that had issued the policy to another company. But a loss having occurred, the assured, not being aware of the transfer, gave notice to the agent through whom he had effected the insurance and who passed on the notice to the company liable. It was held that this notice was sufficient. A notice of the assignment of a life insurance policy will not be sufficient if given merely to a local agent, or, indeed, to any other person or in any other manner than that required by the Policies of Assurance Act, 1867, which requires it to be given "to the assurance company liable under such policy at their principal place of business for the time being, or in case they have two or more principal places of business, then at some one of such principal places of business, either in England or Scotland or Ireland." But this statutory provision does not prevent a company authorising a special agent to receive such notices, and so allowing notices given to that agent to become binding upon it. In effecting an insurance against fire, any material information which should properly be given to the company must be so given

expressly, notwithstanding that an ordinary agent of the company who is negotiating the insurance may have had notice of the facts either as a result of his own view of the property or of some casual intimation from the assured. The need for this might, however, be obviated if the property had been specially inspected by special agents of the company at the latter's risk.

INSURANCE COMMITTEES.—*See* APPENDIX

INSURANCE COMPANIES.—*See* APPENDIX.

INTEREST is the name given to the fixed price paid in money for a loan of other money called the principal. When this is not the case, as where the price paid by the borrower depends upon the success of some undertaking, or any casualty not connected with the duration of life, the price so paid is more properly called a dividend. There are many theories concerning the real nature of interest. Thus, some economists understand it as the price of the *productive* services of capital; others as the price paid for the *use* of productive capital; others as the payment made for *abstaining* from unproductive use of wealth; others as the wages of the capitalist's *labour;* and others as an *exploitation* from the labourer of the wealth which he alone produces. Any of these theories may have a considerable importance when made the basis of an economic generalisation. Thus, the exploitation theory, regarding the labourer in relation to the products of his labour in the same light as the landowner in relation to his land, makes interest a profit of labour to which the labourer alone is entitled, the practical application of this doctrine being found in a certain widespread phase of socialism. It is not unusual to distinguish between *net* and *gross* interest, the former being the price paid solely for the use of the money without any regard to risks or contingencies; when these latter become an element in the price it becomes a gross interest. Interest may also be distinguished from *usury*, which is the term applied to an excessive price paid for a loan. And there is, moreover, the important distinction between simple and compound interest. It would be a case of simple interest if a borrower, following the usual practice, were to agree to pay a fixed sum (the interest) yearly, half yearly, or quarterly, or otherwise as the case might be, for each £100 lent, until the principal is returned. This sum, "for each £100 lent," is referred to as the "rate" of interest. It is of the essence of a loan at simple interest that no part of the interest accruing on it should be added to the principal to form a new principal; and though payment of the interest were not to be made when it becomes due, the lender would not be able to add that interest to the loan and proceed to charge interest on the total. Should the terms of the loan be such that interest is to be so added to the principal, or added to the principal at certain periods, the loan would be one at compound interest. The periods at which, in loans at compound interest, the interest is added to the principal are called "rests."

The rate of interest is determined, in practice, by many causes. As a result of the operation of the law of demand and supply, interest is high when money is scarce and the demand for loans, on the other hand, is considerable. In regard to the highest class of loans this law operates most effectively in the money "market," which in its turn is designedly influenced by the Bank of England, by special borrowings, on occasions when it is necessary to remedy the effects of the operation of the law and keep up the BANK RATE. But many loans not being of this high character, especially the ordinary transactions between individuals, the elements of risk, security,

and personal necessity enter into, and tend to determine, the actual rate of interest. Naturally the borrower in needy circumstances, who is unable to offer an adequate security for the loan, must pay higher interest than does the well-to-do borrower who can also give a security by way of mortgage for example. Yet even loans of a comparatively small amount between individuals generally vary only slightly about the rate ruling for the time being in the market. Nor does this rate itself vary very materially; its variations are only slight and for short periods. Only in the course of a considerable number of years will there be found any striking and permanent variation. This appears from the following figures, which show the average rates since 1845:—1845–54, £3, 8s. 8d.; 1855–64, £4, 14s. 8d.; 1865–74, £3, 16s. 5d.; 1875–84, £3, 3s. 8d.; and 1885–94, £3, 3s. 2d. And also from the following, which show the bank rate during the first week in August in each of five recent years and the present one:—1892, 2 per cent.; 1899, 3½ per cent.; 1900, 4 per cent.; 1901, 3 per cent.; 1902, 3 per cent.; and 1910 (May), 4 per cent. Apart from the general cause of supply and demand, which includes the general state of credit in the country, the rate of interest is from time to time affected temporarily by other circumstances. Thus the Government may have collected in the great amount of inland revenue which is generally paid during the quarter ending on April 5, the day upon which the financial year ends. The amount of this exceeds £30,000,000, and its collection in the hands of the Exchequer tends to make money scarce. Then the Government may even lend some of this for a time, and so ease the rate. And the Government is also continually borrowing temporarily on Treasury bills, and as frequently paying them off or renewing them. And the rate of interest is also being affected, as already mentioned, when the Bank of England borrows in order to lessen any material difference which may exist between its own rate and that prevailing in the market.

And in its turn the rate of interest has a widespread effect upon commerce and industry. The rates of the brokers who discount the best class bills of manufacturers and merchants have to rise or fall in harmony with the prevailing rate; this has its effect, in turn, upon the operations of the manufacturers and merchants. Then also, as it may rise or fall, so does speculation on the Stock Exchange diminish or increase; and so vary the number and amount of bills of exchange drawn upon us from abroad. And various stocks are often bought because the rates of interest on such stocks are higher than the rate which the borrowers pay to the banks. A speculator might buy, say, £20,000 Colonial stock yielding 3½ per cent. interest, and borrow the price at 3 per cent. wherewith to carry it over from one settlement to another. His profit on that transaction, merely from the difference in interest, will be at the rate of £100 per annum.

To calculate the interest of any sum at any rate per cent. for a year, it is sufficient to multiply the sum by the rate per cent. and divide the product by 100. And to find the interest of any sum for a number of years, multiply its interest for one year by the number of years; or, without calculating its interest for one year, multiply the principal by the rate per cent. and that product by the number of years, and divide the last product by 100. When the interest of any sum is required for a number of days, these latter must be treated as fractional parts of a year; that is, the interest of a year should be multiplied

by them and the product divided by 365. Or, by another method, the principal sum may be multiplied by the number of days and the product by the rate of interest, the final product being divided by 36500 (365 x 100). When the rate is 5 per cent., or 1–20th of the principal, all that is required is to divide the product of the principal multiplied by the days by 7300 (365, the days in a year, multiplied by 20). Five per cent. interest being thus easily calculated, it is a facile practice to calculate 4 per cent. by deducting 1–5th; 3 per cent. by deducting 2–5ths; 2½ per cent. by dividing by 2; 2 per cent. by taking the half of 4, and so on. In calculating interest upon Accounts Current, Running Accounts, or in Balance-sheets, it is usual to take the number of days between each receipt or payment, and the date, say 31st of December, to which the account is made up. Such accounts are rendered as a rule on the 30th June and 31st December in every year. Thus, £75, 10s. paid on the 10th of October, bearing interest to the 31st of December, is charged for 82 days. The amount of such interest can then be calculated as just explained, or by the aid of those tables which should be found in every counting-house. But the same results could be obtained by reckoning the interest upon the balances resulting from each operation or variation in the account, though this is not the general commercial practice. The following is an example of an account current in which the interest is calculated according to a method very usually adopted in foreign trade:—

Messrs. George White & Co., Ceylon, in Account Current with Abraham, Barnes & Co., London.

1910.	Dr.	£ s. d.	Days to 31 Dec	Interest Number.	1910.	Cr.	£ s. d.	Days to 31 Dec.	Interest Number.
June 30	To balance of last account	867 10 0	184	1,595	Aug. 10	By proceeds of 5 tons 2 cwts. coffee, per *Louisa*, due Sept. 10	410 0 0	112	459
July 2	To your draft to J. Smith, due Aug. 13	128 0 0	140	179		By your remittance on J. Austin, due Oct. 10	350 0 0	82	287
July 9	To invoice per *Amelia*, due Oct. 9	752 0 0	83	624	Sept. 15	By proceeds of 2 tons 11 cwts. coffee per *Hercules*, due Oct 15	238 0 0	77	173
Oct. 10	To cash paid J. Harvey	75 10 0	82	62	Sept. 20	By cash from J. Johnson	260 0 0	102	265
	To insurance on produce shipped by you in the *Ann Nokes*, £1400, at 2 guineas per cent. £29 8 0 Policy 0 2 0	29 10 0			Dec. 31	Balance of interest carried to Dr.	. . . .	. .	1,276
Dec. 31	Postage and petty charges during the half year	5 3 0				Balance of account carried forward	621 8 7		
	To commission, ½ per cent. on £203 paid, Do. on £260 received on your account	4 6 0							
	To balance of interest this half year, 1276 divided by 73, is	17 9 7							
		£1,879 8 7		2,460			£1,879 8 7		

Errors excepted.

LONDON, 31*st of December* 1910. ABRAHAM, BARNES & Co.

A consideration of the above account will explain very clearly this method of calculating interest. Take the first item of £867, 10s. Here the round sum £867 is multiplied by 184. The product 159,528 is carried into the interest

number column, less the two last figures, which are not regarded. This operation is applied on both sides of the account to each item which carries interest. These interest columns are then added up, a balance struck, and the amount of this interest balance entered in either the Dr. or Cr. side of the account as the case may be. In the above example the balance, 1276, is charged to the Dr. side. To reduce the interest number balance into money, it is multiplied by the rate per cent. and divided by the number of days in the year. Instead, however, of going through that process = $\frac{1276 \times 5}{360}$, it is simpler to modify it thus = $\frac{1276 \times 1}{73}$, which allows us to obtain the desired result by merely dividing the 1276 by 73. In this connection one frequently comes across the phrase "red interest." This interest is so called because it is entered in its appropriate place in the account in red ink but is not included in the total additions and balancing of the account, its own total and balance being separately carried down in red ink as "red interest." The reason for such separate treatment of certain items is that they are not intended to be charged or credited in the particular account in which they appear—only to be recorded therein. An occasion for an entry of red interest would arise where, for example, when making up an account current to 31st December a bill has to be credited which is not due until, say, 12th January; in such a case the interest is reckoned from the 31st December to the due date and entered in red ink. A similar entry, but on the opposite side of the account, would be necessary when debiting a bill which does not mature until after the date to which the account is being made up.

A banker's account with his customer is an important example of an account current. But interest in such an account is calculated more exactly than is usual in ordinary mercantile transactions. The distinguishing feature in a banking account, however, is the daily balance; for on each day a balance is struck in respect of that day's operations on the account, and one day's interest carried out into the interest number column in respect thereof and charged to the customer, if it is a debit account. If there is no operation at all during a day then the preceding day's balance is carried out again, and so on, day by day, until further operations require another day's balance to be struck. At the end of the term of the account the interest number column is added up and treated like that in the above illustration of an account current. Bankers' accounts, as a general rule, terminate on the 30th June and 31st December, such a termination being known as a "rest." The balance of principal and interest is then brought forward into the new account, making one new total of principal upon which interest becomes payable. And so the account "rests" from period to period, on each occasion starting anew with the interest on the preceding principal amount added thereto in order to constitute a new principal sum. This is a good illustration of compound interest, and no doubt goes a long way to account for the by no means inconsiderable profits of banking.

In calculating interest on running accounts, it is of the utmost importance to be able readily to find the number of days from any day in any one month to any day in another month. This may be done with the utmost ease by means of the annexed Table, taken from M'Culloch's *Dictionary of Commerce*.

By this Table may also be readily ascertained the number of days from any given day in the year to another. For instance, from the 1st of January to the 14th of August (first and last days included) there are 226 days. To find the number, look down the column headed January to number 14, and then looking along in a parallel line to the column headed August, you find 226, the number required. To find the number of days between any other two given days, when they are both after the 1st of January, the number after the first day must of

Table for ascertaining the Number of Days from any one Day in the Year to any other Day.

Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
1	32	60	91	121	152	182	213	244	274	305	335
2	33	61	92	122	153	183	214	245	275	306	336
3	34	62	93	123	154	184	215	246	276	307	337
4	35	63	94	124	155	185	216	247	277	308	338
5	36	64	95	125	156	186	217	248	278	309	339
6	37	65	96	126	157	187	218	249	279	310	340
7	38	66	97	127	158	188	219	250	280	311	341
8	39	67	98	128	159	189	220	251	281	312	342
9	40	68	99	129	160	190	221	252	282	313	343
10	41	69	100	130	161	191	222	253	283	314	344
11	42	70	101	131	162	192	223	254	284	315	345
12	43	71	102	132	163	193	224	255	285	316	346
13	44	72	103	133	164	194	225	256	286	317	347
14	45	73	104	134	165	195	226	257	287	318	348
15	46	74	105	135	166	196	227	258	288	319	349
16	47	75	106	136	167	197	228	259	289	320	350
17	48	76	107	137	168	198	229	260	290	321	351
18	49	77	108	138	169	199	230	261	291	322	352
19	50	78	109	139	170	200	231	262	292	323	353
20	51	79	110	140	171	201	232	263	293	324	354
21	52	80	111	141	172	202	233	264	294	325	355
22	53	81	112	142	173	203	234	265	295	326	356
23	54	82	113	143	174	204	235	266	296	327	357
24	55	83	114	144	175	205	236	267	297	328	358
25	56	84	115	145	176	206	237	268	298	329	359
26	57	85	116	146	177	207	238	269	299	330	360
27	58	86	117	147	178	208	239	270	300	331	361
28	59	87	118	148	179	209	240	271	301	332	362
29		88	119	149	180	210	241	272	302	333	363
30		89	120	150	181	211	242	273	303	334	364
31		90		151		212	243		304		365

course be deducted from that opposite to the second. Thus, to find the number of days between the 13th of March and the 19th of August, deduct from 231, the number in the Table opposite to 19 and under August, 72, the number opposite to 13 and under March, and the remainder, 159, is the number required, last day included. In leap years *one* must be added to the number after the 28th of February.

To calculate *compound* interest, the first year's or term's interest must be found, and being added to the original principal, makes the principal upon which interest is to be calculated for the second year or term; and the second year's or

term's interest being added to this last principal, makes that upon which interest is to be calculated for the third year or term; and so on for any number of years. But when the number of years is considerable this process becomes exceedingly cumbersome and tedious, and to facilitate calculation reference should be made to the Tables which have been constructed for the purpose. By systematically investing and re-investing savings at compound interest, a man with even a small income may be certain to realise a competency. It is true that there may be some practical difficulty in investing the small interest of a small capital, but this can be done indirectly by paying it to a savings bank whose business it is to find investments for a large number of small sums. Accumulation at compound interest is very rapid. Thus £100 invested at 5 per cent. will represent at the end of the first year £105, at the end of the second year £110, 5s. 0d., at the end of the third year £115, 15s. 3d., and at the end of the fifteenth year over £200. In twenty-eight years the £100 will have become £411. It is by an application of the principle of compound interest that the modern system of life insurance becomes practicable, and that banking profits are so large.

The Law.—Interest has not always been legal in England, or on the continent, where in the Middle Ages the canon law had so important an influence. On two occasions in the fourteenth century the city of London issued a declaration against the practice of interest, or usury as it was then called. Usury was then defined as lending "gold or silver to receive gain thereby, or a promise for certain without risk." Subsequently many prohibitive Acts of Parliament were enacted. In 1545, however, a statute was passed allowing interest at the rate of 10 per cent. per annum; in 1624 the rate was lowered to 8 per cent.; in 1660 to 6 per cent., and by a statute of Queen Anne it was further reduced to 5 per cent. In 1854 the whole of the Acts against usury were repealed, and the rate can now be settled freely by contract. There still remains, however, the old power of the courts of equity to grant relief from usurious bargains, and there has also been recently passed a MONEY-LENDERS (*q.v.*) Act which has reference to the subject of usury, and which enables a borrower who has been inequitably treated by a money-lender in respect of interest or bonus to obtain relief from the Courts.

And as the law now stands interest can be recovered only when it is allowed by statute, or by contract between the parties, or where the allowance can be inferred from the usage of trade, as in the case of bills of exchange. Where there is a statute or usage of trade which allows interest there is then no question, as a rule, whether or no a party is entitled to interest. Such a question usually arises in claims based upon contracts. Where the contract expressly provides for the payment of interest no difficulty need then arise, but it is otherwise when the contract is on the face of it silent on this point or but vaguely expressed. A promise to pay interest will not be inferred, so as to create a contract for interest, simply because a customer makes no objection to an account sent to him by his creditor whereon the latter gives notice that he will charge interest after the expiration of a certain period of credit; but even apart from such a notice, such a promise may be inferred if the dealings between the parties had been particularly consistent therewith, as where the customer had been in the habit of paying interest on overdue accounts. Not even in a contract of loan, containing no provision for interest, will a promise to pay interest be inferred unless special circumstances or the usages of trade suggest it.

Where excessive prices are charged for work on account of slow and precarious payment no interest should be allowed, for interest is only allowed to supply the want of prompt payment, and here the excessive prices are the recompense therefor. If money is wrongfully withheld, then interest is always due in respect thereof as damages for the detention.

There is no rule of law that, upon a contract for the payment of money on a day certain, with interest at a fixed rate down to that date, a further contract for the continuance of the same rate of interest is to be implied. Where, under such circumstances as in *Cook* v. *Fowler*, the money is not paid on that day, the principal and interest then due become from that time a debt which, when recovered by legal process, may, in the discretion of the Court, be made the subject of an additional liability. But this is not properly a liability to interest according to the contract, but to damages for the breach of it. If goods are sold upon the terms that the purchaser is to pay for them with a bill of exchange, the seller, if the purchaser should fail to give him the bill, may sue for the price of the goods together with interest as from the date upon which the bill, if it had been given, would have become due. The reason for this is that the seller should be in as good a position in this respect as if the purchaser had fulfilled his part of the contract and given the bill. Interest is not due on an account stated for goods sold unless there is an agreement therefor, or it has been paid in respect of previous balances of account. It might be, however, if there was an agreement to pay the balance forthwith upon the adjustment of the account. Not even where one man pays money on account, and at the request of another, is interest due thereon unless there is an agreement therefor.

Compound interest is only payable upon a contract or by custom. It has been laid down as a general rule that such a contract is valid only in commercial accounts current for mutual transactions, and that even then the contract cannot be one antecedent to the statement of the account. If it is made at the time of, or after the statement, the contract will be valid. Banking accounts are the most general examples of contracts for compound interest. But any business man who, in respect of a commercial transaction, can show in an action for money lent, that it was the course of dealing between him and the defendant to calculate the interest every year and add that to the principal, and the next year to calculate upon the total, may recover interest calculated in the same way for those years subsequent to the striking of the last balance between the parties. And so an agent who has advanced money for his principal in effecting insurances and other mercantile business is entitled to charge interest, and at the end of every year to make a rest and add the interest then due to the principal. After an acquiescence in accounts furnished at regular intervals, as those furnished annually or half-yearly by bankers, an agreement that the balance of the principal and interest shall bear interest will be presumed. The mode of taking bankers' accounts with their customers has been already described, but in a case before the courts it has been described as effected "by charging interest on their advances, in a separate column up to the date of lodgment made, deducting the lodgment from the principal, and so on to the end of the year, when a rest is made; the balance of principal and interest constitutes the first item in the next account; and from acquiescence "by customers

in accounts thus furnished the annual balances are allowed to carry interest."

Considered as a subject of the CONFLICT OF LAWS (*q.v.*), the law which governs the payment of interest is the *lex loci contractus*. Thus where a *bill of exchange*, drawn in one country upon a party in another, contains no mention of interest, is dishonoured, the amount of interest recoverable thereon is calculated according to the law of the place where the bill was drawn. But where a bill of exchange was drawn and accepted in Paris by parties who both lived in England, and was made payable in the latter country, that bill, upon default having been made in its payment, was held to carry interest according to the English, and not the French law.

In the case of the payment of an annuity having fallen into arrears the annuitant is not, as a matter of course, entitled to interest on those arrears. But the annuitant may be so entitled under certain circumstances, as where frequent demand has been made for their payment, or the annuity is secured by a bond, or the annuitant has actually entered upon and is in possession of land upon which the annuity is charged. But an annuity left to a wife or child by a husband or father may be said to always carry interest from the day on which it is payable; and especially so will an annuity which is "the bread of the wife or child." To return again to *bills of exchange*, the following points may be noted. When a bill is made payable with interest, the latter should be calculated from the date of the bill. And where a bill is payable on a specified day it will carry interest from that day, unless the non-payment has been occasioned by the negligence of the holder. Bill brokers in the city of London are entitled to recover from the acceptor of a dishonoured bill the interest they pay under their guarantee to the bankers. It is the well-known and almost invariable custom for bankers in London, on receiving bills for discount from bill discounters and brokers, to take from them letters of guarantee, and not to require them to indorse the bills. The intention and effect of these letters of guarantee is to render the bill brokers responsible for the bills discounted for them in every respect as if they had separately indorsed the bills, and thus to obviate the necessity for the separate indorsement of each bill, which in practice, if not absolutely impossible, would be productive of great inconvenience and trouble in view of the thousands of bills which are daily discounted. No interest is carried by a note payable on demand, except from the time a demand for payment is made; to issue a writ is to make a sufficient demand. And interest is never recoverable on a bill which is not produced. And where a note is payable by instalments, and, on failure of payment of any instalment, the whole is to become due, the interest is calculated on the whole sum remaining unpaid on default of any instalment, and not on the respective instalments at the respective times when they would become payable. Interest is not recoverable after the payer of a bill has tendered the amount due thereon. Any one who guarantees the acceptance and payment of a bill thereby guarantees the payment of the interest as well as the principal.

By the *Bills of Sale Act*, 1882, it is provided that a conditional bill of sale not made in accordance with the form prescribed by the Act will be absolutely void, even as between the grantor and grantee. And many bills of sale have been held to be invalid solely on account of their not having

specified the interest according to the method suggested by the statutory form. The form runs in this respect as follows: "for the payment of the sum of £ , and interest thereon at the rate of per cent. per annum [*or whatever else may be the rate*]." It is thus seen that the interest payable under a bill of sale must be clearly stated therein, and must, moreover, be payable according to some *rate*. The amount of the rate is immaterial, so also is the equality or inequality of any instalments by which the interest is agreed to be paid. In fact the actual rate itself need not be specified, provided the amount payable in respect of the interest is clearly rateable. A stipulation for compound interest, whether expressly appearing from the words of the document or inferentially the result of the particular arrangement, will always invalidate a bill of sale.

The position is thus stated by Mr. Herbert Reed, K.C., in his valuable work on *The Bills of Sale Acts*:—"To accord with the form a fixed sum must be stated as the amount secured, which, with rateable interest, calculated up to the time when the principal shall be called in, can be recovered by the granter. There must be no attempt to alter the sum secured, and nothing must be added to it except by the way of rateable interest; thus a bill of sale cannot be made to cover further advances of an uncertain amount, which may or may not be made. For the same reason a bill of sale cannot now be given by way of indemnity, where the amount which will ultimately become payable, or its time of payment is for any reason left uncertain. But this rule against uncertainty of the amount received does not prevent power being given to the mortgagee to pay and charge with interest upon the chattels assigned, rent, insurance, and the like which the mortgagor may neglect to pay; although if the bill of sale makes such payments and interest recoverable by seizure, it will be void; thus an agreement whereby sums which might be paid by the mortgagee were to be added to and recoverable in the same manner as the principal money, was held not in accordance with the form."

INTERNATIONAL COMMERCIAL STATISTICS.—The politician and the theorist are for ever drawing upon the commercial statistics of different countries in order to support a policy or give point to an argument, and, unfortunately, this is generally done without due attention being drawn to certain facts which should always be remembered when dealing with such statistics. By the term commercial statistics is meant those statistical returns prepared by a government with regard to its country's trade and commerce, and which in England are collected and published chiefly by the Board of Trade. The object with which they are thus prepared is, by their comparison with the like statistics of other countries, to afford a guide for the commercial and fiscal policy of the state, as well also for the trading policy of the commercial classes. Without them and such a comparison it would undoubtedly be practically impossible for the Government to conduct public affairs with any degree of safety, or for commercial men to regulate intelligently their business operations. But even having them as a guide or criterion, the course of procedure in any given circumstances is not by any means made altogether certain. On the contrary their practical value, in comparison, is generally strictly limited—mainly to indications and suggestions. Once this fact is grasped and appreciated, neither the politician, the man of business, or even the man in the street, will be so ready to blindly adopt and follow some deep and far-reaching commercial policy merely on account of his first or

general impression of the lesson taught by an ill-considered comparison of various groups of statistics. It matters not how accurately, or upon what logical principles, the statistics of British commerce may be compiled, they will have but little precise value when considered in relation to the similar statistics of another country, compiled with like accuracy perhaps, but upon principles which, though different, may perhaps be equally logical. And it must be remembered that comparative international statistical inquiry is generally a determining element in most of the problems relating to foreign trade; nor is it an infrequent element in the determination of the problems of the home trade. The great difficulty lies in the many various methods adopted by different countries in the compilation of their statistics.

It will be noted in articles like those on INTERNATIONAL TRADE and IMPORTATION AND EXPORTATION that goods imported or exported are, in Great Britain, entered for statistical purposes under certain more or less arbitrary descriptive headings. The headings are in many cases seemingly more adapted to disguise the character of these goods than to describe it. And yet, for example, it would be absolutely impossible to define a hard and fast line of distinction between articles which should be included in manufactures, and those which should be accounted for as unmanufactured or raw materials. The list of "manufactured goods," in the case of the United States, includes a number of articles which would not by us, perhaps, be classed as "manufactured." Chief among these may be mentioned refined mineral oil, and paraffin and paraffin wax. The difficulties really arise because different countries place one class of goods under different heads, and also have varying subdivisions for the same heads. Thus Austria presents its imports from Germany under 1300 specific heads, whilst Germany classifies its exports to Austria under no more than 900 heads. And even where attempts have been made towards a more general and easily determined classification, the conflicting results are not thereby made impossible. Where, for example, the entire commerce of two countries may be grouped in each case under three main general divisions — articles of food, raw materials, and manufactures—each country may yet easily and reasonably have differing notions as to the division in which a particular article should be placed, or whether they should be even included in the general returns. Thus, in the general statistics of the imports and exports of a number of European countries there is no account taken of bullion, specie, or diamonds, though in others, as in our South African colonies, they are included in the export returns, to which they add a very considerable value. Diamonds have been included, so far as declared, in the statistics of this country only since March 1901. The great bulk, however, of diamonds and other precious stones are not declared, and so do not appear in the statistics. And until 1899 the value of ships and their machinery was also omitted. Horses, in the United States, Germany, Russia, and Holland, are included in the food-class as "animals for food"; in the United Kingdom they are found under the head of "miscellaneous articles"; in France, Austria, Italy, and Switzerland they are classified as "raw materials." Changes, too, have been made in the United Kingdom in the classification of the returns of imports and exports, with the consequence that the list of classes is not identical throughout the period covered by any table extending over a considerable number of years.

Another cause of confusion in this class of statistics is found in the various

BRITAIN'S TRADE RIVALS

BRITAIN'S TRADE RIVALS

THERE is controversy regarding the position of the United Kingdom in the markets of the world. Some persons say that our trade rivals are taking away commerce from the United Kingdom in foreign markets and in the markets of British colonies. On the other hand, persons assert that no such loss of sales by us in foreign and colonial markets is occurring; and these conflicting statements are supported by quoting crude trade statistics for this or that year.

A question of this sort can be determined only by careful examination of the full course of trade over a long period. Moreover, the crude facts must be condensed so that we get rid of the puzzling and confusing fluctuations of single years of trade. In other words, one must look at the course of trade, at trade movement, at trade tendencies. It is quite useless to pick out the results for any individual years of trade.

The best way to make the full course of trade disclose itself is to ascertain the yearly average for each consecutive decade. And we ought to examine at least twenty-five years. The latest returns issued by the Board of Trade up to April 1910, as regards the imports into foreign countries, relate to the year 1908. Thus, we can go back to 1880 and use the twenty-nine years 1880-1908, showing the average yearly results for each consecutive decade, thus:—

1880 1889 . . . .
1881-1890 . . .
&c., &c . . .
1898 1907 . . . .
1899-1908 . . . .
} Giving twenty consecutive yearly averages.

That is a sound method, by which the course of trade must disclose itself, and we will apply this method to the special imports into the principal foreign markets, from All Countries, and from the United Kingdom, respectively. Special imports mean imports for consumption in each foreign country, and do not include imports that are subsequently exported by each foreign country. These latter imports *plus* "special imports" are called "general imports." And in one or two countries, the United States, for example, I shall have to work on the "general imports" because the "special imports" are not recorded as regards the country of origin.

During 1880-1908 the United States have been the biggest foreign customer of the United Kingdom, and I will first apply the method explained above to the imports into the United States. See Table I.

TABLE I.—GENERAL IMPORTS* INTO THE UNITED STATES FROM ALL COUNTRIES AND FROM THE UNITED KINGDOM, 1880-1908. *Yearly Averages during each Decade.*

Decade.	Imports from All Countries. A.	Imports from United Kingdom. B.	TEST. Percentage proportion of B to A.
	Million Dollars	Million Dollars	Per Cent.
1880-1889 .	680	174	25 6
1881-1890	692	172	24.9
1882 1891 .	712	174	24 4
1883-1892 .	722	170	23 5
1884-1893 .	737	170	23.0
1885-1894 .	736	164	22.3
1886-1895 .	751	166	22 1
1887-1896 .	766	168	21 9
1888-1897 .	773	168	21 7
1889-1898 .	762	161	21 1
1890-1899 .	757	155	20 5
1891-1900 .	763	152	20.0
1892-1901 .	761	147	19.4
1893-1902 .	769	148	19 3
1894 1903 .	785	149	19.0
1895-1904 .	818	155	18 9
1896 1905 .	857	157	18 3
1897-1906 .	902	161	17 8
1898 1907 .	968	168	17 4
1899-1908 .	1026	176	17.2

* The Special Imports of the United States are not distinguished as to the country of origin.

4 8 Dollars to the £.

Looking at Table I. we see that although the imports from All Countries into the United States have largely increased, yet the United States' imports from the United Kingdom have largely decreased, with recovery in recent years. And, looking at the Test-column in Table I., we see that during 1880-1889, £25 6 per £100 of United States' imports came from the United Kingdom. We see, also, that during 1899 1908 only £17.2 per £100 of the United States' imports came from the United Kingdom. And the fall from the first decade to the last decade was continuous. That is not a satisfactory result.

I have not the necessary space here to deal with each foreign market as I have dealt with the United States' market—our leading foreign customer. But in Table II. I have condensed into one table similar statements to the last column of Table I., relating to the leading foreign markets of the world. Readers who may care to see the facts for each country separately, as in Table I., can see them in my *British Trade Year Book* (Third Issue), published by Mr. John Murray, London.

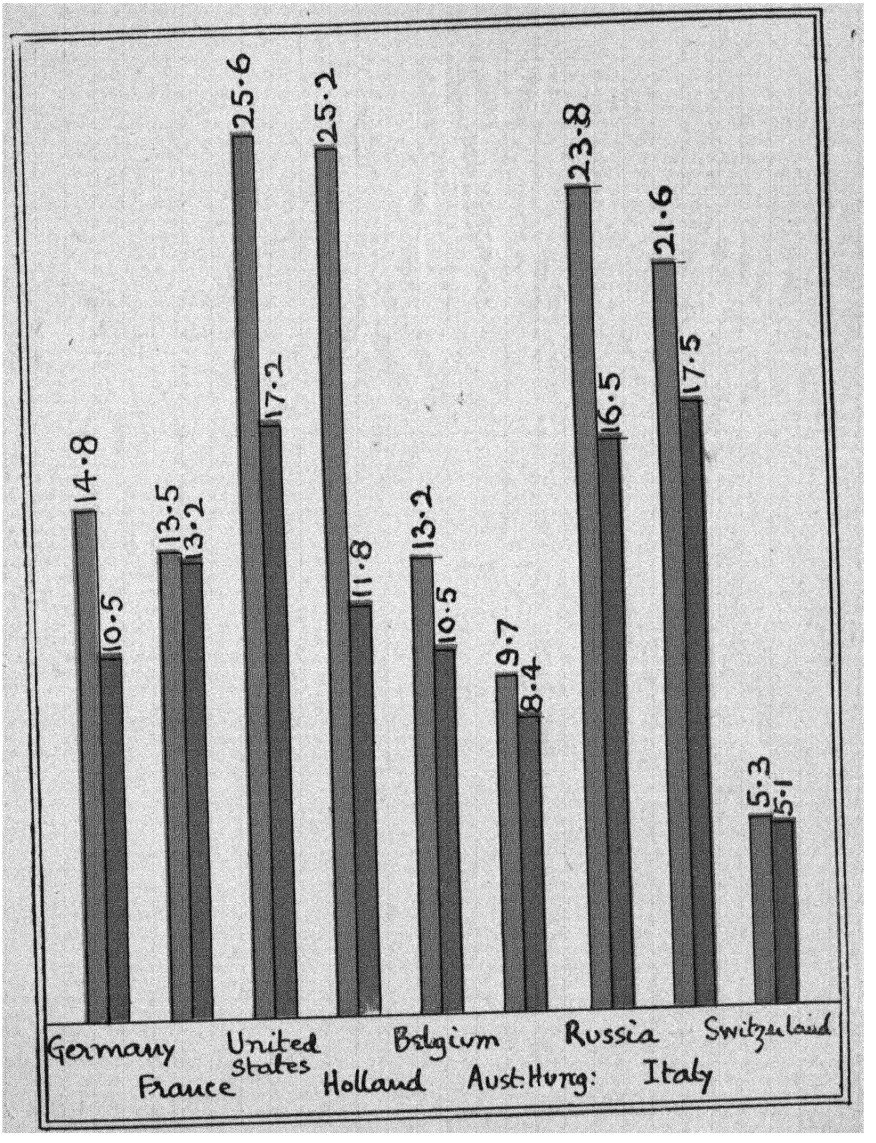
Table II. throws light upon the important question of the United Kingdom's position as a seller in foreign markets.

The ten countries named in the Table are the ten biggest buying foreign countries, and they are arranged in Table II. in the order of their importance as buying countries.

BRITAIN'S TRADE RIVALS

The course of trade, as regards purchases from the United Kingdom, shows itself plainly. In nine out of the nine ten buying countries, the proportion of their purchases from the United Kingdom fell. And in one country, Spain, the proportion rose.

Looking at Germany. During 1881–1890 we supplied Germany with £14.8 per £100 of Germany's imports for consumption in Germany. But during 1899–1908 our share of Germany's imports had fallen to £10.5 per £100.



See Table II. Showing the Fall in the United Kingdom's share of each of the Nine Principal Importing Foreign Markets. From the First Decade (Red Columns) to the Last Decade (Blue Columns). The above countries are arranged in the order of their importance as buying-countries.

Example:—The United Kingdom's share of Germany's purchases has fallen from £14.8 per £100 to £10.5 per £100 of Germany's purchases from all sources.

TABLE II.—SHOWING, FOR EACH OF THE TEN PRINCIPAL IMPORTING FOREIGN COUNTRIES, HOW MUCH PER £100 OF THEIR SPECIAL IMPORTS FROM ALL COUNTRIES CAME FROM THE UNITED KINGDOM, 1880–1908. *Yearly Averages during each Decade.*

Decade.	Germany.*	France.	United States.†	Holland.	Belgium.	Austria-Hungary‡	Russia.§	Italy.	Switzerland ‖	Spain.†
	Per Cent	Per Cent.	Per Cent	Per Cent.	Per Cent	Per Cent.	Per Cent.	Per Cent	Per Cent.	Per Cent.
1880–1889	..	13 5	25.6	25 2	13.2		.	21 6	..	18.1
1881–1890	14.8	13 6	24 9	24 8	12 9	..	..	21.9	..	18.3
1882–1891	14.8	13.4	24.4	24 1	12.5	..	..	21.5	..	18.7
1883–1892	14.9	13 1	23.5	23.4	12.4	..	..	21 4	..	18.9
1884–1893	14.8	12.9	23.0	22 9	12 4	..	23.8	21.3	..	18.8
1885–1894	14.6	12.7	22 3	21 7	12.2	..	23.9	21.4	5.3	18.6
1886–1895	14.3	12.7	22 1	20 9	12 1		23 9	21 4	5 1	18.9
1887–1896	14.1	12 8	21.9	20.0	12.0	.	23.1	21 5	5.0	19 2
1888–1897	13 8	12.9	21 7	19.4	11.9	..	22.5	21 6	5.0	19.5
1889–1898	13 4	12.7	21.1	18.2	11 8	.	21 7	21 1	4 9	19 7
1850 1899	12.9	12.8	20 5	17.3	11.7	..	21.4	20 8	4.8	20.2
1891 1900	12.7	12.8	20 0	16 6	11 7	9.7	21 2	20.5	4.8	20 7
1892 1901	12.4	13 0	19 4	15.7	11.6	9.5	20.8	19.7	4 7	20 5
1893–1902	12 0	13 0	19 3	14 8	11.4	9 3	20.0	19.1	4.7	20 2
1894 1903	11.6	12.8	19.0	14 0	11.1	9 1	19.2	18.5	4 6	20.1
1895–1904	11 2	12 7	18 9	13 4	10 9	8 8	18 4	17.9	4.6	20.0
1896–1905	10.9	12.7	18 3	12.8	10.8	8.5	17.8	17.6	4 6	19.6
1897–1906	10.7	12.7	17.8	12.5	10.7	8.3	17.1	17.5	4 7	19 5
1898–1907	10.7	12.9	17.4	12 2	10.7	8.4	16 5	17 5	4 9	19.6
1899–1908	10.5	13.2	17.2	11 8	10.5	.	..	17.5	5 1	
Course of Trade	A Fall.	A Fall.	A Fall	A Fall.	A Fall.	A Fall.	A Fall	A Fall.	A Fall.	A Rise.

* Not recorded for the year 1880.
† These are General Imports, as the Special Imports are not distinguished as to country of origin.
‡ Not recorded as to country of origin before 1891.
§ " " " 1884.
‖ " " " 1885.

Of course, to ascertain the real course of trade in this way entails infinitely more labour than merely to pick out from our Blue Books the results for this or that year. But, in my opinion, the value of the results obtained by the laborious and full method shown in Tables I. and II. amply compensate for the necessary labour. The pity is that our Board of Trade will not adopt a more scientific method than the method it uses. Because if the Board of Trade could be induced to depart from its old-established methods, all the waste of time and of energy in controversial dispute would be saved. As things are, any one can pick out from the Board of Trade returns whatever crude yearly results may happen to back up this or that opinion. An absolutely worthless procedure.

Table II. shows, conclusively, that the United Kingdom is not holding its position in foreign markets, and that the trade rivals of the United Kingdom are gaining the position that is being lost by the United Kingdom.

And when we make a similarly complete investigation as regards the markets of British Colonies we find the same result—namely, that the United Kingdom is steadily losing position as a seller in British colonial markets, and that the trade rivals of the United Kingdom are steadily gaining the position that the United Kingdom is losing.

In some markets, both foreign and colonial, the United Kingdom has increased its actual sales. *But it is losing position, as a seller, relatively to the position of the United Kingdom's trade rivals.* And that is the important matter. See Table II.

Our rivals are by no means only the United States and Germany. Many other foreign countries are helping to displace us in foreign and colonial markets.

J. HOLT SCHOOLING.

methods of estimating the values of imports and exports. There are three methods generally in use. In some countries, as in the United Kingdom, the values adopted in the official statistics are those "declared" by the importers or the exporters themselves. In 1854 the United Kingdom discarded the "official values" in imports for computed values and in the exports for declared values, and from 1871 the values of the imports have also been declared. In many other countries the authorities rely upon a fixed schedule of official prices which they revise from time to time. In Switzerland a mixed system is adopted, that is to say the authorities themselves determine the value of the imports, and the exporters supply, as in Great Britain, the value of the exports. Then, again, the value is often calculated upon the basis of the net weight of the goods, and as frequently upon the gross weight. Probably the most correct method of calculating and applying average value is to take the value of the goods at the moment of their actual exportation or importation; thus in the case of exports the value of the goods should be taken plus the freight to the frontier, and in the case of imports their value minus duty and freight from the frontier to the place of consumption. But this principle requires modification in the case of transport by sea, for then, when the transportation is under the national flag the cost of freight should be deducted from the value of imports and added to the value of exports. As a matter of fact, however, the United Kingdom calculates its imports on the basis of the value of the goods at the ports of entry, and its exports on the basis of the value of the goods at the ports of clearance, irrespective whether the transportation is made under the national or a foreign flag. Remembering this and bearing in mind that the bulk of our commerce is carried in British bottoms, it follows that we calculate our imports too high and our exports too low. In the United States the cost of freights and insurance does not enter into the determination of the value of the goods, this additional value escaping calculation both at the exporting as well as the importing country; their statistics only regard the wholesale market prices ruling in the country whence the imports come, wherefore their imports are calculated too low. This latter method leads to some curious results. For example, whisky imported from Scotland to the United States would be valued at its wholesale price in Scotland, including the excise duty that it would have paid had it been put on the Scotch market, but which in fact it never paid, having been exported from bond. It would be interesting to know how this procedure is generally followed in practice. And, besides the foregoing, when statistics convert silver values into sterling at nominal rates, the amounts assigned to the silver using countries are thereby considerably affected. This is especially the case in regard to India.

And yet another cause of confusion is found in the regard paid to the actual countries of derivation and destination of imports and exports. In a considerable majority of cases of imports the country of shipment is also the country of origin; but this is not always the case, and to a greater or smaller extent merchandise originating in one country is credited in the statistics to other countries at whose ports it has been transhipped, or through whose territories it has been conveyed by rail for shipment. In particular cases in which this mode of classifying imports appears likely to give a seriously misleading idea of the real course of trade, efforts are made by the British Customs Department, so far as possible, to attribute such imports to the actual countries of first shipment. It is not, however, possible to do this in all cases in the

absence of "certificates of origin" of the imported goods. How far it has been found practicable in each instance to make the necessary adjustments in the returns will be seen, from the following examples of the more important cases in which difficulty arises. (1) Countries such as Switzerland, Afghanistan, Bolivia, and the South African inland colonies, which have no seaboard, did not until recently figure in the returns at all. It has been found impracticable to distinguish merchandise imported from these states, and such merchandise is therefore credited to the country containing the port of shipment, but the exports are now dealt with. (2) Large quantities of goods from Japan, China, and other Eastern countries are transhipped at Colombo. Other Eastern goods are transhipped at Marseilles. Chinese exports have been exclusive of Hong-Kong and Macao since 1861, Korea since 1897, and Wei-hai-wei since 1904. Goods from Chile and Peru are largely transhipped at Colon on the Isthmus of Panama. In all these cases the goods are, so far as possible, credited to the country of original shipment instead of to Ceylon, France, or the Republic of Colombia, as the case may be. Turkey includes Asiatic Turkey. (3) A considerable amount of Canadian produce finds its way to the United Kingdom *viâ* the ports of the United States in winter when many Canadian ports are closed by ice. To a limited extent produce from the United States is sent to the United Kingdom *viâ* Canadian ports in the summer. Where, in such cases, the official documents enable a distinction to be drawn between Canadian and United States produce it is credited to the true country of origin. But in many cases such a distinction cannot be made, so that in using the British statistics it should be remembered that a certain amount of the trade of Canada with this country, especially in winter, is unavoidably included under the heading "United States." (4) A considerable amount of the produce of Germany, Austria, and Switzerland find its way to this country *viâ* Belgium and Holland. Some Russian produce comes through Germany, and a considerable quantity of Italian produce through Germany, Holland, Belgium, and France. Much West Indian, Cuban, and Mexican produce is imported after transhipment at United States ports. And in none of these cases is any correction of the British statistics found possible, and the whole of the produce is therefore credited to the country containing the port of shipment. (5) Since the opening of the Suez Canal (1869) some articles formerly recorded as imports from Egypt have been assigned to the countries of the ports of shipment. (6) Exports, so far as circumstances permit, are credited in the trade statistics of the United Kingdom to the country of ultimate destination as declared by the exporters in their entries.

What has now been said explains many inconsistencies in the statistics. Thus in a certain year Austria calculated her exports to Great Britain at 70,000,000 gulden; in the British statistics, however, it appeared that Austria during that year had imported goods into Great Britain of a less value than 15,000,000 gulden. And, to refer again to values, it is curious to note that according to the United States statistics the total value of imports there from the United Kingdom in 1897 was $159,002,286, and of exports thence to the United Kingdom, $482,695,024; but according to the statistics of the United Kingdom, rendered into dollars, the exports from the United Kingdom to the United States during the same year amounted to $189,669,585, and imports from the United States to the United Kingdom, $565,208,135. There is therefore on these returns a difference of $30,667,299 in the value of goods sent from the United Kingdom to the United States, and of $82,513,111 in the value of goods sent from the United States to the United Kingdom. And throughout the international statistics

similar inconsistencies may be readily found. When Switzerland abandoned what we will here call the "British" method in this regard, her statistics of the first year of the change showed that the imports from the bordering countries, as well as those from Belgium, Holland, and England, were 130,000,000 francs less than for the preceding year, and that the imports from more distant, especially transoceanic, countries doubled, rising from 11 to 22½ per cent. of the total Swiss imports. The "free" ports of Austria and Germany are, in this respect, the cause of considerable statistical discrepancies.

Sufficient has been now said to suggest how unreliable, without an intelligent "editing" are comparative international commercial statistics for the purposes of precise and practical information. Efforts have been made to bring about an international uniformity of system in this respect, but in view of the many characteristic factors specially determining the methods of each country it is doubtful whether any radical change towards harmony is possible. *See* TREATIES.

INTERNATIONAL COPYRIGHT.—This subject is governed by a complicated authority consisting of Statutes, the Berne Convention, and an Order in Council of 1887. The convention created a union of states, called the Copyright Union, the object of which was to secure a copyright in each of the countries within the union for any books, prints, articles of sculpture, or other works of art produced in one of such countries. British and colonial authors and artists who have satisfied the conditions and formalities of our law and the law of our colonies concerning copyright have, therefore, in respect of works they produce here or in the colonies, a right also to copyright in any other of the countries comprised in the union. And in like manner foreign authors who have complied with the copyright conditions and formalities of their country, being one within the union wherein their works have been first produced, are also entitled to copyright in Great Britain and her colonies. But in no case can any greater right or longer term of copyright in a work be obtained than that enjoyed in the foreign country in which the work is first produced. Assuming, therefore, that a work is first produced in Germany, and that in that country it is only entitled to copyright for twenty years, the author will not be entitled to copyright in England for, say, forty-two years, in respect of that work—it would be limited here to twenty years also. If, however, the work had been first produced in England the author would have obtained protection for it here for forty-two years, though for only twenty years in Germany. It may therefore be a very important question as to which country a work shall be first produced in. Assuming that Belgian copyright was of much less duration than French, it would be a wise policy for the Belgian author of a work, that is likely to appeal particularly to the French in their much larger numbers, to arrange for its first production in France. When a work is produced simultaneously in two or more countries of the union, it is deemed to have been first produced in that one of them in which the term of copyright in respect of such a work is the smallest.

The author of a book or dramatic piece first produced in a country belonging to the union may prevent the production in, and importation into, or public representation in, the United Kingdom, of an unauthorised translation of it. But after the expiration of ten years from the first production he will have no such power unless, before the ten years have expired, an autho-

rised translation has been produced here. The effect of this is to give any one a right to translate into English, and publish here, any work first produced in France, for example, which has not been translated by authority, and produced here in such translation within ten years from the date of its first production in France. An authorised translation would be protected in England by the same term of copyright as would be an original work. Political articles, or those which deal only with current topics or reproduce the news of the day and appear in foreign newspapers may be reproduced in England in translation or the original without the permission of the authors or publishers; and so may any other class of newspaper articles, unless their authors or publishers expressly forbid it. It is an infringement of copyright merely to adapt, arrange, or abridge foreign works unless in such adaptation, &c., a new work is in effect created.

A British subject who publishes his work abroad thereby stands, by virtue of section 18 of the Act of 1844, in the position of a foreigner with regard to the copyright of the work, and must look for protection to the International Copyright Acts and the Convention. The Copyright Act, 1911, which comes into operation on the 1st July, 1912, or on certain other dates as may be fixed, has an important bearing on this subject. It repeals all the International Copyright Acts and empowers the issue of Orders in Council which may extend the Act to foreign works and apply, subject to certain conditions, so much of it as relates to international copyright to the British colonies. One result, for example, may be that works first published abroad may enjoy the benefit of British copyright.

INTERNATIONAL CUSTOMS UNION.—In 1890 there was held at Brussels a conference of delegates from all the principal commercial powers of the world with a view, in the interests of international commerce, to arrange a general official publication of the Customs tariffs of all countries. As a result of this conference a convention was signed by these delegates, which provided for the formation of a certain association between the nations there represented, and all other nations which might at a subsequent time agree to the convention. This association bears the title of the "Union Internationale pour la Publication des Tariffs Douaniers," or, in English, the "International Union for the Publication of Customs Tariffs." The main purpose of the union is to publish, at joint expense, and to make known as promptly and as exactly as possible, the Customs tariffs of the various states of the globe, and the modifications to which those tariffs may from time to time be subjected. To effect this there is established at Brussels an International Bureau, the duty of which is to translate and to publish these tariffs as well as such legislative or administrative measures as may introduce modifications therein. These documents are published in a collection entitled "Bulletin International des Douanes." The "Bulletin" is now published in five languages, as representing those most used for trade purposes—English, German, Spanish, French, and Italian. The staff of the Bureau is nominated by the Minister of Foreign Affairs in Belgium, who superintends the regular working of the institution, and in its correspondence the French language is used. A report on its working condition and finances is submitted annually to the contracting governments. The necessary funds for maintaining this institution are supplied by the governments who belong to the union: but in order to decide in an equitable manner what portion each

of the contracting states shall pay, the latter are classified in proportion to the importance of their respective trade into six categories, on a principle explained in the convention. Those countries whose language is not employed by the Bureau in its publications enjoy a reduction of two-fifths of their proportionate contribution.

In order that the "Bulletin" may be produced with as much accuracy as possible each of the contracting states sends to the Bureau, directly and promptly, two copies of—(*a*) its Customs laws and of its Customs tariff carefully corrected up to date; (*b*) all regulations which may modify them; (*c*) such circulars and instructions as it addresses to its Customs officers regarding the application of the tariff or the classification of goods, and which may be made public; and (*d*) its commercial treaties, international conventions, and such legislation as has a direct relation to the Customs tariffs in force. States and Colonies which were not parties to the convention are at liberty to join the union upon application to the Belgian government. The convention came into operation on the 1st April 1891, and it was agreed that it should remain in force for seven years, and then continue for another seven years if not abrogated, and so on from one term of seven years to another.

Each state taking part in the union has the right to translate and print at its own cost either the whole or any portion of the "Bulletin" into such language as it finds most serviceable, provided that the language is not one of those adopted by the Bureau. And such a state has also the right to reproduce extracts from the tariffs, or, in exceptional cases, portions of the "Bulletin," in its own official organ, or in its parliamentary documents. And, moreover, each state is free to publish in the original, or as a translation, all Customs tariffs, provided that the published text is not the work of the Bureau. Though every precaution is taken by the Bureau to prevent inaccuracies in translation, no government connected therewith assumes any responsibility as regards these translations, for, in case of dispute, the original text will be the only guide. The "Bulletin" may be obtained, in England, from the King's printers for an annual subscription of £1.

INTERNATIONAL LAW is the name given to a body of rules which regulate the conduct of civilised states in their dealings one with the other, and it is distinguished in particular from the rules regulating the conduct of individuals which are the subject of municipal law. The law of England is an instance of municipal law, for it is the expression of the rules which regulate the conduct of individuals within that country's jurisdiction. International law used formerly to be more generally known as the Law of Nations, and perhaps the latter designation was equally apt with the one which has now practically superseded it. States are the units with which international law deals. It is not easy to define satisfactorily within the limits of this article the exact conditions which go to constitute a state which is capable of being a subject of international law. A state is not altogether the same thing as a nation. To be the subject of international law a state must be civilised, or included in the circle of modern civilised states; and it must be a sovereign or independent state, or one which has the right to contract with other states. In short, it must be a "born" or else a "naturalised citizen" of the community of modern civilised states, and must also be, as it were, *sui juris*.

But this community of civilised states governed by international law is

very different to a community of individuals which form a state. At no time has there been any sovereign power which has imposed this law upon them; at no time has the law even been expressly stated and agreed upon by them, and adopted as binding. The law has gradually and imperceptibly developed, and as gradually and imperceptibly been accepted. International contentions and disputes have laid the foundations for the law. Legal philosophers, from Grotius to modern writers, have discussed the rights of nations in relation to those matters, and thus created a body of moral and legal principles. Treaties between nations have applied these principles to special cases, and occasionally have obtained the general adherence thereto of all civilised states, and so in effect become acts of international legislation. Courts of International Arbitration, International Commissions, and Prize Courts have had before them the conflicting claims of rival states; and their decisions, based upon generally accepted principles, appropriate treaties, and former decisions, and being clothed with authority and stated with precision, have practically completed the structure of the law of nations. And not without influence upon international law have been the recognitions of principles and the directions for procedure contained in the more important state papers and reports. Such are, roughly, the sources of international law.

But yet an element appears to be absent which is really inevitable in every law. There does not seem to be a "sanction," to use a technical term; one does not discern the presence of a sovereign power able to enforce obedience to the law. And there really is none. And yet, notwithstanding this, an infringement of the law without a consequent adequate penalty is extremely rare, especially in the less important questions that may arise. But when the great and important questions arise, then is seen how little of sanction this law in fact has. The chief of the police force of the law is found in the national combinations for the preservation of the Balance of Power. When it is a matter of indifference to the "Powers" whether or no one state of their number is justified in, for example, declaring a war, or claiming a territory, or conducting a war in a particular fashion, it may be safely affirmed that such state will be able to deal in its own way with the matter it has in hand, the custodians of international right being absolutely regardless of any breach of international law it may commit. Nor, then, are the minor officials of the international police force of much importance, for against a powerful state, and without the co-operation of the powers, the other checks upon international wrong-doing, such as national jealousy and public opinion, are practically useless. This view of the partiality of the guardians of international law may appear to conflict to some extent with the general theory, but it is certainly substantially in accordance with the facts of modern politics. When any two states of first-rate or equal power are involved in a dispute which does not directly or indirectly touch their independence and does not affect any established balance of power, it may be taken as certain that the dispute will be referred to arbitration and to the rules of international law, and not made the subject of a war. Should the dispute be of a more serious character, then war will be the final resort, if the interested neighbouring powers are indifferent to the possible political changes resulting from a war. But let a state stand practically as a buffer to each of the powers, it is then in effect absolutely free from all compliance with international law. It cannot be forced to submit to arbitration, for it

knows that the penalty for non-submission, namely war, will not be enforced. Not one of the powers will be prepared to see it conquered and its place taken by a colleague state. Not one of the powers is in agreement with the others as to the division and distribution of such a state. This is somewhat the position of Turkey in Europe. Unless it offends in a respect which seriously touches all the powers it is safe from the coercion of the law. War is therefore the ultimate sanction of international law, if indeed sanction it can be called; it is rather an instance of its subjects taking the law into their own hands—a condition of things, strictly speaking, only consistent with political anarchy, not with a reign of law. International law, however, assumes to regulate the conduct of war, and it may be said to remain supreme in warfare and even over belligerent states. There is therefore a law of war as well as a law of peace; and these two are the two principal divisions into which, with an incidental third—the law of neutrality—the whole body of international law may be resolved. In the article on NEUTRALITY this third division will be referred to, and in this article notice will be taken of only the laws of peace and of war.

The **law of peace** concerns itself mainly with the rights and obligations of states so far as concerns their independence, equality, jurisdiction, diplomatic intercourse, property and jurisdiction. Independence is an essential condition of a state in order that it may become a subject of international law, and be, in fact, a sovereign state. And one of the tests of independence and sovereignty is whether a particular state has the power to enter into treaties with other states, for this is a right attached to every sovereign state. It follows from this right that a state can contract with another, and restrictively limit its future actions in much the same manner as an individual can. But there is an important distinction between a contract between individuals and a treaty between states which is worth notice. A contract between individuals would be voidable, and could be set aside, if made in consequence of duress or intimidation; but a treaty would be of full force and effect, even if entered into at the point of the sword. Did not this distinction exist it would be impossible for treaties to be made, as so many are, when one of the parties thereto only submits to the terms because it has been intimidated or conquered by the other. Another right of an independent state is that of general Protection or Superintendence. This right is one which seems to have developed in modern times as a result of peculiar modern political conditions. The position taken up by the United States, in accordance with the Munroe doctrine, is a good example of the arrogation of this right, for the United States assumes to stand up, and this assumption is now generally acquiesced in, as the authority to determine whether or no the present political distribution of the American continent can be disturbed and encroached upon by non-American powers. But herein the United States is but following the example of the six Great Powers of Europe which have now for many years assumed an authority to determine the general conditions under which the political distribution of Europe may be disturbed, if at all. It is also now a generally accepted principle that, within certain limits, a state has the right to intervene to protect the rights of another state. This right of intervention requires great delicacy in its exercise. Nothing short of self-preservation, the obligations of treaties, or the prevention of illegal intervention by another state, will, generally speaking, warrant an intervention; perhaps

justice or humanity may, on exceptional occasions. And amongst other topics belonging to the law of peace may be mentioned the right of legation, or the right of states to communicate one with the other by diplomatic agents, and for their commercial interests to be represented by consular agents. International law prescribes the powers and duties of these agents, confers upon them certain privileges, and imposes certain restrictions upon their actions. There is also the right of acquisition and possession of territory, the law regulating these proceedings and laying down general principles upon which states may act.

The **law of war** is of considerable interest. Its principles determine the methods by which war may lawfully be waged, prohibiting many implements and modes of destruction of life and property. Though war by its very nature is an act of destruction, yet international law forces it to be conducted on the least cruel and most civilised lines possible. The details of its regulations concerning the conduct of warfare are hardly the subject of such a work as this, but the ameliorating value of international law in this matter should be here noted and appreciated. In addition to this, however, the law of war endeavours to determine the modes of declaring war, and of deciding whether a state of war does in fact exist between any particular states and at what period it may be considered to have commenced or to end. It discovers the characteristics of enemies, and distinguishes between enemies *de facto* and enemies *de jure*; and, in connection herewith, it determines the property rights of enemies as between themselves. And *see* AMBASSADORS; CONSULS; BLOCKADE; TREATIES; and NEUTRALITY.

INTERNATIONAL STOCK is a term in finance used with two different significations. It is applied as well to those stocks whose dividends are paid in different national centres such as London, Paris, and Berlin, as to those securities which are dealt in indifferently on the principal exchanges of the world. And each of these classes of securities is equally entitled to the designation, for generally speaking they are all dealt in at the leading centres of finance. The securities of certain foreign states, such as Russia and Turkey, are examples of those whose dividends are payable in different centres; and certain high-class stocks and shares, such as a number of American railroads and De Beers, for examples, are instances of securities dealt in practically throughout the world. Stocks and shares which have thus acquired an international status stand naturally in an exclusive and high category. Apart from any question of their intrinsic value they always present the great advantage of being easily realisable, and are available for remittances from one centre to another. It is with this stock that ARBITRAGE operations are conducted.

INTERNATIONAL TRADE.—In this article it is proposed to give some account of the present condition of, and recent developments in, the trade of the United Kingdom and of those foreign countries which are generally considered to be our principal industrial and trading competitors. These foreign countries are France, Germany, and the United States. A consideration of the "theory" of international trade is reserved for the article on the MERCANTILE SYSTEM; here it will be more useful to confine our attention as much as possible to facts. Fortunately at the time of preparing the original edition of this work we were in a position to refer not only to the official Annual Reports of Trade, but also to the

POPULATION

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THE populations of the principal and some other countries are as follows:—

I.—A population of 50 millions or more:—

	Millions
China	402.7
British India	231.9
Russia, in Europe and Asia	128.2
United States	76.3
Germany	60.6
	899.7

II.—A population of 25 and under 50 millions:—

	Millions
Japan	46.7
United Kingdom	45.5
Austria-Hungary	45.4
France	39.3
Italy	32.5
	209.4

III.—A population of 10 and under 25 millions:—

	Millions
Spain	18.6
Brazil	17.4
Mexico	13.6
Egypt Proper	11.3
	60.9

IV.—A population of 5 and under 10 millions:—

	Millions
Canada and Newfoundland	7.2
Belgium	6.7
Roumania	6.0
Australasia	5.2
Algeria	5.2
Holland	5.1
Sweden	5.1
Argentine Republic	5.1
Portugal	5.0
	50.6

V.—A population of 1 million and under 5 millions:—

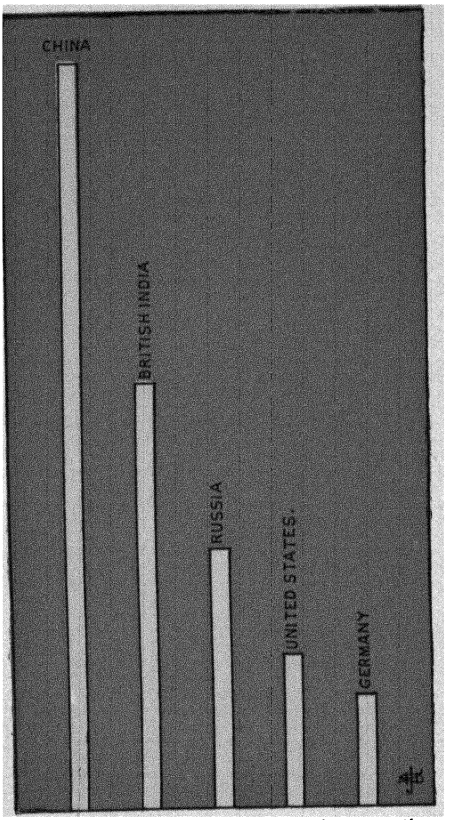
	Millions
Peru	4.5
Bulgaria	4.0
Ceylon	4.0
Switzerland	3.3
Chile	2.7
Servia	2.7
Greece	2.6
Denmark	2.6
Cape of Good Hope	2.4
Norway	2.2
Venezuela	2.1
Cuba	1.6
British West Indies	1.6
Gold Coast	1.5
Natal	1.2
	39.0

VI.—A population of under 1 million:—

	Millions
Porto Rico, Uruguay, Paraguay, Costa Rica, Iceland	2.2
Straits Settlements, Mauritius, British Guiana, Hong Kong, Malta, Fiji, and other small British Possessions	1.6
	3.8

The populations of the foregoing six groups of countries add up to 1263 millions, and, with the exception of China, whose population of 402 millions is the latest estimate, all the populations stated are those given in the most recent British official returns, and are based upon the last census, or upon the latest official foreign estimates supplied to British Departments in London.

This total of 1263 millions does not include every country in the world, but it includes all countries included in the latest British official returns. Some of the countries omitted, and whose populations are sometimes more or less vaguely estimated, are Turkey, Arabia, Persia, Afghanistan, &c. &c. The last estimate of the world's population amounted to 1480 millions.



The Five Populations compared above are the largest in the World.

The leading Group I., consisting of five countries, accounts for 900 millions, considerably more than one-half of the population of the world. Only two of these five are European countries—Russia and Germany. The great superiority in population now possessed by Germany as compared with France is a notable feature; France comes only fourth in Group II., with 39.3 millions to Germany's 60.6 millions—a shortage of over 21 millions, which is, moreover, increasing every year. Another Latin nation, Italy, is last in Group II., and the facts show that the Latin nations have wholly failed to hold their own with nations of Anglo-Saxon or of Teutonic stock in this matter of population.

It is rather interesting to glance at some of the smaller Groups, and to note which nations are associated on the score of population.

In Group III., Spain, Brazil, and Mexico come fairly close to each other. The facts in Group IV. tell us that Canada, despite its great area, has a population not much larger than Belgium's. Canada's population approximates to that of Greater London, and the population of Holland, of Sweden, and of Portugal is smaller.

It is remarkable proof of British capacity to develop new countries that Canada with a population of only 7 millions should now be on the flood-tide to become one of the greatest British nations.

In Group V., Peru heads the list. Venezuela and Greece both together do not equal the population of London. The Cape and Norway nearly match in population.

Coming to the matter of **Density of Population**, *i.e.* the number of persons to one square mile, the facts are as follow :—

I.—250 persons or more per square mile :—

Egypt Proper	939
Belgium	589
Holland	400
United Kingdom	342
Japan	317
Italy	294
Germany	290

II.—100 and under 250 persons per square mile :—

Austria	226
Switzerland	215
British India	213
France	190
Denmark	172
Ceylon	154
Hungary	154
Portugal	146
Servia	144
British West Indies	133
Roumania	118
Bulgaria	108
Greece	108
China	103

III.—50 and under 100 persons per square mile :—

Spain	96

IV.—20 and under 50 persons per square mile :—

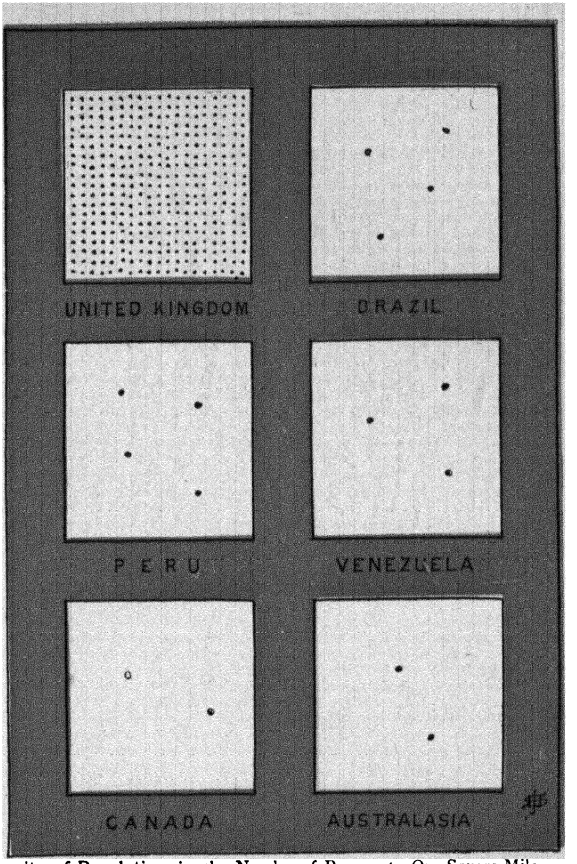
Cuba	36
Sweden	30
Algeria	28
United States	21

V.—10 and under 20 persons per square mile :—

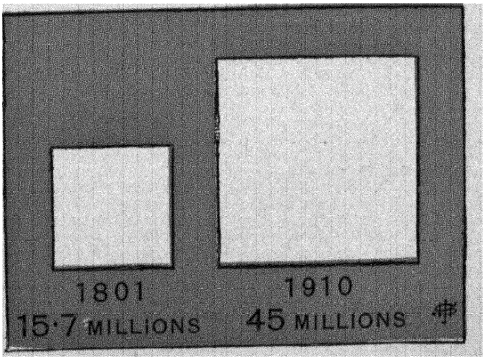
Norway	18
Mexico	18
Russia, in Europe and Asia	15
Gold Coast	13

VI.—Under 10 persons per square mile :—

Chile	9
Cape of Good Hope	9
Argentine Republic	5
Brazil	4
Peru	4
Venezuela	3
Canada and Newfoundland	2
Australasia	2



Density of Population, *i.e.* the Number of Persons to One Square Mile. Contrasting the United Kingdom's Density with that of the five most lonely lands of the earth.



The Population of the United Kingdom in 1801 and in 1910.

POPULATION

The highest density of population is in Egypt Proper, 939 persons per square mile. Egypt Proper includes only the cultivated and settled area of Egypt, *i.e.* the Nile Valley and Delta, and in this part the density of population is as stated. All the foregoing densities of population are extracted from, or computed on, the latest British official returns, with the exception of that for China.

Belgium and Holland are more thickly populated than the United Kingdom, which comes fourth in Group I.

Austria is at the head of Group II., with 226 persons per square mile, and China is at the end, with 103 per square mile.

The United States comes in Group IV., with 21 persons per square mile. With the great energy of the Americans and their vast progress, even under this very low density of population, they may well expect stupendous and unique development in the future, when their country becomes more thickly populated and its natural wealth fully utilised.

Group VI. tells us which are the lonely lands of the earth—all these eight countries have fewer than 10 persons to the square mile. Canada and Australasia are the least populated countries of any of those in the long list now dealt with.

We see that despite the vast populations of China, British India, United States, and Russia, these four countries take a relatively low place when density of population is observed.

J. HOLT SCHOOLING.

Memorandum in a then recently published Blue Book on trade prepared by Sir Alfred E. Bateman of the Commercial Department of the Board of Trade. No subject is more generally and more keenly debated amongst men of business than that of the foreign trade of the United Kingdom, and no problem is more earnestly considered than the means of maintaining our commercial supremacy. There are almost as many views of the state of our commerce in relation to that of our chief foreign competitors as there are men who strive for a view. This should not be so. The main facts are fairly accurately ascertained and appear in various Government publications collected from the principal sources and uninfluenced by any prejudice. The Government departments have no theory to bolster up and no policy to support. Their work is to collect and present information so that those whose part it is to formulate policies and legislation may work upon foundations as surely laid as possible. Because this is so, this article originally followed the scheme of Sir Alfred Bateman's Memorandum and relied mainly upon his facts. Following then that Memorandum, so far as it can now be followed in the year 1912, a Report of 1909 on British and foreign trade and industry, 1854-1908 (but which unfortunately does not continue some of the most interesting statistical tables in the Memorandum), the Annual Statements of Trade, and other sources of information, a reference will be first made to some points connected with the progress and development of the above-mentioned countries when looked at from a more general point of view than that afforded by the trade statistics only.

Growth of population.—A comparison of the trade of particular countries in order to have any value must include some consideration of—(*a*) the relative growth of their populations; (*b*) the tendency of their populations to become industrial as distinguished from agricultural; (*c*) the natural resources of each country in respect of mineral wealth; and (*d*) the extent to which its mineral wealth, plus such additional wealth of the same kind as it can obtain from other sources, is made available for industrial purposes. It would be much more to the point if those who, when discussing the relative commercial advantages of different countries, at once proceed to attack the questions of protection and free trade, were at first to have some regard for the foregoing considerations. The population of the United Kingdom in 1871 was 31½ millions; in 1901 it had risen to 41½; in 1908 it reached 44½; in 1911 the figure was 45¼. This shows an increase during the last forty years of 14 millions, and the annual rate of the increase has been calculated at about 1 per cent. In France during the period 1871-1910 the increase has been from about 36 millions to 39¼ millions, that is to say, an absolute increase of only about 3¼ millions. In Germany, also during the same period, the increase has been from 41 millions to 56⅓ millions in 1901, and to 65 millions in 1910, or an absolute increase of 24 millions. When we come to the United States there is found quite an astonishing increase: from 38½ millions to 75½ millions in 1900, and thence an increase in 1908 to 87 millions, or an absolute increase of about 50 millions. In 1911 the population was 92 millions. And the rate of increase every five years is 6 or 7 millions, as compared with 2 millions in the United Kingdom, a quarter of a million in France, and 2 or 3 millions in Germany. Forty years ago the United States had a population nearly equal to that now subsisting in the United Kingdom, and since then it has added to that population an increase alone exceeding the population of another United Kingdom. These facts alone show in the light of the

conditions of modern life that there is a prime inevitable necessity, from the point of view of population, for a general industrial progress in the United States which must far outstrip the corresponding progress of the other three countries. And from this point of view France is hopelessly out of the race, and Germany should keep in front of the United Kingdom.

Nor is the increase in the United States or Germany confined to rural or agricultural population; for in absolute numbers the increase in those countries, in town population, is beginning to be greater than can be the case in the United Kingdom. In Germany the increase in thirty-five years was 20 millions, and this exceeds by probably 7 millions the total increase of the United Kingdom in the same interval. Wherefore, even allowing for a transfer from rural to urban in the United Kingdom, the absolute increase of the numbers of the commercial, manufacturing, and industrial population in Germany may be assumed to have been probably greater than in the United Kingdom. As to the United States there can hardly be any question. The increase there in the town population in the period of thirty years ending 1900 was 17 millions, or an excess by 7 millions of the total increase of the population of the United Kingdom in the same period, and the transfer from urban to rural with us cannot have been anything like that figure. "In other words," comments the Memorandum of 1904, and the comment holds good to-day, "both Germany and the United States have attained to the position of increasing their non-agricultural population more quickly than the United Kingdom, and looking at the larger mass of the population in both countries and their rapid state of growth, there seems no doubt that unless something happens, which does not seem probable, to make people go back to the land, both Germany and the United States will, in a short time, possess a larger non-agricultural population than we have, and one which will increase more rapidly in numbers. The conclusion, therefore, would seem to be that the conditions of the manufacturing and industrial predominance of the United Kingdom, and even of its manufacturing and industrial pre-eminence, are becoming different from what they were when the non-agricultural population of every other country in the world was smaller than in our own. Industry and manufactures abroad, particularly in the United States and Germany, have become much bigger things relatively than they were. It has long been foreseen that this change of affairs was likely to come about sooner or later, but the change appears now to be already with us, and the developments will need to be closely watched."

Production.—The statistics relating to the production of coal and iron as representatives of productions generally are very interesting. Taking the periods 1870–74 and 1905–8, and taking the production of the United Kingdom as 100, the comparative production of France, Germany, and the United States works out as follows: France has increased her output from 13 to 14; Germany from 26 to 53; and the United States from 36 to 150. And taking the figures of the consumption of coal relatively to population, it further appears that the increase of consumption per head in the United States is more than double that in the United Kingdom, the like increase in Germany being also greater than ours. With regard to pig-iron, the increase in quantity annually produced in the period 1905–8 over 1870–74 was: in the United Kingdom, 3½ million tons; in France, 2 million tons; in Germany, 10 million tons; and in the United States, 20 million tons. But if, in

the case of either coal or pig-iron, the annual production is considered in proportion to population, the United Kingdom still, in regard to coal, takes the lead. Thus the average annual production of coal during the period 1905–08 was: in the United Kingdom, 5·79; in France, ·89; in Germany, 2·19; and in the United States, 4·47. That of pig-iron: in the United Kingdom, ·22; in France, ·08; in Germany, ·19; and in the United States, ·26. This, however, is small consolation if we ignore the fact that our population is comparatively small and slow of increase, and yet at the same time we are ambitious to absolutely lead the world, including as it does such countries as the United States and Germany. Certainly the above coal statistics are not absolutely convincing, for they do not include bunker coal shipped at United Kingdom ports, nor coal taken on board English ships abroad—important items when our shipping industry is so great. Nevertheless, for all practical purposes, they are sufficient.

Foreign trade.—Turning to our exports and imports, and taking two periods, namely the years 1880–84 and 1905–08, for the basis of comparison, the trade statistics show that the annual (estimated on an average of five years) special exports to the principal protected countries in these two periods respectively, set out in millions of £'s, was: for the United Kingdom, 99·6, 133·6; for France, 73·3, 105·8; for Germany, 93·8, 175·4; and for the United States, 45·7, 121·7. By the term "special exports" is meant exports of domestic produce, while "special imports" mean imports for home consumption. The foregoing shows that the increase in the United States special exports was immeasurably greater than that in any of the other countries, that Germany came next and our country was left behind even by France. If, however, we were to select a single recent year, admittedly a bad one, as for example the year 1894, and compare that year with the year 1880, our case would be still worse. Instead of our being able to show any increase at all, we should have to admit for ourselves a decrease of about 3 per cent., but increases for Germany and the United States of about 2 per cent. and 5 per cent. respectively. Fortunately the years 1899 and 1900 were exceptionally good for our export trade, and consequently an average taken over five years gives us some slight appearance of well-doing. But these comparisons are confined to the increase, not to the absolute value of the exports. If this latter is taken we stand, in 1900, at the head of the list with £283 million of special exports, plus exports to the value of about £9 million of new ships and their machinery which were not then included in the returns. The United States follows with £286 million; Germany with £222 million, and an extra £8 million in respect of ships; and France with £164 million. But take the annual average over 1905–08, and in absolute value of special imports to protected countries, we stand considerably below Germany, and but little above the United States. In considering this alarming increase against us it should be remembered, however, that the level from which all three of our principal industrial competitors started, in the above estimate, was considerably lower than that from which the United Kingdom started. After what has already been said with regard to the statistics of population and production of coal and iron in each country, these results can cause no surprise; the figures all tend in the same direction. We can console ourselves with the fact, however, that our export trade was not actually standing still during the years

1905-08; it did move. But, unfortunately, some six years—1885, 6, 7, 1893, 4, 5—can be referred to wherein we actually fell behind the comparatively poor year of 1880. The last six years have given us, however, some cause for satisfaction, as during 1907 our special exports reached the phenomenal figure of £9, 13s. 3d. per head of our population (in 1910, £9, 11s. 8d.), they having been consistently above £6 since the year 1899. In the year ending June 1902 the total exports of the United States fell off to the extent of $105 million as compared with the previous year, but increased by $700 million on that year in 1911.

Perhaps it will give more satisfaction to view more in detail the statistics relatively to population. Such a view will show that from 1875 to 1899, but not including the years 1901 and 1902, the special exports per head were in each of the four countries practically stationary in amount, their average annual value per head of the population for the quinquennial period 1895-99 being: from the United Kingdom, £5, 19s. 5d.; France, £3, 14s. 8d.; Germany, £3, 7s. 2d.; and the United States, £2, 18s. 4d. In the last quinquennial period 1905-08 these exports had risen, however, to £8 7s. 11d. for the United Kingdom, £5, 5s. 11d. for France, £5, 0s. 8d. for Germany, and £4, 4s. 5d. for the United States.

With regard to the imports of the United Kingdom, it should be mentioned that they are more than double per head of population than those of any of the other countries named; nearly four times the imports per head of the United States. And of these countries only Germany is appreciably gaining on the United Kingdom in this respect.

British trade with foreign countries.—*With France.*—Our imports from France increased considerably until 1904, notwithstanding the slow growth of the population of that country, and the increase, on analysis, was found to have been largely occasioned by an increase of miscellaneous articles with a specially large increase of the imports of silk manufactures and smaller increases in the cases of sugar, wine, and woollen manufactures. There is, however, no question of the displacement of home manufactures in the United Kingdom through imports from France. Our exports to France showed until 1907 a sensible decline, in spite of a special increase of £4 million in 1900 due to largely increased exports of coal to France at largely increased prices. In 1907 and 1908 these exports show a considerable increase. In 1880 we imported £42 million, and exported £15 million; in 1885 the figures are respectively, in millions, £35·7 and £15; in 1890, £44·8 and £16·6; in 1895, £47·5 and £13·9; in 1900, £53·6 and £19·7; in 1904, £44·7 and £21·5; in 1908, £41·8 and £31·3; in 1910, £42·3 and £33·5.

With Germany.—The following is some indication of the course of our export and import trade with Germany. In 1880 the imports and exports amounted, in millions of pounds sterling, to 24·4 and 16·9 respectively; in 1885 to 23·1 and 16·4; in 1890 to 26·1 and 19·3; in 1895 to 27·0 and 20·6; in 1900 to 31·2 and 26·4; in 1904 to 49·5 and 36·4; in 1908 to 54·9 and 46·3; and in 1910 to 61·8 and 54·9 (exclusive of new ships and their machinery). From this it is obvious that there is a general current of progress in our trade with Germany, both imports and exports having increased very considerably. The increase of imports is found chiefly in sugar, cotton, woollen, glass, and iron manufactures; the importation of agricultural

produce having decreased. The increase in the exports lies for the most part in coal, but woollen yarns, cotton manufactures, iron and steel manufactures, and machinery have each some place in the export trade. These figures and facts should efface the general impression that German goods are flooding this country and displacing our home manufactures in our home markets; obviously such an impression is an erroneous one, and can only have been caused by superficial observation. But the above statistics have only a general and approximate value, for much of the merchandise sent here from Germany is shipped from Dutch or Belgian ports, and is consequently not included in the returns of imports from Germany, and, on the other hand, a considerable part of our exports debited to Germany, because they have been shipped to German ports, ought really to appear in the accounts against Russia and Austria-Hungary.

With the United States.—Our export and import trade with the United States is the most striking. In 1880 the imports and exports amounted, in millions of pounds sterling, to 107·1 and 30·9 respectively; in 1885 to 86·5 and 22·0; in 1890 to 97·3 and 32·1; in 1895 to 86·5 and 27·9; in 1900 to 138·8 and 19·8; in 1904 to 116·3 and 20·1; and in 1910 to 117·6 and 62·2. Particularly instructive it is to notice the increase in the imports conjointly with, until recent years, a decrease in the exports. The States with their great population, productive resources, intelligent and skilled labour, and organisations of capital, are undoubtedly aiming at an industrial independence so far as home manufactures for their home markets are concerned. And their policy of protection is supporting that aim and making the goal of attainment very possible. Thus they exclude all foreign goods except such as necessity forces them to admit, even our woollen trade having sorely felt this policy of exclusion. Nearly half of our imports is represented by the products of agriculture and stock-raising, timber and petroleum. Another considerable portion includes machinery. It may almost be said that some part of these imports is in effect forced upon us. They represent large amounts of capital which the Americans are bringing into this country for the repurchase of those of their own securities which had always quietly remained in the hands of British and continental capitalists, until America began to realise its wealth. And not only for this purpose is American capital being so largely introduced into this country; it must not be forgotten that it is also brought here for the purpose of capitalising a large proportion of modern British home enterprises.

General relation of trade.—*Imports.*—During the period over which the foregoing survey has extended, namely from 1880 to 1908, it will be noticed that there have been no striking variations in the proportions of our *total* import trade which we have carried on with France. But since 1900 there has been a consistent and considerable increase in the trade with Germany, including Holland now in the latter for sake of greater accuracy in this more general estimate. The imports from the United States increased most considerably, both absolutely and relatively, during the years 1895-1900, but since then the figures have been much less. Our *exports*, too, to France, Germany, and the United States showed until recent years an appreciable decrease.

Exports from the three countries.—As regards the value of all her exports of *manufactured* articles, France, upon a comparison of the years 1896-1900 with 1880-1884 showed an increase of about £9 million per

annum or 12 per cent. But since 1901 these exports have steadily increased from £90 million to £133·7 in 1907 and £118·5 in 1908. This increase consists mainly of increases in cotton tissues, millinery and artificial flowers, clothing and made-up articles, machinery, and ceramic products and glass wares; but these additional importations do not appear to have found their way into the United Kingdom. Germany has been progressing even more rapidly. During the same period her exports of manufactured goods have increased by £34 million, or 36½ per cent. But since 1901 these exports have increased from £1[illegible]2·2 million to £236·4 in 1907 and £213·1 in 1908. The exports so increased were made up chiefly of machinery, clothing and made-up articles, coloured prints, engravings, and photographs; books, maps, and music; coal-tar, dyes; "coarse iron wares," "fine iron wares"; leather, and toys. But here, as in the case of France, the chief markets for these additional exports have been found elsewhere than in the United Kingdom, and, as we have already stated, Germany has not in fact appreciably affected our home trade. The exports of the United States being chiefly *un*manufactured merchandise it cannot be said that our imports therefrom are generally prejudicial to British trade at home. So far as they consist of manufactured goods they are, for the most part, refined mineral oils and paraffin and paraffin wax, machinery, copper goods, cotton manufactures, leather, agricultural implements, and "chemicals, dyes, drugs, and medicines." The precise effect upon our home trade of so much of these exports as come here is a question in course of being answered by British industry at the present time. Many of them are obviously not in competition with our home manufactures; but a substantial proportion of them are. With regard to machinery, the trade has probably been to a large extent a special one in new types (principally electrical and metal working), to which our makers will easily adapt themselves. With regard to leather, as another example, the recent terrible depression here in boot and shoe manufacturing forced the British trade as a measure of self-preservation to assert itself and hold its ground.

Exports and imports of British manufactures.—As to our own *exports* of manufactured goods, their average annual value (exclusive, in order to preserve comparisons, of ships and new boats with their machinery, which have only been recorded from 1899) during the period 1880–84 was £206·4 million, while the like average of the period 1895–99 was £199·6 million, the amounts being practically identical, though during these twenty years there were of course some fluctuations. In 1901 their value was £214·1 million. In the period 1905–08 the annual average had risen to £294·7 million. A consideration of the items making up these totals during the lean years preceding 1901 shows that there was a decrease of about £11 million under the head of yarns and textile fabrics, but there was a compensating increase under the heads of machinery and miscellaneous manufactured articles. The averages for metals and metal manufactures, apparel and articles of personal use, and chemicals and chemical and medicinal preparations remained virtually unchanged. It should be noted that we are here dealing with values and not with quantities, and this fact explains the fall in yarns and textile fabrics. The fact was that the raw materials of which they were manufactured had been imported at a lower value than before, and that consequently the value of the manufactured goods fell accordingly.

THE COMMERCE OF NATIONS

THE COMMERCE OF NATIONS

THE latest Board of Trade return in April 1910 contains particulars of the commerce of foreign countries up to the year 1908. I have summarised the commerce of each of the following countries during the ten years 1899–1908, in order that we may obtain a broad fact-base upon which to compare the foreign trade of nations. The summary relates to Imports of merchandise for home consumption [Special Imports] and to Exports of home-produced merchandise [Special Exports].

THE FOREIGN COMMERCE OF TEN PRINCIPAL COUNTRIES, 1899–1908.

Country.	Special Imports.	Special Exports.	Total.
	Million £	Million £.	Million £.
United Kingdom.	4828	3219	8047
Germany	3310	2676	5986
United States . .	2106	3149	5255
France	1983	1841	3824
Holland	1928	1602	3530
Belgium	1099	872	1971
Austria-Hungary.	833	882	1715
Russia.	708	943	1651
Italy	836	643	1479
Spain	399	365	764

The facts for Russia relate to 1898–1907.

The facts for Spain relate to "General" imports and exports.

Germany's figures are based on 20 Marks to the £.

Nine of these ten nations exceeded 1000 million £ of commerce, or an average of 100 million £ per year. But perhaps the most striking fact in the table is the immense preponderance of British imports over British exports. An excess of imports that is not approached by any other country; although, as we see, two countries were not far behind us in exports.

The following table shows the relation between Special Imports and Special Exports for each of the ten leading countries:—

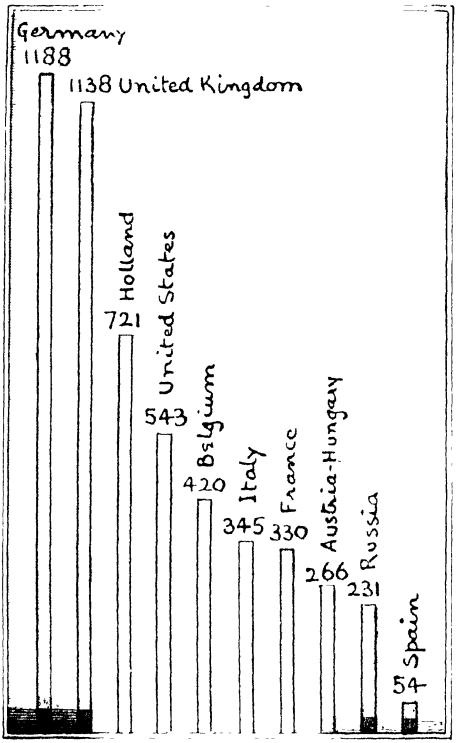
EXCESS OF SPECIAL IMPORTS OVER SPECIAL EXPORTS, AND EXCESS OF SPECIAL EXPORTS OVER SPECIAL IMPORTS, 1899–1908.

Country.	Excess of Imports.	Excess of Exports.
	Million £.	Million £.
United Kingdom . . .	1609	..
Germany.	634	.
Holland	326	..
Belgium	227	..
Italy	193	..
France	142	..
Spain	34	..
Austria-Hungary . . .	..	49
Russia	..	235
United States . . .	..	1043

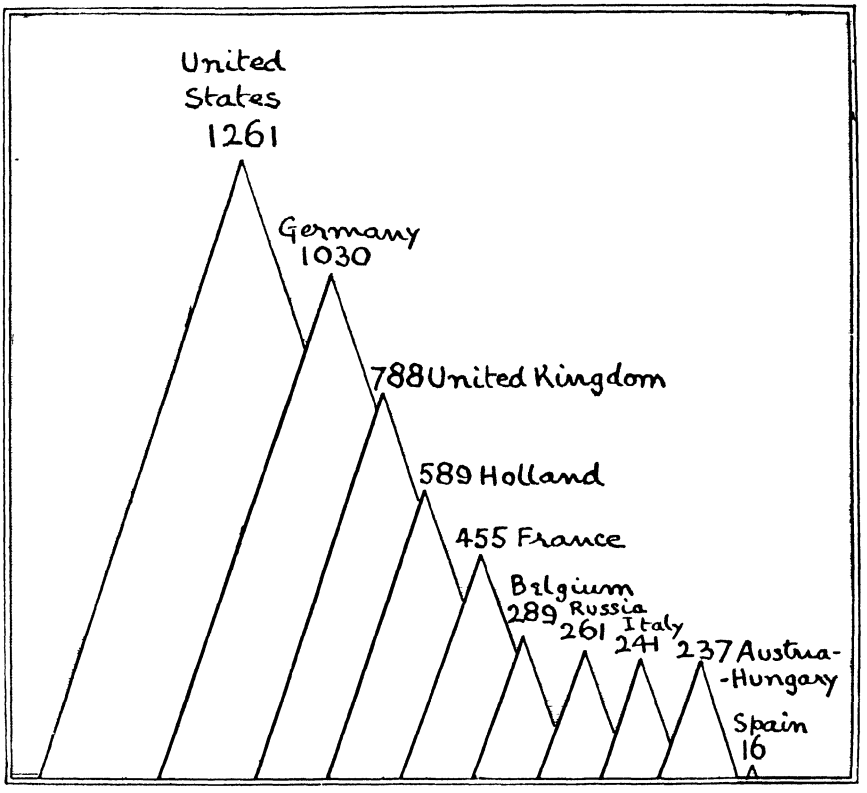
The most striking fact in this table is the contrast between the United Kingdom and the United States. During 1899–1908 the excess of British imports over British exports was 1607 million pounds, and the excess of United States exports over United States imports was 1043 million pounds.

For many years economists have insisted that an excess of imports over exports is an infallible sign of a prosperous commerce, and explanations have been given of prosperous America's contradiction of this rule. The greater the excess of imports over exports, the greater the prosperity of the country—so we are told

But of late the validity of this economic axiom has been seriously impugned. There is no doubt that in many instances an excess of imports is truly a good sign: in the case of the United Kingdom the excess of imports has probably been paid for by our earnings as a sea-carrier of other nations' goods, who pay us in merchandise, and by interest on British capital invested in foreign countries, the interest coming to us in the form of merchandise. But the British excess of imports over exports has in recent years become so very great that the doubt has properly arisen whether a part of this great excess of imports is not being paid for by the realisation of British capital invested in foreign countries. That is to say, are we paying for some of our excess of imports out of capital and not out of yearly earnings?



The Actual Increase in Special Imports into the Ten Principal Countries during the decade 1899–1908 as compared with the decade 1889–1898. (Millions sterling.) Example:—Germany's Imports increased by 1188 million £ (118.8 million £ per year). Spain's Imports increased by 54 million £ (5.4 million £ per year).



The Actual Increase in Special Exports from the Ten Principal Countries during the decade 1899–1908 as compared with the decade 1889–1898. (Millions sterling, represented by the height of the ten peaks.) Example:—The United States' Exports increased by 1261 million £ (126.1 million £ per year). Spain's Exports increased by 16 million £ (1.6 million £ per year).

The question is wholly reasonable, and its importance is great. It is unfortunately very difficult, if not impossible, to obtain the facts necessary to solve the problem, but it is most imprudent to accept as an absolute truth the economic maxim that large imports and smaller exports are an infallible sign of prosperity. The facts in the foregoing table alone do not justify this maxim, and for a full consideration of this question, readers may refer to chapter iv. of my *British Trade Year Book* (Third Issue) (John Murray: London).

Facts show, I think, that an altogether exaggerated importance has been attached to this maxim of large imports and smaller exports, due to a large extent, probably, to the establishment of the maxim by past economic authorities, who were necessarily not acquainted with present facts.

The following table shows the increase in Special Imports and in Special Exports for each of the ten principal countries during 1899-1908 as compared with 1889-1898:—

INCREASE OF SPECIAL IMPORTS AND OF SPECIAL EXPORTS DURING 1899–1908, AS COMPARED WITH 1889–1898.

Country.	Increase of Imports during 1899–1908.	Increase of Exports during 1899–1908.	Total.
	Million £.	Million £.	Million £.
Germany	1188	1030	2218
United Kingdom .	1138	788	1926
United States . .	543	1261	1804
Holland	721	589	1310
France	330	455	785
Belgium	420	289	709
Italy	345	241	586
Austria-Hungary .	266	237	503
Russia	231	261	492
Spain	54	16	70

The facts for Russia relate to 1898–1907.

The facts for Spain relate to "General" imports and exports.

The Exports of the United Kingdom here exclude ships, as these were not recorded before the year 1899.

We see that as regards both imports and exports Germany has made more advance during the last decade than the United Kingdom has made. And looking at exports alone, the advance made by both the United States and Germany has greatly exceeded the increase in our export trade. And this despite the fact that the period here observed covers all the recent years of our "record" trade returns. As I have often pointed out, it is wholly misleading to base opinion upon any one year of trade. If a sound opinion upon international commerce is desired, it is necessary to compare decades, not single years.

British imports increased much more than British exports increased. In this respect the United Kingdom shows a marked divergence from the facts relating to the other nations. Some of these large British imports are *competitive* imports, namely, imports of manufactured goods that compete, in the United Kingdom, with our own production of the same classes of manufactured goods. And whether it is wise or unwise thus to encourage the large free importation of competitive goods is a moot question. But let us bear in mind that our trade policy in this respect differs radically from the trade policy of our rivals in commerce.

J. HOLT SCHOOLING.

But meanwhile the *imports* of manufactured goods increased continuously and enormously from £64·7 million in 1880–84 to £124·8 million in 1905–08. Leather, machinery, and silk and woollen goods contributed to the bulk of this increase, though cotton manufactures, glass wares, and iron and steel manufactures held a considerable place. These figures, while indicating a considerable advance of manufacturing abroad, do not necessarily imply a displacement of home manufactures. It should be noted, for example, that though woollen goods were thus imported, the same class of goods were exported, during the period 1883–1900, to an excess of £5 million per annum beyond the amount of those imported. And these good results were obtained in face of the highly protective tariff imposed on woollen goods by the United States, and which caused an annual reduction of our exportation of those goods amounting to at least £2 million. "In spite of the strides made by Germany and the United States in recent years," comments the Memorandum, "we still preponderate greatly as a country manufacturing for export. Both Germany and the United States have largely developed in capacity to manufacture, not only for their home markets but for export also, and even France has made some gains. Our exports, however, consist more largely of manufactured goods in proportion to our whole exports than do those of France and the United States, but we are run very close by Germany in this respect. Nevertheless, measuring per head of the population we are, as we have already seen, far ahead of Germany or any other of our competitors."

Trade with neutral markets.—A consideration of the *imports into neutral markets*, that is to say, into countries other than the following four countries, from the United Kingdom, France, Germany, and the United States, will show that the greater proportion of the trade in non-European countries, and in British possessions everywhere (except British North America), is carried on in the United Kingdom. But yet our proportion of the trade of some of these "neutral" countries, and to a certain extent of our colonies also, has diminished. Relatively, we are losing trade in Argentina, Uruguay, Chili, and China, while the United States are increasing theirs in these countries. But we have been losing more heavily the Japanese trade, while the United States have been gaining it. The whole of Japan's import trade is now, in 1910, about £46½ million per annum. We used to have 33 per cent. thereof, now we have about 25 per cent. With regard to our Australia, South Africa, British North America, West Indies, and British Guiana trade it is a serious fact that the United States are gaining it at our expense, and Germany is also slightly increasing its trade in Australia and South Africa.

Germany is ahead of us in the trade with Russia, Austria-Hungary, Denmark, and Switzerland, and we can only just manage to keep at the front in the trade with Sweden and Norway. We have the consolation, however, of beating Germany in the more insignificant trades with Portugal, Greece, and Bulgaria, and the rather more important trades with Spain and Italy. The foregoing state of affairs has been in existence during the last seven years or so, so far as comparison with Germany is concerned, except in the case of Russian trade where the decrease of our trade and the increase of German trade have both been remarkably persistent. The United States have been generally gaining ground in these markets, but not so much at our expense as at the expense of Germany.

The following statement is of considerable interest. It shows the average annual amount of the imports of the countries therein mentioned in 1893–95 and 1898–1900, and the proportion of their imports from the United Kingdom, Germany, France, and the United States respectively. Holland is omitted from the list because her foreign trade is mainly of a transit or quasi-transit character:—

Countries.	Total Imports (Millions Sterling).		Proportion from								Total Imports (Millions Sterling).	Proportion from United Kingdom.
			United Kingdom.		Germany.		France.		United States.			
	Average for 1893–95.	Average for 1898–1900.	In 1893–95.	In 1898–1900.	In 1893–95.	In 1898–1900.	In 1893–95.	In 1898–1900.	In 1893–95.	In 1898–1900.	For Year 1908.	
	£	£	Per Cent.	Per Cent.	Per Cent.	Per Cent.	Per Cent.	Per Cent.	Per Cent.	Per Cent.	£	Per Cent.
Russia in Europe	44	58	27	22	28	39	6	5	2	8	98	12·8
Norway	11	17	28	29	27	28	2	2	5	6	21	...
Sweden	19	28	27	31	34	35	2	2	3	2	37½ ('07)	32
Denmark	18½	27	21	21	34	29	2	2	5	15	33½	...
Belgium	63	87	12	14	12	13	18	17	8	13	133	13½
Portugal	9	12	28	32	12	14	10	9	19	15	16	15⅓
Switzerland	35	49	5	5	28	28	16	24	4	5	66½ ('07)	5
Spain	31½	37	20	23	3	7	26	15	11	12	34	18
Italy	48	62	20	20	12	12	16	10	9	12	111	14½
Austria-Hungary	57	69	10	9	37	36	3	3	4	8	97*	10*
Greece	4	6	28	24	1	7	7	8	3	3	6	33
Roumania	17	14	21	19	28	28	8	7	0·3	0·5	17 ('07)	18
Bulgaria	3	2	21	21	13	13	4	6	0·2	0·5	35½	30
Egypt	9	13	34	38	2	3	11	9	0·5	2	25	33
Argentine Republic	19	23	37	36	12	12	11	10	9	12	54½	35
Uruguay	5	5	32	27	11	11	10	9	7	8	8	27
Chile	16	8	44	37	27	27	9	6	6	9	22	21
Mexico	7	10	17	18	8	11	14	12	52	49	23	5
China	29	36	18	17	...	...	...	...	4	8	52⅓	19
Japan	13	26	33	21	7	8	4	2	8	15	44½	25
British India	86	90	72	64	2·0	2·2	1·3	1·4	1·8	1·5	81	62½
Straits Settlements	21	28	14	11	1·5	2·1	0·7	0·5	0·8	0·5	35	10
Ceylon	4	7	25	28	0·5	1·9	0·3	0·6	...	0·3	9	25
Mauritius	3	3	20	24	0·8	0·4	11·2	0·7	2·1	2·5	2	20*
Australasia	51	74	41	38	1·7	3·2	0·3	0·3	3·1	6·9	50	...
Natal	2	6	72	67	2·2	3·1	0·1	8·9	4·8	9·0	49¼	47 ('06)
Cape of Good Hope	14	19	81	68	3·5	3·7	0·2	0·4	4·5	10·9	8	50
Brit. North America	26	33	35	25	3·9	4·4	2·2	2·5	45·9	59·3	13½	55
British West Indies	7	7	44	40	0·9	1·0	1·7	1·3	30·7	34·8	62	20
British Guiana	2	1	54	53	...	0·1	0·9	0·5	25·8	28·3	6	48

* Provisional figures.

The above table cannot yet, by reason of the conditions under which international trade statistics are prepared and published, be extended throughout in detail up to the present date. Indeed, some few more years must pass before this is possible. The value of the table remains, however, for substantially it indicates the tendency and position of international trade to-day. Similar tables relating to the *Imports into France, Germany, and the United States* from all countries, from the United Kingdom, and from one

Photo: Dickinson & Foster

SIR EDWARD GREEN, Bart., born 1831, was educated to be an engineer, and is chief of the eminent engineering firm of E. Green & Son, Ltd. Director of the Lancashire and Yorkshire Railway and of the Yorkshire Fire and Life Insurance Co. Was M.P. for Wakefield. Made a Bart. 1886.

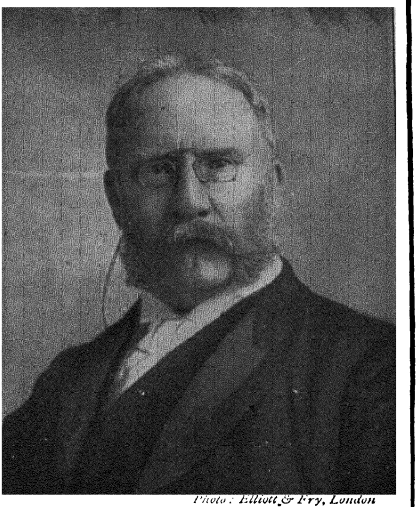


Photo: Elliott & Fry, London

SIR THOMAS WRIGHTSON, born 1839, is a Director of Head, Wrightson & Co., which was formed in 1890 to acquire the engineering business of the same name at Stockton-on-Tees. Also a Director of the North-Eastern Steel Co. Created a Baronet in 1900, and sat for East St. Pancras (Conservative) 1899 to 1906.

LORD JOICEY, born 1846, is Chairman of James Joicey & Co., Ltd., and of the Lambton Collieries, Ltd., the two largest coal-producing firms in the world. Started the *Newcastle Daily Leader* in 1885, and is now chief proproietor of that and of the *Northern Weekly* and *Evening Leader*. Created a Baronet in 1893 and a Peer in 1905.

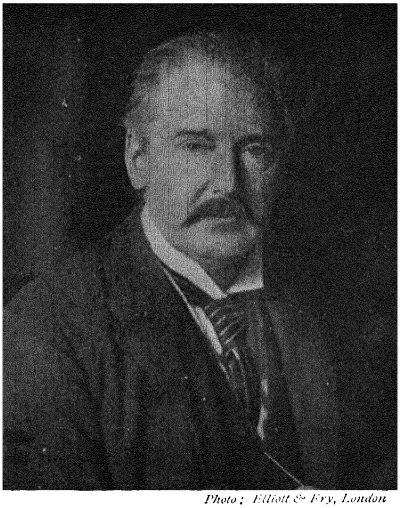


Photo: Elliott & Fry, London

SIR ALFRED JAS. NEWTON, Bart., Lord Mayor of London in 1899-1900, was born in 1849. In 1868 established a yeast business at Burton-on-Trent, subsequently amalgamated with H. Love & Co. of Southwark. In 1880 established with his late brother the firm of Newton Brothers, steamship owners. Is Chairman of Harrod's Stores and of D. H. Evans & Co. Bart. 1900.

SUCCESSFUL BUSINESS MEN

another, would show somewhat like results to the above—that, disregarding the recent increase of the United States trade with Germany, our imports bulk more largely than either of our competitors in the trade of each country. Though for the purpose of the foregoing sentence we have disregarded the increase of the United States trade with Germany, which gave, in 1900, the United States 17 per cent. of the German import trade as against our 12 per cent., and, in 1907, 1319 million marks as against our 976 million, we now note that fact particularly in order to show that no longer are we "absolutely" at the head of international trade.

Another instructive table is the one below, showing the proportion of *imports into neutral markets from the United Kingdom*, and which distinctly indicates that though our total volume of trade has absolutely increased, yet so far from having increased proportionately it has, from that point of view, materially decreased. The decrease in our share of the Japanese imports would not seem to affect our manufacturers, for it appears from the statistics that it is caused by the great increase which has taken place in recent years in the Japanese imports of rice, raw cotton, and sugar.

Countries	Proportion of Imports from the United Kingdom.					Total Value of Imports from all Countries.				
	Average of 1884-85.	Average of 1890-92.	Average of 1893-95.	Average of 1898-1900.	1908.	Average of 1884-85.	Average of 1890-92.	Average of 1893-95.	Average of 1898-1900.	1908.
	Per Cent.	Per Cent.	Per Cent.	Per Cent.	Per Cent.	Mln. £.	Mln. £.	Mln. £.	Mln. £.	Mln. £.
Europe*	18	17	16	15	...	701	806	777	1,011	...
Egypt	39	37	34	38	33	9	9	9	13	25
United States, Argentine Republic, Uruguay, and Chile . .	26	25	24	21	14	164	210	196	186	323
China	25	21	18	17	19	22	32	29	36	53
Japan	45	34	33	21	25	6	11	13	26	45
British possessions .	54	51	52	45	46	194	226	216	268	338

NOTE.—This table takes no account of the imports of British goods into China or Japan from Hong Kong or the Straits Settlements.

* Excluding Austria-Hungary, in order that the figures may be comparative throughout.

It would also be instructive to particularly compare the proportion of imports into neutral markets from France, Germany, and the United States with the above table. The limits of this article will not, however, permit this, and the reader who desires the figures should refer to the blue books.

Gains and losses in trade with neutral markets.—There has been a slight advance in the proportion of the imports of non-European countries from Germany in comparison with the proportion of the imports of those countries from the United Kingdom, the advance amounting to 1 per cent. in the American countries, 2 per cent. in the British possessions, and about 2½ per cent. in Egypt. In the import trade of European countries the United Kingdom has proportionately fallen behind to the extent of 2 per cent., and Germany, continuing to hold its own, now has a slight lead. France, generally speaking, is either declining proportionately, or at best remaining

stationary. The exports of France of special commerce have, however, increased "absolutely" from 4½ million francs in 1904 to over 5 million in 1908. With regard to the United States the proportions have changed very materially. Thus, within the last twenty-five years their exports to European countries (excluding the United Kingdom), and Egypt and China, have more than doubled. Those to other American countries, Japan, and British possessions have increased on the whole to almost the same extent.

Speaking generally, the changes have occurred within the most recent period; in all instances the changes have been in the direction of increase. Our own proportion of the import trade of the lastly above-mentioned countries (except the American, where we just hold our own) has diminished. It has to be remembered, however, that the exports of the United States consist mainly of breadstuffs, live and dead meat, and raw cotton, which of themselves accounted in 1899–1900 for 47 per cent. of the entire export trade of the States, a further 11 per cent. being accounted for by such articles as petroleum, tobacco, and timber. Moreover, beyond these articles it is manifest that the United States must possess natural advantages not possessed by ourselves or any other of our competitors in the production of cotton-seed oil, oilcake, and leather, which accounted for a still further 4 per cent. of the United States export trade in 1899–1900. As before pointed out, however, the growth of the export trade in so-called manufactured and partly manufactured goods from the States during recent years has been remarkable, such goods having contributed to swell the United States export trade in every direction, and thus have influenced the growth of their proportionate share of the trade of the various countries. This trade increased from £101,000,000 in 1900 to £156,000,000 in 1908. The natural conclusion from the figures, however, is that while the United States must continue to be in the main an agricultural country, exporting mainly agricultural products for a very long time to come, she is becoming more and more a manufacturing country also, and more and more a dangerous competitor in the world's markets. Twenty years ago it appeared that at that time we had only one country to consider as being in any way a serious industrial and trading adversary; now we have two, and it would seem as though the United States in the course of time, with the natural advantages and rapidly-increasing population she possesses, will be likely to become a still more dangerous commercial adversary than Germany herself.

The *general relative position* of the United Kingdom and the other countries we have noticed, may be summed up in a comparison of the amounts imported from the United Kingdom, Germany, France, and the United States respectively into the principal countries of the world.

Such a comparison shows that during the twenty-five years preceding 1900 the United Kingdom increased its exports to those countries by a much less increase than have Germany and the United States. From the table set out on the following page—the latest official comparison made—it appears that the increase of the United Kingdom, during the period 1884-1900, was £11,346,000 *less* than Germany, £41,314,000 *more* than France, and £61,283,000 *less* than the United States.

Conclusions.—Some of the main conclusions of the Memorandum are summarised as follows:—"The increase of population in Germany and the United States has recently been greater than the increase in the United

Countries.	Increase (+) or Decrease (−) between 1884–85 and 1898–1900 in Imports from					
	United Kingdom and Germany compared.*		United Kingdom and France compared.†		United Kingdom and United States compared.‡	
	United Kingdom.	Germany.	United Kingdom.	France.	United Kingdom.	United States.
Imports into—	Thousand £.	Thousand £.	Thousand £.	Thousand £.	Thousand £.	Thousand £.
European countries‖.	(+) 19,995	(+) 33,466	(+) 28,144	(+) 3,927	(+) 28,682	(+) 88,346
Egypt	(+) 1,322	(+) 356	(+) 1,322	(+) 186	(+) 1,322	(+) 183
American countries (as before) . . .	(−) 3,774	(+) 5,514	(−) 3,774	(−) 2,720	(+) 844	(+) 1,319
China	(+) 510	§	(+) 510	§	(+) 510	(+) 2,033
Japan	(+) 3,010	(+) 1,796	(+) 3,010	(−) 350	(+) 3,010	(+) 3,538
British possessions (chiefly India, Australasia, and British North America) .	(+) 14,726	(+) 6,003	(+) 14,726	(+) 881	(+) 14,726	(+) 14,958
Totals . . .	(+) 35,789	(+) 47,135	(+) 43,938	(+) 2,624	(+) 49,094	(+) 110,377

* Omitting the trade of Germany and the United Kingdom.
† " " " France and the United Kingdom.
‡ " " " the United States and the United Kingdom.
§ Not distinguished. ‖ Excluding Austria-Hungary.

Kingdom, and those countries have rapidly developed manufacturing and industrial power. As with ourselves, so with those countries, the set of populations has been to the towns; necessarily therefore there has been a more vigorous search than formerly for an outlet for the power above referred to. We are still ahead of either country in our power of manufacture for export, but beginning from a lower level, each country is travelling upwards more rapidly than we are who occupy a higher eminence. If peace is maintained both Germany and the United States are certain to increase the rate of upward movement. Their competition with us in neutral markets, and even in our home markets, will probably, unless we ourselves are active, become increasingly serious. Every year will add to their acquired capital and skill, and they will have larger and larger additions to their population to draw upon. It is necessary, therefore, more than ever that the change of conditions should be recognised, and we can scarcely expect to maintain our past undoubted pre-eminence, at any rate without strenuous effort and careful and energetic improvement in method. The problem how best this can be done is of vital interest to all classes of the industrial and commercial community alike, though the assistance which the state can give in the matter must necessarily be of a limited character."

The fact of the matter is that states are entirely bound by the inevitable operations of economic law in their industrial and commercial conditions. The United Kingdom obtained its pre-eminence in past days when she stood alone as a country with a teeming and intelligent population; with important and necessary mechanical appliances, and vast natural resources in aid thereof and with great stores of capital available for investment. She now stands with her population relatively small and geographically restricted; her mechanical appliances and natural resources relatively ineffective; her capital already invested, and for the most part abroad and in her colonies; and her laws relating to land, minerals, and industrial property generally, absolutely

unsuited and detrimental to a modern commercial country. On the other hand, there are at least two countries whose relative position and latent power are respectively better and greater. The advantage of Germany, one of these, is comparatively a small one. But the advantage of the other country, the United States, is comparatively immense and immeasurable. Its population is about twice that of the United Kingdom, and its geographical conditions permit a yet unlimited increase; its mechanical appliances are, to say the least, as good as ours; but its natural resources in aid of them, such as coal and iron, are infinitely superior, as also are its more general natural resources such as agriculture; its total capital is immense, and the whole of it is available for home investment; and its laws are those of a country whose life is commercial effort. There can be no question, after an independent survey of the existing conditions, but that the immediate industrial and commercial pre-eminence amongst industrial countries will lie with the United States. Proportionately to our population the commerce of the United Kingdom may continue to increase; and absolutely also, provided we retain much the largest share of the world's shipping, its commerce may not decrease; but relatively to the trade of, certainly, the United States, our former progress will never be continued. Though the exports of the United States have recently, as we have already seen, begun to decrease, it must be recognised that this decrease is the consequence of an exceptionally active home trade. This activity will shortly come to an end, and then, when the home trade is quiescent, the United States exports will enter upon a stage of remarkable increase. It will be at the time when that increase begins that the definitive struggle between the United States and Great Britain for commercial supremacy will take place. For that struggle we must prepare.

The foregoing statistics have had no regard to Russia. But Russia is slowly but surely progressing, and we shall soon have to consider our commercial relations to her as carefully as we now do that relation with the United States. Russia has all the possibilities of a future commercial supremacy. Her geographical extent is immense, and so also are her natural resources. To aid these she has a teeming population and an exceptionally large class highly educated in technics and science. It is only a matter of time for Russia to take her place as a leading commercial and industrial nation.

It will have been noticed that our remarks have been applied to the United Kingdom and not to the British Empire. Within the empire are potential future empires of commerce which will one day, in their turn, overtake and pass by the coming commercial supremacy of the United States and the possible supremacy of Russia. The Englishman's problem is therefore how best he can maintain an industrial commercial well-being in the United Kingdom at least proportionate to its population; how he can maintain the general commercial efficiency of the empire; and how, in the meanwhile—and this is the task to which the most intelligence and energy must be brought—he can nurture and develop those industrial countries of the empire which are destined to eventually succeed to the commercial supremacy of the world. In Australasia, British North America, and Africa there is each found a country with a sufficiency of such potentiality. The geographical and natural resources are found in each; they await, for the present, only the populations.

INTERPLEADER.—This is the name given to the relief granted by the

High Court in the following cases: (*a*) Where the person seeking relief, whom we will call the "applicant," is under liability for a debt, money, goods, or chattels, in respect of which he is, or expects to be, sued by two or more parties (called the "claimants") making adverse claims thereto; (*b*) where the applicant is a sheriff or other officer charged with the execution of process under the authority of the High Court and claim is made to any money, goods, or chattels taken or intended to be taken in execution, or to the proceeds or value of any such goods or chattels by any person other than the person against whom the process is issued. The County Courts have also jurisdiction in interpleader proceedings, and the procedure is, in principle, the same as that in the High Court, where the applicant should take out a summons calling on the claimants to appear and state the nature and particulars of their claims, and either to maintain or relinquish them. Upon the claimants appearing to the summons the Court may order, either that a claimant be made a defendant in any action already commenced in respect of the subject-matter in dispute in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants is to be plaintiff and which defendant. The Court has also power to dispose of the merits of the claimants' claims, and decide the same in a summary manner. When goods or chattels have been seized in execution by a sheriff under an execution, and any claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods and chattels by way of security for debt, the Court may order the sale of the whole or a part thereof, and direct the application of the proceeds of the sale in such manner and upon such terms as may be just.

An execution creditor can give notice to the sheriff that he admits the claim of the claimant, whereupon the sheriff will withdraw from possession of the goods claimed, and may apply for an order protecting him from any action in respect of his seizure and possession of the goods. But the claimant must receive notice of such intended application, and if he desires it, can attend the hearing. Where the execution creditor does not in due time admit or dispute the title of the claimant, and the latter does not withdraw his claim thereto by written notice to the sheriff or his officer, the sheriff may apply for an interpleader summons. Any claim to goods taken in execution must be in writing, and notice of it is required to be given by the sheriff to the execution creditor. The latter should admit or dispute the claim within four days after receiving the notice. And where an execution creditor admits the title of the claimant, and gives proper notice of his admission to the sheriff, he is only liable to the sheriff for any fees and expenses incurred prior to the receipt of the notice admitting the claim.

An applicant, upon making his interpleader application, must satisfy the Court by affidavit or otherwise—(*a*) that he claims no interest in the subject-matter in dispute, other than for charges or costs; and (*b*) that he does not collude with any of the claimants; and (*c*) that, unless he is a sheriff, he is willing to pay or transfer the subject-matter into Court, or to dispose of it as the Court may direct.

A consideration of the foregoing will show that an interpleader is the proceeding whereby a party, who is made the object of separate adverse claims in respect of the same subject-matter may obtain relief from the Court. Such a party is either in a private position or in an official position.

An instance of one in a private position is found in a stakeholder who is receiving adverse claims for payment of the stake. A sheriff or bailiff is the most general instance of an official person who finds it necessary to resort to interpleader proceedings. He may have levied an execution upon the goods of a debtor which are claimed by a third party; here he is met by one claim to them from his principal, the execution creditor, and by another from the third party. It is not for him to decide who is entitled to the goods, and consequently he interpleads, and the Court directs the execution creditor and the claimant to fight out the issue. And so it is with the stakeholder. When he interpleads the Court requires each claimant to prove his title to the stake, and awards it to the one whose title is the best. By the interpleader proceeding the stakeholder has been relieved from the responsibility and risk of himself determining the rights of the various claimants. An auctioneer, who holds a deposit which is claimed by different and adverse claimants, is an instance of a stakeholder. But a stakeholder is not by any means the only possible example. Thus two different persons might each, claiming to be the owners of a bill of exchange, take an action against the acceptor; here the acceptor should interplead, deposit in Court the money due, and leave the two claimants to adjust their claims themselves. Or the captain of a ship may find that different parties are adversely claiming some cargo under the same bill of lading; or a man may be sued by two separate persons for the same debt, and he may be doubtful as to the one rightfully entitled. But separate claims, which are not necessarily adverse, are not the subject of interpleader proceedings. Thus a person cannot interplead merely because he is being sued for example by two separate estate agents, both of whom claim a commission for selling his house when perhaps only one, or even not one, of them did so in fact. *See* EXECUTION.

INTESTACY.—When a person dies without having made a will which disposes of his property he is said to die intestate, and the property he thus leaves behind undisposed of, and which was absolutely at his disposal, will be dealt with under the general rules of inheritance or distribution as the case may be. The real property descends according to the law of inheritance, and the personal property is distributed amongst his relatives and next-of-kin according to the rules contained in the Statutes of Distribution. But as regards both real and personal property these rules of inheritance and distribution are slightly modified by the Intestates Estates Act, 1890, in favour of the widow in cases where an intestate leaves no issue behind him. It will be convenient to set out first the rules regulating the inheritance of real property, then the rules concerning the distribution of personal property, and lastly, some account of the Intestates Estates Act. When, therefore, a widow is left by an intestate husband without any issue of the marriage surviving, she should be careful to read the first two sections of this article in conjunction with the third.

Real property.—The characteristic illustration of this class of property is land. But in addition to land the following property descends on an intestacy as real property in the same manner as land. To quote the Inheritance Act, 1833, this additional property is comprised of:—

"Manors, advowsons, messuages [houses and buildings], and all other hereditaments, whether corporeal or incorporeal, and whether freehold or copyhold, or of any other tenure, and whether descendible according to the common law or according

to the custom of gavelkind or borough-English, or any other custom, and to money to be laid out in the purchase of land, and to chattels and other personal property transmissible to heirs, and also to any share of the same hereditaments and properties or any of them, and to any estate of inheritance, or estate for any life or lives, or other estate transmissible to heirs, and to any possibility, right, or title of entry or action, and any other interest capable of being inherited, and whether the same estates, possibilities, rights, titles, and interests, or any of them, shall be in possession, reversion, remainder, or contingency.'

The rules of the descent of real property are mainly settled by the Inheritance Act, and of these some outline will now be given, first, however, noticing that the word "descent" is defined as meaning the title to inherit real property by reason of CONSANGUINITY (*q.v.*), "as well where the heir shall be an ancestor or collateral relation, as where he shall be a child or other issue." Rule (1) provides that in every case descent shall be traced from the purchaser of the property. But it should be particularly noticed in this connection that the word "purchaser" means the person who last acquired the property "otherwise than by descent, or than by any escheat, partition, or inclosure, by the effect of which the land shall have become part of or descendible in the same manner as other land acquired by descent." Should the heir himself have had the property specifically devised to him by a will, then he will not be considered to have taken it by descent. But in order that the pedigree need never be carried further back than the circumstances of the case and the nature of the title require, the person last entitled to the property is, for the purposes of calculating inheritance, always considered to be the purchaser unless it is proved that he inherited it. Then the person from whom he inherited the property is considered to be the purchaser unless it is proved that he inherited it. And in like manner the last person from whom the property is proved to have been inherited is in every case considered to have been the purchaser unless it is proved that he inherited it. (2) No brother or sister is considered to inherit immediately from his or her brother or sister, but every descent from a brother or sister is traced through the parent. (3) A lineal ancestor can be heir to any of his issue. In fact in every case where there is no issue of the purchaser, his nearest lineal ancestor will be his heir in preference to any other relation who would have to trace his descent through that ancestor. Thus a father has priority over a brother or sister; and a more remote lineal ancestor has priority over any of his issue other than a nearer lineal ancestor or his issue. (4) The male line is always preferred. Thus none of the maternal ancestors of the person from whom the descent is to be traced, nor any of their descendants are capable of inheriting until all his paternal ancestors and their descendants have failed. And no female paternal ancestor of that person, nor any of her descendants, are capable of inheriting until all his male paternal ancestors and their descendants have failed. Nor can any one of his female maternal ancestors nor any of her descendants inherit until all his male maternal ancestors and their descendants have failed. (5) The mother of a more remote male ancestor is preferred to the mother of a less remote male ancestor. (6) Any one who is related by the half blood to the person from whom the descent is to be traced is capable of being his heir. The place in the order of inheritance of such a relation is next after any relation in the same degree of the whole blood, and his issue, where the

common ancestor is a male; and next after the common ancestor where such common ancestor is a female. Wherefore the brother of the half blood, on the part of the father, inherits next after the sisters of the whole blood on the part of the father and their issue; and the brother of the half blood, on the part of the mother, inherits next after the mother.

The Law of Property Amendment Act, 1859, provides, as an addition to the foregoing, that "where there shall be a total failure of heirs of the purchaser, or where any land shall be descendible as if an ancestor had been the purchaser thereof, and there shall be a total failure of the heirs of such ancestor, then and in every such case the land shall descend and the descent thereof shall thenceforth be traced from the person last entitled to the land as if he had been the purchaser thereof."

In Scotland the law is now amended by the Intestate Husband's Estate (Scotland) Act, 1911, with regard to the share of an intestate husband's estate falling to the widow in Scotland. Where such estate does not exceed £500 it belongs to the widow if no issue. If it exceeds such sum the widow is a creditor on the estate for £500.

Personal property comprises all property (including leaseholds) other than real property. In the case of an intestacy the distribution of the intestate's personal property is particularly regulated by a statute of Charles II. as amended by another statute of the same reign, and by one of James II. No distribution of the intestate's goods need be made until after one year from the date of the death. This delay is provided in order to give the creditors an opportunity to come in with their claims, but it has no prejudicial effect upon those who are entitled to share in the intestate's estate; their shares vest immediately upon the death. The husband of an intestate woman is absolutely entitled to the whole of her personal property. But where it is the husband who dies intestate, one-third of his personal estate goes to his widow, subject as mentioned below; "and all the residue by equal portions to and amongst the children . . . and such persons as legally represent such children in case any of the said children be then dead." The children would be said to take their shares *per capita*, or, in other words, their shares are ascertained by the number of their heads. But the persons who "legally represent such children," as where one or more of the latter have died and left children of their own, only take their shares *per stirpes*. By this is meant that each family of grandchildren has divided amongst it, *per capita*, only the *per capita* share of its parent. Thus A. dies intestate, leaving a sum of £900 available for distribution. He leaves no wife surviving him; only one son, a daughter, and three grandchildren, the issue of a deceased son. Here the son and daughter each takes £300, being their shares *per capita* of their father's personal estate, their deceased brother having been included when calculating the number of shares; and the three grandchildren each take £100, their shares *per capita*, amongst themselves, of the one share they are entitled to *per stirpes*, or as representing their father. And the principle would be the same if all the three children of A. had died leaving grandchildren numbering two, four, and three in family respectively. The total number of grandchildren would be nine, but they would not receive £100 each, *i.e.* a share *per capita*. They would each only receive their shares of their parent's shares. Two grandchildren would thus get £150 each, four would receive £75 each, and the other three £100 each.

If there are no children, nor any legal representatives of them, then one-half of the personal estate is allotted to the wife and the other half is distributed equally between all the next-of-kin of the intestate who are in equal degree, and those who legally represent them. But no representation is

admitted among collaterals after brothers' and sisters' children. Thus the grandchildren of a deceased brother would not be allowed to take a share with their granduncles and uncles. If there is no wife then all the personal estate is distributed equally amongst the children. And in case there are no children then it is distributed among the next-of-kin in equal degree to the intestate, and their legal representatives. The method of calculating the degrees of the next-of-kin will be found in the article on Consanguinity. But there are some exceptions to the foregoing rules which should be carefully regarded. The father takes in total exclusion of the mother, and brothers and sisters take before a grandfather. And if, after the death of a father, any of his children die intestate, without wife or children in the lifetime of the mother, then every brother and sister and the representatives of them have an equal share with her.

Hotchpot is an old English word meaning mixed pudding, and because of that meaning it now in a certain connection has firm root as a legal expression. A child of an intestate, who has received gifts from his father which amount to an advance of his share, must bring them into calculation, or into hotchpot, when the shares are being apportioned. But this rule does not apply in a case where the intestate is a woman; nor does it if the gifts are relatively small in total amount; nor if the child advanced is the heir at law. But it extends to advances made by the intestate to the child of a deceased child.

The wife.—By the above-mentioned Intestates Estates Act it is provided that "the real and personal estates of every man who shall die intestate . . . leaving a widow but no issue shall, in all cases where the net value of such real and personal estates shall not exceed five hundred pounds, belong to his widow absolutely and exclusively." The £500 limit in this Act should not be forgotten. Where the net value of the real and personal estate exceeds that sum, the widow is entitled to £500 part thereof absolutely and exclusively, and has a charge upon the whole of the estate for its payment together with 4 per cent. interest from the date of the death until payment. As between the real and personal representatives of the intestate, this charge is borne and paid in proportion to the respective values of the real and personal estates. This provision for the widow is in addition and without prejudice to her interest and share in the residue of the real and personal estate of the intestate which remains after payment of the £500, in the same way as if the residue had been the whole of the testator's real and personal estate, and the Act had not been passed. For the purposes of this Act the value of the real estate is estimated "in the case of a fee simple upon the basis of twenty years purchase of the annual value by the year, at the date of the death of the intestate as determined by law for the purposes of property tax, less the gross amount of any mortgage or other principal sum charged thereon, and less the value of any annuity or other periodical payment chargeable thereon, to be valued according to the tables and rules" in the Succession Duties Act, 1853. In the case of an estate for a life or lives then also according to the same tables and rules. In the case of the personal estate its net value is ascertained by deducting from its gross value all debts, funeral and testamentary expenses of the intestate, and all other lawful liabilities and charges to which it is liable.

As some illustration of the application of the rules laid down in this article the reader can refer to the following:—

TABLE OF INTESTATE SUCCESSION

If an Intestate die leaving	His or Her Freehold Property descends	His or Her Personal Estate (including Leaseholds) goes	Administration will be granted to
But the wife takes the first £500 (see above): Wife, no blood relations	To Crown, subject to dower of wife	Half to wife, rest to Crown	Wife
But the wife takes the first £500 (see above): Wife and father	To father, subject to dower of wife	Half to wife, rest to father	Wife
But the wife takes the first £500 (see above): Wife and mother, no relations on father's side	To mother, subject to dower of wife	Half to wife, rest to mother	Wife
But the wife takes the first £500 (see above): Wife, mother, brothers and sisters, and nephews and nieces	To eldest brother or his heir or co-heiresses, subject to dower of wife	Half to wife, rest between others equally, *per stirpes*	Wife
But the wife takes the first £500 (see above): Wife, mother, nephews and nieces	To eldest son of eldest brother, subject to dower of wife	Half to wife, one-fourth to mother, and one-fourth to nephews and nieces, *per stirpes*	Wife
But the wife takes the first £500 (see above): Wife, brothers and sisters	To eldest brother, subject to dower of wife	Half to wife, rest between brothers and sisters equally	Wife
Wife, sons and daughters	To eldest son, subject to dower of wife	One-third to wife, rest between sons and daughters equally	Wife
Wife and daughter	To daughter, subject to dower of wife	One-third to wife, rest to daughter	Wife
Wife and daughters	Equally between daughters, subject to dower of wife	One-third to wife, rest between daughters equally	Wife
Wife and grandchildren (sons of deceased son)	To eldest grandson, subject to dower of wife	One-third to wife, rest between grandchildren equally	Wife
No wife nor child	To lineal ancestor on father's side	To next-of-kin	Father or grandfather
Sons and daughters, by one or more wives	To eldest son	Equally between all	Any one or more, not more than three
Children, by one or more wives, and grandchildren	To eldest son	Equally between all, the grandchildren taking *per stirpes*	Any one or more, not more than three
Daughters, by one or more wives	To daughters, equally	Equally between all	Any one or more, not more than three
Husband and sons	To eldest son, subject to husband's courtesy	To husband	Husband

Husband and daughters	To daughters, equally, subject to husband's courtesy	To husband	**Husband**
Husband and grandchildren (daughters of deceased son or daughter)	To grandchildren, equally, subject to husband's courtesy	All to husband	Husband
Mother, no heirs on father's side	To mother	To mother	Mother
Mother, brothers, and sisters	To eldest brother	Equally between all	Mother
Mother and sisters	To sisters, equally	Equally between all	Mother
Father and mother and brothers and sisters	To father	To father	Father
Sons, daughters, and grandson (son of deceased eldest son)	To grandson	Equally, *per stirpes*	Any son or daughter, not more than three
Daughters and grandchild (son or daughter of deceased son)	To grandchild	Equally	Any daughter, or any number of them not exceeding three
Brother or sister of whole blood and brother or sister of half blood on either side	To brother or sister of whole blood	Equally between all	Either or both
Brothers or sisters and grandfather or grandmother	To eldest brother	To brothers and sisters, equally	Any one or more brothers and sisters, not more than three
Sister and sister's children	Equally, *per stirpes*	Equally, *per stirpes*	Sister
Nephew by eldest brother and other nephews and nieces	To eldest brother's son	Equally, *per stirpes*	Any one or more nephews and nieces, not more than three
Nephews and nieces by brothers and sisters	To eldest brother's eldest son	Equally, *per capita*	Any one or more nephews and nieces, not more than three
Nephew (son of deceased sister) and great niece (granddaughter of deceased brother)	To Great niece	To nephew	Nephew
Brother and aunt	To brother	To brother	Brother
Father's father or mother and mother's father or mother	To father's father or mother	Equally	Either or both
Grandmother on either side and uncle or aunt on father's side	To uncle or aunt	To grandmother	Grandmother
Grandmother and uncle or aunt on mother's side	To grandmother	To grandmother	Grandmother
Aunts and nephews and nieces (children of brother)	To eldest nephew	Equally between all	Any one or more aunts, not more than three
Aunts on father's side and uncles and aunts on mother's side	To aunts on father's side, equally	Equally between all	Any one or more nieces, not more than three
Cousins	To the eldest son of the deceased father's eldest brother (or according to heirship, as the case may be)	Equally, *per capita*	Either or any number not exceeding three of either or both
No relatives	To Crown if freeholds, if copyholds to Lord of the Manor	To Crown	The Crown or a creditor, if he applies

INTIMIDATION is wrongfully putting a person in fear with a view to compel him to abstain from doing, or to do, any act which he has a legal right to do or abstain from doing. It may be effected by coercion, threats, menaces, or duress; and any contract entered into as a result of intimidation may be repudiated and set aside by the party who so entered into it. Coercion, threats, menaces, or duress, must be actual and real in order to amount to intimidation; they must cause a fear of bodily harm or physical prejudice. They need not be directed to the contracting party himself if they are so much as directed to his child or wife. A threat of criminal proceedings may amount to an intimidation; but where such proceedings were threatened against a person who had committed an offence against the Merchandise Marks Act, he was held bound by a contract he entered into to publish an apology in consideration of the proceedings not being taken. A form of intimidation is met with in cases of *duress of goods*, as where there has been a restraint of another person's goods under conditions of hardship. Though if one man wrongfully detains goods belonging to another and the latter is only able to recover possession of them by paying money to the wrongdoer, that money is subsequently recoverable by the one who paid it, yet there is no general rule that a contract induced by duress of goods is void. Intimidation to the person is a constraining force, which not only takes away the free agency, but may leave no room for appeal to the law for a remedy; a man, therefore, is not bound by the agreement which he enters into under such circumstances; but the fear that goods may be taken or injured does not deprive any one of his free agency who possesses that ordinary degree of firmness which the law requires all to exert. The law does not encourage people to enter into contracts with a view to their breach, not even if they are entered into "under protest." On the other hand there is a principle of the law that a court shall not give assistance to a party who seeks to enforce a hard bargain. If a man pays money, or gives securities, to redeem his goods from the custody of the law, it is not a case of duress, and he cannot recover back his money or defend himself from proceedings taken to enforce the securities.

Intimidation is also a criminal offence. And with regard to this subject from the point of view of EMPLOYERS AND WORKMEN (*q.v.*), it may be here noted that section 7 (1) of the Conspiracy and Protection of Property Act, 1875, provides that "Every person who, 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 abstain from doing, wrongfully and without legal authority—uses violence to or intimidates such other person or his wife or children, or injures his property," shall be liable to a penalty of £20 or three months' hard labour. This section aims at the punishment of intimidation in the course of STRIKES, but should be read in the light of the amendment of the law introduced by the Trade Disputes Act, 1906.

INVENTORY.—A detailed list or statement of property, such as a list of property in the possession of a person at his decease. It is one of the duties of an executor or administrator to make an inventory of the goods of the person whose estate he represents. And a bailiff, when levying a distress for rent, should always make an inventory of the goods he levies upon. And the schedule which is required by the Bills of Sale Act, 1882, to be annexed to a bill of sale is bound to contain "an inventory of the

personal chattels comprised in the bill of sale." With certain exceptions, confined under special circumstances to growing crops, fixtures and machinery, a bill of sale is void, except as against the grantor, in respect of any personal chattels not specifically described in the schedule. In the case of *Witt* v. *Banner*, a bill of sale was given by a picture dealer with regard to certain pictures. The document purported to assign "all and singular the several chattels and things specifically described in the schedule hereto annexed." The description in the schedule was, "at 47 George Street; four hundred and fifty oil paintings in gilt frames, three hundred oil paintings unframed, fifty water colours in gilt frames, twenty water colours unframed, and twenty gilt frames." It was held that the bill of sale did not comply with the requirements of the above-mentioned section, and therefore was void as against an execution creditor so far as chattels claimed under the above description were concerned. The Master of the Rolls said: "I am of opinion that the description of the goods in question in the schedule to this bill of sale was not such as to amount to an inventory in ordinary business parlance. I should be disposed to say that it would not be such an inventory, even if the things mentioned in it were all the things in the grantor's shop. It is not what any business man would call an inventory. Even if it could be called an inventory in some sense, it is not an inventory which describes the goods therein as specifically as is usual in inventories of stock-in-trade." Such a general and vague description as was contained in that schedule is not what is generally understood by the term "inventory." There was no identification of the particular pictures, nor any specific description of them whatever. But where, in the case of *Davidson* v. *Carlton Bank*, the schedule to a bill of sale specified the goods in each room of a house, but under "Study" enumerated the books as "1800 volumes of books as per catalogue," the bill of sale was upheld, in respect of the books, on the ground that the description by the reference to the catalogue was a sufficiently specific inventory.

INVESTMENT.—By this term is meant the outlay of money, either by way of purchase or of loan, upon some form of property, in exchange for the expectation of a profit, rent, interest, or other kind of return. Money so laid out may be either the result of a saving of income, or it may be the representative of a prior investment or, in other words, a reinvestment. But whichever it may be, it is in effect a reinvestment. There may have been reason for a distinction in England in years gone by when hoarding was a usual practice, but to-day, when savings are generally deposited in banks, they are thereby practically invested. A consideration of the banking system will show that the bulk of the deposits are used by the banks in order to earn the interest paid to the depositors as well as a necessary additional profit for the bankers. Attention, however, may be profitably drawn to the general distinction between investments as a class. They may be properties already existing, or they may be merely in projection, or they may have their situation abroad. In the first instance, as in the case of an investment in an already established and working railroad or an erected house, the investment causes no diminution in, or lock-up of the floating cash of the community; it is in effect a transfer of the command of cash from one party to another. It is otherwise in the two latter instances. In the first of them there is no return to the capital invested so long as the

property is in course of creation and is so far unproductive, and, as a result, the general and immediate purchasing power of the community is proportionately diminished "It diminishes," says a contributor to the *Dictionary of Political Economy*, "by so much the amount of consumable or exchangeable goods that can be produced. If the country be producing enough only for its own support, it must now import to supply some part of its requirements. If it had already imported, it must now import more. The immediate effect upon the money market is that the exchanges become unfavourable, and bullion must be exported." In the case of a foreign investment the lock-up is more effective. The capital so invested represents in effect so much merchandise exported abroad without an accompanying power to import immediately in exchange, such importing power being deferred until the time of repayment of the capital, though, in the meanwhile, a periodical profitable power to import should exist as representative of the yield on the investment.

The subject of this article is one which at some time or other must occupy the attention of every man; and at all times it must have a supreme importance to the business man. But the latter, in the course of his business career and as a result of his accumulation of experience, can rarely require any general advice on this head. It may be that special advice on particular details will, at times, be eagerly sought by him, but the limited scope of this work will alone prevent any attempt to furnish this. And even were there no such restrictive limits, such an attempt would be really useless. That special advice is only possible, in order to have any use at all, when precise and particular facts are presented for consideration, and when surrounding circumstances, which change day by day in the financial world, can be promptly and adequately estimated. This article, therefore, can only consider the more elementary and general principles of investment. Some slight sketch of these, however, may have its use to the small investor who is not, strictly speaking, a man of business.

A principle of investment which has hitherto been generally accepted is that expressed in the advice so often tendered to the investor, that "he should not have all his eggs in one basket." But unfortunately for the peace of mind of many cautious and generally successful investors, who had always implicitly believed in that principle and had persistently impressed it upon others, the most weighty opinion of Mr. Carnegie is expressed against it. His advice is that all one's eggs should be placed in one basket, but the basket and eggs are to be closely watched. It is just as well, perhaps, that this advice, so opposed to that generally given to the small investor, should have been thus forcibly and authoritatively given to the investing public. It draws attention to the fact that an investment should be always closely watched, that it should be cared for as jealously as the carrier of a basket of eggs cares for his burden, and that it should be of a nature worth watching. Let the investment be well selected and carefully watched. The investors of the class to whom these remarks are addressed may be divided into two classes, namely the savers of income and those who have already saved up an appreciable amount of capital. The former class should be first considered. The place for their savings is primarily the deposit account at a substantial joint-stock bank, or if the savings are too small for that, the post-office savings bank. Their first investment should take the form of an endowment policy of life insurance. And this policy should be one "with profits," and taken out with the office which shows the best all-round returns on policies of the description intended to be effected. Careful inquiry and investigation should

always precede this investment, the articles on insurance in this work could be usefully referred to, and, above all, the inducements offered by the most widely advertised offices and those with the largest funds should be investigated and questioned with particular care and, perhaps, an additional element of distrust. The next thing is the purchase of a house. This should be one in which the investor intends living, and should be carefully selected from that point of view. Savings from income can, in time, find the purchase-money; in the meanwhile it may be obtained from mortgagees, either private or in the form of a building society. One principle in this matter should always be borne in mind. It is, that if the intention is to pay for a house by a system of gradual payments, the accommodation should never, as a rule, be accepted from the individual who is selling the house. The fact of borrowing from him is sufficient to cause the purchaser to be less keen in his bargaining, and the seller to raise his price. The real value of the house can always be ascertained by the investor, before the contract to purchase is signed, through the surveyor to an independent building society or other mortgagee; and such a valuation has a peculiar advantage, inasmuch as it will form the basis upon which the mortgagee is prepared to regulate the amount of his advance. The best test of the value of a house is the amount an intending mortgagee's surveyor values it at. Great care should be exercised in choosing a BUILDING SOCIETY, and in this connection the article under that heading may be usefully referred to.

A man who has an endowment policy in force, and who has purchased, or nearly purchased, his house, and yet has other money, whether acquired by saving or otherwise, available for investment, may well lay claim to the designation of a capitalist. He is now either a big capitalist or a small one, and should be in touch with both a solicitor and a stockbroker, the latter being always a member of the London or his local stock exchange. Outside brokers should be avoided. The solicitor is the person through whom he will invest in real property, the broker being the medium for investment in stocks and shares. But in no case should he rely solely and implicitly upon the advice of his solicitor or his broker with regard to the value of any proposed investments. Though this advice is generally most valuable, and should always be accorded the greatest respect, yet an investor who aims at success as such is bound to cultivate initiation and self-reliance. If real property is his speciality he should make a careful study of local conditions and values, as well as obtain a general idea of the law relating to this class of property. If he has a partiality for stocks and shares, then he must learn the principles and technique of the money market, master as much as possible of the detailed information available concerning the class of stocks and shares he affects, and never omit to watch the general course of financial events. It would be a wise and not by any means a difficult thing for him to acquire a general working knowledge of both real and personal securities.

In real securities he has available for investment, in order of merit, ground rents, mortgages, and the purchase of land and houses. *Ground rents* are probably the safest investment possible, and consequently their yield is not very high. There are, however, some advantages that ground rents possess over consols for instance. A small investor can obtain a higher return upon his investment than a large investor, whereas in the case of consols or like securities their price is the same to both large and small purchasers. Again there are practically no fluctuations in the value of ground rents. A ground rent, in amount, should never exceed one-fifth of the total rental value of the property upon which it is charged. Thus if a house and land let for £50 per annum, then the ground rent charged thereon should not exceed £10 per annum. Where there is such

an excess the price should diminish accordingly. A fairly good average freehold ground rent should be bought at from twenty-eight to thirty-two years' purchase, the price varying between these two figures according to the precise character of the rent dealt with. Of course if the reversion to the house and land is within measurable distance, then that fact will become an element in the price. If the rent is a small one, only amounting from £1 to £2, 10s. per annum, the price should not be more than from twenty to twenty-six years' purchase. The reason for the lower price of these small rents is that generally they are secured upon a poorer class of property, and that large investors do not care to incur the trouble of collecting a large number of small rents. This latter consideration does not usually weigh with the small investor, who is willing to take the trouble if he can obtain a good security at a low figure. In lending upon the security of a *mortgage* the investor should endeavour, as near as possible, to obtain the same marginal security as a trustee is bound by law to obtain. Small mortgages generally pay a higher interest than large ones. Whilst a mortgagor who is borrowing, say £20,000, will pay only 3 to 3½ per cent. interest, the mortgagor who requires only £100 to £400 is generally quite willing to pay 5 per cent. Here again the small investor can obtain as good a security as the large investor, and yet a higher rate of interest. An investor who desires a safe and satisfactory security should never lend money upon a second mortgage or equity of redemption, *i.e.* upon a property which is already mortgaged. The buying and selling of *houses and land* is also a favourite form of investment. But considerable knowledge of building detail and of local conditions is necessary in order to make such investment a success. In estimating the probable yield a big deduction must always be made from the gross rental value on account of depreciation and vacancies. The precise deduction will always depend upon the particular property dealt with, and, unless the investor has some technical knowledge, he should always seek the advice of a surveyor.

When deciding to invest in stocks and shares the small capitalist, whose object is investment rather than speculation, should always avoid securities which are closely affected by the general tone of the market, and the prices of which are always varying. From this point of view government securities are not so valuable to the small capitalist as are the best class of municipal, railway, gas, and water stocks, and industrial debentures, for examples. The best rule to adopt in these dealings is to ignore the prevailing market feeling, and to act absolutely upon a judgment founded on a careful consideration of the special circumstances connected with the class of securities in which investment is intended. Generally gilt-edged securities can be purchased most cheaply at the end of the year, when as a rule there is a disposition in the market to realise all round, and to get in as much cash as possible. Railway securities are most advantageously acquired after a period of slack trade, when things are beginning to look up. But whatever securities are decided upon they must always be considered from the point of view of their possible realisation. If the investor anticipates a necessity to quickly realise his securities at some uncertain future period, he will have to consider whether there is always a free market in them. Should a free market be an absolute necessity for him, then he will have to confine himself to the very highest class of the gilt-edged group. Consols can always be realised at some price; but a local corporation security for example, though for all practical purposes equally sound, may be difficult to realise at times of pressure. But on the whole the latter class of security is preferable for the small capitalist; their yield is higher, and, in a case of emergency, he should always be able to obtain a substantial advance upon them pending the time when they will be freely realisable. When a security is purchased at a premium which is redeem-

able at par, the investor should create a SINKING FUND out of its yield in order to provide for the loss upon redemption. No reliance whatever should be placed upon the "tips" of the newspapers nor on those of some "knowing" friend. They are for the irresponsible speculator. Nor should every PROSPECTUS be believed; it will be wiser to disbelieve its promises as a general rule, and to judge only of the probabilities of the company's success from personal knowledge and experience.

By trustees.—The investing powers of trustees in England and Ireland are strictly limited by the Trustee Act of 1893. In accordance with the provisions of the Act, unless expressly forbidden by the instrument (if any) creating the trust, they can only invest any trust funds in their hands, whether at the time in a state of investment or not, in certain specified classes of securities. These securities are arranged in the following classes:—

(1) Any of the Parliamentary stocks or public funds or Government securities of the United Kingdom. (2) Real or heritable securities in Great Britain or Ireland. These are freehold and copyhold lands and messuages. But a trustee should remember that under this heading he has no power to purchase such property; he can only lend on its security. (3) The stock of the Bank of England or the Bank of Ireland. (4) India 3½ per cent. stock and India 3 per cent. stock, or in any other capital stock issued by the Secretary of State in Council of India under the authority of Act of Parliament, and charged on the revenues of India. (5) Any securities the interest of which is for the time being guaranteed by Parliament. Examples of such securities are the Egyptian and Turkish Guaranteed Loans and the Canadian Government Bonds. (6) Consolidated stock created by the Metropolitan Board of Works or the London County Council, or debenture stock created by the Receiver for the Metropolitan Police District. (7) The debenture or rentcharge or guaranteed or preference stock of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having during each of the ten years last past before the date of investment paid a dividend at the rate of not less than 3 per cent. per annum on its ordinary stock. (8) The stock of any railway or canal company in Great Britain or Ireland whose undertaking is leased in perpetuity or for a term of not less than two hundred years at a fixed rental to any such railway company as is mentioned in class 7, either alone or jointly with any other railway company. (9) The debenture stock of any railway company in India the interest on which is paid or guaranteed by the Secretary of State in Council of India. (10) The "B" annuities of the Eastern Bengal, the East Indian, and the Scinde Punjaub and Delhi Railways, and any like annuities which may at any time hereafter be created on the purchase of any other railway by the Secretary of State in Council of India, and which may be authorised by Act of Parliament to be accepted by trustees in lieu of any stock held by them in the purchased railway. Also deferred annuities comprised in the register of holders of annuity Class D, and annuities comprised in the register of annuitants Class C, of the East Indian Railway Company. (11) The stock of any railway company in India upon which a fixed or minimum dividend in sterling is paid or guaranteed by the Secretary of State in Council of India, or upon the capital of which the interest is so guaranteed. (12) The debenture or guaranteed or preference stock of any company in Great Britain or Ireland, established for the supply of water for profit, and incorporated by special Act of Parliament or by Royal Charter, and having during each of the ten years last past before the date of investment paid a dividend of not less than 5 per cent. on its ordinary stock. (13) Nominal or inscribed stock issued, or to be issued, by the corporation of any

municipal borough having, according to the returns of the last census prior to the date of investment, a population exceeding 50,000, or by any county council, under the authority of an Act of Parliament or Provisional order. (14) Nominal or inscribed stock issued or to be issued by any commissioners incorporated by Act of Parliament for the purpose of supplying water, and having a compulsory power of levying rates over an area having, according to the returns of the last census prior to the date of the investment, a population exceeding 50,000, provided that during each of the ten years last past before the date of the investment the rates levied by such commissioners shall not have exceeded 80 per cent. of the amount authorised by law to be levied. (15) Any of the stocks, funds, or securities for the time being authorised for the investment of cash under the control or subject to the order of the High Court. (16) Any Colonial stock which is duly registered in the United Kingdom under the Colonial Stock Acts. The Treasury keep a list of these stocks.

Trustees have always power, subject to any restrictions imposed by the instrument (if any) creating the trust, to vary their investments from time to time, provided of course that their variations are within the class of securities allowed them by law. They may also invest in any of the securities contained in class 1, notwithstanding that they are redeemable and that the price exceeds the redemption value. But they may not, under the powers of the Act, purchase at a price exceeding its redemption value any stock contained in classes 7, 9, 11, 12, 13, and 16, which is liable to be redeemed within fifteen years of the date of purchase at par or at some other fixed rate; or purchase any of such stock as is liable to be redeemed at par or at some other fixed rate, at a price exceeding 15 per cent. above par or such other fixed rate. They may, however, retain until redemption any redeemable stock, fund, or security which may have been purchased in accordance with the powers of the Act. The statutory powers conferred upon trustees are to be exercised according to their own discretion, but subject to any consent required by the instrument, if any, creating the trust with respect to the investment of the trust funds. A trustee who has power to invest in real securities can only lawfully invest in leaseholds (unless expressly directed to the contrary by the instrument creating the trust), by a "mortgage of property held for an unexpired term of not less than two hundred years, and not subject to a reservation of rent greater than a shilling a year, or to any right of redemption or to any condition for re-entry, except for non-payment of rent." The phrase "right of redemption" refers to any right which affects the lease in favour of the freeholder or other person entitled in reversion on the lease in question. And such a trustee has also power to invest on any charge, or upon mortgage of any charge, made under the Improvement of Land Act, 1864. A trustee who has power to invest in the mortgages or bonds of a railway company or of any other description of company has thereby the power to invest in the debenture stock of such a company, unless the contrary is expressed in the instrument authorising the investment. And one who can invest in the debentures or debenture stock of such a company can invest in any nominal debentures or nominal debenture stock issued under the Local Loans Act, 1875, provided the instrument authorising the investment does not direct the contrary. And subject to the same proviso, a trustee who has power to invest in securities in the Isle of

Man, or in securities of the Government of a colony, can invest in any securities of the Government of the Isle of Man, under the Isle of Man Loans Act, 1880. And a trustee having a general power to invest in or upon the security of shares, stock, mortgages, bonds, or debentures of companies incorporated by or acting under the authority of an Act of Parliament, may invest in or upon the security of mortgage debentures duly issued under, and in accordance with, the provisions of the Mortgage Debenture Act, 1865.

The effect of this latter Act together with its amending Act, the Mortgage Debenture Amendment Act, 1870, is to define the conditions under which a company becomes entitled to issue debentures available as trustees' securities. Such a company must, by its special act or memorandum of association, be limited to certain objects. These are—(1) The advancing of money upon such securities as: (*a*) Lands, messuages, and real property, and all estates therein; (*b*) Rates, assessments, and impositions upon the owners or occupiers of real property imposed by Act of Parliament, Royal Charter, Commission of Sewers or Drainage, or other authority; (*c*) Charges or securities upon real property issued under Act of Parliament. (2) The borrowing of money on transferable mortgage debentures upon the above securities. These latter mortgage debentures can only be issued upon securities upon property in England and Wales of a like class to that just set out. But with regard to real property and interests therein certain securities are not permissible. Such are those upon mines or mineral properties, quarries, brickfields, factories, mills, and other buildings or works for manufacturing purposes. And also those upon leasehold estates determinable upon a life or lives, and not renewable; or leaseholds held for a term, of which at the date of the security less than fifty years are unexpired; or leaseholds held at a rent beyond one-fourth part of the annual value of the property leased as estimated at the date of the security given to the company, and verified by the statutory declaration of a surveyor; or leaseholds subject to any rent beyond a nominal rent or ground rent. A company to be entitled to the advantages of these Acts must have a paid-up capital of not less than £100,000, in shares of the nominal value of not less than £50, of which not less than one-tenth, nor more than one-half, must have been paid up.

A trustee who has power to invest in the purchase of land or on mortgage of land may purchase or take a mortgage of land notwithstanding it is charged with a rent under the powers of the Public Money Drainage Acts, 1846 to 1856, or the Landed Property Improvement (Ireland) Act, 1847, or by an absolute order made under the Improvement of Land Act, 1864, unless the terms of the trust expressly provide that the land to be purchased or taken in mortgage shall not be subject to any such prior charge. Unless he is authorised by the terms of his trust, a trustee cannot apply for or hold any certificate to bearer issued under any of the following Acts, namely, the India Stock Certificate Act, 1863; the National Debt Act, 1870; the Local Loans Act, 1875; and the Colonial Stock Act, 1877.

Investments not chargeable as breaches of trust.—A trustee lending money on the security of any property on which he can lawfully lend is not chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made. But to obtain relief under this rule it must appear to the Court that in making the loan—(*a*) he was acting upon a report as to the

value of the property made by a person whom he reasonably believed to be an able practical surveyor or valuer instructed and employed independently of any owner of the property, whether the surveyor or valuer carried on business in the locality where the property is situate or elsewhere; and (*b*) that the amount of the loan did not exceed two equal third parts of the value of the property as stated in the report; and (*c*) that the loan was made under the advice of the surveyor or valuer expressly given in the report. Relief was denied to a trustee, *in re Stuart*, where he had (*a*) acted on a valuation which stated the amount for which the property was a good security without stating the value of the property; and (*b*) advanced more than two-thirds of the value stated in the valuation. But here the valuer was employed by a solicitor who acted for the mortgagor also, and the trustee did not allege that he reasonably believed the valuer to be employed independently of any owner of the property. If a trustee lends money on the security of leasehold property he is not chargeable with breach of trust merely because, in making the loan, he dispensed with the production or investigation of the lessor's title. Nor is he chargeable only upon the ground that in effecting the purchase of, or in lending money upon, the security of property he has accepted a shorter title than the title which a purchaser, in the absence of a special contract, is entitled to require—provided that the Court is satisfied that the title accepted is such as a person acting with prudence and caution would have accepted. Where a trustee improperly invests in a mortgage which at the time of the investment is a proper investment in all respects for a smaller sum than is actually advanced on it, the security is taken to be an authorised investment for the smaller sum; the trustee is therefore only liable to make good the sum advanced in excess thereof with interest.

Trustees must never lend money upon contributory mortgages, nor on second, third, or any other postponed securities. By so doing they incur a full responsibility for their acts which the courts will not relieve them against. By the amending Act of 1894 a trustee is expressly relieved from liability for breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorised by the instrument of trust or by the general law. The estate of a deceased trustee is not liable for trust funds which he left in a proper state of investment at the time of his death. Where a trustee has power to invest in such securities as "he shall think fit," he is still under an obligation to use a certain discretion. The words really mean "he shall honestly think fit." In the absence of evidence that a deceased trustee with such a power did not act honestly in making a certain investment, the Court held that his estate could not be made liable. But it appeared that the co-trustee had accepted a bribe, and accordingly he was held liable to make good a loss that had happened, the Court having inferred that under the circumstances he could not honestly have thought fit to make the investment.

INVOICE.—The well-known commercial document known as an invoice, or bill of parcels, may be described as a list of the particular items of goods shipped or sent to a factor, consignee, or purchaser, with their value or prices and charges. In the case of goods which come within the scope of the Food and Drugs Acts [*see* ADULTERATION], a person prosecuted for

selling such goods adulterated will be discharged if he can prove that he bought the article in the same state as sold and with a written warranty. This warranty will be sufficient if it is contained in the invoice given to him at the time he bought the article. But the words in the invoice relied upon as constituting a warranty must be much more to the point of quality than are mere words of description of the goods sold. The invoice should be dated on the day of the sale, must contain the terms of the contract of sale, and the goods must have been actually sold and bought under the invoice. In the case of *Hawkins* v. *Williams* a grocer bought some butter from a wholesale merchant who invoiced it as "butter guaranteed pure average quality," and initialled that phrase. But the butter was in fact adulterated, and the grocer being prosecuted therefor, was discharged on the ground that he had purchased the butter with a written warranty as contained in the invoice. The late Lord Russell of Killowen said that he could see no reason why the invoice should not be evidence of a warranty at the time of sale. "Here the natural conclusion from the fact that the invoice bears the date of the day of purchase and contains the words 'guaranteed pure,' followed by initials, is that the vendor was giving that document as a written warranty in pursuance of a stipulation by the purchaser for that object." Before the defendant can rely upon his warranty or invoice he must give notice of it to the prosecutor. A warranty or invoice given by a person resident outside the United Kingdom is not available as a defence to a proceeding under these Acts, unless the defendant proves that he had taken reasonable steps to ascertain, and did in fact believe in, the accuracy of the statement contained in the warranty or invoice. Any person by whom a warranty or invoice is alleged to have been given may appear at the hearing of the prosecution and give evidence. It should be noted that the defendant in a prosecution under the *Margarine* Act is in a better position than a defendant in proceedings under the Food and Drugs Acts. The invoice given to the latter must contain, as we have seen, a warranty in order to make it available to him as a defence. But in a margarine prosecution it will be sufficient if he can show that "he purchased the article in question as butter, and with a written warranty *or* invoice to that effect. . . ."

Any one who sells any artificial *feeding stuff* for cattle is bound to supply the purchaser with an invoice; and this invoice must state the name of the article, and whether it has been prepared from one substance or seed, or from more than one substance or seed. Such an invoice has effect as a warranty by the seller of the statements contained therein. And there is a like obligation imposed upon a seller of a soil *fertiliser*. Here the invoice also has effect as a warranty. It should state "the name of the article and whether it is an artificially compounded article or not, and what is at least the percentage of the nitrogen, soluble and insoluble phosphates, and potash, if any, contained in the article." *See* FERTILISERS AND FEEDING STUFFS.

The invoice may also acquire importance under the MERCHANDISE MARKS Act. By this Act it is an offence "to apply a false trade description to goods;" and an "application to goods" is defined by the Act as including, amongst other things, an application to "any . . . *thing* with which the goods are sold." Such a "thing" was held in *Budd* v. *Lucas* to

include an invoice, and, accordingly, a brewer who invoiced as "barrels" of beer some casks which contained considerably less than thirty-six gallons each was guilty of an offence under the Act. This case was followed in *Coppen* v. *Moore*, where a grocer's assistant invoiced an American ham as a "Scotch" ham. And the latter case also decided that the employer of that assistant would be criminally liable for the latter's acts in contravention of the particular provision of the Act when acting within the general scope of his employment, although contrary to the employer's orders, unless the employer could show that he had acted in good faith, and had done all that was reasonably possible to do to prevent the commission of offences by his servants. And a vendor who gives an invoice with an unintelligible written description of goods cannot escape conviction if, at the time of the sale, he verbally explained what description was really intended, provided of course that such latter intended description was a false one. This fact was discovered by a butcher, in *Cameron* v. *Wiggins*, where a customer went into his shop and asked for a leg of New Zealand mutton. The butcher handed him a leg of mutton, at the same time stating that it was New Zealand meat but giving him an invoice in which the meat was described simply as a leg of mutton. This description was not sufficient for the customer, so he asked the butcher to mark on the invoice that the meat was New Zealand. Thereupon the butcher wrote the letters "N.M." on the invoice, intending to represent that the leg of mutton was New Zealand meat. The subterfuge did not avail him, however, for he was convicted of applying a false trade description to the meat.

In certain cases a CONTRACT OF SALE is required, under the SALE OF GOODS Act, to be in writing and signed by the party intended to be bound thereby. Provided an invoice contains all the material terms of the contract, and is signed, it will itself constitute a sufficient contract of sale under this Act. And it is sufficient to bind the seller even if his own name appears on the invoice in printed characters, provided he has himself, or by the hand of his agent, inserted in the invoice the name of the purchaser. And it may also be binding upon the seller, even if it does not contain all the material terms of the contract, if the purchaser upon receiving it does not object to its brevity and incompleteness. A broker in merely altering the invoice of the seller of the goods by substituting therein the name of his principal for the name of the original purchaser, will thereby create a contract of sale, provided he sends the invoice to his principal with a letter saying that he had transferred the seller's invoice to his principal (*Pauli* v. *Simes*). A purchaser of goods, with the delivery of which has been forwarded an invoice, should always object at once if the invoice contains any inaccuracies as to weight, for if he should not, the fact of receiving the invoice and not making any objection may cause the invoice to operate against him as some evidence of the weight. Another point of importance in connection with invoices is that contained in the decision in *Holding* v. *Elliott*, where the person whose name appeared at the head of an invoice as the vendor of certain goods was allowed, notwithstanding that fact, to show that he was not the actual seller, and that the invoice was only made out in those terms and included those goods for the convenience of the real parties to the contract. Though, as has been already pointed out, an invoice, if it contains

all the material terms of the contract and is sufficient as to signature, may have effect as a contract of sale under the Sale of Goods Act, yet, in view of the fact that the primary function of an invoice is merely to advise the purchaser of the despatch of the goods sold and to assist him in checking them, the law does not presume that every invoice is in fact a contract of sale and so complete evidence of the terms of the sale. Accordingly, for example, it was held in *Lockett* v. *Nicklin* that oral evidence is admissible to show that a sale is effected upon certain terms as to credit, even though the invoice is silent on the point.

A reference to the article on DEFEASANCE will show that an invoice may be the subject of legal consideration in relation to the Bills of Sale Acts. If an invoice and receipt constitute a necessary part of the title to goods, it is necessary, when the latter still remain in the possession of the seller or assignor, that the invoice and receipt should be registered as a bill of sale. But if the purchaser or assignee can prove his title to the goods quite independently of the invoice and receipt there is then no necessity for such registration. The "receipts for purchase-moneys of goods" referred to by the Bills of Sale Act, 1878, are only those which are intended to operate as "assurances," *i.e.* as conveyances or transfers. So long as an invoice and receipt are not intended to form part of a transaction which passes the property in any goods, but there is also an independent bargain and sale which is intended to pass the property, such an invoice and receipt need not be registered.

An exporting merchant should always be careful as to the contents of the invoices he furnishes to his consignees. These are generally required by the Customs authorities of the countries into which the goods are imported as evidence of the description, quantity, and value of the goods. Some countries require what are known as CONSULAR INVOICES (*q.v.*). As an instance of the importance attached to invoices by importing countries, a recent report of the British Consul-General at Sofia may be usefully referred to. He reports that the Bulgarian Customs officials have given notice that they will not accept any invoices unless they bear the seal or signature of the firm issuing them. The invoices must state the numbers, the marks, and the descriptions of the packages; the gross and net weight; the quantity of the goods according to the standard by which they are sold (whether by weight, number, measurement, &c.); and also the price. The total amount of each invoice must be written in words. Corrections in invoices will not be recognised unless certified by the issuing firms. These requirements suggest, very clearly, the details which should find a place in every invoice; and their omission may easily lead to serious consequences.

In the home trade the invoices in general use are free from any special technicalities, and are not the subject of any important technical terms. It is otherwise in the foreign trade, and a few of its terms will now be noticed. A *loco* invoice is one which advises the goods at their actual cost at the place from which they are forwarded. It is at this price that the goods are delivered to the consignee, and any additional items, such as packing, shipping, and insurance, are added separately. A *f.o.b.* invoice is one which includes in the invoiced price of the goods all costs and charges up to and including their shipment. A *c. & f.* invoice includes in the price of the

goods not only the charges included in a f.o.b. price, but also the freight to the destination; and when the cost of insurance is also included the invoice is termed a "siff" invoice, or *c.i.f.* or *c.f. & i.* The word *franco* is also frequently met with in connection with invoices, and this term generally means that the goods invoiced are actually delivered to the consignee free of a charge additional to the invoiced cost price; but often this term has no more extended meaning than c.i.f. A merchant who is required to give a price for goods, other than on "loco" terms, must accordingly bear in mind when estimating that price that he will be expected to pay certain charges incidental to the delivery of the goods, and which are strictly no factor in their actual cost price. There is also the *pro forma* invoice to which reference is made in the article on CONSIGNMENTS, and which is sent to the consignee, not with a view to actually debiting him with the amount, but as some guide to the selling value of the goods; and an invoice of this class would generally be required in respect of a consignment for the information of the Customs authorities. A *pro forma* invoice should always be headed with its title as such.

I.O.U.—This is the name given to a written acknowledgment of a debt already due, and is so called because these letters are generally used therein as an abbreviation for the phrase "I owe you." The acknowledgment usually runs in the following form: "To Mr. A.B., I.O.U. Fifty pounds. C.D., 2nd August 1902." In this form it requires no stamp, for it is neither a receipt nor an agreement to pay. And not being the latter it is necessarily not a promissory note or bill of exchange, and accordingly cannot be a negotiable instrument. The person to whom an I.O.U. in the above form is given—Mr. A.B.—cannot sue C.D. thereon, as he could if the document had been a cheque for example. He can, however, sue C.D. for the £50 mentioned therein, as for an ordinary debt, or as upon a stated account, and upon the trial of the action he can put the I.O.U. in evidence in support of his claim. The peculiar value of an I.O.U. lies in the fact that it is evidence of a stated account. Should C.D. have owed £50 to A.B. for the price of butcher's meat, for instance, which had been supplied to him to a hundred different amounts on as many different occasions, A.B., because he holds that I.O.U., is relieved from suing C.D. for payment of the account and so being put to the proof of every item thereof, for he can sue for the £50 as due upon a stated account.

An I.O.U. should be addressed to the creditor by name, as in the above form; but this is not absolutely essential. If the creditor's name does not appear in it, the I.O.U. will be assumed by the Court to be an acknowledgment of indebtedness in favour of the person who produces it. But this assumption will not be made if the person producing it cannot, apart from and independently of the evidence afforded by the I.O.U., prove that such a state of affairs existed between him and the alleged debtor as constituted the latter a debtor to him in fact, to some extent or other proportionate to the amount of the I.O.U. at the time that the document was given. It is obvious that without such evidence there would be no proof of even the existence of an account capable of being stated between the parties. Care must be taken in drawing up an I.O.U. not to depart very materially from the above form. In particular there should be no words therein to the effect of an

agreement to pay upon demand or on some future date. If there are it will be useless as an I.O.U., and invalid as a promissory note or bill unless it is properly stamped. On the other hand the I.O.U. may contain words in the nature of a memorandum of an agreement already concluded collateral to the subject-matter of the acknowledgment. This proposition would seem to follow from the decision in *Melanotte* v. *Teasdale* that the following document was merely an I.O.U. and did not require a stamp: "1839, Nov. 11, I.O.U. forty-five pounds thirteen shillings, which I borrowed of Mrs. Melanotte, and to pay her five per cent. till paid, (*signed*) C.D." *See* BILL OF EXCHANGE.

IRISH LINEN. *See* APPENDIX.

ISSUE, in its popular meaning, is often used in the sense of *children*, but in its technical meaning it is as frequently used in the sense of descendants. Any person who uses this word in a legal document, such as a will, should therefore be careful to distinguish the sense in which he uses it, though there is nothing to prevent him using it in both senses. Through a testator not being so careful to distinguish his meaning, the case of *Morgan* v. *Thomas* was brought before the courts. Therein the Master of the Rolls said: Issue "is a term of flexible meaning. 'Children' again has a popular meaning. It is used in the sense of the offspring of the first generation, and it has a legal meaning which is the same, but it is quite true you can have a context which shows that 'children' was not used in the sense of 'children,' but in some other sense; and you can have a context of that kind with respect to almost any word in the language. . . . Suppose a testator said, 'I give the black cow on which I usually ride to A. B.,' and he usually rode on a black horse; of course the horse would pass, but I do not think that any annotator of cases would put in the marginal note that 'cow' means 'horse.' . . . I apply this illustration to show the difference in treating the words 'children' and 'issue.' The word 'children' has, both in law and in common parlance, only one meaning, though you may by a context show it is improperly used; that it is written by mistake for descendants or something else. But the word 'issue' has two meanings; it may mean 'descendants,' and it may mean 'children,' the common use of the word in ordinary parlance being 'children,' though in legal parlance its proper meaning is 'descendants.'"

In connection with *Bank notes*, and particularly with reference to section 11 of the Bank Charter Act, 1844, which contains certain provisions regulating and restricting the issue of bank notes, it has been held that "the word means the delivery of the notes to persons who are willing to receive them in exchange for value in gold, in bills, or otherwise; the person who delivers them being prepared to take them up when they are presented for payment." And the word is defined, in relation to *Bills of Exchange* and promissory notes, by the Act of 1882 which makes it mean "the first delivery of a bill or note, complete in form to a person who takes it as a holder. A *debenture* would be said to be issued when it is delivered over by the company creating it to the person who takes the security which it represents.

Shares.—It is often a question of importance whether, or when, certain shares in a company have been actually issued. By the Companies (Consolidation) Act, 1908, it is provided that "every share in any company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same shall have been otherwise determined by a contract duly made in writing, and filed with the

Registrar of Joint-Stock Companies at or before the issue of such shares." Merely because a certificate has not been issued, it does not follow that the shares themselves have not been issued. But any one who subscribes to the memorandum and articles of association of a company obtains an issue of the shares he subscribes for immediately upon, and *ipso facto* of, the registration of the company. Generally speaking, it is for the Court to determine whether there has been an issue, and when, upon a consideration of all the particular facts of the case. Shares cannot be issued at a discount by a company formed under the Companies Acts, and accordingly such a company would not have power to provide by its articles or otherwise for the issue of shares at a discount so as to render the holders of them not liable to pay the nominal amount in full.

In *litigation* there is said to be an issue when the parties have arrived at some certain and material point which is affirmed by one of them and denied by the other. This is the issue that a jury, for example, would determine.

ISSUE DEPARTMENT OF THE BANK OF ENGLAND.—By the Bank Act of 1844, the Bank of England was divided into two great departments, one of which has always been known as the issue department, inasmuch as therein the bank notes are issued. Bank notes have been defined by Act of Parliament as "bills, drafts or notes issued by a banker for the payment of money to bearer on demand, and which shall entitle the holder thereof without indorsation to the payment of any sum of money on demand, whether the same shall be expressed or not, in whatsoever form." This issue department of the bank, though managed and worked by the bank's officers, is absolutely under the control of the government. The directors of the bank have therefore no control over that part of our currency which consists of bank notes, and have nothing whatever to do with the amount at any time in circulation. As the state absolutely controls the metallic currency, so it does the paper currency. The only function of the bank in respect of the note issue is, to give notes for sovereigns when these last equal or exceed five in number, or for sufficient bar gold, and to give or return sovereigns for every bank note presented for payment. The theory is that stated by Sir Robert Peel, "that the paper circulation should conform itself to gold, that it should fluctuate like gold." Gold uncoined, in the shape of bars, is received by the bank, and notes given in exchange at the rate of £3, 17s. 9d. per ounce of twenty-two parts out of twenty-four of pure gold. In consequence of this operation, which it is compelled by law to make, the bank is commonly said to buy gold at £3, 17s. 9d. per ounce. But in truth there is little in the transaction which resembles an ordinary *purchase*. The bank note given in exchange for such gold is more in the character of a receipt than a payment for a purchase. The bank is obliged by law to give bank notes for *all* the gold brought to it for that purpose, and to give gold coin, *i.e.* sovereigns, for bank notes whenever presented for payment.

The transaction is carried on upon the following lines and principles, our description of which is based upon a statement made some years since by Mr. Hankey, a former governor of the bank:—An importer or holder of say 1000 ounces of gold desires to convert it into coin. He can do so by sending it to the Mint, where the operation will be effected free of charge, the Mint delivering him sovereigns at the rate of £3, 17s. 10½d. for every ounce of gold

when it has been properly assayed, and this coined money is given him at that rate for every ounce of standard (*i.e.* of 22 carats fineness); but the operation is a troublesome one to an importer, and must cost something in sending to and from the Mint, and is attended with some loss of interest during the period of the coinage. The usual and invariable course is for the importer to send his gold to the Bank of England, which is compelled by law to buy it at £3, 17s. 9d. per ounce, and this difference in price of 1½d. per ounce is readily paid, and is a great accommodation to the importer, who gets his gold coin without delay and without further expense.

Every note presented at the Bank of England for payment must be immediately paid in gold coin. But as it was known at the time of the Bank Act that the wants of the community in this country were such as to require, for the ordinary trade, from seventeen to twenty million pounds of Bank of England notes to be always in circulation, the bank was permitted to make use of £14,000,000 of their own notes secured by investments set apart for that purpose, and which would yield interest. This interest the bank was to retain for its own use, and was thus enabled to pay, and the nation had a claim to exact, a payment for the privilege, representing the profit derived by the nation from the issue of Bank of England notes. Of these investments a government debt of £11,015,000 forms part. Beyond this sum of £14,000,000 the bank was prohibited from issuing a single bank note without having an equivalent sum of gold in its vaults. Mere investments were not to be a sufficient security for the due honouring of any excess; gold alone was to be the security. There was however a proviso in favour of the bank that should any banker discontinue his issue of notes, the bank might increase its issue to the extent of two-thirds of the issue thus withdrawn; but the profit of this increased issue was to go to the government. The bank was also allowed to compound with issuing banks. The result is that at the present day the bank can issue notes to the total amount of £18,450,000 upon the security of mere investments, and without the security of gold. The extent to which this authorised note issue, known as the fiduciary issue, has been increased, and the dates on which the authority was conferred by Order in Council, will be found in the following statement:—

	Authorised.	Exercised.	
Act of 1844	. . . . .	...	£14,000,000
Order in Council,	December 7, 1855 . .	...	475,000
„ „	June 26, 1861 . . .	...	175,000
„ „	February 3, 1886 . .	...	350,000
„ „	April 1, 1881 . . .	April 16	750,000
„ „	September 15, 1887 .	October 5	450,000
„ „	February 8, 1890 . .	February 19	250,000
„ „	January 29, 1894 . .	February 21	350,000
„ „	March 3, 1900 . .	March 21	975,000
„ „	August 11, 1902 . .	...	400,000
Present amount of fiduciary issue			£18,175,000
Since authorised			275,000
Amount authorised in 1909			£18,450,000

The bank being thus bound at all times to pay all its notes, when presented, in gold, it may be asked how this can be effected when over £18,000,000 of such notes are not represented by gold in hand, but have been invested in securities. The mode is very simple, according to Mr. Hankey. Supposing that all the notes outstanding beyond £19,000,000 were presented for payment, the gold in the bank reserved for that purpose would have effected this operation. But before the amount was reduced to £19,000,000, indeed long before, the bank would commence to realise its nineteen millions of securities. Nearly £8,000,000 consist of securities perfectly saleable at all times; the remainder—viz. £11,015,000—has been lent to the Government. If there were any need of that money, the Chancellor of the Exchequer would not have the smallest difficulty in turning the bank debt into stock, which would be put into the names of the Governor and Company of the Bank of England, who would sell it as required, receiving for all such sales *their own notes, which, not being required to be reissued for the purposes of circulation, would be completely cancelled*, and so on, when all the securities were realised, and all the outstanding notes paid off, this part of the function of the Bank of England would be terminated. And thus, be it observed, all its bank note liabilities would have been discharged without any disturbance of its other business or without having touched a shilling of the capital. *See* BANK RETURN.

J

JOBBER.—This is the designation applied to a person whose business it is to deal in, or buy and sell, stocks and shares on the Stock Exchange. The members of the London Stock Exchange are divided into two distinct classes, the jobbers and the brokers; and it is the latter class through which the public deals and with which it comes into contact, for by the rules of the Stock Exchange a jobber is prohibited from dealing directly with the public, or with the public at all except through a broker. The jobber, to the ordinary investor, is always a very mysterious personage, but he is absolutely unknown in the provincial Exchanges, the New York Stock Exchange, and the continental Bourses. The word "jobber," as generally understood, being also applied to any one who does any sort of casual or chance work and who is not particular as to the nature of the work he does undertake, it is not surprising to find that there is a general impression that a stock-jobber is an individual of a relatively somewhat similar class. Even in up-to-date books of reference one comes across such a passage as the following: "Although there is a slight taint of opprobrium attaching to the name of a stock-jobber, on account of the disreputable characters that too frequently take up the business, the profession is one which demands great tact and knowledge, and the duties pertaining to it are of a very onerous character." Now, as a matter of fact a stock-jobber is as thoroughly a respectable and substantial a man as a banker, solicitor, merchant, or any other city man of position, and it would be practically impossible for a "disreputable character" to remain a member of the Stock Exchange and carry on business as a jobber He is really a well-to-do wholesale dealer in stocks and shares, and it is to

him that the broker goes when he desires to buy or sell any securities on behalf of a client. It is ridiculous to talk about a "taint of opprobrium" attaching to the name of this necessary and most respectable class.

The Stock Exchange is divided into a number of "markets," each of which is exclusively devoted to dealings in certain classes of securities. Thus in the South African market, otherwise known as the "Kaffir Circus," it would be useless to look for business to be done in Midland Railway stock; the broker who desired to buy or sell any of the latter would have to go to the Home Railway market, where, on the other hand, there would be no dealings in such shares as Modderfonteins. Each of these markets is composed of a group of jobbers who are prepared to buy or sell securities of the class appropriated by their special market. A jobber does not necessarily remain in the same market at all times, for it is quite possible, if a wave of speculation sweeps a quantity of business into another market, and so makes his own very dull, that he may migrate to the other market and try and obtain some of its business. He cannot, however, carry on business in more than one market at the same time, though partners in the same firm of jobbers have perfect liberty each to deal in a different market. The broker, when about to buy or sell for his client, goes to the appropriate market, and finding the jobbers there asks one to "make a price" for the particular security in which his client has instructed him to deal. He does not inform the jobber whether he wishes to buy or to sell. His object is to get a quotation independently of that information. The jobber, if he is willing to do business at all, then quotes his price, say $10\frac{1}{4}-\frac{1}{2}$, in the form of a DOUBLE PRICE (*q.v.*), and if this is not good enough for the broker the latter will suggest a less wide quotation, say $10\frac{5}{16}-\frac{7}{16}$. Should they come to terms the broker will announce his object, whether it is to buy or to sell, and the deal or "bargain" will be complete, each party, however, making a note of the bargain in his *jobbing-book*. On the following morning their respective clerks meet and check these entries, and it is astonishing how seldom any mistakes occur in this rapid and rough-and-ready mode of procedure. All that then remains is for the security so dealt in to be delivered and paid for in due course.

It may happen that no amount of stocks or shares are mentioned by the broker or jobber at the time that the bargain is made. In such a case the rules of the Stock Exchange impose certain limits as to the bargain capable of being enforced. Thus an offer to buy or sell a sum of *stock* at a price named is binding as to any part thereof; and an offer to buy or sell stock when no amount named is binding to the amount of £1000 stock. And in the case of *securities deliverable by deed of transfer*, it is provided that an offer to buy or sell an amount of shares or stock at a price named is binding as to any part thereof that may be a marketable quantity; and an offer to buy or sell shares or stock when no amount is named is binding to the amount of £1000 stock, or to the amount of fifty shares. If, however, the market value of the shares is above £15 each, then an offer is binding only to the extent of ten shares, and if the market value is not over £1 each, an offer is binding to the extent of a hundred shares. With regard to *securities to bearer*, an offer to buy or sell a sum of stock at a price named is binding as to any part thereof, not less than the following sums, and divisible by the

same, viz.—£1000 stock or scrip, 750 francs French rentes, ten shares. United States bonds or shares are limited to the amount of $5000 bonds or a hundred shares.

The difference between the two prices, $10\frac{5}{16}$ and $10\frac{7}{16}$, is known as the "jobber's turn," and represents the jobber's profit on the transaction. If the jobber has bought from the broker he will pay the lower price, and if he has sold he will receive the higher price from the broker. Whatever bargain he has made with that broker he will try and "undo," as it is called, as soon as possible, by entering into another bargain, but of an opposite character, with some one else in respect of the same security. In this way he will realise his "turn" and secure his profit. But of course if prices vary at all materially between the time of his bargain with the broker and the time when he undoes that bargain, he stands to either make a loss on the transaction or a further profit. It has been objected that the turn or profit is practically a tax on the public, and that the jobbers could be usefully abolished and their place taken by a register of sellers and buyers. It is doubtful, however, whether such a system would work as well as the present one, and it is fairly certain that the broker's commissions would be then much higher than they are now. The advantage of this system is that a buyer or seller of stocks or shares can always effect a deal upon the Stock Exchange at the market price for the time being. Certainly some securities are practically so much waste-paper, and these naturally cannot be dealt in, but, generally speaking, a man who desires to sell a security can always find a buyer, and he who wishes to buy can always find a seller. And it is through the jobber that this can be effected.

Rights and liabilities.—In the case of *Coles* v. *Bristowe* the position of a jobber who has concluded a bargain to buy was described by Lord Cairns. His contract under such circumstances is that at the settling day he either takes the shares himself, in which case he is, of course, bound to accept and register a transfer, and to indemnify the seller, or he is to give the name of one or more transferees, names to which no reasonable objection can be made, who will accept and pay for the shares. The jobber may perform either alternative; and if, electing to perform the latter alternative, he sends in names which are accepted, and to which transfers are executed, and those transfers are taken and paid for by the transferees or their brokers, the jobber is then and at that stage relieved from further liability, and the liability to register and indemnify is shifted to the transferees. And, accordingly, it was held in that case that after a jobber has paid to the vendor his purchase-money and given the names of transferees to whom the vendor executes transfers, and after these transferees, through their brokers, have received the transfers and paid their purchase-money to the jobbers, all liability of the jobber ceases. But the rules of the Stock Exchange imply, as it was held in *Nickalls* v. *Merry*, that the name of a person so given by a jobber as that of the ultimate purchaser of shares must be that of one able and willing to purchase; and these rules are not satisfied if the name given is that of a non-existent person, a lunatic, an infant, or a person who has not given authority for the use of his name. If the jobber transfers the shares to an infant, or other irresponsible nominee, he will himself become liable on the shares as though he were himself the transferee. Such a

liability may be incurred in respect of calls or contributions, and if the company or liquidator should seek to recover from the vendor, the latter has a right to reimbursement from the jobber. By the custom of the Stock Exchange shares must be transferred not later than the tenth day after the settling day fixed on by the parties; and, within that time, the buyer's transfer must give to the seller the name of the person who is to take the transfer. This latter person has a similar right, within the time, to "pass" or give the name of another person, and so on until the name of an actual purchaser of shares is passed to the seller. This custom has been held to be legal in the case of *Sheppard* v. *Murphy*, and when the proposed name has been given, and the transfer executed and paid for, a privity of contract is completely established between the original seller of those shares and their ultimate purchaser. Should a jobber carry over a contract without the consent of the ultimate purchaser, whose name he passes, the jobber will not, under such circumstances, be discharged from his liability, for the nominee himself is not bound thereby. There is no implied authority to a jobber to so carry over any shares merely because the purchaser is unable to find the purchase-money on the day originally fixed for the completion of the purchase. And *see* STOCK EXCHANGE; STOCKBROKER; NAME-DAY.

JOINT ACCOUNT.—If several persons, such as trustees, advance money upon a mortgage, that money is considered to belong to them as joint-owners, and consequently it passes in the event of the death of either of them to the survivors or survivor. This is the effect of section 61 of the Conveyancing Act of 1881. But notwithstanding this general rule the Court will order the money to pass as belonging to the mortgagees in separate shares, as TENANTS IN COMMON (*q.v.*), if in fact the money did so belong to them. Before the above Act was passed all money advanced by a number of persons on one security was considered in equity to have been advanced out of moneys belonging to them as tenants in common, with the result that if one or more of them died it was necessary for the mortgagor to obtain the receipt of the legal representatives of the deceased, as well as that of the survivors, when he repaid the advance. To obviate this necessity it was usual to insert a clause in mortgages, declaring that the moneys advanced belonged in equity to the mortgagees on a joint account. Section 61 of the Act is to the following effect:—

(1) Where in a mortgage, or an obligation for payment of money, or a transfer of a mortgage or of such an obligation, the sum, or any part of the sum, advanced or owing is expressed to be advanced by or owing to more persons than one out of money, or as money belonging to them on a joint account, or a mortgage, or such an obligation, or such a transfer is made to more persons than one, jointly, and not in shares, the mortgage money, or other money, or money's worth for the time being due to those persons on the mortgage or obligation, shall be deemed to be and remain money or money's worth belonging to those persons on a joint account, as between them and the mortgagor or obligor; and the receipt in writing of the survivors or last survivor of them, or of the personal representatives of the last survivor, shall be a complete discharge for all money or money's worth for the time being due, *notwithstanding any notice to the payer of a severance of the joint account.* (2) This section applies only if and so far as a contrary intention is

not expressed in the mortgage, or obligation, or transfer, and shall have effect subject to the terms of the mortgage, or obligation, or transfer, and to the provisions therein contained. (3) This section applies only to a mortgage, or obligation, or transfer made since the 1st January 1882.

JOINT AND SEVERAL LIABILITY.—This form of liability is more general, and more advantageous to creditors, than is the related form of JOINT LIABILITY (*q.v.*). It exists when the creditor may sue one or more of the parties to the liability separately, or, at his option, all of them together for the whole amount of the liability. A familiar instance of a joint and several liability is that arising out of a promissory note which, in the case of there being several makers of it, usually commences with the words, "We jointly and severally promise to pay." It may be especially distinguished from a merely joint liability, in that the creditor is not bound to sue all the parties to the contract together; and that if one of the debtors should die his estate will still continue liable for payment of the whole amount of the debt. Where one of several joint and several debtors has paid the whole of the debt, or more than his share of it, he is entitled to contribution from the others. And a joint and several debtor is entitled to the benefit of the statute of limitations even though his co-debtors, or one of them, may have done some act excluding the operation of the statute on behalf of themselves or one of them.

JOINT LIABILITY.—In the case of *Richards* v. *Heattier* it was said that "by the law of England, where several persons make a joint contract, each is liable for the whole, although the contract be joint . . . because," quoting another case, "when two men are *jointly* bound in one bond, although neither of them is bound by himself, yet neither of them can say that the bond is not his deed; for he has sealed and delivered it, and each of them is bound in the whole. That was a case upon a deed, but *Rice* v. *Shute* was a case upon a simple contract; and it was there held that although the promise was a joint promise, yet the defendant, who was sued alone, could not say that he did not promise. . . . These two cases establish this, that proof of a joint contract is sufficient to sustain an allegation that one contracted." It is the right of persons who are jointly liable to pay a debt to insist upon being sued together. If then there are three persons so liable, and the creditor sues two of them, and those two make no objection, the creditor may recover judgment against those two. "But," said Earl Cairns in *Kendall* v. *Hamilton*, "should he afterwards bring a further action against the third, that third may justly contend that the three should be sued together. It is no answer to him to say that the other two were first sued and made no objection, for the objection is the objection of the third and not of the other two. Nor is it any answer to him to say that whatever he pays on the judgment against himself he may have allowed in account with the others, because he may fairly require, with a view to his right of account or contribution, to have the identity and the amount of the debt constituted and declared in one and the same judgment with his co-contractors. If, therefore, when the third is sued, and requires that the other two should be joined as parties, the creditor has to admit that he cannot join the other two because he has already recovered a judgment against them in the same cause

of action, this is equivalent to saying that he has disabled himself from suing the third in the way the third has a right to be sued."

And this principle applies even if the joint debtors constitute a partnership firm, for the equitable doctrine which gives a several character to a partnership is only applicable under such circumstances as the administration of the assets of the partnership or of a deceased partner. The equitable doctrine has no application when the action of the creditor is taken whilst the partnership is in existence. The Partnership Act, 1890, provides (section 9) that every partner in a firm is liable jointly with the other partners, and in Scotland severally also, for all debts and obligations of the firm incurred while he is a partner; and after his death his estate is also severally liable in a due course of administration for those debts and obligations, so far as they remain unsatisfied, but subject in England or Ireland to the prior payment of his separate debts. If one joint debtor were to give his own cheque for the joint debt to the creditor, and the cheque having been dishonoured the creditor obtained a judgment thereon against that joint debtor, then, on the authority of *Wegg-Prosser* v. *Evans*, that judgment would be no bar to an action against the other joint debtors on the original contract. A release granted to one joint tortfeasor, or to one joint debtor, operates as a discharge of the other joint tortfeasor, or the other joint debtor, the reason being that the cause of action, which is one and indivisible, having been released all persons otherwise liable thereto are consequently released (*Cocke* v. *Jenner*). But it has been held, in *Hutton* v. *Eyre*, that a covenant *not to sue* one of two joint debtors does not operate as a release of the other joint debtor, the reason being that the joint action is still alive. On the same principle it was decided, in *Duck* v. *Mayeu*, that a covenant not to sue one of two joint tortfeasors does not operate as a release of the other from his liability. In *Wilson* v. *Balcarres Brook Steamship Co.*, the old principle of the common law was expressly adopted that where one of several joint contractors was sued alone, the one sued had a *primâ facie* right as a general rule to have the others made co-defendants with him. But should one of the several joint contractors be resident outside the jurisdiction the right to have him joined in the action is subject to the careful discretion of the Court, a discretion which is exercised with the very greatest caution. The reason for this right is that any one who is sued on a joint liability is entitled to contribution from his co-joint contractors. It only naturally results from the general legal position of joint debtors that should one of them die his estate is released from the liability and his legal representatives are not burdened with it, the whole liability being thereupon cast on the surviving joint debtors. And the Bankruptcy Act of 1883 specially provides that an order of discharge is not to release any person who at the date of the receiving order was a partner or co-trustee with the bankrupt or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

Limitation of actions.—Various provisions are made by certain enactments and which are fully noted elsewhere, whereby a new written acknowledgment or promise of a debt signed by a debtor may prevent the debt being statute-barred on account of lapse of time. In regard to a joint liability it is provided, by 9 Geo. IV. c. 14, that "where there shall be two or more joint contractors, or executors, or administrators of any contractor, no such joint

contractor, executor, or administrator shall lose the benefit of the said enactments or either of them so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed by any other or others of them." And the same Act also provides that a plaintiff, though statute-barred as to one or more of his joint debtors, can recover against any other or others of them who may have given to him a new acknowledgment or promise of the debt sued for. And these two provisions would equally apply in a case where an otherwise statute-barred liability had been revived and continued by the payment of principal, interest, or other money instead of by a written acknowledgment or promise.

The reader should be careful to distinguish between a joint liability and a JOINT AND SEVERAL LIABILITY, the subject of a separate article.

JOINT OWNERS are those several persons who own property between them in equal undivided shares. Table A of the Companies Act, 1862, provides that if several persons are registered as joint holders of a share, any one of those persons can give effectual receipts for any dividend payable in respect of it; and "if one or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same." But this provision can be excluded or modified by the articles of association of a company. In the case of debentures there is usually a condition indorsed thereon that the principal moneys and interest thereby secured shall be deemed to be owing to them on a joint account, but this condition is really nothing more than a statement of the actual law on the subject. Shares standing in the names of joint owners follow the general rule relating to joint ownership, and consequently, if of two such owners one died, the survivor would be solely liable for any calls which might be made in respect of the shares. Joint owners of a share in a ship are considered, for the purposes of registration, as one person only; they cannot dispose in severalty of their interests in the share. *See* JOINT-TENANCY.

JOINT PATENTEES.—Two or more persons may make a joint application for a patent, and a patent may be granted to them jointly; and it is lawful to grant a patent to several persons jointly although only one or some of them is or are the true and first inventor or inventors. But the application for a joint patent must distinguish the applicant who claims to be the true and first inventor. Joint patentees should be careful to remember that any one of them may use the invention for his own benefit, may even sell his interest, and may also sue alone for an infringement. But he must not do anything to prejudice the rights of his co-patentees where a patent is vested in trustees upon trust for several owners in common or joint owners, it is a question whether any one of them is at liberty to work the patent on his own account. *See* PATENT.

JOINT-STOCK COMPANIES ARRANGEMENTS. — Like private persons and firms, so joint-stock companies may find it advantageous, when in financial difficulties, to effect an arrangement with their creditors. In order to provide facilities therefor the Joint-Stock Companies Arrangement Act was passed in 1870, and this Act, as modified by the Companies(Consolidation)Act, 1908, allows any creditor, member, or liquidator of a company to apply to the Court for its approval of any compromise or arrangement which the company may propose to effect with its creditors. But this approval is only possible

when the company is in course of being wound up, either voluntarily or under the supervision of the Court. And it is only granted on the terms that a meeting of the creditors is duly called, and a majority of three-fourths in value of those creditors are there present, either in person or by proxy, and agree to the proposed compromise or arrangement. The compromise or arrangement may then be sanctioned by the Court, and will be binding upon all the creditors, and also on the liquidator and contributories of the company. Any scheme which is fair and reasonable will be so sanctioned. Mr. Beaufort Palmer, in his work on *Company Law*, states that the commonest form of scheme is that a new company shall be formed; that the debenture holders of the existing company shall take debentures or preference shares of the new company; that the unsecured creditors of the existing company shall take a composition of so much in the pound payable partly in cash and partly in shares, or partly in debentures; and that the shareholders shall receive shares in the new company with a liability attached. Another scheme is mentioned by the same author which avoids the necessity for a new company. It is that the debenture holders of the existing company shall grant an extension of time for payment, say five or ten years, and that creditors shall accept some composition, or perhaps second debentures or shares, and that the winding up shall be stayed, and that the company shall resume business. *See* COMPANIES; RECONSTRUCTION.

JOINT-TENANCY is such a proprietorship of property by two or more persons as vests the property in them all in equal undivided shares. The essential difference between a joint-tenancy and a TENANCY IN COMMON (*q.v.*) is, that joint-tenants have the property by one joint title, and in one right, whilst tenants in common have each a distinct and separate ownership in their several shares in the property though the enjoyment of the latter is common to them all. The "four unities" are the characteristics of a joint-tenancy. These are: the unity of interest, of title, of time, and of possession. In other words joint-tenants have one and the same interest accruing by one and the same title, commencing at one and the same time, and held by one and the same undivided possession. The first unity necessitates that one joint-tenant cannot be entitled to one period of duration or quantity of interest in the property, and another to a different one. Thus one joint-tenant cannot be the freeholder of a piece of land and his co-tenant hold it for a certain number of years. If the freehold of an estate is conveyed to a number of persons without any restrictive, exclusive, or explanatory words, they thereby all become joint-tenants of the freehold, the law assuming that they were each intended to have an equal share in the property. And the second and third unities require that their estate is created by one and the same act, whether legal or illegal; and that it is vested in them at one and the same period of time, as well as by one and the same time. Then comes the last unity—that of possession. Joint-tenants are said to hold their property, in the old technical phrase *per my et per tout*, that is to say, by the half or moiety, and by all. Each of them has the entire possession, as well as every part of the whole. No one of them has his share separately and the others theirs, and so one cannot hold, say, one acre and the others the remaining acres. Each has an undivided part or share of the whole, and not the whole of an undivided part or share. Assuming that A., B. and C. were joint-tenants of a certain property, then, by

the rule of survivorship which is always incident to a joint-tenancy, upon the death of A. the whole of the property would vest in B. and C., his survivors, as joint-tenants, and finally, upon the death of B. the property would vest solely in C., and upon his death pass to his legal representatives. Such a state of things would work admirably, and to the satisfaction of every one, if A., B. and C. were merely trustees of the property; but, if the property were their own, this rule of survivorship would undoubtedly work a hardship upon the children or legal representatives of A. and B. Efforts have accordingly been frequently made in past times to obtain some modification of the strict law on the subject. As a result of these efforts the following points have been settled. Where two or more persons purchase land, and advance the money in equal parts, and take a conveyance to themselves and their heirs simply, there is no escape from the fact that this transaction constitutes a joint-tenancy with its incidental chance, or right, of survivorship. But where the proportions of money are not equal, they are in the nature of partners; and though the legal estate vests in the survivor, he will in fact hold it solely as a trustee for the representatives of his deceased co-tenant, in respect of the money paid by the latter. And so, if where two having purchased jointly, afterwards one lays out a considerable sum on improvement, &c., and dies, it will be a lien on the property, and a trust for the representative of the one who advanced the money. But a joint-tenant who has so laid out his money has no remedy against his co-tenant so long as the property remains in common.

In general, it is advantageous for joint-tenants to dissolve the jointure, for thereby the chance or right of survivorship will be taken away, and each tenant is enabled to transmit his own share in the property to his own representatives. The joint-tenancy can be severed by one joint-tenant alienating and conveying his part or share to a third person. As a result of so doing the joint-tenancy is turned into a tenancy in common, for the transferee and the remaining joint-tenant then hold by different titles, and one of the aforesaid unities is missing. The remaining joint-tenants derive their title as before from its original source, but the transferee derives his from the alienating joint-tenant. But an attempted disposition of one's share by will is no severance of the jointure; for no testament takes effect until after the death of the testator; and by that death the right of the survivor, which accrued at the original creation of the estate, and has therefore a priority to the other, is already vested. And a severance may also be effected under the provisions of the Partition Act, 1868, which allows a partition to be ordered by the Chancery Division of the High Court, in an action instituted by one or more of the parties interested; and where in the opinion of the Court a sale would be more beneficial than a division, the Court may, on request of any of the parties, direct a sale.

Goods and chattels may belong to their owners in joint-tenancy, and in common, as well as real estates. Thus if a horse, or other personal chattel, is given to two or more persons absolutely, they are joint-tenants thereof; and, unless the jointure is severed, the same doctrine of survivorship will take place as in the case of lands and tenements. Residuary legatees and executors are also joint-tenants, unless the testator uses some expression which converts their interest into a tenancy in common; and if one dies before a division or severance of the surplus, the whole that is undivided will pass to

the survivor or survivors. But for the encouragement of trade, there is no survivorship of a capital or stock-in-trade among merchants and traders; were it otherwise partnership would be impossible. And this exception even extends to any real property belonging to and used for the purposes of a partnership.

JOURNAL.—This is the name given to one of the principal books used in book-keeping, as distinguished from the subsidiary books. It thus ranks in importance with the ledger. All the transactions of the business may be entered in this book, or "journalised," to use the technical term, day by day, in the order in which they occur, the material for the entries being taken from the subsidiary books, such as the cash book, bill book, bought book, invoice book, &c. There is also frequently used, as a subsidiary book, a roughly entered-up waste-book, the contents of which are in like manner journalised. The foregoing cannot, however, be laid down as rule of general application, for in different businesses, and amongst different book-keepers, there is a considerable variation of opinion as to the extent the journal should be used in respect of matters already the subject of entries in the subsidiary books. The journal may, therefore, be very properly used only for the purpose of recording transactions which, whilst strictly adhering to the principle of double entry book-keeping, would not appear in any of the subsidiary books. But whatever view may be taken as to the province of the journal, it must be always understood that, so far as a journal is kept at all, the transactions appearing therein should be journalised separately from one another, daily, and in chronological order. Considered, however, in its complete form, the journal is capable of being a perfect record of all the transactions of the business, is most varied and comprehensive in its nature, and serves in effect as an index to every book of consequence in the counting-house. In their turn the entries in the journal are posted into their appropriate accounts in the ledgers.

The following is a page from a farmer's not very complicated

JOURNAL.

Ledger Folio.	Date.	January 1902.	Dr.			Cr.		
1	9	Sheep, Dr.	18	0	0			
1		To cash				18	0	0
		12 wethers @ 30/-						
1	10	Cash, Dr.	80	0	0			
1		To cattle				80	0	0
		4 cows @ £20						
2	11	Alfred Jones, Ealing, Dr.	52	10	0			
2		To wheat				52	10	0
		30 qrs. @ 35/-						
1	12	Horses, Dr.	60	0	0			
2		To R. Graham, Billericay				60	0	0
		2 horses @ £30						
1	13	Cash, Dr.	52	10	0			
2		To Alfred Jones, Ealing				52	10	0
2	14	R. Graham, Dr.	60	0	0			
1		To cash				60	0	0
			323	0	0	323	0	0

The first of the above entries recounts the fact that the farmer has "bought 12 wethers for cash at 30s.," the effect of which transaction being that his stock of "sheep" receives value to the amount of £18 whilst his stock of "cash" is diminished by the like amount. "Sheep" is therefore for that amount debtor to "cash," which in its turn is creditor to a like amount to "sheep." The second entry, like the first, having been made in respect of a cash transaction, needs no mention of any of the persons who may be connected with the deal. It is sufficient that the farmer can make it appear in his books, and ultimate balance-sheet, that he has "sold 4 cows for cash, £80"; and it will so appear if his "cash" account is made Dr. to his "cattle" account, for the increase in his cash is only possible as a consequence of a corresponding decrease in the value of his cattle. The third entry is the representation of a credit transaction wherein the farmer appears to have "Sold to Alfred Jones, wheat, £52, 10s. 0d." This means that his "wheat" account must be credited as against a debit to the account of "Alfred Jones." And the fourth entry shows a credit transaction of an opposite nature to the foregoing. The farmer has here "Bought of R. Graham, 2 horses, £60," upon credit, and consequently he must credit the account of "R. Graham" with that amount, and at the same time make a corresponding debit in the "horse" account. The fifth and sixth entries can be read as "Received from Alfred Jones, cash, £52, 10s. 0d.," and "Paid to R. Graham, cash, £60," respectively. In the fifth the "cash" account is debited with the amount to correspond with the credit thereof to the account of "Alfred Jones"; in the sixth, the credit and debit are reversed.

JOURNEYMAN is the expression now generally used to denote a mechanic or artisan who, having passed through a period of apprenticeship and improvement, works at his trade as a skilled worker for a definite wage. But in its origin, and until comparatively recent times, it always meant a tradesman who worked and was paid by the day.

JUDGMENT.—A judgment is the sentence or decision of the law pronounced by the Court upon the matter before it as presented by the proceedings in the action. A "final" judgment may be said to be one which disposes of all the issues in the action, whilst an "interlocutory" judgment is one affecting only part of, or something incidental to, the matter in dispute, and so does not put an end to the proceedings. The party who obtains a judgment against another for the payment of money is called a judgment creditor, the term judgment debtor being applied to the other party. A reference to the article upon CONTRACT will show that a judgment, as between the parties to it, ranks as a contract of the most binding character; they are, as a rule, absolutely precluded from disputing it. A mere clerical error or omission in the wording of a judgment may be rectified or supplied; but, except by way of appeal, a judgment cannot be avoided even though it is founded upon some mistake of the Court as to law or facts. A judgment carries interest at the rate of 4 per cent. unless some other rate is named therein. A Court will enforce its judgment upon the application of the party entitled to it, and this is usually done by way of EXECUTION when the effect of the judgment is to constitute a debt. A party who has obtained a judgment should proceed to enforce it in the usual way, not by taking a fresh action upon it, for if he should do so, he may be deprived of his costs of the second action.

But under no circumstances can an action be brought in a County Court upon a High Court judgment. And *see* the next article.

JUDGMENT SUMMONS is the name of a proceeding by which a judgment creditor may obtain the commitment to prison of his debtor in default of the latter paying the judgment debt. This proceeding is more particularly referred to under the heading DEBTORS' ACT. But reference may here be made to section 103 (5) of the Bankruptcy Act, 1883, which provides that upon the hearing of such a summons, when the committal of the debtor is asked for and the Court has a jurisdiction in bankruptcy, "the Court may, if it thinks fit, decline to commit, and in lieu thereof, with the consent of the judgment creditor, and on payment by him of the prescribed fee, make a receiving order against the debtor." In such a case the judgment debtor is deemed to have committed an act of bankruptcy at the time the receiving order is made. As to the nature and effect of a receiving order *see* BANKRUPTCY.

JUDGMENTS EXTENSION.—A judgment for any "debt, damages, or costs," if obtained in any of the superior courts of England, Scotland, or Ireland, may, under the provisions of the Judgments Extension Act, 1868, be transferred from the court and country in which it was given, and registered in a superior court of either or both of the other two countries upon a certificate of its original entry being produced. A similar opportunity is made available by the Inferior Courts Judgments Extension Act, 1882, in the case of judgments in the inferior courts of these countries. A Scotch judgment, for example, may be extended to England. The result of an extension is that the Scotch judgment in a superior court will be "of the same force and effect, and all proceedings shall and may be had and taken on such certificate as if the judgment of which it is a certificate had been a judgment originally obtained or entered upon the date of such registration" in the Court in England in which it is registered. But though a Scotch or Irish judgment may be extended into England and there enforced by execution, it cannot be enforced by proceedings in bankruptcy against the judgment debtor. Judgments in the local inferior courts in England, such as the Mayor's Court in London, the Salford Hundred Court, the Liverpool Court of Passage, and the Tolzey Court at Bristol, may be transferred into the High Court. When so transferred an execution can be issued in the same manner, and with the same effect, as if the judgment had been originally a High Court judgment. These facilities to remove a judgment from a local inferior court to the High Court are very valuable inasmuch as they afford a judgment creditor an opportunity to proceed against the goods and person of a judgment debtor who is outside the jurisdiction of the inferior court. A County Court judgment, exceeding £20 exclusive of costs, can also be removed to the High Court if a judge of the latter court is satisfied that the judgment debtor "has no goods or chattels which can be conveniently taken to satisfy such judgment." And a judgment in the High Court can always, and practically as a matter of course, be brought into a County Court, thus giving a judgment creditor an opportunity to avail himself of the machinery of the County Court system for the enforcement of his judgment.

JUDICIAL SEPARATION.—In the days of the ecclesiastical courts, prior to the Matrimonial Causes Act of 1857, a divorce would be granted

à mensâ et thoro, i.e. "separation from board and bed," which did not operate as an absolute dissolution of the marriage, to obtain which a divorce *a vinculo* was requisite. But by that Act the jurisdiction in matters matrimonial then vested in the ecclesiastical courts was taken away and vested in a court for divorce and matrimonial causes now represented by the Probate Divorce and Admiralty Division (Divorce) of the High Court of Justice. Section 7 of the Act provided that no decree should thereafter be made for a divorce *à mensâ et thoro*, but in all cases in which such a decree might then have been pronounced the new court should pronounce a decree for a judicial separation. This latter decree was to have the same force and the same consequences as a divorce *à mensâ et thoro* then had. And so at the present moment there remains the decree of separation which can be obtained where the circumstances of the case do allow the Court to dissolve the marriage absolutely. A sentence of judicial separation may be obtained, either by the husband or the wife, on the ground of (*a*) adultery, or (*b*) cruelty, or (*c*) desertion without cause for two years and upwards. The application may be made, on any one of the above grounds, by either husband or wife, by a petition to the Court. Whereupon the Court, being satisfied of the truth of the allegations contained in the petition, and that there is no legal ground why the petition should not be granted, may decree the judicial separation applied for. Where the application is by the wife the Court may make any order for ALIMONY (*q.v.*) which it considers just.

There is undoubtedly a general feeling that the present practice of only dealing with these petitions in the Divorce Court in London, entailing the expense of attending in London and bringing witnesses there, makes the procedure practically a luxury for the well-to-do. And in view of this feeling it is interesting to note that the legislators of 1857 had certainly no intention, so far as regards judicial separations, to create the present centralised system. By section 17 of the Act it was provided that a petition could be presented "to any judge of assize at the assizes held for the county in which the husband and wife reside or last resided together, and which judge of assize is hereby authorised and required to hear and determine such petition," and to make the consequent decree. And this power was not even exclusively vested in judges of assize, in addition to the regular matrimonial judges; it was also provided that a judge of assize could refer a petition to a Queen's counsel, who could then decide upon the matter, and had all the powers of the judge of assize.

A decree of judicial separation obtained during the absence of a husband or wife may be reversed under certain circumstances. These appear from section 22, which runs as follows: "Any husband or wife, upon the application of whose wife or husband, as the case may be, a decree of judicial separation has been pronounced, may, at any time thereafter present a petition to the Court praying for a reversal of such decree on the ground that it was obtained in his or her absence, and that there was reasonable ground for the alleged desertion, where desertion was the ground for such decree; and the Court may, on being satisfied of the truth of the allegations of such petition, reverse the decree accordingly, but the reversal thereof shall not prejudice or affect the rights or remedies which any other person would have had in case such reversal had not been decreed, in respect of any debts, contracts, or acts of the wife incurred, entered into, or done between the times of the sentence

of separation and of the reversal thereof." It is important to notice that if the petitioner for a judicial separation has been guilty of adultery, he or she is absolutely barred from any relief; had the petition been for divorce it would then be within the discretion of the Court whether or no the adultery should be a bar to a decree. *See* DIVORCE; ALIMONY; HUSBAND AND WIFE; SUMMARY MATRIMONIAL CAUSES.

JUDICIAL TRUSTEES.—By the Judicial Trustees Act of 1896 it is now possible in England for a trustee to be appointed in such a manner as to subject him, and his dealings with the trust estate, to the control and supervision of the Court as if he were an official of the Court. And a private trustee, already constituted and acting as such in the ordinary manner, is now enabled if he desires it to become subject to the control of the Court and so be relieved of much personal responsibility. A trustee whose appointment is within the terms of this Act is known as a "judicial trustee." The Act provides that such a trustee may be appointed upon application being made to the Court by or on behalf of the person creating or intending to create a trust; or by or on behalf of a trustee; or by or on behalf of a beneficiary. If sufficient cause is shown the Court will even appoint a judicial trustee *in the place of all or any of the existing trustees.* For the purpose of this Act the administration of the property of a deceased person, whether a testator or intestate, is considered to be a trust; and an executor or administrator is a trustee. Any fit and proper person nominated for the purpose in the application can be appointed a judicial trustee. In the absence of such a nomination, or if the Court is not satisfied with the fitness of the person nominated, the Court has power to appoint an official of the Court. In any case a judicial trustee is subject to the control and supervision of the Court as an officer thereof. The Court, if it thinks fit, will allow a beneficiary of the trust to be appointed judicial trustee; so also will it allow the appointment of a relation or husband or wife of a beneficiary, or a solicitor to the trust or to the trustee or to any beneficiary, or a married woman, or any one who may happen to stand in any special position with regard to the trust. And a person may be so appointed even though he is already a trustee of the trust. Whether requested so to do or not, the Court can give to a judicial trustee special directions in regard to the trust or its administration. The judicial trustee may receive remuneration for his trouble, but must render to the Court full accounts from time to time of his dealings with the trust.

This Act has a special interest to all trustees, private or judicial, for it extends the power of the Court to relieve trustees from liability for breach of trust provided they have acted honestly and reasonably, even though not in accordance with ordinary business caution or according to the usual routine. The words of this important part of the Act are as follows—"If it appears to the Court that a trustee, whether appointed under this Act or not, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the passing of this Act, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the Court in the matter in which he committed such breach, then the Court may relieve the trustee either wholly or partly from personal liability for the same."

Appointment.—*Mode of making application.*—An application to the Court to appoint a judicial trustee should be made in the Chancery Division, and (*a*) if not made in a pending cause or matter must be made by an originating summons; and (*b*) if made in a pending cause or matter, must be made as part of the relief claimed, or by a summons in the cause. The summons should be served—(*a*) where the application is made by a trustee, on the other trustee (if any); and (*b*) where it is made by a beneficiary, on the trustees (if any); and (*c*) in either case, on such of the beneficiaries as the Court directs. But where the application is made by the person creating or intending to create a trust, the summons, subject to any direction of the Court, need not be served on any one at all. When making the application, the applicant must furnish to the Court a certain written and signed statement. This statement should contain the following particulars so far as he can gain information with regard to them:—A short description of the trust and instrument by which it is, or is to be, created, and of the relation which the applicant bears to the trust; if any one is nominated as judicial trustee, his name and address and short particulars of the reasons which lead to his nomination; if any one is so nominated, a statement whether it is proposed that he should be remunerated or not; short particulars of the trust property, with an approximate estimate of its income and capital value; short particulars of the encumbrances (if any) affecting the trust property; a statement whether it is proposed that the judicial trustee should be a sole trustee or should act jointly with other trustees; particulars as to the persons who are in possession of the documents relating to the trust; the names and addresses of the beneficiaries and short particulars of their respective interests; any exceptional circumstances specially affecting the administration of the trust. The applicant must also make an affidavit verifying these particulars, and if he cannot gain any of the necessary information he must mention the fact in his statement.

Vesting orders.—On the appointment of a judicial trustee the Court will do all things necessary to vest the trust property in him, either as a sole trustee or jointly with other trustees as the case requires. An *official judicial trustee* is usually the official solicitor of the Court. When such a trustee ceases to hold office as an official he ceases to be a judicial trustee without any formal resignation. The trust property is never vested in such a trustee's own name but in the title of his office; and if he dies or ceases to hold office, the property thereupon vests in his successor.

Administration of the trust.—*Statement.*—Directly after his appointment, unless the Court thinks it unnecessary, a judicial trustee must furnish the Court with a complete statement of the trust property, accompanied with an approximate estimate of the income and capital value of each item; and he must also keep this statement, from time to time, correct to date. Unless he is an official he may be required to give a *security* for his administration of the trust property, but this may be dispensed with upon due application being made to the Court, unless the Court thinks it a case where such security is necessary or desirable. The security usually takes the form of a bond with sureties, and its amount or nature may be varied from time to time by order of the Court. It is always a condition of the bond that the judicial trustee shall give immediate notice to the Court of the death or

insolvency of any of his sureties. Unless the security is dispensed with, the appointment of a person to be a judicial trustee will not take effect until he has given the required security. Any premium paid by him to a guarantee company on account of his security may, if the Court so directs, be paid out of the trust property. *Trust account.*—A separate account must always be kept in the name of the trustees, at some bank approved by the Court, for the receipts and payments on behalf of the trust. And the title-deeds, certificates, and other documents of title must be deposited there or in such other custody as the Court may direct. The deposit is to be in the names of the trustees, and the judicial trustee must give notice to the custodian not to deliver up any of the deposited documents to any person whatever except on a request signed by the judicial trustee and countersigned by a Master or Registrar of the Court, and also to allow any person authorised in writing by such an officer of the Court to inspect them during business hours. A list of documents so deposited is required to be furnished to the Court, and this list must be kept accurate. Any payments on account of the income of the trust property may be provided for by means of a standing order to the bank at which the trust account is kept. The judicial trustee may obtain directions from the Court, if necessary, for securing the safety of the trust property. He must pay all money coming into his hands on account of his trust estate without delay to the trust account at the bank. If he keeps any such money in his hands for a longer time than the Court considers necessary, he will be liable to pay interest upon it at 5 per cent. for the time during which it remains in his hands.

Accounts and Audit.—The Court gives directions to a judicial trustee as to the date to which the accounts of the trust are to be made up in each year; and it fixes in each year the time after that date within which the accounts are to be delivered to it for audit. In ordinary cases these accounts are audited in the High Court by a Master or District Registrar, and in the County Court by a Registrar. But if the Court considers that they are likely to involve questions of difficulty it can refer them to a professional accountant for report and order him to be remunerated. *Filing and inspection of accounts.*—The accounts of a trust of which there is a judicial trustee, together with a note of any corrections made upon the audit, are required to be filed as the Court may direct; and the judicial trustee must send a copy of the accounts or, as the Court thinks fit, of a summary of the accounts to such beneficiaries or other persons as the Court thinks proper. The Court may also allow any person interested in the trust to inspect the filed accounts. On the audit of his accounts a judicial trustee is usually allowed a deduction in respect of his remuneration, allowances, and of fees paid by him; but he is not allowed any deduction for the expenses of professional assistance, or his own work or personal outlay, unless the deduction has been authorised by the Court or it is justified by the strict necessity of the case.

Remuneration and allowances.—Where a judicial trustee is to be remunerated his remuneration is fixed by the Court and can be altered from time to time; in fixing this remuneration regard is had to the duties entailed upon the judicial trustee by the special nature of the trust. The following matters may be the subject of special allowances payable out of the trust property: (*a*) the statement of trust property prepared by the judicial trustee

on his appointment may warrant an allowance not exceeding ten guineas; (*b*) realising and reinvesting trust property where the property is realised for the purpose of reinvestment, an allowance not exceeding 1½ per cent. on the amount realised and reinvested; and (*c*) realising or investing trust property in any other case, an allowance not exceeding 1 per cent. on the amount realised or invested. And the Court may also, in any year, make a special allowance if satisfied that in that year more trouble has been thrown upon the trustee by reason of exceptional circumstances than would ordinarily be involved in the administration of the trust; such an allowance as this is paid in addition to his remuneration, if he is a remunerated trustee. Remuneration is liable, however, to forfeiture. This may occur when the judicial trustee fails to comply with the Act, or rules thereunder, or with the direction of the Court or its officer, or when he has otherwise misconducted himself in relation to the trust. Such a forfeiture does not affect the liability of the judicial trustee for breach of trust or to be removed or suspended. He has, however, an opportunity of being heard by the Court before any order is made for the forfeiture of his remuneration or any part of it.

Removal and resignation.—*Suspension.*—A judicial trustee will be suspended by the Court if it is expedient to do so in the interests of the trust, and while so suspended he cannot act as a trustee. The suspension may be ordered either without any application, or on the application of any person appearing to the Court to be interested in the trust. Upon a suspension a notice thereof should be given to those interested in the trust, and also to the persons having the custody of the trust property. In like manner the Court may order the *removal* of a judicial trustee. But in this case the application must be made by summons, and notice must be first given to him of the grounds on which it is proposed to remove him, and of the time and place at which the matter will be heard. Notice should also be given to those interested in the trust. An inquiry into the acts of a judicial trustee is conducted by a Master or Registrar. *Resignation and discontinuance.*—A judicial trustee who desires to be discharged from his trust must give notice to the Court, stating at the same time what arrangements it is proposed to make with regard to the appointment of a successor. An official of the Court may be appointed in his place in a case where no fit and proper person appears available for the office, or where the Court considers that such an appointment is convenient or expedient in the interests of the trust. And the office of judicial trustee may be discontinued altogether as such whether the person who is a judicial trustee continues as a trustee or not; but to obtain this discontinuance an application should be made by some one interested in the trust. All persons so interested should concur in the application, and it should really be a *bonâ fide* expression of their general wish.

Special trusts.—Any one who is an executor or administrator may be appointed a judicial trustee for the purpose of the collection and distribution of the estate of a deceased person in the same manner and subject to the same provisions as in the case of an ordinary trust. And where an administrator has given an administration bond he is not usually required to give security as a judicial trustee as well. An official of the Court cannot be a judicial trustee for any persons in their capacity as members, or debenture holders of, or being in any other relation to, any incorporated or unincor-

porated company or any club. Nor can he, when the administration of the trust involves the carrying on of any trade or business, unless by consent of the Court after a special consideration of the facts of the particular case.

Communication with Court.—It is not necessary to take out a summons for any purpose under this Act except where it is specially required. Where a judicial trustee desires to make any application or request to the Court, or to communicate with the Court as to the administration of his trust, he may do so by letter addressed to the Master or Registrar, as the case may be, without any further formality. And the Court, in its turn, may give any direction to a judicial trustee with regard to the administration of his trust by a letter signed by the Master or Registrar, as the case may be, and addressed to the trustee, without drawing up any order or formal document. And to obtain the attendance at his chambers of the judicial trustee, or any other person connected with the trust, for purposes relating to its administration, the Master or Registrar can make such appointments as he thinks fit by letter, and without the service of formal notices. Any document may be supplied for the use of the Court by leaving it with the Master or Registrar, as the case may be, or sending it to him by post.

JUNIOR means *younger*, which word is often used as its substitute. If a father and son have precisely the same name, then *primâ facie*, that name whenever used without an indicative distinction is presumed to refer to the father. It is for this reason that it is usual, under such circumstances, to append the word "junior," or other distinguishing note, to the name of the son.

JURORS.—A juror is a person sworn on a jury. In the words of Chief-Justice Gibson of the United States, "The term 'jurors' means nothing more than twelve men qualified and sworn to try a cause according to the evidence. Their oaths as jurors rest on their consciences as men, and as men they are accountable to God and their country for their verdict. Nothing more is demanded of them as jurors than an honest exercise of their judgment as men. The evidence which produces conviction on their minds in one capacity works the same result in another. Their belief is the same in both." It must be remembered, said the same judge, that jurors are men, and that it is because they have human hearts and sympathies and judgments that they are selected to determine upon the rights of their fellow-men. If they were more or less than men they would not be the constitutional peers of a prisoner, and would be disqualified to decide his case. *See* JURY.

JURY.—A jury is a certain number of men, selected in the manner prescribed by the law, and sworn to try the facts and declare the truth upon the evidence presented to them on the trial of some cause. In contradistinction to the Grand Jury, which ought, by old-standing custom, to be composed of freeholders, and the functions of which are referred to in the article on INDICTMENT, stands the petty jury which at the common law should be composed of twelve men who are sworn to try and determine, by a unanimous verdict, the facts in evidence before them in a criminal prosecution. There are also the coroner's jury which determines the facts at a coroner's inquest; the *common jury*, which is composed of men of the same class as the petty jury, but which is engaged in the trial of a civil action; and the *special jury*, the duties of which are the same as those of a common jury, but

which is drawn from men of a wealthier class, and is generally engaged in matters of difficulty and importance. The jury of matrons needs no reference in this article, which will deal more particularly with the special and common juries as found in the civil courts. It may be mentioned here, however, that the number of jurors in a County Court jury is usually eight; not twelve as in the case of a special or common jury in the High Court.

Right to trial by jury.—In Magna Charta it is especially declared, that no freeman shall be injured either in his person or his property, except by the legal judgment of his peers or the law of the land. Whether this reference to peers is synonymous with a reference to a jury may be questioned, but it is at least certain that so far back as the reign of Edward I. the jury was an important constituent in our legal system. And by the time we reach the reign of Edward III., a whole body of statutes will be found relating to jurors and trial by jury. In the reign of George IV. the statute law on the subject had increased to such an extent, and with such complication, that a Jury Act was then passed which repealed all prior Acts, and consolidated the whole law of the subject into one compendious legislative declaration. This statute aimed at consolidating, simplifying, and amending the then existing law relative to the qualification, summoning, and formation of juries, increasing the number of persons qualified to serve on juries, and removing complaints, which had long been urged, as to the partial and defective mode of striking special juries. To this day that Act remains the foundation of our modern statutory law on this subject, though since then, a number of further acts having passed, especially the Juries Act, 1870, there has again arisen a need for fresh consolidating and amending legislation.

In actions in the High Court in respect of slander, libel, false imprisonment, malicious prosecution, seduction, or breach of promise of marriage, the plaintiff has an absolute right to a trial by jury; and if he does not give the proper notice requiring a jury, the defendant may do so instead. But there is nothing to prevent both parties abstaining from requiring a jury, and going to trial before a judge alone. Indeed the general tenor of the Rules of Court made under the Judicature Acts, is to constitute trial by a judge without jury the normal course of proceeding. And yet these Acts and Rules are expressly declared to preserve the rights of litigants to trial by jury. The net effect of them, however, is to preserve the absolute right in the cases of the above actions only. In other actions, and in all cases where a special jury is required, the party who desires the jury must apply to the Court for an order for one. As a matter of practice this order is generally made or refused at a very early stage in the proceedings, upon a summons for directions. In the County Courts this right to a jury is governed by section 101 of the County Courts Act, 1898, and Order xxii., rule 3, of the Rules made thereunder. The effect of these provisions is that in all cases where the amount claimed exceeds £5, the plaintiff or defendant may require a jury to be summoned to try the action, unless the action is of the nature of the matters assigned to the CHANCERY DIVISION (*q.v.*) of the High Court; and that in all actions where the amount claimed does not exceed £5, the judge, on the application of either party, may in his discretion order an action to be tried by a jury. Interpleader matters and actions of replevin, or for the recovery of lands or tenements, or to enforce any right relating to

lands, or for the recovery of any damages in respect of any such right may, at the instance of either party, be tried by a jury, and any other actions can be by order of the judge or registrar.

Qualifications.—By the statute of 1825, as amended by that of 1870, it is enacted that every man, unless exempted as presently stated, between the ages of twenty-one and sixty years, residing in any county of England and Wales who (*a*) has in his own name or in trust for him, within the same county, £10 by the year above reprizes, in lands or tenements, whether of freehold, copyhold, or customary tenure, or of ancient demesne, or in rents issuing out of such lands or tenements, or in such lands, tenements, or rents taken together, in fee simple, fee tail, or for the life of himself or some other person; or (*b*) has within the same county £20 by the year above reprizes, in lands or tenements, held by lease or leases for the absolute term of twenty-one years, or some longer term, or for any term of years determinable on any life or lives; or (*c*) being a householder, is rated and assessed to the poor rate, or to the inhabited house duty in the county of Middlesex, on a value of not less than £30, or in any other county on a value of not less than £20; or (*d*) occupies a house containing not less than fifteen windows—is qualified and liable to serve on juries for the trial of all issues joined in any of the King's Courts of Record, and in the superior courts, both civil and criminal, of the three counties palatine, and in all courts of assize. But the liability to try these issues is limited to the county in which a qualified juror resides. And a man so qualified is also liable to serve on grand juries in courts of sessions of the peace, and on petty juries, for the trial of all issues joined in such courts of sessions, and triable in the county, riding, or division in which he resides.

But the above qualifications do not supersede any special qualifications which had thitherto obtained in towns and other places not counties, having any civil or criminal jurisdiction of their own; in such cases the qualifications remain as before. And special provision is made with regard to the qualification of jurors in *London*. Section 50 of the Act of 1825 provides that no man shall be empannelled or returnable by the sheriffs of the city of London as a juror to try any issue joined in His Majesty's Court of Record at Westminster, or to serve on any jury at the sessions of oyer and terminer, gaol delivery, or sessions of the peace to be held for the said city, who is not a householder, or the occupier of a shop, warehouse, counting-house, chambers, or office for the purpose of trade or commerce, within the city, and has lands, tenements or personal estate of the value of £100. No man, however, can be empannelled or returned to serve on a jury for the trial of a capital offence in any county, city, or other place, who is not qualified to serve as a juror in civil causes within the same place.

Special jurors have their qualifications fixed by section 6 of the Juries Act of 1870, which runs as follows:—

"Every man whose name shall be in the jurors' book for any county in England or Wales, or for the county of the City of London, and who:—(*a*) is legally entitled to be called an esquire; or (*b*) is a person of higher degree; or (*c*) is a banker or merchant; or (*d*) occupies a private dwelling-house rated or assessed to the poor rate or to the inhabited house duty on a value of not less than £100 in a town containing according to the census next

proceeding the preparation of the jury list, 20,000 inhabitants and upwards, or rated or assessed to the poor rate or to the inhabited house duty on a value of not less than £50 elsewhere; or (*e*) occupies premises other than a farm rated or assessed as aforesaid on a value of not less than £300—shall be qualified and liable to serve on special juries in every such county in England and Wales, and in London.

Aliens, who have been domiciled in England or Wales for ten years or upwards, if in other respects duly qualified, are qualified and liable to serve on juries and inquests in England and Wales as if they had been natural-born subjects of the king. But, with this exception, no man not being a natural-born subject of the king can be qualified to serve on juries or inquests in any court or on any occasion whatsoever. It need hardly be added that *women* are disqualified from serving upon juries except, naturally, in the case of a jury of matrons.

Exemptions.—Unless a man is seriously ill, or too young or too old, or out of the United Kingdom, or has permanently changed his place of residence to another county, or comes within the following exemptions, he must comply with any summons he may receive to serve upon a jury. A right to exemption applies only to the time, as a rule, when the parties are actually engaged in the occupation that renders them exempt. The following is the table of exemptions, but in reading it, it should be remembered "that no man who has been or shall be attainted of any treason or felony, or convicted of any crime that is infamous, unless he shall have obtained a free pardon, nor any man who is under outlawry, is or shall be qualified to serve on juries in any court on any occasion whatever":—

Peers; Members of Parliament; Judges; Clergymen; Roman Catholic Priests; Ministers of any congregation of Protestant dissenters and of Jews whose place of meeting is duly registered, provided they follow no secular occupation except that of a schoolmaster; Serjeants, barristers-at-law, certificated conveyancers and special pleaders, if actually practising; Members of the Society of Doctors of Law, and advocates of the civil law, if actually practising; Solicitors and proctors, if actually practising, and having taken out their annual certificates, and their managing clerks, and notaries public in actual practice; Officers of the courts of law and equity, and of the Admiralty and Ecclesiastical Courts, including therein the Courts of Probate and Divorce, and the clerks of the peace or their deputies, if actually exercising the duties of their respective offices; Coroners; Gaolers and keepers of houses of correction, and all subordinate officers of the same; Keepers in public lunatic asylums; Members and licentiates of the Royal College of Physicians in London, if actually practising as physicians; Members of the Royal Colleges of Surgeons in London, Edinburgh, and Dublin, if actually practising as surgeons; Apothecaries certificated by the Court of Examiners of the Apothecaries' Company, and all registered medical practitioners and registered chemists and druggists, if actually practising as apothecaries, medical practitioners, or chemists and druggists, respectively; Officers of the navy, army, militia, and yeomanry while on full pay; the members of the Mersey Docks and Harbour Board; the master, wardens, and brethren of the Corporation of Trinity House of Deptford Strond; Pilots licensed by the Trinity House of Deptford Strond, Kingston-upon-Hull, or Newcastle-upon-Tyne, and all masters of vessels in the buoy and light service employed by either of those corporations, and all pilots licensed under any Act of Parliament, or charter for the regulation

of pilots; the household servants of His Majesty, his heirs and successors; Officers of the Post Office, Commissioners of the Customs, and officers, clerks, and other persons acting in the management or collection of the customs, Commissioners of Inland Revenue, and officers or persons appointed by the Commissioners of Inland Revenue, or employed by them, or under their authority or direction, in any way relating to the duties of inland revenue; Sheriffs' officers; Officers of the rural and metropolitan police; Magistrates of the metropolitan police courts, their clerks, ushers, doorkeepers, and messengers; Members of the council of the municipal corporation of any borough, and every justice of the peace assigned to keep the peace therein, and the town clerk and treasurer for the time being of every such borough, so far as relates to any jury summoned to serve in the county where such borough is situate; Burgesses of every borough in and for which a separate court of quarter sessions shall be holden, so far as relates to any jury summoned for the trial of issues joined in any court of general or quarter sessions of the peace in the county wherein such borough is situate; Justices of the peace, so far as relates to any jury summoned to serve at any sessions of the peace for the jurisdiction of which he is a justice; Officers of the Houses of Lords and Commons; Dentists registered under the Dentist Act, 1878, who do not desire to serve on Juries; Commissioners of Income and Property Tax; Members of the London County Council; Members of the Territorial Force.

Special regulations.—Jurors may be summoned by post; but no one can be summoned to serve on a jury or inquest (except a grand jury) more than once in every year, unless all the jurors upon the list have been already summoned to serve during that year. A juror who has been summoned, and duly attended or served at a court of sessions is entitled to obtain from the clerk of the peace, before he leaves the sessions, a certificate of his attendance. No one is exempted from serving as a common juror because he is on any special jurors' list, or is qualified to serve as a special juror. And no one can be summoned or be liable to serve as a juror in more than one court on the same day. A juror is entitled to at least six days' notice of the day on which he is required to attend, so that should his notice be less than that he will not be liable to a penalty for non-attendance. This penalty takes the form of a fine not exceeding £10, though in some cases the amount is £2, but not less than £1; if not duly paid, it is recoverable by distress and sale of goods. Jurors, after being sworn, may, in the discretion of the judge, be allowed at any time before giving their verdict the use of a fire when out of court, and be allowed reasonable refreshment, this latter to be procured, however, at their own expense. A juror who acts corruptly may be indicted therefor and punished by fine and imprisonment; and a sheriff, bailiff, or other officer may be fined, according to the gravity of the offence, for directly or indirectly taking money, reward, or a promise thereof, to excuse any one from serving or being summoned on a jury. Special jurors cannot receive a fee of more than one guinea, except, by direction of the judge, in a case where they have had to make a special view. A common juror is entitled to five shillings a day on a view; in an ordinary case in the High Court in London he usually receives a shilling. The Act of 1870 prescribed a fee of one guinea per day for a special juror, and ten shillings per day for a common juror, but this provision was so quickly repealed that it would seem the office of juror showed, for the time being, a tendency to become a profession. The parties to an action, under certain circum-

stances, may object to special individuals serving upon the jury intended to try it.

Duties and powers of a jury.—When upon a trial there arises any question of law mixed up with the facts of the case, it is the duty of the judge to give a direction upon the law to the jury in order that they may understand the law in its bearing upon the particular facts; beyond this a judge is not bound to go. A judgment of Lord Cairns in a case of negligence will illustrate this. His lordship said: "The judge has to say whether any facts have been established from which negligence may be reasonably inferred. The jurors have to say whether from those facts, when submitted to them, negligence ought to be inferred. It is in my opinion of the greatest importance that the separate functions should be maintained, and maintained distinct. It would be a serious inroad on the province of the jury if, in a case where there are facts from which negligence may reasonably be inferred, the judge were to withdraw the case from the jury upon the ground that, in his opinion, negligence ought not to be inferred; and it would, on the other hand, place in the hands of the jurors a power which might be exercised in the most arbitrary manner, if they were at liberty to hold that negligence might be inferred from any state of facts whatever." And, generally speaking, when a question of fact has been once tried by a jury, and they have given their verdict thereon, the Court cannot set aside or disregard it. But if the judge is of opinion that really no evidence at all had been given in support of the facts found by the jury, he has a right to disregard the verdict, but his opinion could be reviewed upon appeal. And a judge may also set aside or disregard a verdict because some matter of law renders it immaterial to the decision of the Court; and also when it is rendered immaterial by reason of some new fact in the case. These three sets of circumstances are practically the only ones which give a judge the right or power to disregard or set aside a verdict. It sometimes happens that a jury form a strong opinion as to the general merits of a case the legal and technical merits of which are rather too complicated for laymen to grasp and distinguish, even though they may have had the advantage of a careful direction by the judge as to the law. And in such a case it may easily happen that the view of the judge as to the general merits of the case is not quite in harmony with the opinion of the jury. Under such circumstances a jury may possibly bring in a verdict of which the judge does not quite approve; and judges, when so opposed by a jury, have not been unknown to deal with the jury in such a manner as to render their verdict useless in effect for its intended purpose as a whole. The jury is so dealt with by means of inquiries by the judge as to their grounds and specific reasons for the particular verdict; and invariably, the jury, not knowing their valuable right of resistance to such inquiries, give to the judge some grounds or reasons which, because of some technical inadequacy, afford an opportunity for the judge to disregard or set aside the verdict. A jury should therefore know that they cannot be asked for the grounds or reasons of their verdict; it is their undoubted privilege to decline finding any other than a general verdict, even though the judge requests them to give a special verdict. It is really only surplusage for a jury to state the particular evidence on which they find a fact; and as a rule a judge refuses to hear such a statement, however much the jury may desire

to express it. The proper remedy for a party who feels aggrieved by a verdict is to apply to the Court of Appeal for a new trial on the ground, for example, that the verdict was against the weight of the evidence. But the new trial will not be granted unless the verdict was not only one which reasonable men ought not to have given, but one which was so unreasonable that a jury could not properly give it if they really performed the judicial duty cast upon them.

A not unfrequent occurrence in the law courts is the *withdrawal of a juror*. This does not necessarily mean that the action in the trial of which the jury is engaged is so ended that no further proceedings can be instituted in respect of the same matter. Whether this is so or not will always depend upon the arrangement between the parties. If the arrangement is one which imposes terms upon one of the parties, and he commits a substantial breach of those terms, the Court will re-try the action. This withdrawal of a juror can only be by consent of the parties, and in this respect it differs from the *discharge of a jury*, which can be ordered by a judge, at his discretion and without such consent. A jury is usually discharged when they are unable to agree upon a verdict. But they may be discharged only as to certain of the issues in the case, and their verdict taken as to those issues upon which they can agree; in such a case judgment is given upon the verdict found, and the parties are at liberty to proceed to a new trial upon the undecided issues.

Misconduct of the jury is a ground for a new trial. But the misconduct must be such as leads to the presumption that justice has not been properly administered. Such misconduct was attributed in a case where the jury absented themselves at intervals, and drank ale and smoked in the same room with the attorney for the plaintiff, for whom they returned their verdict. And so also where a juror, before being sworn, expressed his determination to give a verdict in a certain direction. But it would not be a ground for a new trial for a juror, after trial, to ask for money from the party who has obtained the verdict, so long as there had been no previous arrangement between them for a payment contingent upon the verdict. Jurors cannot evade their duty, and decide upon their verdict by casting lots or splitting the difference; nor even can they agree amongst themselves not to apply their minds to the assessment of damages and to give nominal damages to the plaintiff as an easy way of settling the case and relieving themselves of trouble. A perverse verdict would be a ground for a new trial, but perversity would be difficult to prove. It would not be inferred, for example, merely from the fact that though the judge recommended a verdict for the plaintiff with nominal damages, yet the jury gave substantial damages. The difficulty in a case of misconduct by a jury is to prove it, for the Court will not take the evidence of one of the jurors as to what occurred during their retirement, nor will it receive the evidence of any one who had been told of it by a juror. But a spectator, not belonging to the jury, can give this evidence; and so also can a juror, if the misconduct occurred in open court.

Bringing an *improper influence* to bear upon a jury will have the effect of giving reason for a new trial. In the time of Edward III. a new trial was granted because a great lord concerned in the case sat on the bench during the trial; nowadays, however, it would seem that improper influence, as a

ground for a new trial, is successfully urged in but very few cases. It has not been considered improper for two of a jury, during the progress of a trial which lasted two days, to dine and sleep at the house of the defendant on the evening of the first day, and consequently before the summing-up; though in such a case as this the Court would consider the particular circumstances very strictly. And the mere fact that some of the jury had during the adjournment of a trial been treated by one of the plaintiff's witnesses previously examined, who had told them that he knew more about the case than he had already stated in his evidence, thereby causing himself to be re-examined, has been held not necessarily to invalidate a verdict subsequently found for the plaintiff.

Excessive damages are not a ground for a new trial in an action of tort, unless the damages awarded are so large that no twelve reasonable men could have given them. There must be some reasonable proportion between the damages and the circumstances of the case; the damages must never suggest vindictive and improper feelings on the part of the jury, nor a perverted view of the case. Where damages are excessive the Court has power, with the plaintiff's consent, to reduce them.

JUST ALLOWANCES.—Though under the heading of ALLOWANCES some reference has already been made to certain mercantile deductions, it may be useful to mention here more particularly the nature of those deductions and also of certain other allowances made by the law in special cases. A *draft* was a deduction at one time made from the original gross weight before taking off the tret, but this allowance is now no longer in vogue. *Tare*, which is a deduction for the weight of the packages and cases containing the goods, is a term met with in the following forms:—"Computed tare," where the tare is agreed between the parties; "real" or "open tare," which is a deduction of the actual weight of the packages; "average tare," where there is a number of packages and their average weight is taken to be the approximate deduction in each case; and "super tare," which is an additional tare deducted when the goods or package exceeds a specified weight. *Tret* was an allowance of 4 lbs. once made in every 104 lbs. of "suttle" weight, as for "ullage"; and "clough" was a further allowance of 2 lbs. in every 3 cwt. after the tret had been deducted. But the general rule of law, subject to such exceptions as are mentioned in the articles on FREIGHT and INVOICE, is that expressed in an American work that "'seller's weight is law,' and any loss in weight in transit is at the buyer's risk."

JUSTICE OF THE PEACE is the title of a magistrate whose office it is to preserve the king's peace. Such magistrates are found all over the country in large numbers, their position being an honorary one, though in the judicial and administrative system it is an "inferior" one. A justice of the peace is said to be on the Commission of the Peace for the county or borough in respect of which he has jurisdiction. He is appointed, and removed when such a course appears advisable, by the Lord Chancellor, who acts upon the recommendation of the Lord Lieutenant in the case of county magistrates and upon that of the Home Secretary, and perhaps that of the town council, in the case of borough magistrates. Until recently a man was required to have a property qualification for appointment as a county magistrate, but in certain exceptional cases these qualifications were dis-

pensed with. A County Court judge, for example, had no need of such a qualification; nor the Mayor of Oxford or Cambridge in order to act in the county of his city or town. And a peer, privy councillor, judge of the High Court, attorney- or solicitor-general, or the eldest son of a peer was not required to have an estate qualification. And the chairman of a rural or urban district council is *ex officio* a justice for his county during his term of office. Should a man have acted as a county justice without due qualification, or without having taken certain oaths of office, he became liable to a penalty of £100, and any person was entitled to an attested copy of the papers signed by a justice when qualifying for his office. The estate qualification for a county justice was thus set out in the Justices Qualification Act of 1744: "No person shall be capable of being a justice of the peace or of acting as such for any county, riding, or division, . . . who shall not have either in law or equity, to and for his own use and benefit, in possession, a freehold, copyhold, or customary estate for life, or for some greater estate, or an estate for some long term of years, determinable upon one or more life or lives, or for a certain term originally created for twenty-one years or more, in lands, tenements, hereditaments, lying or being in that part of Great Britain called England, or the principality of Wales, of the clear yearly value of £100, over and above what will satisfy and discharge all encumbrances that affect the same, and over and above all rents and charges payable out of or in respect of the same; or who shall not be seized of, or entitled unto in law or equity, to and for his own use and benefit, the immediate reversion or remainder of and in lands, tenements, or hereditaments, lying or being as aforesaid, which are leased for one, two, or three lives, or for any term of years determinable upon the death of one, two, or three lives, upon reserved rents, and which are of the clear yearly value of £300." The occupation qualification was allowed by an Act of 1875, which provided that notwithstanding the Act of 1744, "every person of full age and who has during the two years immediately preceding his appointment been the occupier of a dwelling-house assessed to the inhabited house duty at the value of not less than £100 within any county, riding, or division, in England or Wales, and shall during that time have been rated to all rates and taxes in respect of the said premises, and who is otherwise eligible, shall be deemed to be qualified to be appointed a justice of the peace for such county, riding, or division." But no justice appointed in respect of this qualification can act as such after he has ceased for twelve calendar months to retain a qualification within the same county, riding, or division. This property qualification for a county justice has now been abolished.

A minimum property qualification, either of estate or occupation, has never been imposed in the case of a justice of the peace appointed for a borough. He must, however, reside within the borough, or seven miles thereof, or occupy a house, warehouse, or other premises within the borough.

An action for damages may be brought against a justice, even for an act done as such in the execution of his duty and with respect to any matter within his jurisdiction; but the plaintiff in such an action must allege and prove that the act complained of was done maliciously and without reasonable and probable cause. If, however, the act complained of was done by the justice in a matter over which he had no jurisdiction, or in which he exceeded his jurisdiction, the person injured thereby can bring an action against the

justice without expressly alleging and proving malice and the absence of reasonable and probable cause. But the Justices Protection Act, 1848, makes certain provisions with regard to such actions as the latter being brought against a justice in respect of an act done under a conviction, or order made, or warrant issued without or in excess of jurisdiction. For one thing the action cannot be brought until the conviction has been quashed, either upon appeal or upon application to the King's Bench. Nor can it be brought for anything done under a warrant which has been issued to procure the appearance before the justice of the party aggrieved, and which has been followed by a conviction remaining unquashed. And where such a warrant as the latter has not been followed by a conviction, the party cannot bring an action if a summons had been issued previously to the warrant, and the summons had been served upon him, either personally or by leaving it for him with some person at his last or most usual place of abode, and he did not appear according to the requirement of the summons. Where one justice makes a conviction or order, and another grants a warrant, it is the former who will be liable in respect of any irregularity in the proceedings. If a justice objects to it, an action cannot be brought against him in a County Court for anything done by him in the execution of his office. And in this connection reference may be made to the article on the protection of PUBLIC AUTHORITIES.

In order to constitute a valid court of summary jurisdiction, there must be present at the same time at least two justices. But one justice may receive an information and grant warrants. And the justice who receives an information and grants a warrant need not be present at the hearing of the charge. A justice who has jurisdiction in the place in which a prison is situated, or in the place where the offence in respect of which a prisoner confined in a prison was committed, can enter the prison whenever he thinks fit, examine it, and also examine all the prisoners except any under sentence of death. When a number of justices hear a charge and are divided as to their decision, the rule is that the majority shall decide; and where the division is equal the case can be adjourned if there is a probability of a decision being arrived at when it is heard on a subsequent occasion by other justices. There are various special provisions excluding the jurisdiction of justices when it may be said that they are likely to be interested in the proceedings brought before them. Thus an interested justice cannot act in any proceedings brought under any of the Intoxicating Liquor Licensing Acts. He will be "interested" if he "is, or is in partnership or holds any shares, in any company which is a common brewer, distiller, maker of malt for sale, or retailer of malt or of any intoxicating liquor in the licensing district or in the district or districts adjoining to that in which" he usually acts. And so also he cannot act in respect of any premises in the profits of which he is interested, or of which he is wholly or partly the owner, lessee, or occupier, or for the owner, lessee, or occupier of which he is manager or agent. But this definition of "interest" is not applicable in cases where the offence charged is that of being found drunk in a highway or other public place, whether a building or not, or on licensed premises; or of being guilty, while drunk, of riotous or disorderly conduct; or of being drunk while in charge, on a highway or other public place, of a carriage, horse,

cattle, or steam-engine; or of being drunk when in possession of loaded fire-arms. Justices who are shareholders in railway companies, which are making or are interested in a charge, are thereby disqualified from hearing the case. And generally it may be taken as a rule that no justice should hear a case in which he is individually interested, or where he is a near relative of either party, or where he has already advised either party. He should withdraw from the bench under such circumstances, unless the parties have no objection to his hearing the case. But because a justice is known to have a general bias in respect of a matter before him, it does not follow that he is thereby "interested" in the result of the case, and that he should decline to hear it.

K

KEEPING HOUSE.—This is an ACT OF BANKRUPTCY and is dealt with in the article under that heading. When a man absents himself from his abode or place of business, or secludes himself in order to evade the fair importunity of his creditors, he is said to be "keeping house," and thereby commits an act which gives a creditor the right to present a bankruptcy petition against him. Generally speaking this act is proved by evidence that the debtor has denied himself to a creditor who has called upon him for the payment of a debt, and has demanded to see him personally. Evidence that the debtor has given general instructions to his servant to deny him in case a creditor should call is no proof of "keeping house" unless a creditor has in fact called and been denied.

KEYS are not fixtures, strictly speaking, but they pass with the house to which they belong. Goods are frequently transferred or delivered by merely *delivering the key* which controls their possession; the delivery is not effected because the key is a *symbol* of possession, but because it is the means whereby their possession is controlled. Thus if the keys of a warehouse are delivered to a purchaser of goods locked up there, with the object of thereby effecting a delivery of the goods, the transaction will be in effect a complete delivery of those goods. In the words of Mr. Justice Kekewich, in *Hilton* v. *Tucker*, "the delivery of the key, in order to make constructive possession, must be under such circumstances that it really does not pass the full control of the place to which admission is to be gained by means of the key; as for instance where timber is deposited in a warehouse. The delivery of the key is the symbol of possession where the possession itself is practically impossible. A man being unable to carry about with him, or at any rate to conveniently move to his own warehouse adjoining, a large quantity of timber, the delivery of a key giving exclusive control is regarded as delivery of possession itself. I think that principle runs through all the cases on delivery of the key as equivalent to possession." It is possible therefore on the authority of this case to validly pledge goods as a security for an advance of money, by delivering to the lender the key of the place in which they are deposited, provided there is nothing in the nature of the place of deposit, or in any written document which may accompany the pledge, to bring the whole of the transaction within the scope of the Bills of Sale Acts.

KNACKERS.—*See* APPENDIX.

L

LABOUR BUREAUX.—For some years, especially when the unemployed class has been abnormally large, there have been established in London, and in a small number of provincial centres, certain labour or employment exchanges, or registries, for the use of persons offering or seeking employment. The general name applied to an establishment of this class was, for some time, Labour Bureau. They would appear to have been first established in 1887, in France, where, though initiated by the working classes, they have since received a substantial amount of financial and official support from the various municipalities. The municipality of Paris, for example, voted a sum of £48,000 for the establishment in Paris of a *bourse du travail*, the administration of which has remained in the hands of the trades unions. In Germany the Labour Bureaux have considerably developed in recent years. In Great Britain the only bureaux of any importance were, until the Labour Bureaux and Unemployed Workmen Act: in London, those of Battersea and the Salvation Army; and in the provinces, those of Glasgow, Liverpool, Plymouth, and Ipswich. It will be recognised that these were doing a useful work and supplying the necessities of both employers and employees if some attention is paid to the returns they furnished to the Labour department of the Board of Trade. As a consequence these bureaux obtained some state recognition of their utility: as witness the Labour Bureaux (London) Act of 1902. This Act made it lawful for the Council of any Metropolitan Borough to establish and maintain a Labour Bureau, and provide for its expenses out of the general rate. The Act defined a Labour Bureau as "an office or place used for the purpose of supplying information, either by the keeping of registers or otherwise, respecting employers who desire to engage workpeople, and workpeople who seek engagement or employment." Then, under the Unemployed Workmen Act, 1905, labour exchanges and employment registers were established. And now, under the LABOUR EXCHANGES (*q.v.*) Act, 1909, a network of bureaux or exchanges has been created through the country.

The metropolitan system under the Act of 1905 was organised by the Central Unemployed Body, and, when completed in 1908, consisted of twenty-five district exchanges with an additional City of London office. This latter did not undertake the registration of applicants for work, but sent them to their appropriate district exchange. It did, however, canvass and register employers. All these were connected with and controlled by a central exchange, which acted as a clearing-house for all the other exchanges, which were connected with one another by telephone, as well as with the central exchange. Thus the London system paved the way for the national system under the Act of 1909. *See* LABOUR EXCHANGES.

LABOUR DEPARTMENT.—This is an important sub-department connected with the commercial, labour, and statistical department of the Board of Trade. It had its origin in the year 1886, when it was thought desirable to make provision for an adequate centralisation of information upon matters more particularly relating to labour. Mr. Robert Burnett, who was then the general secretary of the Amalgamated Society of Engineers,

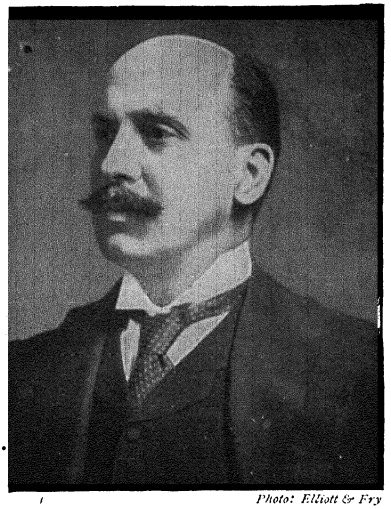


Photo: Elliott & Fry

LORD COWDRAY (born 1856), of the great contracting firm of S. Pearson & Son, Ltd. Became senior partner in the firm, and when in 1897 it was converted into a limited liability company (with capital of £1,501,000) became its President. Is also Chairman of the Halifax Graving Dock Co.

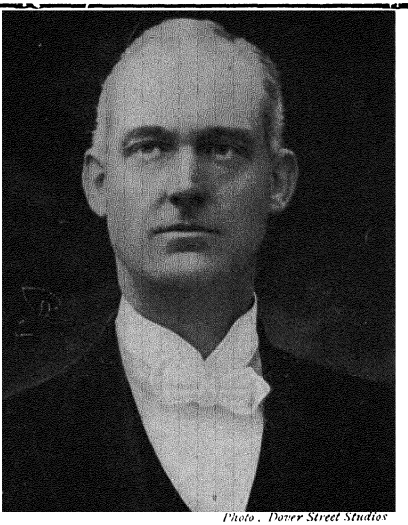


Photo. Dover Street Studios

SIR GEORGE A. RIDDELL is a newspaper proprietor, with many interests. Is a Director of the *Western Mail*, Ltd.; *News of the World*, Ltd.; George Newnes, Ltd.; *Country Life*, Ltd.; and Caxton Publishing Company, Ltd. Admitted as a solicitor in 1888, he has been more actively associated with business life than with the law, and is an authority on the business management of newspapers.

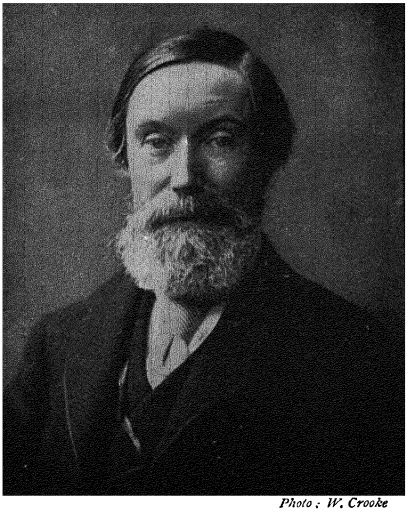


Photo: W. Crooke

WILLIAM MCEWAN, D.L., LL.D., Chairman of Wm. McEwan & Co. of Edinburgh, was born in 1827. The firm was formed in 1889, and Mr. McEwan holds the majority of the shares, the authorised capital being £1,000,000. Was also on the directorate of the Caledonian Railway Co., and formerly sat in Parliament for Edinburgh Central (Liberal).

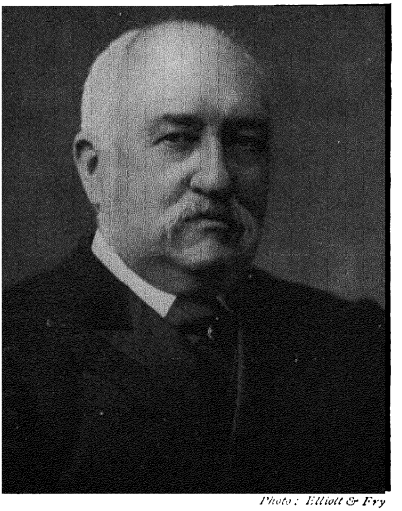


Photo: Elliott & Fry

SIR E. LEADER WILLIAMS (born in Worcester 1828) has been engaged as an engineer since 1846 on the works of the Great Northern Railway, Shoreham and Dover Harbours, and River Weaver and Bridgewater Canal Navigations. He was chief engineer of the Manchester Ship Canal during construction.

SUCCESSFUL BUSINESS MEN

was appointed to be its manager and organiser under the title of "labour correspondent," but later on, in 1893, when the work and importance of the department had increased, a new arrangement was made whereby its operations were placed under the control of an official called the Controller-General. But the supreme control of the labour department continued, as before, in the Commercial and Statistical Department of the Board of Trade. The labour department has no executive or administrative functions whatever. Its sole province is the collation of facts and their presentation, with reports thereon, for the use of the Board of Trade, and also the publication of the *Labour Gazette*. In particular it engages in the compilation of information relating to questions affecting labour in Great Britain, the regulation and remuneration of labour, the relations between labour and capital, the number and the economic position of the working-classes including the statistics of unemployment, trade disputes, industrial accidents, and the effects of legislation specially affecting labour and the relative situation of the industrial population in Great Britain and in foreign countries; and also in the conduct of such inquiries as it may be directed to undertake by the Board of Trade.

As illustrative of the valuable work done by this department may be mentioned the preparation and publication of its "Annual Reports on Trade Unions," and its "Annual Reports on Strikes and Lockouts." It must also be credited with a large number of occasional and special reports such as its "Return of Wages Published between 1830 and 1886," "Report on Sweating in the East End of London," "Report on Rates of Wages in Belgium," "Report on the Condition of Nail Makers and Small Chain Makers," "Report on Profit Sharing," and "Report on Agencies and Methods for Dealing with the Unemployed." The *Labour Gazette* is published monthly at the price of one penny, and is as useful and interesting to the employer and capitalist as to the working man, if not more so. The state of the labour market during the past month is carefully reviewed, new Home-office orders are noticed, recent legislation is summarised, and all the more interesting legal cases affecting labour reported during that month are fully digested. The state of labour in the colonies and abroad is also noticed. Reports on special industries regularly appear; these being based upon information supplied by the trade correspondent for the particular trade, local correspondents, Employers' Associations, Trades Unions and other sources. The department has its local correspondents in every industrial centre, and these furnish every month a full report of trade in their respective centres.

LABOUR EXCHANGES. *See* APPENDIX.

LANDING is a term met with in connection with **marine insurance** and with the Customs formalities of importation. In its first connection the question: What is a landing? came before the Court in *Houlder* v. *The Merchants Marine Insurance Co.*, which was an action upon an insurance policy which covered "all risk of craft until the goods are discharged and safely landed." It was held therein that such a policy would not cover the risk to the goods while waiting on lighters at the port of delivery for transhipment into an export vessel; and consequently, in this particular case, a cargo of rails which had arrived in London, but were discharged into lighters with the intention of loading them into other ships for exportation

to Sydney, were not covered by the insurance when a gale sunk some of the lighters in which they were being transhipped. As Lord Justice Bowen said: "The policy in question includes all risk of craft until the said goods or merchandise be discharged and 'safely landed.' The risk insured against is the risk of the transit upon the lighters which have in the ordinary course of business to convey the goods to the shore. The nature of this risk can be perfectly appreciated and estimated by the parties to the contract. *Landing goods means putting them upon the land, or upon that which by custom of the port is its equivalent.* In the present case, instead of placing the goods on lighters to carry them to the shore, the goods were placed upon lighters which were to take them to an export vessel and there to load them as soon as she was ready to receive them. Such transhipment, however usual in the trade, is not the same thing as landing the goods directly and immediately upon the quay." Even if it can be proved that rails which are consigned by coasting vessels to London are generally transhipped into export vessels in London without being landed, and that the underwriters are aware of this ordinary procedure, yet this will not prove that by custom a transhipment is equivalent to a landing. The proper course in such circumstances is for the parties interested in the consignment to effect an insurance which provides for transhipment.

But before we notice the Customs formalities relating to landing, it will be useful to refer to the subject of landing from the point of view of liability to **harbour dues**. Thus a harbour authority may have power to demand and levy tolls on vessels which come into or use the harbour, or lie there, and for all goods "landed" therein. Such, as it appeared in the case of *Harvey* v. *Lyme Regis*, were the powers of the corporation of Lyme Regis in respect of their harbour, though the corporation had for a long time allowed stones to be shot from boats on to a spot within the harbour, appointed for the purpose by the corporation, or lying below high-water-mark. Stones so deposited were brought in boats along the coast from the neighbouring quarries; they remained where they were shot until they were put on board vessels for exportation from the harbour; and on this exportation duty was levied and paid under the above powers. But the corporation now claimed duties on the stones thus shot, as upon goods landed. Their claim failed, however, for the Court held that the stones so shot were not landed within the meaning of the statutes which conferred upon them the power to levy harbour dues. "What is a landing?" asked Baron Bramwell in this case, and then proceeded to answer the question as follows: "It is putting on the land. Where does the land begin? Where the sea ends. Where does the sea end? At high-water-mark; above the place where the goods were deposited. We must say that the goods were landed in the sea. It would certainly be strange if the captain of a steamboat were to say that he had landed his passengers, if he made them get out into three feet of water. Yet I do not say that the goods might not be said to be landed, if they were put there with the means and right of taking them up on to the land. As a matter of good sense it might perhaps be, that though goods would not be landed in the usual sense of the word until they had got to the land, yet as soon as in any manner they had reached what might be considered as the end of the transit, that might be called a landing."

Customs formalities.—*Discharge of cargo.*—Goods arriving from parts beyond the seas must be unshipped and landed on a weekday, and between 8 A.M. and 4 P.M. from the 1st March to 31st October, and 9 A.M. and 4 P.M. during the remainder of the year. There can be no unshipment and landing on a Sunday or holiday. But by special permission of the Commissioners of Customs, or under special orders, these times may be varied. It should be noted also that there are no such restrictions upon the landing of diamonds, bullion, lobsters, and fresh fish of British taking, imported in British ships; such goods have also the privilege of being landed without report or entry. It is, moreover, provided that imports can only be unshipped or landed in the presence or with the sanction of a Customs officer. And the landing should take place at a legal quay, wharf, or other place duly appointed for the landing or unshipping of goods. An officer's permission is required for a transhipment before landing. Goods unshipped from an importing ship for the purpose of being landed, will be forfeited if they are not landed at once at the wharf at which they are intended to be landed. So also will the barge or other vessel removing them be forfeited. Fresh butter or margarine, upon request being made to the officer, can be landed, examined, and cleared before entry. Packages for private use are also allowed to be delivered without entry, even though they appear in the ship's Report. Before a ship can commence discharging, a sufficient number of officers should be on board to take an account of the goods discharged; and where a tally is required, there should be at least one for each hold. Bags or bales of sponges may, at the option of the importer, be examined at the ship's side. Free goods examined at the ship's side are allowed to be landed after the usual hours of business without the presence of an officer. The officer's tally accounts are compared with those of the dock company's tallymen, twice a day at the least; and also at the close of the day when their agreement, or any discrepancies, should be noted. A vessel's cargo should always be completely discharged within twenty-one days, exclusive of Sundays and holidays and the days of reporting and of clearance inwards, otherwise the master will be served with a Notice of Detention, which means that he will incur daily charges for the attendance of the Customs officers, according to the rates indorsed on the notice. The owner or master may appeal from this notice, or **overtime notice** as it is usually called, to the Collector or, in London, the Waterguard Inspector, and the overtime charges will not then be enforced if the delay need cause no expense for guarding the ship and cargo in the interests of the Revenue during any part of the excess days. But if the collector or inspector should not feel justified in remitting the charges, the matter must go before the Board, the charges being held on deposit in the meantime. The usual overtime charge is five shillings per day.

The regular hours during which a cargo can be discharged have already been stated. But the discharge of cargoes consisting only of free goods in bulk can take place at any hour, under certain circumstances, without any charge to the importer for the cost of supervision. The appropriate Customs officer will make all the arrangements for this supervision upon the importer making written application in sufficient time beforehand. This application should specify the days and the extra hours within those days during which it is proposed to carry on the discharge; and the authorities will also require

to be satisfied that the requirements of the law as to the report of the vessel and the entry of the goods have been complied with, and that the proposed place of discharge is a place approved for the landing of free goods, at which there is a sufficient staff of officers to protect the revenue; and if desired, an interim report may be accepted and a clearance granted thereon. At ports other than London and Liverpool, where officers are compelled by circumstances to reside at a distance from their work, some hardship may arise when they are called out from home for short broken periods during the night, between 8 P.M. and 6 A.M., for service at the importer's request. In such cases the importer must pay an addition, not less than one or exceeding two hours, beyond the actual attendance of the officers. By "short broken periods" is meant any period not exceeding five hours, and not immediately preceded by attendance on regular or other duty. And overtime rates are incurred by an importer who requires the attendance of officers on Sundays and public holidays outside the hours of 8 A.M. to 4 P.M. When vessels are, between the hours of 6 P.M. and 6 A.M., discharging free goods, which though not actually in bulk are such as can be dealt with by Preventive officers, the Customs supervision is provided, at the importer's or shipowner's expense, by means of occasional visits of officers arranged to suit the particular circumstances; this arrangement is one that limits the expenses of the importer or shipowner to what is strictly necessary.

Examination of goods.—Goods are forfeited if removed from a ship or quay without having been examined by the Customs officers, or unless under their care or authority. Whether liable to duty or not, all imports must be examined according to the regulations applicable to their several descriptions, and the importer bears all the expense of removing them to the place of examination, and of opening, weighing, repacking, sorting, and marking them. He does not, however, bear the expense of weighing them at the King's warehouse. The wording of the Act upon this matter is as follows:—"The unshipping, carrying, and landing of all goods, and bringing them to the proper place for examination and weighing, putting them into the scales, opening, unpacking, repacking, bulking, sorting, lotting, marking, and numbering, where such operations are necessary or permitted, and removing to and placing them in the proper place of deposit until duly delivered, shall be performed by or at the expense of the importer."

Very elaborate instructions are given to the examining officers for the execution of their duty. Thus free goods (with a few exceptions) of the same commercial description, in cases, casks, or other wholly enclosed packages, such as drums and baskets, are examined, irrespective of marks, to a certain specified extent. For example where there is a single entry of a number of packages, exceeding twenty but not exceeding fifty, imported from Germany, Holland, Belgium, or the Channel Islands, the officers must examine four of those packages. And so the number to be examined will vary according to the total number of the packages in the entry and according to the place from which they have been imported. And the packages chosen for opening are selected, as far as possible, from different marks, though due regard is of course paid to the number of packages under one mark. For another example may be cited free goods imported in packages of the nature of bales, bags, or bundles, which can be easily spitted or bored; here, if there are no more than

a hundred packages in the entry, only three need be examined. And the same scale is applicable to free goods which are so packed that the outer covering or fastening leaves the goods wholly or partially exposed to view. But in both these cases the officers have also to be quite satisfied as to the *bonâ fides* of the description of the goods, and as to their being of the same commercial description. Then again there are other regulations with regard to the examination of such goods as cotton, hops, or moss-litter, which are usually imported in press-packed or similar packages, and so cannot be effectively and satisfactorily examined by means of the spit or by boring.

These foregoing scales for examination are only considered as a general standard; in suspicious circumstances the number of packages to be opened can be increased; and in the event of dutiable, restricted, or prohibited goods being found in a selected package, the whole consignment will be most carefully examined. Small consignments generally receive special attention, as also any packages which present features of suspicion or doubt. When goods liable to duty not exceeding 2s. 6d. are found in packages entered as free of duty, the goods may be detained or delivered at the discretion of the surveyor; but in all cases the free goods in the packages may be delivered. Though examination by means of the spit is intended to be thorough, yet it is required to be so conducted as not to subject the goods to unnecessary damage; and wherever possible the actual contents are personally examined. The spit should only be used by, or under the immediate directions of, the superior officer responsible for the examination; and if, in any case, the importers or their agents object to its use, the examination is made by opening The boring of reels of paper, or the use of augurs or other instruments generally (except spits) is in all cases confined to the importer or his agent in the presence and under the immediate directions of the officer. An examination of reels of paper by unrolling or boring may be made at the place of destination in the same port, but the packages selected for the examination go forward under tape and seal to the destination to be there examined, the remainder of the parcel being detained at the place of landing pending a satisfactory examination of the selected packages. If the whole parcel is required to be forwarded to another place or port for examination, either of the following courses may be adopted at the request of the importer or his agent, on bond being given in double the value of the goods:—(*a*) Provided the importer or his agent is willing to have the wrappers removed, at the place of importation, from the number required to be examined under the appropriate scale, only one or two of this number need be taped and sealed for boring or unrolling at the place of destination; (*b*) When this partial examination on landing is objected to, the full number required to be examined under that scale will be required to be taped and sealed; in both (*a*) and (*b*) the officers can exercise their discretion as to requiring packages other than those taped and sealed to be opened if they should deem it necessary. Notice must be given by the importer or his agent to the office surveyor in London, or to the principal officer at an outport, for the attendance of an examining officer when the packages are ready for examination. And in all cases the expenses incurred by the Crown are to be defrayed by the parties concerned. In order to prevent the importation of advertisements of foreign lotteries, any consignments of such a character are detained and the circum-

stances reported to the authorities. And to discover such importation a special lookout is maintained for—(*a*) circulars in envelopes, or folded with the obvious intention of being sent by the post or by some private agency after the manner of the post, even though the envelopes or circulars are not addressed; and (*b*) circulars unenclosed, and not folded as above, but accompanied on the same package by addressed envelopes. Circulars imported simply in bulk are not interfered with, whether enclosed in or accompanied by envelopes, or folded with the obvious intention of being distributed by the post or some private agency. And *see* CONTRABAND; SMUGGLING; IMPORTATION AND EXPORTATION; SAMPLES.

LANDLORD AND TENANT is a branch of our law only very recently introduced as such, comparatively speaking, into English law. Until 1798 the law of landlord and tenant was treated under many separate and distinct titles, such as distress, covenant, waste, leases, and rent; but in that year the whole subject was for the first time dealt with as a whole, under the one title, in the yet well-known and authoritative treatise of Woodfall and his successive editors. In order to facilitate reference, and because of the design of this work, the subject is here treated in the older fashion, and the reader should therefore refer for information in detail to such articles as those on DISTRESS; DILAPIDATIONS; EJECTMENT; LEASES, &c. It is sufficient to note here that a landlord is the person from whom lands or tenements are taken. Tenant signifies one who holds or possesses such property by any kind of right, either in fee, for life, for years, or at will. Tenure is the terms or conditions according to which it is held. The King, or crown, is the one great landlord in England; the freeholder is but his tenant in fee. A copyholder is one who holds as the tenant of a lord of a manor, who, in his turn, must be the tenant of the King. A leaseholder is one who is a tenant for and during the term created by a lease. Other tenants are those such as tenants for life, by the year, or at will. Possession and the payment of rent are the great criteria by which the existence of this relationship is tested. But neither possession or the payment of rent, nor even both, will necessarily create the relationship of landlord and tenant, though the payment of rent is strong *primâ facie* evidence that the person who pays it, if he occupies the premises, is the tenant of the owner of the land. The intention of the parties is undoubtedly the ultimate test.

Once the relationship is created the principal incidents thereof are first, that the landlord will allow quiet enjoyment and possession of the premises to the tenant; and secondly, that the latter will pay the rent and at the expiration of his tenancy deliver up the premises to the landlord in as good condition as he received them, fair wear only excepted. But the incidents of a tenancy are usually specifically determined by a lease or an agreement. A landlord is not, except in the case of a furnished house, or certain small unfurnished premises, presumed to have warranted that the premises let are in a tenantable state and condition; nor is he, apart from statutory obligation in respect of certain low-rented tenements, as noted in Vol. I. p. 97, under any obligation to let them in good repair. And it follows, therefore, that he is not generally liable for any injuries caused to his tenant through the non-repair of the premises; nor even for injuries to a third party lawfully on the premises, unless the defect in the premises existed at the time of the letting.

AGREEMENT TO LET FURNISHED HOUSE.]

Agreement made the 28th day of June 1910 — **Between David Read** of 23 Old Bridge Street in the City of London Estate Agent (hereinafter called the landlord) of the one part and **Ronald Alfred Brady** of 19 St. James Crescent Camberwell in the County of London Accountant hereinafter called the tenant of the other part **Whereby it is agreed** between the parties as follows :-

1 The landlord will let and the tenant will take All that dwellinghouse situate and being № 5 Creed Road Stoke Newington in the County of London and also all the household furniture and things now being in and about the said dwellinghouse belonging to the landlord and specified in an inventory which has been drawn up in duplicate and dated this day and signed by both the parties at the yearly rent of Forty pounds payable quarterly on the usual quarter days the first payment to be made on the 29th day of September 1910

2 The tenant agrees to pay the said rent on the days and in manner aforesaid

3 He will also keep the said furniture and things clean and in good order and condition and also the internal parts of the said dwellinghouse and in such order and condition deliver the same up on the termination of the tenancy

4 He will also allow the landlord or his agent at all reasonable times to enter upon the said premises and inspect the same and the said furniture and things and will within one month after receipt of written notice from the landlord so to do repair all defects in the said premises and furniture and things as shall be specified in the said notice and which he shall be liable to do and repair and he will in default in compliance with such notice permit the landlord at any reasonable time to enter upon the said premises and himself do and repair such defects and will forthwith upon receiving from the landlord an account of the cost of such reparation by the landlord pay the amount thereof to him

5 He will not without the consent of the landlord underlet the said premises or any part thereof or remove or attempt to remove the said furniture and things or any part thereof

6 The landlord will keep the walls roofs and external parts of the said premises in good order and repair during the said term and will forthwith upon written demand by the tenant replace with articles of equivalent character and quality any such of the said

furniture and things as shall during the said term become damaged or unfit or unsuitable for use or worn out by fire damp dryrot unavoidable accident or reasonable use and wear

As witness the hands of the said parties the day and year first before written

Witness

Jas Marks
Clerk to Mr Read

David Read

Ronald Alf Brady

In the case of non-payment of the rent the landlord has a right to distrain, as a rule, upon all the goods he may find upon the premises; and at the termination of the tenancy he is entitled to eject the tenant in accordance with the regular process of the law.

LAND REGISTRATION is now regulated in England by the Land Transfer Acts of 1875 and 1897. The object of both these Acts is to provide by a system of registration for the simplification of title to land, and also to facilitate its transfer. But the Act of 1875 only providing an optional means to this end, and not attempting to make the adoption thereof compulsory, was bound to become a dead letter, as in fact it did. It therefore remained for the Act of 1897 to make registration compulsory, and so render the older statute effective. The Act of 1897 did not, however, require that registration should be forthwith enforced throughout the country. It recognised that the absolute indifference with which the older Act had been regarded by the community was some evidence that perhaps a system of registration is not altogether acceptable to English landowners. Accordingly the system of compulsory registration was to be given a certain local trial before it should be enforced throughout the country; an arrangement which would allow the abandonment of the new system altogether, before much expense had been incurred, and before the whole country had been subjected to inconvenience, in case registration when thus on its trial should prove ineffective or unnecessary. The later Act authorised the local trial and gradual introduction of compulsory registration, by leaving it to the Privy Council to declare, from time to time by its Order, what county or part of a county should on and after a day specified in the Order be subject to the system. But this compulsory registration of title was limited by the Act to "land" and to "sales" of land. It was also provided, in support of these Orders, that, when such an Order has been issued, no person should, "under any conveyance of sale executed on or after the day so specified, acquire the legal estate in any freehold land in that county, or part of a county, unless or until he is registered as proprietor of the land." Up to the present time two Orders in Council have been issued, by which registration has been made compulsory on sale in certain parts of the County of London. Though an opposition to the Act has been persistently maintained by a large proportion of those who have dealings in land, as well as by those who are professionally engaged in its transfer, there would seem to be little ground to doubt but that the system has now been introduced to stay. A striking indication of this is found in the fact that the Government are now expending very large sums of money in the erection of a great registry in London. Whatever may be the real strength of the opposition, or the value of its criticism, it is certainly evident that the Government are either ignoring it or are satisfied that its argument and spirit are reactionary. In due course of time, therefore, this system of compulsory registration will, without doubt, be distributed throughout the country.

It will be seen above that registration is compulsory only in the case of the sale of land. It is therefore important to know what the Land Transfer Acts mean by the expressions "sale" and "land." There is no authoritative definition of the former word, and accordingly it must be taken in its ordinary sense as a technical legal term, and be confined to a transaction in which

a vendor transfers land to a purchaser in return for a price in money or money's worth. But if the money's worth is in the nature of other land, then the transaction will be an exchange and not a sale. A lease is not a sale, however long the term may be for which it is granted; but an assignment of a lease may be a registrable sale where the term is sufficiently long. This will be noted below. A mortgage is not a sale, and cannot therefore be registered. If the owner of registered land wishes to create a mortgage or charge, he should do so in one of the following ways: (*a*) By an instrument of charge in the statutory form completed by registration; or (*b*) By a mortgage or charge without regard to registration, and which he should protect by either a "caution" or "restriction"; or (*c*) By a like mortgage or charge which should be accompanied by a statutory transfer of the land to the mortgagee, with a caution to protect the equity of redemption; or (*d*) By depositing the land certificate with the mortgagee, and giving a notice to the registry in order to protect himself against improper dealings therewith by the mortgagee. The word "land" in connection with compulsory registration comprehends all corporeal and incorporeal hereditaments; but it is especially provided by the Act that nothing therein "shall render compulsory the registration of the title to an incorporeal hereditament, or to mines or minerals apart from the surface, or to *a lease having less than forty years* to run or two lives yet to fall in, or to an undivided share in land, or to freeholds intermixed and indistinguishable from lands of other tenure, or to corporeal hereditaments parcel of a manor, and included in a sale of the manor as such."

Freehold land.—Any person who has contracted to buy freehold land, or is entitled thereto for his own benefit, or is capable of disposing thereof for his own benefit by way of sale, is entitled to be registered as the owner of that land. But if he has only contracted to buy, he must get the vendor's consent. He may register an absolute title, or a possessory title, or a qualified title. If he desires an absolute title he must get it approved by the registrar, but if only a possessory title is required he may obtain registration as proprietor of the freehold on giving such evidence of title and serving such notices, if any, as for the time being may be prescribed. Registration as the proprietor of freehold land with an absolute title vests in him an estate in fee simple in the property, together with all rights, privileges, and appurtenances belonging or appurtenant thereto, but subject to such encumbrances and interests as may, in fact, be attached thereto. A qualified title is registered when, upon an application for an absolute title, it appears to the registrar that the title can be established only for a limited period, or subject to certain reservations. A possessory title will not prejudice any rights possessed by third parties against the registered proprietor, but, subject thereto, such a proprietor has a title of the same value as an absolute title. It is at present the more general practice for owners of land to apply for a possessory title, and not for an absolute one; by adopting this course they effect a considerable saving of time, and, what is of great importance, they do not run the risk of only being allowed to register with a qualified title. On the entry of the name of the first registered proprietor on the register, the registrar delivers to the proprietor a **land certificate**, in the prescribed form, which states whether his title to the land is absolute, qualified, or possessory.

This certificate has to be produced whenever any disposition of his land is made by the proprietor, and a memorandum of the particular transaction is indorsed thereon. It is in effect his title-deed to the property, but he should still continue to keep his old title-deeds in case a necessity should arise to prove some of his rights.

LANDS CLAUSES ACTS is the name given to the following series of Acts, namely, the Lands Clauses Consolidation Acts of 1845, 1860, and 1869, the Lands Clauses (Umpire) Act, 1883, and the Lands Clauses (Taxation of Costs) Act, 1895. The objects of these Acts, and the similar Companies Clauses Acts and Railways Clauses Acts, are referred to in the article on COMPENSATION, but it may be useful to notice here the Lands Clauses Acts with some slight particularity as being generally indicative of the provisions of the other Acts with regard to the compulsory acquisition of land. It is, however, impossible within the limits of a work of this character to do more than sketch very lightly some part only of these Acts, for together they constitute a complete and voluminous code of law upon the matters they deal with. In the first place the Acts confer upon the promoters of public undertakings the power to purchase land, houses, or real property, by agreement with the owners; and where the latter are persons under some legal disability, they provide a means whereby the purchase may be effected notwithstanding such a disability, and whereby the proper price or compensation can be ascertained by valuation. Examples of public undertakings are barracks, arsenals, camps, forts, highways, town improvements, artisans' dwellings, allotments, cemeteries, railways, tramways, and water, gas and electric lighting works. Any one who is absolutely entitled to land may sell it to a public undertaking on the terms that he receives an annual rent charged thereon. But a municipal corporation cannot as a rule sell its lands to a public undertaking without the approbation of the Treasury.

But perhaps the most important provisions of these Acts are those which confer upon promoters of the foregoing description a power to take over property in the hands of a private owner, otherwise than by agreement, and without regard to the owner's disinclination to part with it; but such a power can be exercised only by those undertakings whose capital is wholly subscribed before the compulsory powers of purchase are put in force. This latter provision ensures the existence of a source for the payment of purchase-money, compensation, &c., to the parties dispossessed. When the promoters of such undertakings desire to exercise these powers, they must give a notice of their intention to all persons interested, and serve it upon the owners and occupiers of the property intended to be dealt with. This notice must state "the particulars of the lands so required, and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made for all parties for the damage that may be sustained by them by reason of the execution of the works." Once this notice has been properly served the promoters cannot withdraw it (unless it is for part of the property, and the owner requires them to take the remainder), and it becomes a binding contract to purchase, subject only to the fixing of the price. Within twenty-one days after the service of the notice, the parties interested in the property have an opportunity to serve a counter-notice upon the promoters, in which they should state that they are willing to

treat; or if the promoters' exercise of their powers is detrimental to them, because only part of the property is taken, they should give particulars of any claim they wish to make that the rest of the property is to be taken. Should they fail to do this, the price or compensation payable in respect of the property will be considered to be in dispute, and so, although this counter-notice or claim may not be given, the rights of the owners are not barred; the matter will be treated as a dispute. A claim should always be prepared by a surveyor who is accustomed to deal with such cases, and it should state—(1) The owner's interest in the property and its value; (2) the mortgages or encumbrances to which it is subject; (3) the estimated amount of damage; and (4) the manner in which the owner desires his claim to be assessed.

Where the amount claimed does not exceed £50, the dispute is settled by two justices; where it exceeds that sum it is settled either by arbitration or by jury, at the option of the party claiming compensation. When settled by justices, they hear the evidence upon oath in the usual manner; but where it is agreed to be settled by two or more arbitrators an umpire must also be appointed. In the case of the death of a single arbitrator the matter begins *de novo*, and if either of two or more arbitrators refuse to act, the others proceed *ex parte*. The arbitrators must make their award within twenty-one days, or within the fixed extended time, or else the matter must go to the umpire. The costs of the arbitration are borne by the promoters unless the arbitrators award them the same or a less sum than they offered the owner of the property, in which case each party bears his own costs and half of the costs of the arbitrators. The award must be delivered to the promoters, who are to retain it, but must forthwith on demand, at their own expense, furnish a copy to the other party to the arbitration, and produce the original to him and allow it to be inspected.

If it is decided to go before a jury the promoters, before summoning the jury, must give ten days' notice to the other party of their intention to cause a jury to be summoned; and in the same notice they must also state what sum of money they are willing to give for the property sought to be purchased, and for the damage likely to be sustained by the owner by the execution of their undertaking. The under-sheriff usually presides over an inquiry before a jury, and in Westminster the high-bailiff; and the jury should be twelve in number of indifferent persons duly qualified to act as common jurymen in the superior courts, or, at the option of either party, qualified as special jurors. In the course of the inquiry the party seeking compensation is deemed to be the plaintiff, and has all the rights and privileges to which a plaintiff is entitled in the trial of an action at law. If either party so request him in writing, the sheriff must order the jury, or any six or more of them, to view the place or matter in controversy. Not less than ten days' notice of the time and place of the inquiry should be given in writing by the promoters to the other party, and if the latter makes default in appearing at the inquiry the compensation is ascertained by a surveyor appointed by two justices. The jury are required to be sworn, the verdict and judgment must be duly recorded, and the sums payable for the purchase of the property and for drainage must always be separately assessed. If the jury award a greater sum than that previously offered by the promoters, the

latter bear the whole costs of the inquiry; if for the same or a less sum, each party bears his own costs and pays half of the costs of summoning, empanelling, and returning the jury, and taking the inquiry and recording the judgment. The costs can be taxed in the King's Bench Division of the High Court. The promoters must pay their costs within seven days after demand, for if they do not, the other party is entitled to levy a distress therefor. But they are entitled to deduct any costs which the owner has to pay to them out of the compensation found to be payable. And if the net result of the proceedings is that the owner has to pay a balance to the promoters the latter may levy a distress therefor if default is made in payment. It has already been mentioned that if the owner should not attend the inquiry the ascertainment of the amount of compensation or damage is left to a surveyor, but it should be noted that the owner will still be able to reject the surveyor's assessment and have it submitted to arbitration. Provision is made for the deposit and investment of any monies payable by the promoters for the compensation of persons who are incapable of acting on their own account.

Before making an entry upon any property the promoters must pay the purchase price thereof, or obtain the consent of the owners and occupiers, unless the entry is for the purpose of a survey or like operation, when they can enter without consent upon giving fourteen days' previous notice. They can acquire a right of entry, however, by paying a deposit or giving a security. Should they wrongfully enter without consent they render themselves liable to a penalty of £10 over and above the amount of any damage they may do to the property, and proceedings may be taken against them therefor before the magistrates. On the other hand the promoters can take proceedings against an owner who wrongfully refuses to deliver up possession of his property, and can enforce the delivery of possession.

Amongst the special points which can be usefully remembered may be mentioned the following. No one can at any time be compelled to sell or convey to the promoters a part only of a house or other building or manufactory, if he is willing and able to sell and convey the whole of it. But as a rule the special act of an undertaking will vary this provision, and an underground railway, for example, will consequently not be required to purchase the house beneath which it runs, provided the promoters sufficiently underpin the structure. If any lands, not situate in a town or built upon, will be so cut through and divided by the promoters and their works as to leave, either on both sides or one side thereof, less than half an acre of land, and if the owner of that small parcel of land requires it, the promoters must purchase that parcel along with the other land they require, unless the owner has other land adjoining to that so left into which it can be thrown, so as to be conveniently occupied with it. And if the owner has any other land so adjoining, the promoters, if so required by him, must, at their own expense, throw the piece of land so left into the adjoining land, by removing the fences and levelling the sites thereof, and by soiling the same in a sufficient and workmanlike manner. Property may be only temporarily taken, provided it is for an authorised purpose, and during and necessary for the execution of the works. The promoters have power to redeem mortgages, and make payments to the mortgagees where part only of the mortgaged lands is taken,

and to make compensation in certain cases if a mortgage is consequently paid off before the stipulated time. And so also they can release lands from rent charges. They can take over leasehold property and exclude lessees and tenants. But a lessee is entitled to compensation, and so also is a tenant from year to year.

LAND TAX.—The land tax, which must be distinguished from the taxes introduced by the Finance Act, 1910, was originally imposed, in 1689, as a tax on personal property, salaries, and land. So soon as 1692, the two of those sources other than land had so effectively slipped out of assessment, that the tax was in that year officially described as an "aid by a land tax," or as "the annual land tax." By the year 1833 the annual contribution of personal property to the tax amounted to little more than £5000, and in that year the charge on such property was repealed. In 1876 the collection of the tax from salaries was also stopped. The assessment of the land tax, from the year 1697, has always proceeded upon the basis of the collection of a certain fixed annual total sum. That sum was fixed in 1697 at £1,484,015, 1s. 11¼d., it being then directed to be raised by a levy at the rate of 3s. in the pound on the assumed income of the taxpayers from goods, merchandise, salaries, and personal property; and in case the total was not thereby raised, by a further levy on the annual value of his real estate. From this it will be seen that the tax was originally really an income-tax, and that its primary source was income derived from personal property and not from land. But, as already noted, the contributory shares from personal property and salaries gradually diminished, the land being left to bear the greater part of the burden. Until 1797 the same total sum continued to be fixed, but during those intervening hundred years the rate was constantly varying—at one time being 4s. in the pound, at another 1s. In November of that year, however, the total sum was fixed for the last time at £1,989,673, 7s. 10¼d. for England, and £47,954, 1s. 2d. for Scotland, the rate being also fixed at 4s. in the pound, to be finally reduced in 1896 to 1s. in the pound, at which latter figure it now remains. And in 1798, six months after the total sum was so finally fixed, the Government of the day made the tax perpetual, but at the same time permitted its redemption in exchange for Government stock—thus affording a possible means for the public to relieve the money market of the then abnormal pressure thereon of public securities. During that year and the next, while stock stood at the low average figure of 56, the owners of land hastened to redeem £435,888 of the tax; but since then, because of the rise in the price of stock, the redemption has been relatively so slow that in 1893 £858,000 represented the whole total of tax redeemed, leaving £999,000 then payable.

The price and terms of the redemption of the tax are now regulated by the Finance Act of 1896, which took away the not very valuable right of the landowner to redeem his tax by transfer of stock. To redeem now, he must pay in money a sum equal to thirty years' purchase of the tax for the time being assessed upon his property, less any increase in the amount of the tax due to the present method of assessment. If he desires to make the payment by instalments, he can do so on the terms mentioned below. Having redeemed his land tax, he can continue it in his own favour if he chooses; that is to say, he can obtain from the Inland Revenue authorities a certificate, having the effect of a mortgage, which will charge the land with the price

paid for the redemption. It need hardly be said that when land tax has been once redeemed, the land out of which it was payable can no longer continue to be assessed and charged with the tax. And since redemption has now been available for so many years, and it is therefore possible that the evidence of the redemption may in some cases be lost or in the hands of others, it will be useful to note the pronouncement of a well-known authority that "the fact of no land tax having been assessed on lands for a considerable number of years may reasonably be regarded as presumptive evidence that the property at one time formed part of an estate in respect of which the owner had redeemed the tax or been otherwise exonerated."

The fixed total amount of the tax is divided into certain specified portions or quotas, which are allocated for collection in definite local areas, and this allocation has remained the same, absolutely unaltered, since its fixture by the Act of 1797. The tax is assessed and collected in separate districts or divisions, comprising a number of local areas. Each of these divisions is the province of a board of Land Tax Commissioners who subdivide themselves into committees according to the number of local areas within their district. They are honorary officials, and must have certain property or official qualifications; they act under the general supervision of the Inland Revenue authorities, and appoint a clerk, and at least two assessors and the necessary collectors. Knowing the proportion of the total amount of the tax they are required to raise in their division, their function is to assess in each parish or local area the land therein liable to payment of the tax, and to fix a rate that will afford the necessary yield. It has already been stated that the statutory rate leviable is now a shilling in the pound; but having regard to the present high value of land in many parts of the country, it is obvious that a shilling rate will much more than meet the requirements of the tax, and consequently a lower rate can in many cases easily satisfy the local proportion of the tax. It is provided, however, that the rate leviable on a rich area shall not be less than a penny in the pound; this is called the minimum rate. If even this minimum rate produces more than is required, the surplus will be applied to allowances to the assessors and to the redemption of the tax. But the statutory rate is maximum, so that if in a particular quota it does not yield the necessary return, the deficiency must be remitted.

The assessment is made for the year commencing on the 25th March and ending on the following 24th March, and the tax is payable on or before the 1st January in that year. Any one who is aggrieved at an assessment can appeal to the District Commissioners, but he has not, as he would have in the case of Income-Tax and Inhabited House Duty, any further appeal from their decision by way of a special case. If the tax is not paid upon due application therefor having been made by the collector, the occupier of the premises becomes liable to the seizure and sale of his goods and chattels. And if a tenant pays the tax he is entitled to deduct it from his rent even though there is no covenant to that effect in his lease or agreement for tenancy.

How to redeem the tax.—Any person having an estate or interest in lands and tenements (except tenants at rack rent, or holding under the Crown, or the Duchy of Lancaster, or the Duchy of Cornwall) may contract for the redemption

of the Land Tax charged thereon. Where any person redeems Land Tax by payment of a capital sum, the Commissioners of Inland Revenue will, *on his application at the date of the redemption,* grant to him a certificate charging the property with the amount of that sum, and with interest equal to the amount of the Land Tax redeemed. He will be entitled to this charge as if it were a mortgage secured to him by a mortgage deed; and such charge, when the certificate is registered in pursuance of the Land Charges Registration and Searches Act, 1888, will have priority over all other charges and encumbrances. Any money authorised to be invested in real security may be invested on the security of any such charge.

Any person so entitled to contract for the redemption of the Land Tax charged upon his property, and being desirous so to do, must (either personally or by his authorised agent) attend before the Clerk to the Land Tax Commissioners for the division in which the property is situate, and in his presence sign one of the forms of declaration hereinafter mentioned. He must produce at the same time either: a full description of the property proposed to be exonerated, giving its area and boundaries, and any other details which will assist in its future identification, or the Tithe or Ordnance Numbers relating to it; or else a plan showing the extent and position of the property. If a plan be used—as is preferable, though not obligatory—it must be in duplicate, one copy to accompany the Certificate of the Contract, and the other to be attached to the Registry thereof at the Land Tax Redemption Office The Clerk will thereupon attest the signature to the Declaration, and, on a special form, certify the amount of the Land Tax charged upon the property proposed to be exonerated. In the event of the property not being assessed, or not being separately assessed, the Land Tax Commissioners for the division in which the property is situate will, upon application, settle and adjust the proportion of Land Tax that ought to be borne by such property, and will grant a certificate thereof.

Both documents with plans (if any) will be forwarded by the Clerk to the Registrar of Land Tax, who will prepare a Certificate of the Contract to be signed by the Commissioners of Inland Revenue, provided the documents are made out in accordance with the requirements of his office. The Contract so entered into will, under the provisions of the Land Tax Redemption Acts, be binding upon the Contractor. In due course the Registrar of Land Tax will notify to the Contractor, or his agent, the amount of the consideration, which must be paid or remitted to the Accountant-General of Inland Revenue at Somerset House, London, W.C. No payment thereof can be legally made except in pursuance of such notice, and to the officer named therein, no other person having any authority to receive the money. Upon the money being paid, the Contract will be registered, after which it will be forwarded to the Contractor, or his agent, further indorsed with a Certificate of Registration, and of the period from which the property will be exonerated from Land Tax. No person is authorised to charge the public with any fee for Certificates of Assessments, or other proceedings, in the redemption of Land Tax. The Acts of Parliament do not authorise the Declaration in any case to be attested by an *Assistant* Clerk, but in the absence of the Clerk it may be attested by one of the Commissioners of the District, and the Certificate of Charge signed by two of such Commissioners.

Where the consideration is intended to be paid *in one sum,* it must be thirty times the amount of the Land Tax assessed on the property proposed to be exonerated. Where the consideration is intended to be paid by *four annual instalments,* it must be thirty times the amount of the Land Tax assessed on the property proposed to be exonerated, and must be paid by *annual instalments of not less than £5 each.* Where the consideration is intended to be paid *by annual*

instalments exceeding four years, it must be thirty times the amount of the Land Tax assessed on the property proposed to be exonerated, and must be paid within a period *not exceeding sixteen years,* the period to be regulated by the amount of the consideration. The money to be paid in any year must not be less than £60. For instance, if the whole consideration amounts to £960, the period may be sixteen years; if it amounts to £900, fifteen years, and so downwards; but any period within the limit above-mentioned may be chosen by the Contractor. Interest at the rate of 3 per cent. per annum on so much of the consideration as remains unpaid must be paid with each instalment of the consideration. And *see* INCREMENT VALUE DUTY.

LAND VALUES DUTIES. *See* Appendix.

LARCENY is the legal term for **theft,** and it is a remarkable fact that the legislature, though for centuries occupied in dealing with this subject, and even in consolidating the law thereon in 1861, has ever refrained from an attempt at its definition. For a definition one is bound to turn to the law books, and there make a selection from a series extending over many centuries. The following is a definition by the late Mr. Justice Stephen: "Theft is the act of dealing, from any motive whatever, unlawfully and without claim of right, with anything capable of being stolen, in any of the ways in which theft can be committed, with the intention of permanently converting that thing to the use of any person other than the general or special owner thereof." This may be compared with the definition contained in *The Mirror of Justices,* a work which was certainly compiled not later than the commencement of the fourteenth century, and which runs as follows: "Larceny is the treacherous taking of a corporeal movable thing of another, against the will of him to whom it belongs, by evil acquisition of possession or of use. Taking, we say: for bailment or livery excludes larceny. A corporeal movable, we say: for no larceny can be committed of an immovable or incorporeal thing such as land or rent or advowsons of churches. Treacherously, we say: because if the taker believed the things to be his own, so that he could lawfully take them, in such a case he does not commit this sin. Nor does he where he takes another's goods believing that his taking them is agreeable to the owner; but in this case he must show some open presumption and evidence." Sir James Stephen himself admits that this ancient definition is correct, and certainly it can claim to be as intelligible as the modern and more laborious effort. Four points should be noticed: the property must be taken; it must also be carried away; there must be a criminal intent; the taker must not be lawfully entitled to take and carry away the property. The *taking* need not be actual, for it is sufficient if constructive; and the *carrying away* will be sufficient, even if it is nothing more than a bare removal from the place where the thief finds the goods. The Larceny Act, 1861, together with a few later Acts, is now the main repository of the law relating to larceny, though in this Act are also included a number of offences which are not larcenies. There may be a larceny of gas and water in pipes, and of electricity; larceny by bailees, partners, joint tenants, tenants in common, wife from husband, husband from wife, and tenants or lodgers. Special statutory punishments exist for larceny from docks, wrecks, vessels, the person, by police and Customs officers; also for larceny of cattle, dogs, deer, rabbits and hares in warrens, fish, fixtures, trees, plants, documents of title, valuable securities and ores from mines. To enter into details of these

many and differing provisions would be unduly to trespass upon space, but reference to special cases will be found under appropriate headings.

LAUNDRIES carried on by way of trade or for purposes of gain come within certain special provisions of the Factory and Workshop Acts, 1901 and 1907. Thus: (*a*) The period of employment, exclusive of meal hours and absence from work, is not to exceed, for women, fourteen hours; for young persons, twelve hours; and for children, ten hours in any consecutive twenty-four hours; nor a total, for women and young persons, of sixty hours, and for children of thirty hours, in any one week, in addition to such overtime as may be allowed in the case of women. (*b*) A woman, young person or child, cannot be employed continuously for more than five hours without an interval of at least half-an-hour for a meal. (*c*) Women, young persons and children, employed in a laundry are to have the same holidays as those which would be allowed to them if they were employed in a factory or workshop. (*d*) Certain general provisions of the Act have some application to laundries, such provisions being those relating to health and safety, education of children, notice of occupation of a factory or workshop, the affixing of abstracts and notices and the matters to be specified in those notices (so far as they apply to laundries), powers of inspectors, and to fines and legal proceedings for any failure to comply with the special provisions: so far as regards such general provisions they have effect as if every laundry in which steam, water, or other mechanical power is used in aid of the laundry process were a factory, and every other laundry were a workshop; and as if every occupier of a laundry were the occupier of a factory or of a workshop. (*e*) The notice to be affixed in a laundry must specify the period of employment and the times for meals, but the period and times so specified may be varied before the beginning of employment on any day. (*f*) The provisions of the Factory and Workshop Act prohibiting the employment of women within four weeks after child-birth, and of children under the age of twelve years, apply as much to a laundry as to a factory or workshop. It is a punishable offence to send *infected clothes* to a laundry.

Women employed in laundries may work overtime, subject to certain conditions, namely: (*a*) A woman must not work more than fourteen hours in any day; and (*b*) the overtime worked must not exceed two hours in any day; and (*c*) overtime must not be worked on more than three days in any week or more than thirty days in any year; and (*d*) the requirements of Section 60 of the Act of 1901 with respect to notices must be observed, and the foregoing provisions must be read with those contained in the Act of 1907, which are set out in the article on LAUNDRIES in the Appendix. And there are also some provisions specially applicable to laundries worked by steam, water, or other mechanical power: (*a*) A fan or other means of a proper construction must be provided, maintained, and used for regulating the temperature in every ironing-room, and for carrying away the steam in every washhouse in the laundry; and (*b*) all stoves for heating irons must be sufficiently separated from any ironing-room or ironing-table, and gas irons emitting any noxious fumes must not be used; and (*c*) the floors must be kept in good condition and drained in such manner as will allow the water to flow off freely. A laundry in which these latter provisions are contravened will be deemed to be a factory not kept in conformity with the Act. But the provisions of the Act in respect to laundries in general, have no

application to a laundry in which the only persons employed are members of the same family dwelling there, or in which not more than two persons dwelling elsewhere are employed. Nor do these provisions apply to a laundry in which the only persons employed are: (*a*) Inmates of any prison, reformatory, or industrial school or other institution for the time being subject to inspection under any Act other than the Factories and Workshops Act; or (*b*) inmates of an institution conducted in good faith for religious or charitable purposes.

LAW REPORTS.—Speaking generally, our law is composed of two main constituents—statute law and case law. The first is recorded in the Acts of Parliament, the second in the Law Reports. These latter would seem to have had their practical genesis in the thirteenth century, and to have flourished until the sixteenth, for the latter part of that period being compiled by officially-paid reporters. The system of officially-paid reporting having then been abandoned, the reports of our judicial decisions fell into the field of private enterprise, with the result that until the middle of the eighteenth century the reports were generally posthumous publications, and, with some few exceptions, badly edited, unauthenticated, and in general bad repute. But from the year 1765 the reporting was done by authorised reporters attached to the various Courts, and their reports accordingly enjoyed the distinction of being to some extent authorised. Their expense, and the delays in their publication, created an opportunity for rival reports, especially by legal journals that desired to place the decisions of the Courts before their readers as speedily as possible. Consequently, there resulted an increasing multiplicity of these publications. As an attempt to remedy this evil, a Council of Law Reporting was established in 1865, with the object of publishing a series of Reports that would meet the requirements of all persons interested in them at the least possible expense. These reports, called the Law Reports, are published to this day, and appear likely to continue their career so long as the need for law reporting remains. Special classes of reports are now practically unknown, except in some few cases, as the Reports of Patent Cases for example. But several independent series of general reports have survived, and of these the *Law Journal* reports may claim to equal in value the publications of the Council. The *Law Times* reports have also an independent use and value which more than justifies their publication. the *Times* series of law reports, though established only about eighteen years, have also a claim to attention, especially by the business man. Their price is moderate, and they appear very soon after the date upon which the decisions reported are given, being, as they are, a weekly reproduction, in convenient form, of all cases appearing in the *Times* of permanent interest to the legal profession, bankers, merchants, and the public generally. The same journal also publishes, at short intervals, a series of reports under the title of "Reports of Commercial Cases." The cases cited in this work are taken, wherever possible, from the Law Reports, Law Journal Reports, and the Law Times Reports.

LEAKAGE AND BREAKAGE.—In bills of lading it is not unusual to have a memorandum as follows: "weight, measurement, and contents unknown, and not accountable for leakage." This memorandum has the effect of so limiting the liability of shipowners to freighters that they are not ordinarily accountable for loss occasioned by leakage of part of the cargo;

but notwithstanding this memorandum, the shipowners would be liable in a case where such a loss is occasioned through their negligence. It has been held, in the case of *The Helene*, that ignorance of the shipowners as to the latent effect of heat in storing casks of oil with wool and rags, will not, where the shipper himself superintends the stowage, amount to such negligence as to make them liable to the holders of the bill of lading for any loss occasioned by the leakage of the oil. It is, however, a question of fact in each case whether the shipowners are negligent; it is quite possible that, in another case, upon a similar class of facts, it might now be found by a jury that such an ignorance on the part of shipowners is unjustifiable. But the case of *Czech* v. *The General Steam Navigation Co.* is one in which the shipowners were held liable in respect of damage done to goods shipped on board their steamer under a bill of lading which contained an exception from liability for "breakage, leakage, or damage." These goods were found at the end of the voyage to be injured by oil. It was proved that there was no oil in the cargo, but that there were two donkey engines on deck, near the place where the goods were stowed, for the lubricating of which oil was used. There was, however, no direct evidence of how the injury to the goods occurred; the jury inferred the negligence from the facts. It was decided that where a bill of lading contained such an exception as did the one in this case, the exception discharges the owner and master from liability only until the damage is proved to have arisen from the fault of one of them, or of some person for whose conduct they are answerable. In a footnote to this case, in the Law Reports, the reporter remarks as follows:—"The answer to the question whether the proof of damage is *primâ facie* proof of fault, must depend upon the circumstances; the mere proof of damage is obviously not enough to raise the presumption of fault in the crew, and yet there may be cases in which it could not have happened without their fault, or as to which it is so highly unlikely to have happened otherwise, that a jury may fairly come to the conclusion that it did so happen. The result of the decisions seems to be that the exemption in our law casts the burden of proving fault upon the party complaining." In the case of *The Nepoter*, a bill of lading for a consignment of sugar contained a memorandum that the shipowner was "not liable for leakage," and the sugar, in consequence of improper stowing, was damaged during the voyage by the drainage from other sugar stowed above, which caused it to heat. The shipowners, when sued for damages, pleaded the memorandum, but it was held that the damage was not caused by leakage within the meaning of the memorandum, and that the shipowners were liable, the particular facts of this case being distinguished from those in *The Helene*. And in the case of *Thrift* v. *Youle*, it was held that the exemption created by this memorandum did not extend to exclude the shipowners from liability for damage caused to some palm baskets by oil which had escaped from barrels also shipped by the consignor of the baskets. "The words 'rust, leakage, or breakage,'" said Mr. Justice Grove, "simply mean that if the goods are injured by rust, or if the casks containing them become leaky, or are broken, the shipowner is not to be accountable; there is nothing in the bill of lading to show that the clause is to be extended to remote consequences; and the ulterior injury arising from leakage may be of a very important kind, and nevertheless of a totally different nature. Suppose, for instance, that a cask of spirits leaks, and that what escapes from it catches

fire and destroys other goods; I think that this clause would not protect the shipowner from liability to compensate the owner of the goods burnt. The words 'rust' and 'breakage' go to show that the limited construction of 'leakage' is the proper interpretation; for it is difficult to understand how rust or breakage can be mischievous to any goods besides those which themselves become rusty or broken. For these reasons, I think that the clause in the bill of lading does not extend to collateral consequences." Some goods, such as oil stored in barrels, are apt to leak; and the insertion of the word is intended to protect the shipowner from liability to compensate the owner of the goods for the waste occasioned by leakage. Any damage caused to a cargo by the leakage of the ship is absolutely at the risk of the shipper, even so far as it is increased by the negligent omissions of the master, where the charter-party or bill of lading contains an exception from "perils of the sea . . . and other accidents of navigation, even when occasioned by the negligence . . . of the . . . master" (*The Cressington; The Southgate*). It should be noted that the exception in the form of the bill of lading, reproduced in Volume I., is wider than that of the subject of the foregoing cases. The form excepts loss from "leakage, breakage . . . or rust . . . of *other* goods." *See* BILL OF LADING; CHARTER-PARTY.

LEASE.—A lease is properly a conveyance of lands or tenements for a specified terms of years, or determinable with certain lives or a life, or at will, in consideration of a rent or other annual return. The person who makes the conveyance, or "demise" as it is called in this connection, is the "lessor," and the person to whom the conveyance is made is the "lessee"; and in all cases the term for which the property is demised must be less than that for which the lessor himself holds it. Property held under a lease is known as "leasehold," in contradistinction to a freehold or copyhold estate, and it matters not how long the term of the lease may be, a leasehold property is always considered to be of less importance in the eyes of the law than a freehold. The latter is real estate, and is subject to the incidents attaching to realty, whilst a leasehold is nothing more than personal property. Thus freehold property descends to the heirs, but a leasehold estate is distributed among the next-of-kin. And, as already mentioned, the duration of the period for which the property is held on lease does not affect the legal nature of the holding. A plot of land held on a lease for a thousand years at a peppercorn rent is as emphatically personal estate as is a house held for seven years at a rack rent; and, on the other hand, a man who has an estate for the term of his own life, or the life of another, has a freehold. It must be noted, however, that a lease for a number of years, say ninety-nine, determinable upon a life or lives, is not such a lease for life as will create a freehold; it is only a lease for years, or CHATTEL (*q.v.*) determinable upon a life or lives.

The reason for a distinction between leaseholds and freeholds, which has operated so as to lead to this illogical result, is found in the fact that when the practice of leasing was first introduced into the English land system, the leases were usually confined to agricultural lands and granted for short terms, and also frequently included, especially where the lessors were corporate bodies, a lease of the farming stock. On the expiration of such a lease the tenant was bound to return the same amount of seed corn and of live and dead stock as he received, or their estimated value. The leasing

of cattle and sheep on these terms, wrote Thorold Rogers, was very common before the plague. For instance, in a lease of certain college lands at Farley, granted in 1360, "the tenant took two horses and seven affri, valued at ten shillings each; a bull reckoned at ten shillings; ten cows, each at eleven shillings; four oxen, each at eighteen shillings and fivepence; twenty-four quarters of wheat, at six shillings and eightpence; six and a half of sprig, at four shillings; three quarters and a bushel of frumentum vescosum, at four shillings; three quarters three and a half bushels of barley, at four shillings and eightpence;" and so on. But although leaseholds are thus strictly speaking personal property, yet in one important connection the law regards them as really in the sense that they are "immovables," as that term is understood in a CONFLICT OF LAWS (*q.v.*). Accordingly, if a domiciled Frenchman, or any person belonging to and domiciled in a state having its jurisprudence administered independently of England, were to die intestate and leave leasehold property in England, that property would be regarded as immovable, or "real," for the purpose of deciding that the English law should govern the succession thereto, but it would thereupon be distributed as "personal" in accordance with the English law.

How a lease is made.—A lease for a term of three years or less, where the rent reserved amounts to two-thirds of the full improved value, can be made verbally or by writing; but for a valid lease creating a term exceeding three years it is necessary that the lease should be in writing and by a deed. But an agreement for a lease, however short or long the term may be, must always be in writing; and either should specifically state the time at which the term is intended to commence, or be so worded that this can be readily collected from the general terms of the document. If a written document not under seal purports to be a lease, but, because of the length of the term it assumes to create should have been a deed, either of the parties to the document may sue thereon, and obtain specific performance thereof as if it had been an agreement for a lease instead of a document ineffectually purporting to be a lease. The result is that if a lessee under an agreement for lease obtains possession of the property and pays rent according to the terms of the agreement, the Court will consider that he is holding the property upon the same terms as if a proper lease had been actually granted; and so in effect an agreement for a lease, as soon as possession is taken and rent paid, becomes to a very large extent the same thing as a lease itself. It has now become a very usual practice for such agreements to take the place of leases; one reason being a general saving of legal expenses, another that the estate agent, being able to lawfully charge for preparing an agreement, but unable to do so for a deed, naturally suggests this course to those for whom he has negotiated the letting. Without going into details it is sufficient to remark here that a wise man, whether lessor or lessee, will insist upon having proper legal assistance when settling a lease. It is only a lawyer who can estimate the great number of slavish copies of old and out-of-date leases which, absolutely useless as they generally are in matters of detail, are now being distributed throughout the country by incompetent agents, and for which lessees have usually had to pay as much as if they had been up-to-date and skilfully drawn instruments.

Leases are properly executed in *counterpart*, that is to say the document

is made in two copies of which the lessor executes one, and the lessee the other; the one executed by the lessor is the original lease, and that one executed by the lessee is the counterpart of it. The lessee holds the lease, and the lessor retains the counterpart, which should be stamped with a denoting stamp in order to show that the lease itself has been duly stamped. The counterpart is frequently executed by both parties, and thereby becomes a duplicate lease, and casts upon the lessor the burden in any action he may bring against the lessee of giving evidence of the execution of the original.

The **stamps** on leases and agreements for leases, as finally settled by the Finance Act, 1910, are as follows:—

(1) For any definite term not exceeding a year: of any dwelling-house, or part of a dwelling-house, at a rent not exceeding the rate of £10 per annum, *£0, 0s. 1d.*

(2) For any definite term less than a year:—

(*a*) Of any furnished dwelling-house or apartments where the rent for such term exceeds *£25, £0, 5s. 0d.*

(*b*) Of any lands, tenements, or heritable subjects except or otherwise than aforesaid: *the same duty as a lease for a year at the rent reserved for the definite term.*

(3) For any other definite term or for any indefinite term:—

Of any lands, tenements, or heritable subjects—where the consideration, or any part of the consideration, moving either to the lessor, or to any other person, consists of any money, stock or security; in respect of such consideration, *the same duty as a conveyance on a sale for the same consideration.*

Where the consideration or any part of the consideration is any rent, if the rent, whether reserved as a yearly rent or otherwise, is at a rate or average rate:—

	If the Term does not Exceed 35 Years, or is Indefinite.	If the Term Exceeds 35 Years but does not Exceed 100 Years.	If the Term Exceeds 100 Years.
	£ s. d.	£ s. d.	£ s. d.
Not exceeding £5	0 1 0	0 6 0	0 12 0
Exceeding £5 and not exceeding £10	0 2 0	0 12 0	1 4 0
„ 10 „ „ 15	0 3 0	0 18 0	1 16 0
„ 15 „ „ 20	0 4 0	0 24 0	2 8 0
„ 20 „ „ 25	0 5 0	0 30 0	3 0 0
„ 25 „ „ 50	0 10 0	0 60 0	6 0 0
„ 50 „ „ 75	0 15 0	4 10 0	9 0 0
„ 75 „ „ 100	0 20 0	6 0 0	12 0 0
Exceeding £100 for every full sum of £50, and also for any fractional part of £50 thereof.	0 10 0	3 0 0	6 0 0

(4) Of any other kind whatsoever not hereinbefore described, *£1, 0s. 0d.*

An *Agreement for a Lease or Tack*, or with respect to the letting of any lands, tenements, or heritable subjects for any term not exceeding *thirty-five years*, is charged with the same duty as if it were an actual lease made for the term and

consideration mentioned in the agreement. A lease or tack made subsequently to, and in conformity with, such an agreement, duly stamped, is charged with the duty of *one shilling* only.

How to be charged in respect of produce, &c.—Where the consideration or any part of the consideration for which a lease is granted, or agreed to be granted, consists of produce or other goods, the value of the produce or goods is a consideration in respect of which the lease will be chargeable with *ad valorem* duty. Where it is stipulated that the value of such produce or goods is to amount at least to, or is not to exceed a given sum, or where the lessee is specially charged with, or has the option of paying after, any permanent rate of conversion, the value of such produce or goods will be estimated at that sum, or according to that permanent rate. A lease made either entirely or partially for any such consideration, if it contains a statement of the value of such consideration, and is stamped in accordance with such statement, is, so far as regards the subject-matter of such statement, to be deemed duly stamped, unless or until it is otherwise shown that such statement is incorrect, and that the lease is in fact not duly stamped.

Duty in certain cases.—A lease is not chargeable with duty in respect of a penal rent, or increased rent in the nature of a penal rent, thereby reserved or agreed to be reserved or made payable; or by reason of its being made in consideration of the surrender or abandonment of an existing lease, tack, or agreement of or relating to the same subject-matter. A lease made for any consideration subject to *ad valorem* duty, and in further consideration either: (*a*) of a covenant by the lessee to make, or of his having previously made, any substantial improvement of or addition to the property demised to him; or (*b*) of any covenant relating to the matter of the lease—is not charged with any duty in respect of the further consideration. No lease for a life or lives not exceeding three, or for a term of years determinable with a life or lives not exceeding three, and no lease for a term absolute not exceeding twenty-one years, granted by an ecclesiastical corporation, is charged with any higher duty than £3, 10s. 0d. A lease for a definite term exceeding thirty-five years granted under the "Trinity College (Dublin) Leasing and Perpetuity Act, 1851," is not charged with any higher duty than would have been chargeable thereon if it had been a lease for a definite term not exceeding thirty-five years. An instrument whereby the rent reserved by another instrument chargeable with duty duly stamped as a lease, is increased, is not charged with duty otherwise than in respect of the additional rent thereby made payable.

When adhesive stamp may be used.—The duty upon an instrument chargeable with duty as a lease or tack of: (*a*) any dwelling-house or part of a dwelling-house for a definite term not exceeding a year, at a rent not exceeding the rate of ten pounds per annum; or (*b*) any furnished dwelling-house or apartments for any definite term less than a year; and upon the duplicate or counterpart of any such instrument, may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the instrument is first executed.

Penalty.—Any one who executes or prepares, or is employed in preparing any such instrument (except letters or correspondence), and which is not at or before the execution thereof duly stamped, will incur a fine of five pounds.

The covenants in a lease relate chiefly to the payment of the rent, rates, and taxes, and the preservation, repair, and insurance of the demised property. And as they all generally create important rights and obligations, it is important that their usual character should be clearly understood by

both lessor and lessee. It being undoubtedly to the interest of the lessor to obtain the insertion in a lease of as many and as onerous covenants on the part of the lessee as possible, it results that during the negotiation for a lease there is considerable contention between the parties as to what covenants shall be inserted and what omitted. If any one contracts to take a lease of property and makes no stipulation whatever as to the precise covenants to be inserted in the lease, that contract is technically known as an "open" one, and the only covenants which the landlord can insert in the lease under such circumstances, notwithstanding any objection by the intending lessee, are those called the "usual covenants." The intending lessee can be forced by the landlord, in an action for specific performance, to accept a lease of the property containing those covenants. But, on the other hand, he cannot force an intending lessee, whose contract to take the lease is an open one, to accept a lease which contains covenants other than the usual ones. When entering into an agreement for a lease, it is quite open, however, for the parties to specify particularly the covenants they agree to. In the case of a lease of a house or land for ordinary occupation or business purposes, the "usual covenants" on the part of the lessee are the following:— (1) For due payment of the rent; (2) for payment of the rates and taxes; (3) for the preservation of the premises during the term in a good state of repair; (4) for the delivery up of the premises at the end of the term in good repair and condition; and (5) for liberty to the lessor to enter upon the premises during the term and view the state of repair. In the case of leases of a special character, such as agricultural and mining leases, there are further usual covenants; a mining lease may contain covenants relating to the management and working, or the lease of a farm covenants as to cultivation; in both of these cases the actual covenants which could be considered usual, especially in relation to local customs, would be generally inserted in such leases. But, as already stated, the parties to a lease, when contracting for it, can always stipulate for either more or less than, as well as, the usual covenants. Accordingly, therefore, the lessor cannot in general demand, as a matter of right, a covenant by the lessee not to assign or underlet the premises without leave; or not to carry on a particular trade or business on the premises; or, perhaps, a covenant to insure them; or, probably, a covenant to pay land tax or sewer rate. So it is not usual for a lessor to covenant to rebuild the demised premises in case of fire, with an alternative of a cessor of rent on failure to do so.

There is little need to make any detailed reference here to the special character of the usual covenants, for they are dealt with separately in such articles as those on DISTRESS, EJECTMENT, FIXTURES, DILAPIDATIONS, and LANDLORD AND TENANT, as well as in other articles relative thereto. It will be more convenient to notice in this article the following special topics:—the covenant restricting the use of the premises; that against assignment or underletting; the condition of re-entry by the lessor, with the consequent forfeiture of the lease, and relief to which the lessee may be entitled; and the determination of the tenancy. Of these then in their order.

Restriction of user.—A very usual covenant in a lease is that which provides against the lessee carrying on some specified trade, or even any trade at all, on the demised premises, or carrying on any offensive trade, or

one which might be an annoyance or disturbance to the neighbourhood. The object of this covenant is to prevent the depreciation of the premises, or of property in the immediate vicinity. Though this covenant is not one of the usual covenants, yet if the lessor is himself but a leaseholder and not a freeholder of the premises, and the lease under which he holds contains a covenant on his part of this nature, then the person who takes a lease, or rather an under-lease, from the lessor can be restrained by the superior landlord from acting in breach of that covenant. But he cannot be compelled to take the sub-lease with such a restrictive covenant specifically included in it, unless, perhaps, he knew that such a covenant was in the original lease. Covenants of this kind when inserted in leases, since they substantially affect the mode of enjoyment, are said to "run with the land," and accordingly are binding upon an assignee of the lease; and if broken, the lessor may either bring an action for damages or proceed under the proviso for re-entry.

A covenant not to convert the premises into, or permit them to be used as, a shop, nor to have any mark or show of trade or business thereon, nor to use or exercise, or suffer to be used or exercised, any trade or business thereon, was held to be broken by carrying on the business of a schoolmaster on the premises, although there was no board or sign or other mark or show of trade or business; for the Court said that the business in question was likely to create as much annoyance to the neighbourhood as could be predicated of almost any business; and that the exhibition of the boys might be said to resemble a show of business. And so a covenant not to use the premises otherwise than as a private dwelling-house will be broken by using them as a school, or as a charitable institution for the maintenance and education of children, or as a building to be let out in residential flats. A covenant not to carry on an offensive trade on the premises, or one which might be an annoyance to the neighbours, would be broken by establishing a hospital there for diseases carrying a certain amount of risk; but it would not be broken by opening the premises as a public-house, if the covenant, though enumerating a number of offensive or annoying trades, had omitted to include the trade of a licensed victualler. The terms "public-house" and "beer-house" having now acquired a definite technical meaning, would neither of them extend to an off-license house, and consequently a man could retail beer, for consumption off the premises, notwithstanding his lease prohibited him from keeping them as a public-house or a beer-house; it would have been otherwise if the prohibition had included a "beer-shop." A certain grocer held his premises under a lease containing a covenant that he would not use the place "for the sale of spirituous liquors." He was therefore not allowed to sell wine or spirits in bottle, although he would have been able to have done so if the covenant had been worded that he should not "carry on the trade of a seller of wine and spirituous liquor." A covenant by the lessee of a public-house to use his best and utmost endeavours to keep it open as a public licensed victualling-house, is broken by the licence being taken away on account of irregularities permitted by the occupiers, and his neglect to apply for a rehearing of the case, or to do some act with a view to obtain the continuance of the licence and get the house open again. It is not necessary that a man should carry on every branch of a prohibited

This Indenture made the twentieth day of March One thousand Nine hundred and ten **Between** Herbert Smith of Easton Hall in the Parish of Bicklebury in the County of Somerset Esquire of the one part and Arthur Jones of 93 Hanway Street in the County of London Merchant of the other part **Witnesseth** that in consideration of the rent hereinafter reserved and of the Lessee's covenants hereinafter contained **The** said Herbert Smith (hereinafter called "the Lessor" which expression shall include his heirs and assigns where the context so admits) hereby demises unto the said Arthur Jones (hereinafter called "the Lessee" which expression shall include his executors administrators and assigns where the context so admits) **All that** messuage or dwelling house situate and being number 14 in Grafton Square in the Borough of St. Pancras in the County of London aforesaid **To hold** the same unto the Lessee for the term of Twenty one years from the twenty fifth day of March One thousand nine-hundred and ten **Yielding and Paying** during the said term the yearly rent of One-hundred pounds by four equal quarterly payments on the twenty fifth day of March the twenty fourth day of June the twenty ninth day of September and the twenty fifth day of December in every year the first quarterly payment to be made on the twenty fifth day of March next and the last quarterly payment to be made in advance on the twenty fifth day of December immediately preceding the expiration of the said term together with the quarterly payment falling due on that day **And** the Lessee hereby covenants with the Lessor in manner following (that is to say)

1 **The** Lessee will during the said term pay the rent hereby reserved at the time and in manner aforesaid and will also pay all rates taxes and assessments whatsoever which now are or during the said term shall be imposed or assessed upon the said premises or the Landlord or Tenant in respect thereof by authority of Parliament or otherwise (except the Land Tax and the Landlord's Property Tax)

2. **And** will at all times during the said term keep the said premises and the fixtures painting and decorations in good and substantial repair internally and externally and the same in good and substantial repair deliver up to the Lessor at the expiration or sooner determination of the said term

3 **And** in particular will paint with two coats at least of good oil and white lead paint and in a proper and workmanlike manner the outside wood and iron work of the said premises once in every four years of the said term and such parts to the inside of the said premises as have been usually painted once in every seven years of the said term the last painting both outside and inside to be in the year immediately preceding the determination of this Lease whether by effluxion of time or notice

4. **And** will at the same time with every outside painting restore and make good the outside wood stucco and ironwork wherever necessary and at the same time with every inside painting whitewash and colour such parts of the inside of the said premises as are usually whitewashed and colored

5 **And** will permit the Lessor or his Agent with or without workmen and others twice or oftener in every year during the said term at convenient hours in the day time to enter into and upon the said demised premises and view and examine the state of repair and condition thereof and of all such defects and wants of reparation as shall be then and there found to give to the Lessee or leave on the said premises notice in writing to repair and amend the same within the period of three calender months then next following within which time the Lessee will repair and amend the same accordingly

6. **And** will forthwith insure and keep insured the said demised premises against loss or damage by

fire in the joint names of the Lessor and Lessee in Scottish Insurance Office or in some other well-established Office to be prescribed by the Lessor in the sum of Two thousand pounds at least and will pay all premiums and sums of money necessary for that purpose and will whenever required produce to the Lessor the Policy of such Insurance and the receipt for every such payment And will cause all moneys received by virtue of any such Insurance to be forthwith laid out in rebuilding repairing or otherwise in reinstating the said premises And if the moneys so received shall be insufficient for the purpose will make good the deficiency out of his own moneys

7. And will not at any time during the said term carry on or permit to be carried on any trade manufacture or business upon the said premises or permit the same to be occupied or used as an Asylum Hospital School Hotel or Tavern or for the sale of beer wines or spirits or in any other manner than as a private dwelling house.

8 And will not except by Will assign transfer or underlet the said demised premises or any part thereof without the consent in writing of the Lessor first had and obtained unless such consent shall be unreasonably withheld

Provided Always And these presents are upon this condition that if the said yearly rent of One hundred pounds or any part thereof shall be in arrear for the space of twenty one days next after any of the days whereon the same ought to be paid as aforesaid whether the same shall or shall not have been legally demanded Or if there shall be any breach or nonperformance of any of the Lessee's covenants hereinbefore contained Then and in any of the said cases it shall be lawful for the Lessor at any time thereafter into and upon the said demised premises or any part thereof in the name of the whole to reenter and the same to have again repossess and enjoy as in his former estate **Provided Always** And it is hereby declared that if the Lessee shall be desirous of determining this lease at the end of the first seven or fourteen years of the said term and of such desire shall give to the Lessor or his Agent or leave at his usual or last known place of abode in England or Wales six calendar months previous notice in writing then and in such case at the end of such seven or fourteen years as the case may be the term hereby granted shall cease But subject to the rights and remedies of the Lessor for or in respect of any rent in arrear or any breach of any of the Lessee's covenants **And** the Lessor hereby covenants with the Lessee that the Lessee paying the rent hereby reserved and observing and performing the covenants and conditions herein contained and on his part to be observed and performed shall and may peaceably and quietly possess and enjoy the said premises hereby demised during the said term without any lawful interruption from or by the Lessor or any person rightfully claiming from or under him **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 said Herbert Smith in the presence of
Mary Smith Bucklebury
Married Woman

Herbert Smith (L.S.)

Signed Sealed and Delivered by the said Arthur Jones in the presence of
Reginald Grover. W. W.
93 Hathaway W. W.
Clerk.

Arthur Jones (L.S.)

trade in order to bring him within the covenant; it is sufficient if he partially exercises it; and therefore, where a lease contained a covenant prohibiting the trade of a butcher, and the tenant fitted up the premises as a chandler's shop and sold various articles of provisions, and among them meat in a raw state, it was held that the covenant was broken, though the meat was kept in the interior shop, visible however to those who passed by the house if they chose to look in, and was not exposed in the shop window, and although the animals were not slaughtered on the premises. By resorting to some artifice, and so attempting a fraud on the covenant, the obligation of the latter cannot be evaded.

A forfeiture occasioned by a breach may be waived by the act of the lessor; there must be some act on his part, such as acceptance of rent, &c., to affirm the tenancy. Mere knowledge and acquiescence in a breach will not necessarily amount to a waiver, though if the lessor tacitly allows the lessee to expend money in improving the premises, this will be a strong circumstance from which a jury may imply a waiver. If the covenant prohibits the *using* of premises in a certain way, the landlord, after he has received rent accruing since a breach, and with knowledge of a breach of the covenant, may proceed to a forfeiture for a continued using; for a breach occurs every day during the time they are so used. And the case does not resemble that of converting a house into a shop, for example, for there the breach is complete at once, and the consequent forfeiture is waived by a subsequent acceptance of rent. A tenant cannot obtain any relief from the Court against a forfeiture of his lease occasioned by a breach of a covenant not to carry on a prohibited trade. And even if he should have carried on one of the trades prohibited by the lease without objection by the lessor, he cannot avail himself of this tacit permission as a license to carry on any other; nor will the Court enter into a comparison, and permit him to carry on some trades as less offensive than others. An injunction can be obtained by the lessor notwithstanding the covenant is secured by a forfeiture of the lease and a penalty. And if a lessee subject to forfeiture of his lease on certain trades being exercised on the premises, underlets with a similar restriction, the underlessee can be restrained by injunction from trading so as to endanger his immediate landlord's lease.

Restraint upon assignment or underletting.—A covenant which prohibits the lessee assigning or underletting without the consent of the lessor is not a "usual" covenant, and so cannot be forced upon an unwilling lessee under an open contract. It is, however, a covenant very commonly found in leases, though generally it is qualified by the addition of some such words as the following: "Such consent not to be unreasonably withheld," or "Such consent not to be withheld if the proposed assignee [*or* tenant] is a responsible and respectable person." Where the covenant is thus qualified, and the lessor refuses to give his consent in a proper case, the lessee may then assign or underlet without his lessor's consent. If the covenant is merely one not to "assign," then the lessee is at liberty to underlet; but, on the other hand, an assignment is a breach of a covenant not "to let, set, or demise the premises for all or any part of the term." Hence an express or sufficiently explicit provision is requisite to prevent underletting. And even though the lessee covenants not to underlet, or part with any part of his interest in the premises,

he may, without danger of a forfeiture, permit to a lodger the exclusive enjoyment of a room. Lord Ellenborough, in *Pitt* v. *Laming*, ridiculed the idea of an application to a lessor for a license to take in lodgers, though Baron Parke, in a later case, characterised the grounds of Lord Ellenborough's decision as scarcely satisfactory. Nevertheless, it still remains that an explicit covenant, or one whose terms are so wide as necessarily to include a lodger, is required in order to effectively prohibit a lessee from letting lodgings or receiving boarders. But where a lessee was bound by a covenant not to alter, convert, or use the rooms of the house demised then used as bedrooms, or either of them, into or for any other use or purpose than bed or sitting rooms, for his own occupation, without the license of the lessor in writing, he was held to have broken the covenant by letting part of the house to a lodger.

Fine for consent.—The Conveyancing Act, 1892, makes special provision prohibiting fines for consenting. Section 3 runs as follows: "In all leases containing a covenant, condition, or agreement against assigning, underletting, or parting with the possession, or disposing of the land or property leased without license or consent, such covenant, condition, or agreement shall, *unless* the lease contains an expressed provision to the contrary, be deemed to be subject to a proviso to the effect that no fine or sum of money in the nature of a fine shall be payable for or in respect of such license or consent; but this proviso shall not preclude the right to require the payment of a reasonable sum in respect of any legal or other expense incurred in relation to such license or consent." But notwithstanding this provision a lessor may lawfully make it a condition of his consenting to an assignment that the lessee should deposit a sum of money with him as a security for the performance of the obligations under the lease.

A covenant not to assign without license will not be broken by a mere advertisement for sale. Nor by the deposit of the lease by way of mortgage. Nor by the grant of an underlease.

Forfeiture and re-entry.—There is usually included in every well-drawn lease a proviso that in the event of the lessee committing a breach of any of the covenants and conditions therein contained and on his part to be observed and performed, the lessor shall be entitled to re-enter upon the premises and the lessee's interest therein will forthwith be determined. In this connection it should be noticed that the Court will relieve the lessee against forfeiture in appropriate cases. Such relief was originally only granted in the case of a breach of the covenant to pay the rent, but now, by the Conveyancing Acts, 1881 to 1892, the relief is extended to other cases. The Act of 1881 provides, however, that these provisions for relief shall not extend—(1) To a covenant or condition against the assigning, underletting, parting with the possession, or disposing of the land leased; or to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest (as to both of which see also page 292); or, (2) In the case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing-machines, or other things, or to enter or inspect the mine or the workings thereof. These Acts, in respect to relief, will have effect notwithstanding any stipulation to the contrary contained in any lease. And for the purposes of the Acts a lease is defined as including an original or derivative underlease, also an

agreement for a lease, and a grant at fee farm rent, or securing a rent by condition; and a lessee may be an original or derivative under-lessee, and the executors, administrators, and assigns of a lessee, also a grantee under a fee farm grant and his heirs and assigns. A lessor may be an original or derivative under-lessor, and the heirs, executors, administrators, and assigns of a lessor, also a grantor and his heirs and assigns.

Relief is granted although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any special Act of Parliament. A lease limited to continue so long only as the lessee abstains from committing a breach of covenant will take effect, for the purposes of this relief, as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry for such breach.

In order that a lessor may enforce, by action or otherwise, a right of re-entry or forfeiture under a proviso or stipulation for a breach of covenant, he must first give a certain notice to the lessee and the latter must have failed to comply with the terms of the notice. The notice is required to be served on the lessee; it must specify the particular breach complained of; and, if the breach is capable of remedy, it must require the lessee to remedy the breach; and, generally, it must require the lessee to make compensation in money for the breach. These are the statutory requirements relating to the notice. The breaches complained of should be specified with sufficient particularity to enable the lessee to gather the nature of the complaints, and to remedy the breaches; but the lessor is not bound to include in the notice a requisition for money compensation if he does not want it. A proper notice having been served, the lessor will only be entitled to proceed to enforce his right to re-enter if the lessee fails, within a reasonable time after the service of the notice, to remedy the breaches complained of, if capable of remedy, and to make reasonable compensation in money to the satisfaction of the lessor. But all this is subject to the lessee's right to apply to the Court for relief. By section 14 (2) of the Act of 1881 it is provided that "where a lessor is proceeding, by action or otherwise, to enforce such a right of re-entry or forfeiture, the lessee may, *in the lessor's action*, if any, *or in any action brought by himself*, apply to the Court for relief; and the Court may grant or refuse relief, as the Court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, thinks fit; and in case of relief may grant it upon such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the Court in the circumstances of each case thinks fit."

Protection of under-lessees.—By section 4 of the Act of 1892 a power is conferred upon the Court to protect under-lessees on the forfeiture of the superior lease. This power is exercised by the Court on the application of any one who claims as under-lessee an estate or interest in the property comprised in a lease under which a lessor is exercising his right of re-entry or forfeiture. This application by the under-lessee should be made either in the lessor's action for re-entry and forfeiture, if any, or in an action to be brought by the under-lessee for the purpose of obtaining the relief. When the

application so comes before the Court an order by way of relief may be made. And the relief can be granted by an order "vesting for the whole term of the lease or any less term the property comprised in the lease or any part thereof in any person entitled as under-lessee to any estate or interest in such property, upon such conditions as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security, or otherwise, as the Court in the circumstances of each case shall think fit." But in no case is any such under-lessee entitled to require the lessor to grant a lease to him for any longer term than he had under his original sub-lease.

Costs of waiver and relief.—A lessor is entitled to recover his costs, as a debt due to him from the lessee, in the event of a breach of covenant by the latter having been waived by the lessor in writing, at the request of the lessee, or from which the lessee has been relieved under the provisions of the Conveyancing Acts. These costs are in addition to damages (if any), and are limited to "all reasonable costs and expenses properly incurred by the lessor in the employment of a solicitor and surveyor or valuer, or otherwise, in reference to any breach giving rise to a right of re-entry or forfeiture," which has been so waived or made the subject of judicial relief.

Bankruptcy and executions.—It has already been stated that these statutory provisions for relief do not extend to cases of re-entry or forfeiture because of the lessee's bankruptcy, or because execution has been levied against the land. But this statement must be taken subject to the two following very important qualifications:—(1) The exclusion from the statutory relief will only apply after the expiration of one year from the date of the bankruptcy, or taking in execution, and provided the lessee's interest is not sold within that year. If the lessee's interest is not so sold the lessee, or the person entitled to his interest in the lease, can claim relief under the statute; (2) But the foregoing qualification does not apply to any lease of agricultural or pastoral land; mines or minerals; a house used or intended to be used as a public-house or beer-shop; a house let as a dwelling-house, with the use of any furniture, books, works of art, or other chattels not being in the nature of fixtures; any property in respect to which the personal qualifications of the tenant are of importance for the preservation of the value or character of the property, or on the ground of neighbourhood to the lessor, or to any person holding under him.

Determination of the tenancy.—The tenancy of the lessee under and by virtue of his lease expires at the end of term for which the lease is granted, and it is not necessary for him to give any notice to the lessor. It may also be determined by forfeiture or re-entry by the lessor because of the lessee's breach of some covenant or condition. And it may be determined by surrender or by operation of law. And express surrender must be by deed; or, where the term was one which could have been created without writing, by writing not under seal. A surrender by act and operation of law may be effected by various means. It will occur if the lessee re-leases the property to his lessor for the entire term, reserving an annual rent. So, if the lessee accepts an interest in the property incompatible with his tenure under the lease; as if he takes a second lease of the same property, to commence during the continuance of the first, a surrender at law will be the immediate

result. But there will be no surrender if the second lease is made to commence after the expiration of the first. And the lease will also be surrendered if the lessee gives up possession, and the lessor resumes it, in pursuance of an agreement between the parties that the term created by the lease shall be brought to an end; and also if a new lease is made to a third party, with the assent of the original lessee, who gives up possession.

LEASEHOLD ENFRANCHISEMENT.—Reference is usually made under this term to the extinction of leasehold interests in lands and their conversion into freehold, the lessee thereby becoming the owner of the land in fee simple. A limited provision for the enfranchisement of leaseholds was introduced by the Conveyancing Act of 1881, to which extended reference will presently be made, but this provision is not accounted sufficiently far-reaching by many of our more advanced politicians. They would not restrict the right of enfranchisement only to leaseholds held upon long unexpired terms at absolutely nominal and ineffective rents, but would extend it to leases of comparatively short terms which are held upon rents of some substantial value. The reason for this reform is found in the injustice said to be done to the leaseholder, in that at the end of his term he must deliver up to the freeholder not only the property originally leased, but also any valuable building and improvements thereon which may have been erected and made at the leaseholder's sole expense. It is also urged that this position of the leaseholder tends, against the general interests of the community, to repress a spirit of enterprise in the use and improvement of landed property. But as against this view of the subject is that of the freeholder or lessor. Leases are originally granted as a result of free contract between the parties, and they are subsequently assigned in the same manner. The final disadvantages attendant upon a holding by lease are therefore taken into full consideration at the time the lease is granted, and accordingly there can be no injustice to the leaseholder in the arrangement. It is his own fault if at the end of the term he finds himself a loser by reason of his not having made provision therefor by saving, insurance, or the creation of a SINKING FUND (*q.v.*). And, moreover, as a matter of principle it must not be forgotten that the lessor has a right to retain his own property, and not to be forced to part with it against his wish, unless it is needed for the public good, and even then he must be adequately compensated for his loss. Such are the opposing views on this subject, but which take little account of such an enfranchisement as that now legally possible, as the lessor's interests disturbed thereunder are practically valueless and non-existent. The sole practical effect of the enfranchisement is to turn certain personal property into realty and to alter the rights of succession thereto in the event of an intestacy. It has also the sentimental advantage of resolving the owner of such property into a freeholder.

The Act, as amended by the Conveyancing Act of 1882, applies to leases or underleases of land and houses of which there is an unexpired residue of not less than two hundred years of a term, which, as originally created, was for not less than three hundred years. It does not matter whether the property to be enfranchised is the whole property originally comprised in the term, or only a part; but it must not be subject to any trust or right of redemption affecting the term in favour of the freeholder, or other person entitled to the rent, nor be liable to be determined by re-entry for any broken condition,

nor created out of a superior lease which would itself be incapable of being enfranchised under the Act. And, moreover, it is expressly provided that the lease must not reserve any rent other than a peppercorn rent or some other rent not having any money value; but this proviso will not apply if there was originally a rent which has subsequently been released, or has become barred by lapse of time, or has in some other way ceased to be payable. Generally speaking, any person who is the beneficial owner of the residue of the term created by the lease, or as a trustee of it is entitled to its income or has it vested in him, is entitled to exercise the right of enfranchisement. This is done by simply declaring, under seal, that from and after the execution of the deed the term shall be enlarged into a fee simple. "Thereupon," proceeds the Act of 1881, "by virtue of the deed and of this Act, the term shall become and be enlarged accordingly, and the person in whom the term was previously vested shall acquire and have in the land a fee simple instead of the term." *See* LEASE.

LEDGER.—This is the name given, in book-keeping, to the book in which are registered all the transactions of a business. So far it is identical with the JOURNAL (*q.v.*), but it differs therefrom in the very important particular that the journal registers all these transactions in the chronological order in which they take place, while the ledger registers them under separate and appropriate headings. For this purpose the ledger is divided into many different accounts according to the particular nature of the business, each of these accounts being headed with its appropriate title in order to explain the nature of the items it contains. Ledger accounts are of three kinds, which respectively correspond with the three groups into which the whole transactions of a business most naturally distribute themselves. These groups are: (1) The debts owing to the owner of the business, and the debts he owes to others; (2) the items of the property or stock belonging to him, including an account of the quantity and value thereof disposed of; and (3) the accounts of his revenues, profits and losses, and expenses. These three accounts are those known as the Personal, Real or Property, and Impersonal or Nominal accounts, and with these we will now deal in their order.

Personal accounts.—An account must be opened for every person or firm with whom there are any dealings on credit. The debts of those indebted to the owner of the business are entered on the Dr. or left-hand side of the account; but the debts he may owe to them are entered on the Cr. or right-hand side. Accordingly all goods sold on credit, money paid, and everything for which these persons or firms are accountable to the owner, are entered on the Dr. side; but goods bought on credit, money received, and everything for which he is accountable to them, are entered on the Cr. side. The balance shows how much they owe him or he owes them, as the case may be. And amongst these accounts should be found his own Capital and Drawing Accounts.

Real accounts are those of all the property which constitutes the stock or assets of the business. Such property consists of cash, goods, houses, ships, investments, bills, &c., and a ledger account is opened for each class. The cash account registers the payment and receipt of money; on the Dr. side is entered the money in hand at the time the account is opened, and afterwards each instance of its receipt. All payments are entered on the Cr.

side. The goods account is kept upon the same principle. The first entry on the Dr. side is that of the goods in hand at the time the account is opened, and afterwards the goods bought are entered on the same side. Goods sold have their place on the Cr. side. It is convenient in this account to have separate columns on each side for the quantities and the values of the goods dealt with, for by so doing both the state of the stock and the profit or loss thereon can be readily ascertained. If the totals of the quantity columns on the opposite sides are equal, it shows that the goods are all sold, and the balance of the value or money columns shows the profit or loss. A balance in the quantity columns will show the stock in hand. The details of this account can be varied indefinitely according to the necessities of the business. Instead of having one account for goods, separate accounts may be opened for as many different classes of goods as may be convenient. Thus in a grocery business, instead of one general goods account, it would be probably more useful to have separate accounts for such goods as tea, coffee, sugar, biscuits, or sundries. And each of these accounts may be so entered up as to distinguish between the different classes of the commodity to which it is assigned. Thus if there are three kinds of tea sold, it will be sufficient if the tea account has three quantity columns on each side of the account instead of only one; and the stock in hand of each kind will be readily found by balancing the appropriate columns on both sides of the account. Accounts of houses and land would have the value of the particular property entered as a first item on the Dr. side, and subsequently all repairs and other charges and outgoings; the rents and other profits received would have their place on the Cr. side. In general, real accounts contain the value of the property and all charges on the Dr. side, and the sales and other returns on the Cr. side. When such an account is to be balanced, if any property remains, its value is placed on the Cr. side; and then the balance shows the profit or loss, according as the Cr. or Dr. side is the greater. But so far the profit or loss has been estimated without reference to the profits and expenses of the business as a whole. It is only known that a certain stock of tea, for example, has been sold out at a higher price than was paid for it, and that therefore that account shows a profit. The third group of accounts must therefore claim our attention.

Nominal accounts.—Under this denomination would come a number of subsidiary accounts opened in order to shorten and simplify the personal and real accounts, and also to methodise the profit and loss account which gives the business man his final balance. Of these subsidiary accounts may be mentioned the accounts devoted to such subjects as revenue, interest, commissions, carriage, wages, and insurance; but the number of these accounts will always vary with the nature of the business, and their province is amply indicated by their titles. The bad debts account may be taken as an example of this class. There are entered on the Dr. side such debts as are estimated to be hopeless and beyond recovery; and on the credit side will appear any of these which may happen to be unexpectedly recovered. With all the transactions of the business thus accounted for and so entered as to be capable of resolution into balances, there now remains, as a master-key to the profit and loss account, the very important *capital account*. This account when opened should contain on the Dr. side the amount of the debts

which the owner of the business owes when the books are opened; and on the Cr. side the amount of ready money, goods, debts, and property of every kind belonging to him. This shows him the amount of his net assets; or, in case of insolvency, the amount of his deficit. After all the other books of the business are balanced, the net profit, if there is any, is entered on the Cr. side, and the net loss in that event on the Dr. side; the balance will then show the net capital at the time the books are closed. The *Profit and Loss* account is a collection together in one account of all the balances of the other accounts. Every balance in the nature of a profit is made an item for entry on the Cr. side, and every balance of an opposite character finds its place on the other side. The final credit balance represents the result of the trading for the year after charging expenses of administration and the amount placed to reserve, and this balance is carried to the Cr. side of the balance-sheet.

A ledger should always be provided with an index for the alphabetical indication of the folios of the various accounts. In a very small and simple business one ledger might serve for all the different accounts, but it is usual to have at least three or four: a debtor's ledger, a creditor's or bought ledger, a real account ledger, and one or more for subsidiary accounts and those of a private nature. Such accounts as those of profit and loss, capital, and the drawings of the owner are usually kept in a private ledger. Where one ledger is used, then each class of account should be confined to its own portion of the ledger; it would be very inconvenient to mix up the accounts of various classes, as for example by placing the profit and loss account between the folios containing a debtor's account and a goods account. The ledger is posted or entered up from the entries in the journal. The Dr. of a journal or other entry is posted on the left-hand page of the appropriate ledger account by writing the date in the margin, and on the same line a short "narration" of the transaction with the word *To* prefixed, the total of the entry being inserted in the money column. This narration is now nothing more than a very general statement of the nature of the entry, such as To Goods, By Cash, To discount, By returns, &c.; for complete information it is usual to refer to the journal or other book from which the entry is made. The Cr. of the journal entry is entered on the right-hand page of the same account, the word *By* being prefixed to the narration. This being done, the journal is marked in the margin with the number of the folios to which the entry is posted. When the space allotted to an account is filled up, the account must be continued in another folio. In correcting errors in the ledger certain rules should always be observed. If an item has been omitted, it should be inserted under the last item made at the time when the omission was discovered, a cross being marked in the margin against the insertion and another against the place where it should have appeared; no interlineation should be attempted. If a line has been written entirely wrong, or in the wrong place, a cross should be prefixed, the word *error* written at the end, and the total sum omitted or cancelled. A cancellation is effected by drawing a line lightly through the error, so that the old writing continues to be legible. *See* BOOK-KEEPING.

LEGACY.—A legacy, or bequest, is a gift of personal property made by a testator in his will or codicil. A gift of real property would not be properly described as a "legacy"; it is technically known as a "devise." When giving a legacy a testator usually uses the words "I give," or "I bequeath,"

or "I give and bequeath." But the mere fact of other words having a similar meaning being used will not destroy the validity of a legacy. The person to whom a legacy is given is called a "legatee," but it is important to note that he cannot himself take his legacy directly out of the assets of the testator. He can only receive it at the hands of the executor; and this would be so even in a case where the legacy is for example a sealed packet; and here, and in like cases, the executor's right and even his duty extend to opening the package before handing it over to the legatee.

Except that an attesting witness to the will, and his or her wife or husband, cannot receive a legacy under that will, and that there may be certain legal restrictions in the case of a legacy to a charitable institution, it may be laid down as a general rule that any person whatsoever is competent to be a legatee. But in certain cases there are some legal incidents attached to his or her position as such which can be here usefully noted. Thus if the legatee is a married person he or she will take it subject to the terms of the marriage settlement, if any, that includes his or her after-acquired property. If a testator desires to give a legacy to his wife a priority over his other legacies to more distant connections, or even strangers such as charitable institutions, it is necessary that he should specifically express that desire in his will; for otherwise, in the event of his assets being insufficient to pay all the legacies, his wife will have to abate hers equally with the others. A person named as an executor in a will can only take his legacy, other than one of the residue, if he also accepts the position of executor; so that if a testator desires that the legacy shall be paid whether the legatee accepts the executorship or not, he must be careful to include in the will a direction to that effect or else some reference to a motive for the legacy other than the acceptance of the executorship by the legatee. A legacy to an infant must be retained by his guardian until he attains his majority, or it should be paid into Court; but a testator, by an express direction, can make the legacy payable to the infant at any time during the infancy he may desire. A testator should always exercise great care when making a bequest to a creditor, and should consider whether he intends the legatee to take it in satisfaction of the debt or in addition to due payment. If he desires to make both legacy and debt payable, he should either say so in express terms or otherwise include a general direction to his executors to pay both debts and legacies. The need for this care arises out of the rule of law that where a testator gives a legacy to his creditor, that legacy is *primâ facie* intended as a satisfaction of the debt. But in qualification of this rule there is another very important one: that where a testator gives to his creditor a legacy which is either absolutely or even possibly less advantageous to the creditor-legatee than full payment of the debt, then such a legacy can be taken by the creditor-legatee in addition to the payment of his debt. Accordingly, apart from any express qualifying direction contained in the testamentary document, a legacy to a creditor which amounts to more than the debt will be a substitution for payment of the debt, and if the creditor takes the legacy he must forego the payment of his debt. On the other hand, if the legacy is less in amount than the debt, or is a conditional or contingent gift and so possessed of a possibility of less value, the creditor-legatee will receive both the legacy and payment of the debt. If, however, any one becomes a creditor of the testator after the execution of a will in

which he is made a legatee, then the above rules will have no application, and the legatee-creditor will be entitled to payment of the legacy as well as of his debt.

In the article on ABATEMENT will be found some reference to specific, demonstrative, and general legacies; here the distinction between them may be noted. A specific legacy is a gift of some particular thing belonging to the testator, and which is described in the will in so specific a manner as to distinguish and separate it from other things of the same species which might belong to the testator. A gift of "my black horse," or "my fifty De Beers shares," would in each case constitute a specific legacy. A demonstrative legacy would be a gift directed to be taken or paid out of some particular specified fund, provided the fund was not of the same species as the gift. Thus a gift of "£100 to be paid out of my London and North-Western stock" would be a demonstrative legacy, though if it had been a gift of "£100 of my London and North-Western stock" it would have been specific. A general legacy is one which is not specific or demonstrative.

A legacy may be conditional, that is to say, only operative in the event of the legatee fulfilling some condition prescribed by the testator. But great care must be taken lest the condition is one which the law will not allow to be imposed, or one which will render the legacy void. Difficulties in these respects most frequently arise where testators endeavour to interfere with the matrimonial or religious liberty of legatees. It is against the policy of the law that marriage should be generally restrained. Accordingly a condition that a legacy should be paid only in the event of the legatee marrying with a certain consent will be satisfied, and the legatee will be entitled to the legacy, even though he or she has married without consent, provided the condition required the consent to be obtained even though the legatee was above twenty-one years or other reasonable age. A testator cannot validly attach a condition to a legacy that the legatee shall not take any legal proceedings whatever in relation to the will. Such a condition would be too wide and sweeping for the law to support. But a condition would be valid which restrained proceedings in dispute of the validity of the will, and if a legatee bound by such a condition took proceedings of that character and failed therein, he would lose his legacy. It is interesting to know that if a testator gives to a legatee such articles as he may *select* out of a certain class or bulk, that legatee will have a perfect right to select and keep every one of those articles. A gift of *furniture* will not include tenant's fixtures, books, clothes, or sporting or scientific instruments; nor does it include wines, though these latter will be included in a gift of *household effects*, which will also pass the furniture, which generally includes pictures, ornaments, plate, and linen. *Books* include manuscripts, but the term *jewellery* will not include a collection of old coins; these latter would pass with the furniture as curiosities if they had been kept as ornaments.

It need hardly be mentioned that if a will is revoked or held to be invalid all legacies payable thereunder are also revoked or fail. But a legacy may also fail because the testator, where he stands *in loco parentis* to the legatee, has paid it in his lifetime; or because the terms of the gift are too indefinite, as in a case where the testator bequeathed "a handsome gratuity" to one of the objects of his bounty; or—unless the legatee is issue of the testator and himself leaves issue surviving the testator—the legatee has died

before the testator, and the will has no express provision that in such event the legacy is to be paid to the legatee's personal representatives. Sometimes a will is found to give more legacies than one to the same legatee; in such a case the legatee will receive them both unless their amounts are the same, when the real intention of the testator must be gathered from the particular wording of the will. Though legacies need not be paid until the end of a year from the testator's death, yet they become due and vest forthwith upon the death. Where, however, the payment of a legacy is expressly postponed by the testator, it may become an important question whether it has vested, and when. Should the legacy be payable only upon the performance of a condition or the happening of an event, then it will not as a rule vest until the condition is performed or the event has happened. But if the legacy is clearly given, and payment only is postponed until a certain time, then it will vest upon the testator's death. But generally the question whether a legacy has vested or not must always be determined from the words of the will itself. *See* EXECUTORS.

LEGACY DUTY.—For the purposes of duty the term "legacy" has a more extended meaning than the one more properly belonging to it. Thus the share taken by a next-of-kin in the personal estate of an intestate, other than his leaseholds, is subject to duty as a legacy. A gift of personalty under a will is strictly speaking a legacy, and of course this is subject to the duty. In the case of a testator dying on or since the 1st July 1888, there is no legacy duty payable in respect of any money he gives by will and which he directs to be raised by means of a charge on land or of a sale of land; succession duty is payable instead. But it should be noticed, and the foregoing provision is consistent with the fact, that the essential element of a legacy—that it is a gift of personalty and not a devise of realty—is strictly preserved, and that not only is a gift or devise of real property, strictly so-called, exempt from legacy duty, but even leaseholds rank as realty for the purposes of duty in the case of an intestacy. A *donatio mortis causa* is liable to legacy duty, and so also is a gift to an executor in consideration of his accepting the executorship. If a testator, in his will, forgives a debtor, then that debtor must pay legacy duty in respect of the debt so forgiven him. A specific legacy is subject to duty as well as a pecuniary legacy, and, in the former case, the executor must value it for the purposes of duty. In this connection a specific legacy means a gift of an article or other personal property, and which is not a pecuniary gift. A gift of an annuity is also a legacy upon which duty is payable. If the gift takes the form of a sum of money wherewith an annuity is to be purchased, the duty is payable upon the amount of that sum. But if the gift takes the form of a direction that certain annual or other payments shall be made to the legatee during his or her life, the sum upon which the duty is payable is to be ascertained by calculating the value of the annuity by the succession tables. The duty on an annuity may be paid by four annual instalments, and if the annuitant should die before the last of these instalments becomes due, no further payment will be required than such as will clear up any arrears of instalments.

The Inland Revenue authorities have charge of the collection of this duty, and in aid of their duties have the right to inspect the wills proved in the Probate Registry. The duty is payable by the legatee, and although the estate of the testator is not liable for its payment, unless so far as the

will expressly provides that the estate shall pay it, yet it is the duty of the executor, or the administrator in the case of an intestacy, to transmit an account of the legacies, or distribution, to the Inland Revenue before the legacies are paid or the estate is distributed. The account must also show the duties payable. When this account has been approved by the Inland Revenue it is the duty of the executor or administrator to pay the legacies or shares to the legatees or next-of-kin, having deducted therefrom the duty payable, and remitted it to the Inland Revenue. Special receipt forms for legacies, stamped with the appropriate duty, are provided by the authorities, and must always be used; they do not require receipt stamps. Should an executor or administrator make default in the performance of this part of his duty he will render himself liable to penalties; but when he has properly discharged his office in this respect he can obtain a certificate from the authorities releasing him from all liability for duties. A legatee who has not paid his duty can be proceeded against by the Inland Revenue authorities for its recovery.

Rates of Duty, by the Stamp Act, 1815, and the Customs and Inland Revenue Act, 1888, and the Finance Acts, 1894 and 1910.

Note.—If the Deceased died on or after 1st June 1881, every *pecuniary* Legacy or Residue, or share of Residue, although not of the amount or value of £20, is chargeable with Duty by the Customs and Inland Revenue Act, 1881, s. 42.

The Description of the Legatee.	Out of Personal Estate. Out of Real Estate, if the Deceased died before the 1st July 1888, or if Estate Duty under the Finance Act, 1894, has been paid upon the Property.
* Children of the Deceased and their Descendants, or the Father or Mother or any Lineal Ancestor of the Deceased, or the Husbands or Wives of any such Persons	† 1 per Cent.
Brothers and Sisters of the Deceased, and their Descendants, or the Husbands or Wives of any such Persons	5 do.
Brothers and Sisters of the Father or Mother of the Deceased, and their Descendants, or the Husbands or Wives of any such Persons	10 do.
Brothers and Sisters of a Grandfather or Grandmother of the Deceased, and their Descendants, or the Husbands or Wives of any such Persons	10 do.
Any Person in any other Degree of Collateral Consanguinity, or Strangers in Blood to the Deceased	10 do.

* Persons otherwise chargeable with duty at the rate of 1 per cent. are exempt in respect of any Legacy, Residue, or share of Residue, payable out of, or consisting of, any Estate or Effects, upon the Value whereof duty shall have been paid on the Affidavit or Inventory, in conformity with the Customs and Inland Revenue Act, 1881; or where Estate Duty, under the Finance Act, 1894, has been paid upon the value of the property, and the same passes under the Deceased's will or intestacy.

The Husband or Wife of the Deceased is not chargeable with duty except where the testator dies on or after 30th April 1909.

Relations of the Husband or Wife of the Deceased are chargeable with duty at 10 per cent. or 11¼ per cent., as the case may be, unless themselves related in blood to the Deceased.

† This duty is not payable in estates not exceeding £15,000; or in the case of legacies and successions of less than £1000 (£2000 in the case of Widow or minor Child of the Deceased) whatever may be the value of the whole estate.

Interest at the rate of 3 per cent. per annum is chargeable upon all Legacy Duty in arrear, under the provisions of the Finance Act, 1896, s. 18 (2).

Exemptions.—In addition to the exemption in favour of the husband or wife of the deceased, as mentioned above, the following exemptions to legacy duty may be noticed:—*Specific* legacies under the value of £20; legacies of books, prints, and other specific articles, given to a public body for preservation and not for sale; where the value of the personalty does not amount to £100; plate, furniture, pictures, and the like given to persons in succession without power to sell; legacies to lineal ancestors or descendants, if the property is liable for estate duty; where the net value of the real and personal property of the deceased does not exceed £1000, and is not liable for estate duty. Any legacy or share in an intestacy which is payable without probate or letters of administration, and which (*a*) does not exceed £50, out of deposits in a loan society or building society; (*b*) does not exceed £80, under the Industrial and Provident Societies Act and the Friendly Societies Acts; and (*c*) does not exceed £100, under the Savings Bank Acts, the Army Prize-Money Act, the Navy and Marines Deceased Property Act, the Civil Service Superannuation Act, and the Regimental Debts Act.

LETTERS.—A letter is a document requiring no definition. In business and in private life the use of letters for purposes of correspondence is now as universal as the arts of writing and reading. But though so commonly used it is remarkable how little care is taken in their composition, especially from the point of view of their possibilities as contracts. And again, considered as the possible vehicles of libel and prejudicial statements, it is equally remarkable how little regard is paid to their publication and custody. In the article on CONTRACT will be found some account of the creation of contractual relationships by means of letters, and in that on LIBEL some notice is taken of the circumstances which the law considers as constituting the publication of a letter alleged to contain some defamatory statement. To refer again to contract, it is interesting to know that practically not only every class of contract may take the shape of a letter, but even such instruments as the conveyance of a freehold house. Certainly most old-established legal instruments have their own conventional form, replete with some characteristic technicalities, yet, generally speaking, they can all be reduced to the shape of a letter. And where a layman finds himself bound by temporary exigencies to draw a legal document without professional aid, he will be well advised if he puts it into the form of a letter, and inserts therein the details of the contract in logical and chronological order, and in language as far as possible colloquial and popular.

Elsewhere will be found some references to letters written "without prejudice": here we will notice a point as to those marked "private." If the plaintiff and defendant in an action are on such bad terms that the plaintiff refuses to hold any communications with the defendant, the latter cannot, by marking any letter he may write to the plaintiff with the word "private," thereby prevent the plaintiff using those letters against him in the action or in any other way in which they might otherwise lawfully be used. But no person whatever who is giving evidence in an action, can be discredited or contradicted by any letter he may have written unless and until he has first been cross-examined on its contents; and such a cross-examination is allowable without the letter being produced; this rule also applies to any

statement made by the witness in writing, or reduced into writing, relative to the subject-matter of the action.

The recipient who is the addressee of a letter is the owner of it, can use it for any lawful purpose, and may even destroy it; the writer parts with his ownership of it directly it leaves his possession for the purpose of being conveyed to the addressee, and at that moment the latter acquires the ownership. When once the writer has posted the letter it becomes the property of the addressee, and the post-office authorities have its possession solely as bailee of the addressee, and without his authority cannot as a rule return it to the writer. But this ownership of a letter by its recipient is after all so limited a one as strictly speaking to constitute him nothing more than a joint owner of the letter with the writer. Or it may be stated even more accurately, perhaps, that the recipient of the letter becomes the owner of the paper writing, and the writer retains the right to restrain the publication of its contents, unless he should cast such false imputations upon the recipient as would necessitate the publication thereof by the latter as a means to the vindication of his character. It is only consistent with this that if a letter should be lost by, or taken out of the possession of, its recipient, and should then get back into the hands of the writer as its bailee, the recipient would be entitled to recover its possession in a court of law. Executors may obtain from the Court an injunction restraining the publication, without their leave, of letters written by their testator. But in deciding whether or no it will grant an injunction restraining the publication of letters the Court will always take into consideration all the acts of the parties connected with the correspondence.

The case of *Stapleton* v. *Foreign Vineyard Association* is of some importance. A., who had been for some time the manager for a company carrying on business at 190 Regent Street, had left their employment and set up in opposition at 203 Regent Street. After he had so left, letters which were directed to him at 190 Regent Street were delivered there by the postal authorities and opened by the company, who claimed to be entitled to do so in order to receive any which may have been addressed to A. on their business. A. thereupon moved the Court for an injunction restraining the company from receiving and opening any of such letters unless they bore some external indication that they were really intended for them, and also for an injunction restraining the postal authorities from delivering those letters at any address other than 203 Regent Street. Though he failed altogether as against the postal authorities, for the Court held that they ought not to have been proceeded against in that manner, yet the company were ordered to give an undertaking that they would not open any of the letters in question except in the presence of A., unless, after they had given him notice to attend at their offices at a specified hour for that purpose, he omitted to do so. In another case the employee, when leaving his firm, gave notice to the post-office to deliver at his new address all letters which might be directed to him care of the firm, and of which letters it appeared that probably the greater part related to the business of the firm. This latter fact weighed very considerably with the Court when the firm moved for a mandatory injunction to compel their former employee to withdraw that notice to the post-office; and not only was the injunction granted as asked for, but the firm was

allowed to receive and open his letters on very similar terms, as to his presence at the opening, as those imposed in the case quoted above.

On the trial of an action it may be of importance to know whether the construction of letters is for the judge or a jury. The rule of law as to this appears to be that, if extrinsic circumstances are not capable of explaining them, their interpretation will be a pure matter of law, in however ambiguous language they may be couched. But if they are written in so dubious a manner as to bear different constructions, and if they can be explained by other transactions, the jury, who are clearly the judges of the truth or falsehood of such collateral facts, which may vary the sense of the letters themselves, must decide upon the whole evidence. The law presumes, as a rule, that letters are written on the day of their date. Post-marks on letters, when capable of being deciphered, are *primâ facie*, but not conclusive, evidence that the letters were in the post at the time and place therein specified; and if a letter properly directed is proved to have been either put into the post-office or delivered to the postman, it is presumed from the known course of business in that department of the public service that it reached its destination at the regular time, and was received by the person to whom it was addressed. This last presumption is, in some cases, rendered conclusive by the legislature, as in regard to service of a summons, notice, order, or other document upon a company registered under the Companies Acts. If a letter, properly directed, is left with the addressee's servant, it may be presumed *primâ facie* that it reached his hands. And in Scots law it has been said, and no doubt the same holds good in English law, "that where there is proof of the regular practice of a house of business to despatch its letters in a particular manner to the post-office, it is not necessary to prove that the individual letter in question was so despatched;" it would certainly be sufficient if the person who was in the habit of carrying the letters to the post were to give evidence that he invariably despatched the letters in accordance with the practice of the house.

LETTERS OF CREDIT.—A letter of credit is an authority, or rather request, by a banker to his foreign correspondents therein named to make payments to the bearer, or to discount bills or honour drafts drawn on him by the bearer. Such letters and CIRCULAR NOTES (*q.v.*) are methods of obtaining credit abroad, introduced for the convenience of travellers and agents, to obviate the trouble and risk of carrying about coin or bank-notes; when used together, the letter of credit is called a letter of indication. The banker usually indemnifies himself against any payments which may be so made, or any bills or drafts which may be so drawn, by anticipating them and obtaining a security or deposit from the bearer. The bearer has generally to make a sufficient deposit with the banker before the letter will be issued to him. As a rule the letter of credit is limited to a certain sum and to a certain period. It is rarely that a letter is issued which gives the bearer an unlimited right to credit, either as regards amount or the time during which the credit will be available. A more extended definition and account of letters of credit is given in Bell's Commentaries of the Law of Scotland, wherein the author writes that, strictly speaking, they are "mandates, giving authority to the person addressed to pay money or furnish goods on the credit of the writer. They are generally made use of for facilitating the supply of money or goods required by one going to a distance or abroad, and

avoiding the risk and trouble of carrying specie, or buying bills to a greater amount than may be required. The debt which arises upon such a letter in its simplest form, when complied with, is between the mandatory and mandant; though it may be so conceived as to raise a debt also against the person who is supplied by the mandatory. (1) When the letter is purchased with money by the person wishing for the foreign credit; or is granted in consequence of a check on his cash account; or procured on the credit of securities lodged with the person who grants it; or in payment of money due by him to the payee, then it is in effect similar to a bill of exchange drawn on the foreign merchant. The payment of the money by the person on whom the letter is granted raises a debt, or goes into account between him and the writer of the letter, but raises no debt to the person who pays on the letter against him to whom the money is paid. (2) Where not so purchased, but truly an accommodation, and meant to raise a debt against the person accommodated, the engagement generally is to see paid any advances made to him, or to guarantee any draft accepted or bill discounted; and the compliance with the mandate in such case raises a debt both against the writer of the letter and against the person accredited."

It is an *open credit* when the request to pay contained in the letter of credit is unconditional; a *document credit* when the request is on condition that bills of lading or shipping documents are deposited as collateral security; and a *marginal credit* when a person named in the margin guarantees to another person that he shall receive credit from, or have his bills accepted by, another person. But letters of credit are generally either special or general. It is a **special** letter of credit "when a merchant [or banker], at the request of any other man, doth write his open letter of credit, directed to his factor, agent, or correspondent, giving him an order to furnish such or such a man, by name, with such or such a sum of money, at one or more times, and charge it to the account of the merchant or banker that gives the credit, and takes bills of exchange or receipts for the same." The person so ordered to make the payment is the only one who can acquire, by a payment thereunder, a right of action against the writer of the letter in respect of such payment; and herein a special letter may be distinguished from one which is **general** and is not directed to a particular person, being intended to be acted upon by any one to whom it may be presented. An American author thus summarises the distinction between a letter of credit and a bill of exchange: (1) It is not payable absolutely, but only in the event that the bearer uses it, which is optional with him; (2) It is not necessarily for a certain amount; (3) It is not necessary that it should be addressed to a particular person; (4) Its writer, in many instances, becomes the principal and only debtor for the advances, and is not, in such cases, at all like the drawer of a bill; (5) Nor is he, like the drawer of a bill, entitled to immediate notice if the letter is not complied with.

It may be, on occasion, a question of importance whether the document is not rather a guaranty, or letter of surety, than a letter of credit, and whether the writer thereof is not in fact a guarantor or surety. This will always depend upon the actual terms of the document itself, but where the addressee of the letter is required to furnish goods, and not to make a payment of money, it may be safely assumed that the writer is really a surety. On a letter of credit the writer assumes a primary, and generally exclusive,

liability, but on a contract of guaranty his liability is secondary to that of the person to whom the money or goods are directed to be paid or furnished. A letter of credit, though required to be stamped as a bill of exchange, is not a negotiable instrument. A banker's credit is usually operated upon by bills of exchange, though it may also be operated upon by cheques or by simple demands, in any form, for the payment of the sums for which credit has been given. A person who has obtained a letter of credit from a banker for a sum paid down, may demand repayment without producing the letter; it follows that any undrawn surplus is equally at the call of the grantee of the letter. Should a banker pay a letter of credit upon a forged signature, he will be liable therefor to the person properly entitled to payment; and he can only prove that he has duly met his obligation under a letter of credit by producing the draft upon which he has made the payment. *See* MARGINAL CREDITS.

LIBEL may be considered as a personal wrong, and accordingly as the subject of a civil action for damages, or it may be considered as an offence against public order, when it can become the subject of a criminal prosecution. A libel consists of a written defamatory statement containing that sort of imputation which is calculated to vilify a man, and bring him, as the law books say, into hatred, contempt, and ridicule. It is mainly distinguished from slander in that a libel is of necessity a written statement and not a verbal one. And again, a written statement may be actionably defamatory even though the same statement, if made verbally, would not support an action for slander. The purpose of a civil action upon a libel is to recover compensation for damage sustained by the plaintiff by reason of the libel. According to Lord Mansfield, in *Thorley* v. *Lord Kerry*, the tendency of the libel to provoke a breach of the peace, or the degree of malignity which actuates the writer, has nothing to do with the question. This may be strictly correct as a technical description of the law, especially from a historical point of view, but in practice these considerations always have great weight with a jury when they are called upon to assess damages in a particular case. As further important distinctions between a libel and a slander may be mentioned the facts that a slander can never be a criminal offence as such, and that as a rule a slander requires proof of special damage, whereas a libel does not.

Upon the trial of an action for libel it is the duty of the judge to say whether the statement complained of is capable of the defamatory meaning ascribed to it by the plaintiff; but when the judge is satisfied of that, it must be left to the jury to say whether the statement has, as a matter of fact, the alleged defamatory meaning. The defamatory meaning ascribed to a statement by a plaintiff for the purpose of claiming that the words are libellous is technically known as the "innuendo." If the judge, taking into account the manner and the occasion of the publication and all other facts which are properly in evidence, is not satisfied that the words are capable of the meaning ascribed to them, then it is not his duty to leave the question raised by the innuendo to the jury. And as Lord Selborne said in *Capital and Counties Bank* v. *Henty*, "in deciding on the question whether the words are capable of that meaning he ought not, in my opinion, to take into account any mere conjectures which a person reading the document might possibly form, as to some out of various motives or reasons which might have actuated the writer, unless there is something in the document itself, or in other facts properly in evidence, which to a reasonable mind would suggest, as implied

in the publication, those particular motives or reasons." It is not necessary that the person libelled should be actually named, so long as his identity is indicated; and so a fictitious defamation of a fictitious person may constitute an actionable libel against a real person whose name and description is similar to that of the fictitious person (*Hulton* v. *Jones*). To disparage a trader's goods does not give ground for an action for libel, although, if special damage is proved, the plaintiff may recover in an action on the case. So an attack upon the system worked under a patent does not necessarily involve an imputation upon the person who supplies the parts and licenses the use of the system (*Griffiths v. Benn*).

Publication is an essential ingredient in an actionable libel. An unpublished libel could not therefore be a ground for an action for damages or for a prosecution. And if the publisher is a distinct person from the writer of the libel he will be as much liable as the latter. So also will any one who disseminates the libellous publication; unless the dissemination was in the ordinary course of his business, without negligence, and he did not know and had no ground for supposing that the publication was likely to contain libellous matter. And any one who requests another to publish a libellous statement will be liable with the actual publisher if the libel is published accordingly. As Chief Justice Denman has said: "If a man requests another generally to write a libel, he must be answerable for any libel written in pursuance of his request. He contributes to a misdemeanour and is therefore responsible as a principal. He takes his chance of what is to be published;" for, as Lord Bacon somewhat quaintly wrote in his *Maxims*, "when a man is author and monitor to another to commit an unlawful act, then he shall not excuse himself by circumstances not pursued." And the principle is the same when a libel is considered as a personal wrong as when it is being dealt with as a criminal offence; and is conclusively upheld in the well-known case of *Parkes* v. *Prescott*. A libel may be held to be published even though the publication is constituted by ordinary and everyday acts which, at first sight, do not seem to suggest what is commonly understood as a publication. Thus if a man dictates a letter to his clerk or typewriter, or shows a letter he has written to his clerk, or has a letter press-copied in the office letter-book, or writes it on a post-card, or on a telegram form for the purpose of telegraphing it, he in each of these cases will have sufficiently published the letter to allow any one who may be libelled therein to take proceedings against him in respect of the libel. These examples of publication are sufficient to show that almost the slightest act in the nature of a publication will render a defamatory writing available for legal proceedings. But the law on this point may be said to have been stretched to its furthest extent, and consequently, wherever possible, the courts will now refuse to allow that a sufficient publication has been made in any case where the acts of alleged publication can only with difficulty be brought on a level with those in the above examples. Thus where the man who wrote a defamatory document showed it to his own wife, and to no one else, there was held to be no sufficient evidence of publication; but it would be otherwise if a libel were to be sent to the wife of the man libelled, for such a publication, being likely to cause considerable mischief in many possible cases, has been held to be sufficient.

The case of *Emmens* v. *Pottle and others* is of considerable practical interest in connection with this topic of publication. The defendants were newsvendors carrying on a large business at the Royal Exchange in London, and in the ordinary course of their business sold copies of a certain periodical, without any knowledge of its contents, which contained a libel against the

plaintiff. The latter sought to make the defendants liable as publishers of the libel; but he failed. In the judgment of the Court of Appeal, Lord Esher, the Master of the Rolls, admitted that the defendants were *primâ facie* liable, as they had handed to other people a paper in which there was a libel on the plaintiff, and that consequently, to escape liability, they were bound to show some circumstances which would absolve them, "not by way of privilege, but facts, which show that they did not publish the libel." His lordship, after referring to the facts that a proprietor of a newspaper is liable for its contents, even though the libel therein is caused by a printer's error, and that the printer is similarly liable therefor, proceeded as follows: "But the defendants did not compose the libel on the plaintiff, they did not write it or print it; they only disseminated that which contained the libel. The question is whether, as such disseminators, they published the libel? If they had known what was in the paper, whether they were paid for circulating it or not, they would have published the libel, and would have been liable for so doing. . . . Taking the view of the jury to be right, that the defendants did not know that the paper was likely to contain a libel, and, still more, that they ought not to have known this, which must mean that they ought not to have known it, having used reasonable care—the case is reduced to this, that the defendants were innocent disseminators of a thing which they were not bound to know was likely to contain a libel. That being so, I think the defendants are not liable for the libel. If they are liable the result would be that every common carrier who carries a newspaper which contains a libel would be liable for it, even if the paper were one which every man in England would say that it was not likely to contain a libel. To my mind the mere statement of such a result shows that the proposition from which it flows is unreasonable and unjust." In the words of Lord Justice Bowen, in the same case, "a newspaper is not like fire; a man may carry it about without being bound to suppose that it is likely to do an injury." But from the foregoing it must not be understood that the vendor of a newspaper is not responsible for a libel contained in it, if he knows, or ought to know, that the paper is one which is likely to contain a libel. Even an ordinary reader of a newspaper is liable if he reads out to another person any libellous statement therein. Whenever there is a doubt whether or no a libel has been in fact published, the question can for all practical purposes be always safely referred to *John Lamb's Case*, in Coke's Reports, as a criterion. There the resolution of the Star Chamber may be read, "that every one who shall be convicted in the said case [of libel], either ought to be a contriver of the libel, or a procurer of the contriving of it, or a malicious publisher of it, knowing it to be a libel; for if one reads a libel, that is no publication of it, or if he hears it read, it is no publication of it, for before he reads or hears it, he cannot know it to be a libel; or if he hears or reads it, and laughs at it, it is no publication of it; but if after he has read or heard it he repeats it, or any part of it, in the hearing of others, or after that he knows it to be a libel he reads it to others, that is an unlawful publication of it; or if he writes a copy of it, and does not publish it to others, it is no publication of the libel; for every one who shall be convicted ought to be a contriver, procurer, or publisher of it, knowing it to be a libel."

Having thus seen what facts go to constitute an actionable libel, it is now

necessary to notice the defences available to a person against whom damages are sought to be recovered in respect of an alleged libel. It goes without saying that he will succeed in his defence if he can prove that he did not write or authorise the defamatory words to be written, and that he did not publish them. Another defence would be that the words are not in fact defamatory, and that the defamatory innuendoes applied thereto by the plaintiff are not warranted. In support of this defence the defendant can claim that the whole document shall be read, and that the words therein which are complained of shall be considered in their relation to the remainder of the document in order to discover whether they really are defamatory. But where a man writes two or more documents, one of which is libellous, and expresses its meaning so distinctly as not to require any reference by a reader to the other document, that man will be liable in respect of the libellous publication, and will not be allowed to refer to the other one in order to show that there is no libel on the whole. The case that decides this, *Leyman* v. *Latimer*, is also of interest as supporting the doctrine that it is defamatory to call a person who has been convicted of felony "a convicted felon," if he has received a pardon or suffered his sentence. Yet another defence is that of **fair criticism**, a defence which is not only available to journalists and authors, but is open to any one of the public who has expressed his opinion upon any matter of public interest, however limited that interest may be. An important case on this point is *Merivale* v. *Carson*, in which the authors of a play claimed damages from the editor of a theatrical paper in respect of a criticism of the play published in the defendant's newspaper. The criticism was alleged to be libellous in that it attributed to the plaintiffs that they had written a play founded upon adultery, without any objection to it on their part; in other words, that they had written an immoral play. The jury found that the criticism was not fair, but gave the plaintiffs only one shilling damages, and this they did after hearing a direction of the judge that if the alleged libel "is no more than fair, honest, bold, even exaggerated criticism, then your verdict will be for the defendant." In such a case, therefore, the question whether the criticism is or is not actionable depends upon whether in the opinion of the jury it goes beyond the limits of fair criticism. "Nothing is more important," said the judge in *Campbell* v. *Spottiswoode*, "than that fair and full latitude of discussion should be allowed to writers upon any public matter, whether it be the conduct of public men, or the proceedings in Courts of Justice or in Parliament, or the publication of a scheme, or a literary work. But it is always to be left to a jury to say whether the publication has gone beyond the limits of a fair criticism on the subject-matter discussed. A writer is not entitled to overstep those limits, and impute base and sordid motives which are not warranted by the facts, and I cannot for a moment think, because he has a *bonâ fide* belief that he is publishing what is true, that is any answer to an action for libel." Consequently the question is not whether the publication in question is privileged, but whether it is a libel. "Fair comment" means that which any fair man, however prejudiced or however strong his opinion may be, would say about the work or actions in question. If the comment goes beyond this limit, as where a critic attacks the private character of an author, then the critic will be liable as for a libel. "There is another class of cases," said Lord Justice Bowen, "in which, it seems to me, the writer would be travelling out of the region of fair criticism—I mean if he imputes

to the author that he has written something which in fact he has not written. That would be a misdescription of the work. There is all the difference in the world between saying that you disapprove of the character of a work, and that you think it has an evil tendency, and saying that a work treats adultery cavalierly, when in fact there is no adultery at all in the story. A jury would have a right to consider the latter beyond the limits of fair criticism."

Privilege is a defence of considerable importance. It may be either an absolute privilege or qualified. If absolute, the person libelled is powerless against it; but if only qualified, he can proceed with his action successfully, provided he can prove malice in addition to the libel itself and its publication. A defamatory statement is *absolutely privileged* when made upon a privileged occasion by a person holding some public office or position of importance. Thus anything spoken by a member of Parliament, in his place there, is absolutely privileged; and so is anything contained in a petition to Parliament or a Parliamentary record. And so also are words judicially used by a judge, even though they are not used *bonâ fide*, and words used by a coroner at an inquest, and a counsel or solicitor when acting as an advocate; a witness upon his examination at a trial; a deponent in an affidavit in any judicial proceedings; in a pamphlet or other document which publishes fairly and accurately a report of any legal proceedings; and by a newspaper in a fair and contemporaneous report of legal proceedings not blasphemous or indecent.

Qualified privilege is perhaps more frequently met with in actions for libel. It exists, generally speaking, in confidential communications, in giving advice to those who have a right to ask for or to receive it, in communications to persons upon matters in which the parties to the communications have a common interest, and in substantially fair and accurate contemporaneous reports by newspapers of transactions of public interest. But though a communication may be so far privileged, it must be made temperately and judiciously. A man who may reasonably be supposed to have the privilege of making a particular communication by means of a letter through the post, may not have the right, in every case, to make it upon a post-card or by means of a telegram. The privilege to make a certain communication to certain parties does not invest him with the privilege of making it to other parties and thereby bringing the person affected into needless ridicule and contempt. But, as was observed in *Laughton* v. *Bishop of Sodor and Man*, the language of a privileged communication is not to be scrutinised strictly. Nor will any distinction be drawn between one class of privileged communications and another, for precisely the same considerations apply to all cases of qualified privilege. The proper meaning of a privileged communication, as laid down in *Wright* v. *Woodgate*, is only this: that the occasion on which the communication was made rebuts the inference *primâ facie* arising from a statement prejudicial to the plaintiff, and puts it upon him to prove that there was malice in fact—that the defendant was actuated by motives of personal spite or ill-will, independent of the occasion on which the communication was made. Take for example a communication made in answer to an inquiry with reference to a servant's character. There is no reason why any greater protection should be given to such a communication than to any other communication made from a sense of duty, legal, moral, or social. Privilege, according to *Jenoure* v. *Delmege*, would be worth very little if a person making a communication on a privileged occasion were to be required, in the first place, and as a

condition of immunity, to prove affirmatively that he honestly believed the statement to be true. Accordingly in such a case *bonâ fides* is always presumed.

Newspapers.—Notice has already been taken of the privilege of newspapers to publish reports of legal proceedings, and it will here be convenient to notice their qualified privilege in the matter of other reports. This privilege has been made the subject of statutory enactment in section 4 of the Law of Libel Amendment Act, 1888, and the most useful course will be to set out that section in full, leaving the rest of the Act for separate treatment in the article on NEWSPAPERS, which should be read with this one in regard to newspaper libel generally. The section is as follows:—

A fair and accurate report published in any newspaper of the proceedings of a public meeting, or (except where neither the public nor any newspaper reporter is admitted) of any meeting of a vestry, town council, school board, board of guardians, board or local authority formed or constituted under the provisions of any Act of Parliament, or of any committee appointed by any of the above-mentioned bodies, or of any meeting of any commissioners authorised to act by letters patent, Act of Parliament, warrant under the Royal Sign Manual, or other lawful warrant or authority, select committees of either House of Parliament, justices of the peace in quarter sessions assembled for administrative or deliberative purposes, and the publication at request of any Government office or department, officer of state, commissioner of police, or chief constable of any notice or report issued by them for the information of the public shall be privileged, unless it shall be proved that such report or publication was published or made maliciously: Provided that nothing in this section shall authorise the publication of any blasphemous or indecent matter: Provided also, that the protection intended to be afforded by this section shall not be available as a defence in any proceedings if it shall be proved that the defendant has been requested to insert in the newspaper in which the report or other publication complained of appeared a reasonable letter or statement by way of contradiction or explanation of such report or other publication, and has refused or neglected to insert the same: Provided further, that nothing in this section contained shall be deemed or construed to limit or abridge any privilege now by law existing, or to protect the publication of any matter not of public concern and the publication of which is not for the public benefit. For the purposes of this section "public meeting" shall mean any meeting *bonâ fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted.

Justification is a bold defence, which is only possible when the words complained of as a libel are true, and the defendant is in a position to prove their truth. To justify a libel is to prove its truth, and a defendant in a libel action will not be allowed to justify unless he admits the statements constituting the alleged libel, even though he disputes their meanings as suggested by the plaintiff. And in his written defence he must state particularly the facts whereon he relies in support of his justification. Thus if he has charged a man with being a swindler, he must state the particular instances of fraud by which he means to support his charge. He cannot keep them quietly to himself until the trial of the action and then spring them upon the plaintiff. And even if his charge in the libel is of a general nature, he must, if he desires to justify, give full particulars of the facts on which he relies. It is no excuse that by giving these particulars he may be

hampered in his defence, as for example by giving the names of his witnesses. If he were not required to give these particulars, a defence of justification would be really nothing more than a repetition of the libel complained of. And the defendant must also be prepared to give these particulars before, and without the aid of interrogatories to, and discovery from the other party, for if he were allowed this postponement and assistance, it would amount to permitting a mere suspicion to justify a libel. The result would be that a libeller would presume upon the likelihood of his obtaining facts in justification from the person libelled.

Criminal proceedings.—There is an old maxim of the *criminal* law that, "the greater the truth the greater the libel." It is doubtful, however, whether this holds good to-day in any practical sense. *Primâ facie* it appears to be absolutely inconsistent with justice, but upon consideration it at least affords some reason for the criminal law of libel as it exists to this day. It probably really expresses the fact that a true defamatory statement would be more likely to stir up the resentment of the man against whom it is made, and so lead to a breach of the peace, than would such a statement which is false. The reason for the criminal law taking cognisance of libels is that they lead to a disturbance of the King's peace, and that being the case, unless its truth is specially brought into consideration, it is a matter of indifference to the Court whether the libel is true or not. Accordingly, by the Libel Act of 1843, it is provided that any one who maliciously publishes a defamatory libel shall be liable to fine or imprisonment for one year, or both; but any one who so publishes a defamatory libel, knowing it to be false, is liable to two years' imprisonment and a fine in addition. For truth to constitute an element in a defence to a criminal prosecution for libel it is necessary that the person prosecuted should also prove that it was *for the public benefit* that the libel was published. To obtain an opportunity to urge this defence at the trial, he must comply with the requirements of the statute, and first file a written plea in answer to the indictment or information. This plea must allege the truth of the libel with the same particularity as a justification is alleged in a civil action, and it must further allege "that it was for the public benefit that the said matters charged should be published, and the particular fact or facts by reason whereof it was for the public benefit." If after such a plea the defendant is convicted, the Court, in pronouncing sentence, may consider whether the guilt of the defendant is aggravated or mitigated by the plea, and by the evidence given to prove or disprove it. In the case of a private prosecution, if judgment is given for the defendant, he is entitled to recover his costs from the prosecutor; and if, upon a special plea of justification, the issue is found in favour of the prosecutor, he will be entitled to recover from the defendant the costs occasioned by the plea.

The foregoing does not refer to seditious, blasphemous, or obscene libels; or to libels on the administration of justice; or to newspaper libels, which latter are dealt with under the heading NEWSPAPERS.

Rival traders' goods.—In order that an action may be maintained for what is called "slander of goods," it is necessary that three things should be proved: that the defendant has disparaged the plaintiff's goods, that such disparagement was false, and that damage has resulted or is likely to result. Because the statement complained of was not proved to be untrue, and

because no special damage was proved, the respondent Mellin was unable, in the House of Lords case of *White* v. *Mellin*, to maintain an action against White for, as he alleged, libelling his goods. Mellin was the proprietor of the well-known food for infants sold by him in bottles enclosed in wrappers bearing the words "Mellin's Infants' Food." He was also in the habit of supplying White with these bottles, which White sold again to the public after affixing on Mellin's wrappers a label as follows:—"Notice. The public are recommended to try Dr. Vance's prepared food for infants and invalids, it being far more nutritious and healthful than any other preparation yet offered. Sold in barrels, each containing 1 lb. net weight, at 7½d. each, or in 7 lb. packets, 3s. 9d. each. Local Agent, T. White." This so-called local agent was really the proprietor of Dr. Vance's food. Though Mellin brought scientific evidence to show that his food was suitable for infants, especially up to the age of six months, and persons who could not digest starchy matters, and that Vance's food was unsuitable for such beings, nay pernicious and dangerous for very young infants, yet the action was dismissed on the ground that the label was merely the puff of a rival trader and that no cause of action was disclosed. With this dismissal the House of Lords concurred, their lordships pointing out that the disparaging statement was perfectly general, and would apply in its terms not only to Mellin's food but to all others that were offered to the public; and that the word "infants" included children above the age of six months, and there was no evidence that White's statement was untrue as to his food in relation to them. That there was no special damage proved has already been mentioned. *Thorley's Cattle Food Company* v. *Massam* is a case wherein a trader was restrained from publishing an untrue statement reflecting directly upon the goods sold by his rival.

LIBRARIES.—The establishment and regulation of public libraries are provided for, in England, by the Public Libraries Act, 1892, with its amending Acts of 1893 and 1901, the operation of these statutes being modified, to some extent, by the Local Government Act, 1894. Not only libraries, but public museums, art galleries, and science and art schools may be established under these Acts. The first provision of the Act is to constitute a *library district*, which for library purposes is defined to mean every urban district and every parish in England and Wales which is not within an urban district. But the Act is required to be specifically adopted by a library district before it can apply to that district. Where a parish is partly within and partly without an urban district, the Act has effect as if the part without the district was a separate parish; and the overseers for the parish will be the overseers for that part. But a *limitation on expenditure* for libraries is imposed. Thus a rate, or addition to a rate, cannot be levied for the purposes of the Act for any one financial year in any library district to an amount exceeding one penny in the pound. This is the statutory maximum rate. A library district may, however, adopt the Act subject to a condition that the maximum rate or addition to a rate to be levied for the purposes of the Act in that district, or in any defined portion of it, in any one financial year shall not exceed either one halfpenny or three-farthings in the pound. But if the condition fixes the limitation at one halfpenny it may be subsequently raised to three-farthings or altogether removed; or where it is for the time being fixed at three-farthings it may be removed.

Proceedings for adoption.—In a library district consisting of a parish

not within an urban district there are special provisions which have effect with respect to (*a*) the adoption of the Act; and (*b*) the fixing, raising, and removing of any limitation on the maximum rate to be levied for the purposes of the Act. These special provisions are:—(1) Any ten or more voters in the library district may address a requisition in writing to the overseers requiring them to ascertain the opinion of the voters in the district with respect to the questions stated in the requisition; (2) On receipt of the requisition the overseers are to proceed to ascertain by means of voting papers the opinion of the voters with respect to those questions; but the overseers are not to ascertain the opinion of the voters on any question with respect to the limitation of the rate unless required to do so by the requisition, or with respect to any limitation of the rate other than the limitations specified in the Act; (3) Every question so submitted to the voters is to be decided by the majority of answers to that question recorded on the valid voting papers, and where the majority of those answers are in favour of the adoption of the Act, the latter will forthwith, on the result of the poll being made public, be deemed to be adopted; (4) Where the opinion of the voters is ascertained upon the question as to the adoption of the Public Libraries Act, or upon a question as to the limitation of the rate, no further proceeding can be taken for ascertaining their opinion until the expiration of one year at least from the day when the opinion was last ascertained—that is to say, the day on which the voting papers were collected. By "voters" is meant those persons who are registered as parliamentary electors in respect of the occupation of property situate in the library district concerned. Special regulations are prescribed by the Act for ascertaining the opinion of the voters, and these are set out at length in the first schedule to the Act of 1892, together with a form of voting paper containing suggestive questions. When adopted the Act is carried into execution by a library authority consisting of not less than three nor more than nine "commissioners" appointed from the ranks of the voters. These commissioners, who must themselves be voters or qualified to vote, are a body corporate by the name of "The Commissioners for Public Libraries and Museums of the parish of —— in the county of ——," and they have perpetual succession and a common seal, with power to acquire and hold lands for the purposes of the Acts, without any license in mortmain. There are special statutory provisions for the retirement, by rotation, of the commissioners; their reappointment by the voters; the supplying of casual vacancies amongst their number; the number of their meetings; and the record of their proceedings. Disqualification for their office is the same as that for a parish or district councillor. Vestries of neighbouring parishes may combine in order to adopt and share the expenses of the execution of the Act; and parishes may be annexed to an adjoining library district.

Where a library district is an *urban district* the adoption of the Act is in the hands of the urban authority, who may adopt and fix the necessary rating limits by means of a resolution. Such a resolution must be passed at a meeting of the urban authority, and one month at least before the meeting; special notice thereof, and of the intention to propose the resolution, must be given to every member of the authority. The notice will be sufficiently given if it is either—(*a*) given in the mode in which notices to attend meetings of the authority are usually given; or (*b*) where there is no such mode, then signed by the clerk of the authority, and delivered to the

member or left at his usual or last known place of abode in England, or forwarded by post in a prepaid letter, addressed to the member at his usual or last known place of abode in England. The resolution must also be published by advertisement in some one or more of the newspapers circulating within the district of the authority; and also by causing notice thereof to be affixed to the principal doors of every church and chapel in the place to which notices are usually affixed; and also in such other manner as the authority thinks sufficient for giving notice thereof to all persons interested. The resolution comes into operation at such time not less than one month after the first publication of the advertisement of the resolution that the authority may have fixed by another resolution. A copy of the resolution must be sent to the Local Government Board. That the resolution has been duly passed is proved by a copy of the advertisement, unless the contrary is shown. After three months from the date of the first advertisement no objection can be made to the effect of the resolution, on the ground that notice of the intention to propose it was not duly given, or on the ground that the resolution was not sufficiently published. Two or more urban districts may combine for the purpose of adopting and putting into execution the provisions of the Act.

Execution of the Act.—The library authority has power, as already stated, to provide all or any of the following institutions, namely: Public libraries, public museums, schools for science, art galleries, and schools for art. For these purposes it may purchase and hire land, and erect, take down, rebuild, alter, repair, and extend existing buildings, and fit up, furnish, and supply the same with all requisite furniture, fittings, and conveniences. Where any one of these institutions has been established under the foregoing statutory powers, the authority may establish others of them without taking further proceedings for the adoption of the Act. No charge can be made for admission to such a library or museum, or, in the case of a lending library, for the use thereof by the inhabitants of the district; but the authority, if it thinks fit, can grant the use of a lending library to persons not inhabitants of the district, either gratuitously or for payment. For the purpose of the purchase of land by a library authority, the LANDS CLAUSES ACTS (*q.v.*), with the exception of the provisions relating to the purchase of land otherwise than by agreement, are incorporated with the Public Libraries Acts. The authority has certain powers of acquisition and disposal of land; and it may let a house or building, or any part thereof, or any land vested in them, which is not at the time of letting required for the purposes of the Act, but the rents and profits must be applied to such purposes. Persons holding land for ecclesiastical, parochial, or charitable purposes may, subject to certain provisions, give, sell, or exchange not more than one acre of it for the purposes of these Acts.

The general management, regulation, and control of the library, museum, art gallery, or school is vested in and exercised by the library authority, which can provide books, newspapers, maps, and specimens of art and science, and cause them to be bound and repaired when necessary. The same authority has also in its hands the appointment and dismissal of officers and servants; it can make regulations for the safety and use of every library, museum, gallery, and school under its control, and for the admission of the public thereto.

And library authorities of different districts may share the cost of erection and upkeep and the use of their respective libraries; and authorities have also power to accept parliamentary grants from the Department of Science and Art, and carry out any educational and other conditions imposed upon them by that department.

Financial provisions.—The expenses of a library authority may be defrayed: (*a*) Where the library district is a municipal borough, out of the borough fund or borough rate, or a separate rate to be made, assessed, and levied in like manner as the borough rate; and (*b*) where the library district is an urban district other than a borough, out of the rate applicable to the general expenses incurred in the execution of the Public Health Acts, or a separate rate to be made, assessed, and levied in like manner as the rate so applicable; and (*c*) where the library district is a parish, out of a rate to be raised with and as part of the poor rate; subject, however, to this important qualification, that every person assessed for the poor rate in the parish in respect of lands used as arable, meadow, or pasture ground only, or as woodlands or market-gardens, or nursery grounds, is entitled to an allowance of two-thirds of the sum assessed upon him in respect of those lands for library purposes. There are special statutory provisions for defraying the expenses of a library district which is a parish and is not combined with any other parish for library purposes. In the case of an annexed parish, or part of a parish, it will contribute proportionately to the rate. Library authorities have power to borrow money under certain conditions.

There are, too, special provisions relating to the *accounts* of library authorities and their *audit*. The Act of 1892 enacts in this respect as follows: "(1) Separate accounts shall be kept of the receipts and expenditure under this Act of every library authority and their officers, and those accounts shall be audited in like manner and with the like incidents and consequences, in the case of a library authority being an urban authority, and of their officers, as the accounts of the receipts and expenditure of that authority and their officers under the Public Health Acts. (2) The accounts of the receipts and expenditure of a library authority being commissioners appointed under this Act, and of their officers, shall be audited yearly by a district auditor in like manner and with the like incidents and consequences as in the case of an audit under the Acts relating to the relief of the poor, and those commissioners shall be a local authority within the meaning of the District Auditors Act, 1879. (3) The accounts of the receipts and expenditure under this Act of any library authority other than the council of a municipal borough shall be open at all reasonable times to the inspection, free of charge, of any ratepayer in the library district, and any such ratepayer may, without charge, make copies of and extracts from

such accounts; and if any library authority or any person being a member thereof or employed by them and having the custody of the accounts fails to allow the accounts to be inspected, or copies or extracts to be made, as required by this section, such authority or person shall for each offence be liable, on summary conviction in manner provided by the Summary Jurisdiction Acts, to a fine not exceeding five pounds."

In **London** the provisions of the Acts apply with certain slight modifications, the expression "urban authority" including the common council of the City of London and a metropolitan borough council, and the expression "district" or "urban district" including the City of London and a metropolitan borough; in the *City*, however, the maximum rate is not limited to one penny in the pound, and the Lord Mayor would obtain the opinion of the voters on the requisition of the common council. There are also Acts in force in Scotland and in Ireland similar to those the subject of this article.

Bye-laws.—A library authority may make bye-laws for certain purposes relating to any library, museum, or gallery or school under their control by virtue of the Public Libraries Acts. These purposes are: (*a*) For regulating the use of the premises and of the contents, and for protecting the same and the fittings, furniture, and contents from injury, destruction, or misuse; (*b*) for requiring from any person using the same a guarantee or security against the loss of, or injury to, any book or other article; (*c*) for enabling the officers and servants of the library authority to exclude or remove persons committing any of the offences mentioned below, or against the bye-laws.

These **offences** are created by the Libraries Offences Act, 1898, and are punishable as well if committed in a library or reading-room maintained by a registered industrial and provident or friendly society, or trade union, as in a public library under the above Acts. Section 2 of the Act enacts that "any person who, in any library or reading-room to which this Act applies, to the annoyance and disturbance of any person using the same: (1) behaves in a disorderly manner; (2) uses violent, abusive, or obscene language; (3) bets or gambles; (4) or who, after proper warning, persists in remaining therein beyond the hours fixed for the closing of such library or reading-room, shall be liable on summary conviction to a penalty not exceeding forty shillings."

LICENCE.—It is not proposed in this article to refer to licenses of the class mentioned in the article on the EXCISE, or to the variety of that class associated with the liquor trade, and which is dealt with in the article on LICENSING. The licence now the subject of our attention is that permission which one private person gives to another to do some act which, without that permission, would be an unlawful one. The other licenses, those the subject of the Excise and the liquor traffic and other laws, may be distinguished from licenses of the class just defined by the fact that they issue from a public or governmental authority and are not the permissions of private individuals.

The case always cited in connection with this subject is the well-known authority *Wood* v. *Leadbitter*. It should be premised that the licence considered by this case was one given in respect of real property or an interest

therein, which, under statute, and particularly the Statute of Frauds, should be in accordance with certain statutory forms, if it is wished to confer upon any one some estate therein. Had the decision in *Wood* v. *Leadbitter* been other than it was, it would be possible, other things equal, for a person who could get any one to swear to even a parol licence by the owner of some land, to build a house upon it, and thereby, without any conveyance by deed, to acquire substantially all the beneficial right in that house and land of a legal owner of the freehold thereof.

The facts of the case were as follows: The Earl of Eglintoun was steward of the Doncaster races, 1843. Tickets for admission to the grand stand, which were issued under the authority of the stewards, were sold in the town for a guinea each, and it was understood that they entitled the holders to come into the stand and the enclosure surrounding it during every day of the races, which lasted four days. The plaintiff purchased one of these tickets, and came into the enclosure on one of the race days; and while the races were going on the defendant, who was an officer of police, by the order of Lord Eglintoun, desired him to go out of the enclosure (in consequence of some malpractices of his on a former occasion connected with the turf), telling him that if he did not do so force would be used to turn him out. The plaintiff refused to depart, whereupon the defendant, by the order of Lord Eglintoun, took him by the arm and forced him out, using no unnecessary violence. The plaintiff thereupon took an action against the officer for damages for the assault. Upon the trial the judge directed the jury that, assuming the ticket to have been sold to the plaintiff under the sanction of Lord Eglintoun, it still was lawful for Lord Eglintoun, *without returning the guinea and without assigning any reason*, to order the plaintiff to quit the enclosure, which was admitted to be his property; and that if the jury were satisfied *that notice was given* to the plaintiff requiring him to quit the ground, and that, before he was forcibly removed by the defendant, *a reasonable time had elapsed during which he might have gone away voluntarily*, then the plaintiff was not at the time of the removal on the ground by the leave and licence of Lord Eglintoun. Note that at the time of the removal the plaintiff was no longer on the ground by virtue of the licence; he had then become a trespasser. The assault was therefore an act for which the plaintiff had no right to recover damages; it was, in fact, justified. Accordingly, his only grievance was the revocation of the licence, and if that was done wrongfully his remedy would have been an action for breach of contract. For, according to *Kerrison* v. *Smith*, the right of a licensor to revoke a licence is consistent with a right of action against the licensor *for breach of contract* not to revoke the licence.

The question in *Wood* v. *Leadbitter* was whether Lord Eglintoun had a right to revoke the licence. Now the right claimed by the plaintiff was a right, during a portion of each day, for a limited number of days, to pass into and through and to remain in a certain enclosure belonging to Lord Eglintoun; to go and remain where, if he went and remained, he would, but for the ticket, be a trespasser. This was a right affecting land at least as obviously and extensively as a right of way over the land—it was a right of way and something more; a right which cannot be created in any other way than by deed.

A mere licence is therefore revocable. But that which is called a licence is frequently something more than a licence; it often comprises or is connected with a "grant," and then the party who has given it, whether it is under seal or not, cannot in general revoke it so as to defeat his grant to which it was incident. If, therefore, to take an extreme case, a man grants to another a right to fish in waters wholly enclosed in land belonging to the grantor, the grantee will have an irrevocable licence to pass over that land to reach the water whether the licence is by deed, mere writing or words, or implied from the peculiar circumstances of the grant. A licence to enter upon land, however, is not implied by the sale of *goods* which merely happen to be stored on the land; unless, perhaps, the person in possession of the land is a party to the sale.

But where a licence is in respect of *personal property* and not of an interest in lands, the general position is different. Then, if the licence is for valuable consideration it cannot be lawfully revoked. And to find whether it is intended to be revocable and there has been any valuable consideration, the Court, if necessary, will look to the whole document. If there are in it any mutual obligations imposed on the licensee and the licensor which are inconsistent with an intention that the licence should be revocable, the Court will declare it to be irrevocable. The case of *Butler* v. *Manchester, Sheffield, and Lincolnshire Railway Company* is very instructive. Here the question arose whether a railway company had a right to remove from their carriage a passenger who had paid his fare but lost his ticket, and, as the company had removed him, the Court held them liable to him for damages for assault, and distinguished the licence conferred by the ticket from the licence in *Wood* v. *Leadbitter's* case. The railway ticket was not a licence in respect of an interest in land; it was a licence in respect of an interest in a railway carriage, which is a species of personal property. And so, where a dock company refused to allow a ship to use their dock in accordance with the terms of their licence or contract with her owners, it was held that the latter were entitled to damages as the subject-matter of the licence or contract—the dock—was not an interest in land within the meaning of Statute of Frauds.

From the case of *Wood* v. *Leadbitter*, it will be gathered that it is necessary when revoking a licence to give the licensee some notice of the revocation and also a reasonable opportunity to remove himself from the premises. And he should also have a like opportunity to remove any goods he may have been licensed to place therein. Accordingly, in *Cornish* v. *Stubbs*, it was held that where a man had been licensed to warehouse timber on a wharf, for which accommodation he paid something in the nature of rent, that licence could not be revoked without a reasonable time being allowed him to remove the timber.

If a man has merely a licence or bare permission to enter upon the property of another, the licensor is not responsible to him in respect of any damage he may sustain through any defects in the property; but it would be otherwise if he were in the premises at the invitation of the owner.

LICENSED VICTUALLERS.—The law on licenses for the sale of intoxicating liquors is now contained in the consolidating Licensing (Consolidation) Act, 1910.—**Offences.**—The exercise of the "trade" is so carefully regulated by statutory provision that it is of importance that the licensed victualler

should have some knowledge of those acts which are prohibited, and in respect of the commission of which he may become liable to a fine or forfeiture of his licence, or even to imprisonment. This article will therefore contain a summary of some of the principal offences associated with the licensed trade. In the first place it should be noted that *drunkenness* or any violent, quarrelsome, or riotous conduct is not allowed to take place on licensed premises; nor may the licensed victualler sell any intoxicating liquor to a drunken person: the penalty is £10 for the first offence, and £20 for the second. This is an old-standing and well-known offence, but the Licensing Act, 1902, introduced the important provision which is now contained in the Act of 1910, that "where a licensed person is charged with permitting drunkenness on his premises, and it is proved that any person was drunk on his premises, it shall lie on the licensed person to prove that he and the persons employed by him took all reasonable steps for preventing drunkenness on the premises." Before this Act was passed, in order to establish a charge of "permitting drunkenness," it was necessary for the prosecution to prove knowledge, connivance, or negligence on the part of the licensed victualler concerned, but it will be seen that now, once the prosecution has proved that some one was drunk on the premises, it lies upon the person charged to establish his innocence. The same Act has also introduced a prohibition against the sale of intoxicating liquors to any person declared to be an *habitual drunkard*. Upon the conviction of such a person, whether he is ordered to be detained or not, a notice of the conviction is sent by the Court to the local police authorities, and the convicted person is informed that the notice is to be so sent. Thereupon, if the drunkard within three years after the date of the conviction purchases any liquor he will be liable to a fine. But more important to the licensed victualler is the provision that if within that period he "knowingly sells, supplies, or distributes, or allows any person to sell, supply, or distribute intoxicating liquor to, or for the consumption of, any such person, he shall be liable on summary conviction, for the first offence, to a fine not exceeding £10, and for any subsequent offence in respect of the same person, to a fine not exceeding £20." Regulations are made by the police authorities for the purpose of securing the giving of information to licensed victuallers of these convictions, and for assisting in the identification of the convicted persons. And whilst noticing this Act the attention of the reader should be directed to its provisions for a record of every conviction of a licensed person, and which provisions are set out below under the heading of "convictions."

Sale to children.—Two important recent statutes are the Intoxicating Liquors (Sale to Children) Act, 1901 (now repealed, but included in the Act of 1910), and the Children Act, 1908. These first provide that "no holder of a licence shall knowingly sell or deliver, or allow any person to sell or deliver, save at the residence or working-place of the purchaser, any description of intoxicating liquor to any person under the age of fourteen years for consumption by any person on or off the premises." But this prohibition does not extend to such intoxicating liquors as are sold or delivered in corked and sealed vessels, in quantities not less than one reputed pint, for consumption off the premises only. By the term "corked" is meant closed with a plug or stopper, whether it is made of cork or wood or glass, or some other material; and by the expression "sealed" is meant secured with any substance without the destruction of which the cork, plug, or stopper cannot be withdrawn. It is, however, expressly provided that

nothing in the Act shall prevent the employment by a licensed person of a member of his family or his servant or apprentice, as a messenger to deliver intoxicating liquors. Any one who sends a child to purchase or obtain delivery of intoxicating liquors must also have regard to the foregoing prohibition, for otherwise he will become liable to similar penalties to those imposed upon a licensee. And the latter must not sell or allow to be sold, to be consumed on the premises, any description of *spirits* to any person who has the appearance of being under the age of sixteen years. The penalty may be 20s. for the first offence and 40s. for the second offence; and it will lie upon the defendant to prove that the person illegally dealt with was actually over the prohibited age.

By the later of the above Acts it is unlawful, under a penalty of 40s. for a first offence, for a licence-holder to allow a child of fourteen years of age or under to be at any time in the bar of the licensed premises, except during closing hours, unless the child is his own, or one residing on the premises and not employed in the business, and in the bar only on its way, because there is no other, to or from an unlicensed part of the premises. This prohibition does not apply in the case of railway refreshment-rooms. It is also a punishable offence for any one to give intoxicating liquor to a child under five years of age, *in any place whatever*, except upon the order of a medical man, or in case of sickness or apprehended sickness or other urgent cause. A person found drunk while in charge of a child under seven may be apprehended and fined.

Various.—Any one who sells or exposes for sale by retail any intoxicating liquor which he is *not licensed* to sell, or at a place where he is not authorised by his licence to sell, incurs heavy penalties and disqualification from holding a licence. All intoxicating liquor must be sold in imperial *measures* when sold by retail, in quantities of not less than half a pint and not in cask or bottle. The penalty is £10 for the first offence, £20 for a subsequent offence, and forfeiture of the illegal measure in which the liquor was sold; and it is incurred as well by the person who allows the liquor to be illegally sold by any one under his control or in his employment as by the person who actually serves and sells the liquor. But an employer would not be liable if he had expressly directed his servant not to sell any liquor in any other than legal measures. The prohibition, it will be noted, does not extend to less quantities than half a pint, and consequently a "glass" of beer of less quantity than half a pint may be lawfully sold and served in an unstamped glass, unless of course a half a pint or greater quantity is specifically demanded. Selling in this connection means serving or delivering; wherefore a publican was held liable to a penalty in an instance where the customer, who was in a parlour out of sight of the bar, asked for a pint of beer, and the publican, though drawing the beer in a lawful measure, poured it into an unstamped jug for delivery to the customer, who was unable to watch the transfer, and was not aware that the beer had originally been drawn in a stamped measure.

Unauthorised internal communication between licensed premises and a house of public resort is prohibited, as also is the storing of liquor which the licensee is unauthorised to sell.

An offence is also committed by allowing a purchaser of intoxicating liquor, when the seller's licence is not for consumption "*on the premises*,"

to drink it on the premises, or on a highway adjoining; the penalty is £10 for the first offence, and £20 for the second. The expression "on the premises" includes any premises adjoining or near the premises where the liquor is sold, if belonging to the seller, and the liquor is under his control or used by his permission. In order to prevent the evasion of the law in this respect section 66 (2) of the Act of 1910 extends the last-mentioned offence in the following precise terms: If any person, having a licence to sell intoxicating liquors not to be drunk on the premises, himself takes or carries, or employs or suffers any other person to take or carry, any intoxicating liquor out of or from the premises of such licensed person for the purpose of being sold on his account, or for his benefit or profit, and of being drunk or consumed in any place whatsoever (whether enclosed or not, and whether or not a public thoroughfare) other than the licensed premises with intent to evade the conditions of the licence, the holder of the licence shall be liable in respect of each offence to a fine not exceeding in the case of the first offence £10, and in the case of any subsequent offence £20. If the place is a house, tent, shed, or other building of any kind whatever belonging to the holder of the license, or hired, used, or occupied by him, he shall be deemed, unless the contrary is proved, to have intended to evade the conditions of the licence.

Internal communication beeween licensed premises and house of public resort.—Every person who makes or uses, or allows to be made or used, any internal communication between any licensed premises and any unlicensed premises which are used for public entertainment or resort, or as a refreshment house, will be liable to a penalty of £10 for every day during which such communication remains open. In addition to this penalty the person convicted, if he is the holder of a licence, will forfeit the licence. *Illicit storing of liquor.*—If any licensed person has in his possession on the premises in respect of which his licence is granted any description of intoxicating liquor which he is not authorised to sell, unless he can account for its possession to the satisfaction of the Court, he will forfeit the liquor and the vessels containing it, and will also be liable to a penalty for the first offence of £10, and for any subsequent offence of £20. And every licensed person must cause his *name to be painted or fixed*, and kept painted or fixed on the premises in respect of which his licence is granted, in a conspicuous place and in such form and manner as the Commissioners of Inland Revenue may from time to time direct. And after the name must appear the word "licensed," and also words sufficient, in the opinion of the commissioners, to express the business for which his licence has been granted, and, in particular, words expressing whether the licence authorises the sale of intoxicating liquor to be consumed *on* or *off* the premises only, as the case may be. No one may have any words or letters on his premises importing that he is authorised as a licensed person to sell any intoxicating liquor which he is not in fact duly authorised to sell. Every person who acts in contravention of this provision will be liable to a penalty not exceeding for the first offence £10, and not exceeding for the second and any subsequent offence £20.

Keeping disorderly house.—A licensed person who knowingly permits his premises to be the habitual resort or place of meeting of reputed prostitutes, will be liable, if he allows them to remain thereon longer than is necessary for the purpose of obtaining reasonable refreshment, to a penalty

not exceeding for the first offence £10, and not exceeding £20 for the second and any subsequent offence. And whether the object for their so resorting or meeting is or is not prostitution is an immaterial factor in the offence. *Forfeiture of licence for harbouring thieves, &c.*—A penalty is also imposed on keepers of licensed houses for harbouring thieves, &c., by the Prevention of Crimes Act, 1871, of which section 10 enacts as follows: "Every person who occupies or keeps any lodging-house, beer-house, public-house, or other house or place where intoxicating liquors are sold, or any place of public entertainment or public resort, and knowingly lodges or knowingly harbours thieves or reputed thieves, or knowingly suffers them to meet or assemble therein, or knowingly allows the deposit of goods therein, having reasonable cause for believing them to be stolen, shall be guilty of an offence against this Act, and be liable to a penalty not exceeding £10, and in default of payment to be imprisoned for a period not exceeding four months, with or without hard labour, and the Court before which he is brought may, if it think fit, in addition to or in lieu of any penalty, require him to enter into recognisances, with or without sureties, and if in Scotland to find caution, for keeping the peace or being of good behaviour during twelve months; provided that—(1) No person shall be imprisoned for not finding sureties or cautioners in pursuance of this section for a longer period than three months; and (2) the security required from a surety or cautioner shall not exceed £20. And any licence for the sale of any intoxicating liquors, or for keeping any place of public entertainment or public resort, which has been granted to the occupier or keeper of any such house or place as aforesaid, may, in the discretion of the Court, be forfeited on his first conviction of an offence under this section, and on his second conviction for such an offence his licence shall be forfeited and he shall be disqualified for a period of two years from receiving any such licence; moreover, where two convictions under this section have taken place within a period of three years in respect of the same premises, whether the persons convicted were or were not the same, the Court shall direct that for a term not exceeding one year from the date of the last of such convictions no such licence as aforesaid shall be granted to any person whatever in respect of such premises; and any licence granted in contravention of this section shall be void." *Permitting premises to be a brothel.*—A licensed victualler who is convicted of permitting his premises to be a brothel will be liable to a penalty not exceeding £20, and to a forfeiture of his licence, and he will be disqualified for ever from holding any licence for the sale of intoxicating liquors.

Harbouring constable.—A licensed person who—(1) knowingly harbours or knowingly suffers to remain on his premises any constable during any part of the time appointed for such constable being on duty, unless for the purpose of keeping or restoring order, or in execution of his duty; or (2) supplies any liquor or refreshment, whether by way of gift or sale, to any constable on duty unless by authority of some superior officer of such constable; or (3) bribes or attempts to bribe any constable, will thereby render himself liable to a penalty not exceeding £10 for the first offence, and not exceeding for the second or any subsequent offence £20. *Permitting gaming.*—If any licensed person—(1) suffers any gaming or any unlawful game to be carried on in his premises; or (2) opens, keeps, or uses, or suffers his house to be opened, kept, or used in contravention of the "Act for the Suppression of Betting Houses,"

he will be liable to a penalty not exceeding for the first offence £10, and not exceeding for the second and any subsequent offence £20. Any *constable may at all times enter* on any licensed premises, or any premises in respect of which an occasional licence is in force, for the purpose of preventing or detecting the violation of any of the provisions of the licensing laws which it is his duty to enforce. And every person who, by himself, or by any person in his employ or acting by his direction or with his consent, refuses or fails to admit any constable in the execution of his duty demanding to enter in pursuance of these Acts, will be liable to a penalty not exceeding for the first offence £5, and not exceeding for the second and every subsequent offence £10.

Power to exclude from licensed premises.—Any licensed person may refuse to admit to and may turn out of the premises in respect of which his licence is granted any person who is drunken, violent, quarrelsome, or disorderly, and any person whose presence on his premises would subject him to a penalty under the licensing laws. And any such disorderly person who, upon being requested in pursuance of the law by the licensed victualler, or his agent or servant, or any constable, to quit the premises, refuses or fails so to do, becomes liable to a penalty not exceeding £5. All constables are required, on the demand of the licensed victualler, or his agent or servant, to expel or assist in expelling disorderly persons from the premises; and they may use such force as may be necessary for that purpose. The Court committing any one to prison for non-payment of a penalty for this offence, may order him to be imprisoned with hard labour. *Power of justices to close licensed premises in case of riot.*—Any two justices of the peace acting for any county or place where any riot or tumult happens or is expected to happen, may order every licensed person in or near the place where the riot or tumult happens or is expected to happen to close his premises during whatever time they may order. Any one who keeps open his premises for the sale of intoxicating liquors during the time at which the justices have ordered them to be closed is liable to a penalty not exceeding £50. It is lawful for any person acting by order of the justices to use such force as may be necessary for the purpose of closing the premises.

The name of the licensee must be affixed to the licensed premises with a statement of the business for which his licence is granted.

Closing of premises.—If during the period during which any premises are required to be closed any person is found on those premises, he will be liable to a penalty of £2 unless he satisfies the Court that he was an inmate, servant, or a lodger on the premises, or a *bonâ fide* traveller, or that otherwise his presence there was not in contravention of the law with respect to the closing of licensed premises. Any constable may demand the name and address of a person found on the premises during the period during which they are required to be closed. If he has reasonable ground to suppose that the name or address given is false, he may require evidence of the correctness

thereof, and may, if the person fails upon demand to give his name or address, or such evidence, apprehend him without warrant, and carry him, as soon as practicable, before a magistrate. Any one so required by a constable to give his name and address, who fails to give them, or gives a false name or address, or gives false evidence with respect to the name and address, is liable to a penalty not exceeding £5. Every one who by falsely representing himself to be a traveller or a lodger buys or obtains or attempts to buy or obtain at any premises any intoxicating liquor during the period during which the premises are closed, will be liable to a penalty not exceeding £5. Any person who, during the time at which premises for the sale of intoxicating liquors are directed to be closed by or in pursuance of this Act, sells or exposes for sale in such premises any intoxicating liquor, or opens or keeps open such premises for the sale of intoxicating liquors, or allows any intoxicating liquors although purchased before the hours of closing to be consumed in such premises, will for the first offence be liable to a penalty not exceeding £10, and for any subsequent offence to a penalty not exceeding £20. But there is no law which precludes a person licensed to sell intoxicating liquor to be consumed on the premises from selling such liquor at any time to *bonâ fide* travellers or to persons lodging in his house; though no person holding a six-day licence can sell any intoxicating liquor on Sunday to any person whatever not lodging in his house. Nor is there anything to preclude the sale at any time, at a railway station, of intoxicating liquors to persons arriving at or departing from the station by railroad.

If in the course of any proceedings which may be taken against a licensed person for infringing the provisions of the law relating to closing, the defendant fails to prove that the person to whom the intoxicating liquor was sold is a *bonâ fide* traveller, but the justices are satisfied that the defendant truly believed that the purchaser was a *bonâ fide* traveller, and further that the defendant took all reasonable precaution to ascertain whether or not the purchaser was such a traveller, the justices must dismiss the case as against the defendant. If they think that the purchaser falsely represented himself to be a *bonâ fide* traveller, they can direct proceedings to be instituted against him. For the purposes of the licensing law no one will be considered a *bonâ fide* traveller unless the place where he lodged during the preceding night is at least three miles distant from the place where he demands to be supplied with liquor; the distance is calculated by the nearest public thoroughfare.

No person keeping a licensed house is liable to a penalty for supplying intoxicating liquors, after the hours of closing, to private friends *bonâ fide* entertained by him at his own expense.

Convictions.—Where a licensed person is convicted of an offence committed by him as such, it is the duty of the clerk of the licensing justices to enter notice of the conviction in the register of licences kept by him; if the clerk of the court is not the clerk of the licensing justices, he

forthwith sends notice of the conviction to the clerk of the licensing justices. On an application for the grant, renewal, or transfer of a licence the licensing justices have regard to any entries in the register of licences relating either to the person by whom, or to the premises in respect of which, the licence is to be held. When a conviction relating to any premises is entered in the register of licences, the clerk of the licensing justices serves notice of the conviction on the owner of the premises. Since 1st January, 1903, convictions are not recorded on a licence. If the licences of two persons licensed in respect of the same premises are forfeited within any period of two years, the premises themselves will be disqualified for one year from the date of the last forfeiture. But where any premises are so disqualified notice thereof must be served upon the owner of the premises. A conviction under the licensing laws is not after five years from its date receivable in evidence against any person for the purpose of subjecting him to an increased penalty or to any forfeiture.

Protection of owners.—Where the tenant of licensed premises is convicted of an offence against the licensing laws, and the offence is one the repetition of which may render the premises liable to be disqualified from receiving a licence for any period, it becomes the duty of the clerk of the licensing justices to serve notice of every such conviction on the owner of the premises. The owner then may take proceedings to protect his property and the licence.

Evidence of sale or consumption.—In proving the sale or consumption of intoxicating liquor for the purpose of any proceeding relative to an offence under the licensing laws, it is not necessary to show that any money actually passed or any intoxicating liquor was actually consumed, if the Court is satisfied that a transaction in the nature of a sale actually took place, or that any consumption of intoxicating liquor was about to take place. Proof of consumption, or intended consumption, of intoxicating liquor on licensed premises, by some person other than the occupier of or a servant in the premises, is evidence that the liquor was sold to the person consuming, or being about to consume, or carrying it away by or on behalf of the holder of the licence.

Payment of wages in public-houses is expressly forbidden by the Payment of Wages in Public-Houses Prohibition Act, 1883. In this Act the expression "workman" means any person who is a labourer, servant in husbandry, journeyman, artificer, handicraftsman, or is otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, but does not include a domestic or menial servant, nor any person employed in or about any mine to which the Coal Mines Regulation Act, 1872, or the Metalliferous Mines Regulation Act, 1872, applies.

It enacts that no wages shall be paid to any workman at or within any public-house, beershop, or place for the sale of any spirits, wine, cider, or other spirituous or fermented liquor, or any office, garden, or place belonging

thereto or occupied therewith, save and except such wages as are paid by the resident owner or occupier of such public-house, beershop, or place to any workman *bonâ fide* employed by him.

Every person who contravenes or fails to comply with or permits any person to contravene or fail to comply with the Act is liable to a penalty of £10 for each offence. And in the event of any wages being paid by any person in such contravention, for or on behalf of any employer, the employer himself shall be guilty of an offence against the Act, unless he can prove that he had taken all reasonable means in his power for enforcing the provisions of the Act and to prevent such contravention.

Price for certain sales not recoverable.—The Tippling Act of George II., as amended by the like Act of 1862, precludes the seller of certain small quantities of spirits from recovering the price where the sale is on credit. The Act of George II. is as follows:—"No person or persons whatsoever shall be entitled unto, or maintain any cause, action, or suit for, or recover either in law or equity, any sum or sums of money, debt, or demands whatsoever, for or on account of any *spirituous liquors*, unless such debts shall have really and *bonâ fide* been contracted at one time to the amount of twenty shillings or upwards; nor shall any particular article or item in any account or demand for distilled spirituous liquors be allowed or maintained where the liquors delivered at one time, and mentioned in such article or item, shall not amount to the full value of twenty shillings at the least, and that without fraud or covin, and where no part of the liquors so sold or delivered shall have been returned or agreed to be returned directly or indirectly; and in case any retailer of spirituous liquors, with or without a licence, shall take or receive any pawn or pledge from any person or persons whatsoever, by way of security for the payment of any sum or sums of money owing by such person or persons for such spirituous liquors or strong waters, every such person or persons offending herein shall forfeit and lose the sum of forty shillings for each and every pawn or pledge so taken in or received by him or them, to be levied and recovered by warrant under the hand and seal of one justice of the peace where the offence is committed, and that one moiety thereof shall be to the use of the poor of the parish where such offence is committed, and the other moiety to the informer or informers; and the person or persons to whom any such pawn or pledge doth or shall belong, shall have the same remedy for recovering such pawn or the value thereof as if it had never been pledged." But by the Act of 1862 this prohibition does not apply to any case where the spirituous liquors are (1) sold to be consumed elsewhere than on the premises where sold; and (2) are delivered at the residence of the purchaser thereof, in quantities not less at any one time than a reputed quart. And of considerable importance is section 182 of the County Courts Act, 1889, which enacts that—"No action shall be brought or be maintainable in any county or other court to recover any debt or sum of money alleged to be due in respect of the sale of any ale, porter, beer, cider, or perry which was consumed on the premises where sold or supplied, or in respect of any money or goods lent or supplied, or of any security given for, in, or towards the obtaining of such ale, porter, beer, cider, or perry." *See* LICENSING.

LICENSING.—Under this head may be grouped that large body of our

law which regulates, in England and Wales, the sale by retail of intoxicating liquor of any kind, and is now contained in the Licensing (Consolidation) Act, 1910. Before that statute became law the Acts which it repealed, and whose provisions it almost entirely adopted, were known in general terms as the Licensing Acts, of which those of 1828, 1872, 1874, 1902, 1904, and 1906 may be said to have been the chief. The provisions of the Act of 1904, which extended the power of the justices to refuse renewals, and provided for compensation where redundant licences are withdrawn, are set out, as now contained in the Act of 1910, in detail in the articles on LICENSING in the Appendix to this volume. The licences to which the Licensing Act has special reference are those granted by the justices, and any of which throughout this article will generally be called by the name of "licence" simply. Not all traders in intoxicating liquors require such a licence; but another licence—the excise licence—is necessary in every case, either alone or jointly, with the licence of the justices. The excise licence is a condition imposed for the purpose of yielding revenue to the State; but the object of the licence of the justices is the regulation of the liquor trade so that its evils may be minimised as much as possible and its exercise be made subservient to the general good of the community. An excise licence is the only condition in the following cases:—(1) To sell intoxicating liquor by wholesale. (2) To sell spruce or black beer. (3) To sell intoxicating liquor in theatres in pursuance of the Acts on that behalf. (4) To sell intoxicating liquor on passenger vessels. (5) For medical practitioners, chemists, and druggists to sell spirits made up in medicine for such persons, or medicated or methylated spirits. (6) To sell any intoxicating liquor in a canteen under the authority of the Secretary for War or of the Admiralty. (7) To sell intoxicating liquor for consumption on a railway restaurant car. (8) In either the second, third, or fourth of the above cases to sell by retail for consumption off the premises when the excise licence taken out by the dealer is "for premises which are exclusively used for the sale of intoxicating liquors, or of intoxicating liquors and mineral waters, or other non-intoxicating drinks, and which have no internal communication with the premises of any person who is carrying on any other trade or business." From the first six of these cases it will be seen that, generally speaking, a wholesale wine, spirit, and beer dealer does not require a justices' licence; the only condition to his lawfully carrying on business as such being an excise licence. On the other hand it will be seen that the eighth case prevents a grocer, or other like trader, from retailing intoxicating liquor without a justices' licence. In the licensing laws the term "intoxicating liquor" means spirits, wine, beer, porter, cider, perry, and sweets, and any fermented, distilled, or spirituous liquor which cannot be legally sold without an excise licence.

Prohibition of sale of intoxicating liquors without licence.—No one can sell or expose for *sale by retail* any intoxicating liquor without being duly licensed, or at any place where he is not authorised by his licence to sell it. Any one who sells or exposes for sale *by retail* any intoxicating liquor which he is not

licensed to sell by retail, or sells or exposes for sale any intoxicating liquor at any place where he is not authorised by his licence to sell it, will be subject to the following penalties; that is to say—(1) For the first offence, to a penalty not exceeding £50, or to imprisonment with or without hard labour for a term not exceeding one month; (2) For the second offence, to a penalty not exceeding £100, or to imprisonment with or without hard labour for a term not exceeding three months, and he may be disqualified for any term not exceeding five years from holding a licence for the sale of intoxicating liquors; (3) For the third and any subsequent offence, to a penalty not exceeding £100, or to imprisonment with or without hard labour for a term not exceeding six months; and he may be disqualified for any term of years or for ever from holding any licence for the sale of intoxicating liquors. In addition to any such penalty any one convicted of a second or any subsequent offence, if he is the holder of a licence, will forfeit that licence; and in the case of a conviction of any of the foregoing offences, the Court may declare all intoxicating liquor found in his possession, and the vessels containing such liquor, to be forfeited. But no penalty will be incurred by the heirs, executors, administrators, or assigns of a licensed person who *dies* before the expiration of his licence; or by the trustee of one who has been adjudged a *bankrupt*, or whose affairs are liquidated by arrangement before the expiration of his licence. These exemptions only apply, however, in respect of a sale or exposure for sale of intoxicating liquor, when the sale or exposure for sale is made on the premises specified in the licence, and takes place prior to the special sessions then next ensuing, or (if such special session is held within fourteen days next after the death of the said person or the appointment of a trustee in the case of his bankruptcy, or the liquidation of his affairs by arrangement) takes place prior to the special session held next after the special session last mentioned.

Disqualifications.—No licence will be granted to any person, or in respect of any premises, declared under the Act to be disqualified during the continuance of such disqualification. A licence will be void if held by any one so disqualified, or attached to premises so disqualified. The qualification of premises is noted on page 337; here the attention of the reader will be directed to the personal disqualifications declared by the Licensing Act, the extent of the disqualification varying in the different cases. (1) A licensed dealer in game would appear to be inferentially disqualified by the Game Act, 1851; (2) so also disqualified is a sheriff's officer or any other officer executing the legal process of a court of justice in England or Wales while he is such an officer; and for life, (3) any one convicted of forging a justice's licence or who makes use of a forged justices' certificate, knowing it to be forged; (4) any one who has been convicted of felony; (5) any person who by virtue of any other Act than the Licensing Act is disqualified for holding a justices' licence, the disqualification to continue as provided under that Act; for life, (6) any licensed person who has been convicted for permitting his premises to be used as a brothel; for a term mentioned in the order, (7) a person who has been convicted for illicit selling of intoxicating liquor.

The functions of the justices.—The licensing laws are administered by the justices at a "meeting," and not at a "court," so far as regards any question touching the granting, withholding, renewal, or transfer of any licence; and so also as regards any question relating to the fitness of the person applying for a licence; or of the house intended to be kept by that person. These questions are determined by the majority of the justices, not disqualified, who are present when they arise. An abstention from voting is equivalent to a vote against the licence; the chairman has not a casting vote in the event of an equal division of votes, which will have the effect of a refusal of the application in respect of which the vote has been taken. Every licence bears a seal verifying the determination of the majority. In determining licensing questions the justices have a very wide discretion, though not an absolute and irresponsible one. Their discretion is what is known as a judicial discretion, and should therefore be exercised in such a manner as to deal fairly with the retailer whilst they guard the interests and welfare of the public. And, generally, this discretion exists as much on a renewal as on a grant of a new licence. But the renewal of an off-licence in force on the 25th June 1902 can only be refused under certain exceptional circumstances referred to on page 332, or under the repealed Act of 1904 as set out in the article in the Appendix. The case of *Sharp* v. *Wakefield* is conclusive, subject to the Act of 1904, which we must again note is now included in the Act of 1910, on the subject of the justices' discretion, where it exists. Lord Bramwell there drew attention to the fact that "houses of public entertainment and the sale of drink have been in this country and in many others the subject of regulation for police purposes; not for what one may call economic purposes, like the fixing of the price of bread or the wages of labour, but for the maintenance of order. And, naturally, the buildings themselves, their character, their number, and their neighbourhood have been considered as well as the persons who should be permitted to carry on the trade or business. That certainly has been the case in England; and it is undoubtedly so now with respect to licences granted to sell drink on premises for the first time." If an application is made for a licence to sell drink on premises not before licensed it is certain that the magistrates may refuse it, and may refuse for the reason and no other than that they think the neighbourhood does not need it; that none is needed, or none in addition to the houses already licensed. But it was contended in the above case that this power or right in the magistrates does not exist where a licence has been granted, and the question is whether it should be renewed. This contention could perhaps be met by this: the magistrates have a discretion to refuse, they are not bound to state their reason, and, therefore, their decision cannot be questioned. But if they had to state their reasons it would be a good one in point of law, that they refused to renew on the ground, for example, of "the remoteness from police supervision and the character and necessities of the locality and neighbourhood in which the inn is situate." Of course the finding of the facts by the sessions would be conclusive. Different considerations undoubtedly and rightly operate on the minds of the justices. The hardship of stopping the trade of a man who is getting an honest living in a lawful trade and has done so, perhaps, for years, with probably an expense at the outset, may well be taken into consideration, but it must be done so in conjunction with considerations the other way, and must be left to the discretion of the

justices. And this is so even where the licence is a renewal. That word has been criticised. It may be misleading, but is correct. It is a "renewal," *i.e.* a new licence, as we talk of a new lease being a renewal, thongh parties and terms may be wholly different. Where the discretion is limited in the case of a renewal, the legislature has said so in terms in the Licensing Act. But whenever the discretion is unlimited the courts ought not to put a limit on general words of a statute without almost a necessity for doing so. The legislature has certainly contemplated that, as a rule, licences will be renewed. But there is nothing to show that the discretion to refuse is taken away. Certainly the legislature has most clearly shown that it supposed—contemplated—that licences would usually be renewed; that the taking away of a man's livelihood would not be practised cruelly or wantonly. But because it showed that plainly, it may have felt it safe to leave an absolute discretion with the justices, a discretion that would be discreetly exercised. And it is so exercised by justices generally.

A justice is disqualified from acting in a licensing matter when he has a certain interest in the liquor trade. But it is specially provided by statute that a justice shall not be disqualified by reason only of his being interested in a railway company which is a retailer of intoxicating liquor: this is an amendment of the old law which would have disqualified a justice who is a shareholder in a railway company which carries on an hotel or refreshment business by a manager in the district. A justice is not disqualified because he holds debenture stock in a brewery company.

The "Brewsters Sessions" is the term generally applied to the general annual licensing meeting of the justices, and at which new and provisional licences are granted, removal orders are made, and licences are granted. Above the Brewsters Sessions is the "confirming authority," by which the licences granted must be confirmed.

Date of annual licensing meeting.—The general annual licensing meeting in every licensing district is held within the first fourteen days of the month of February in each year, and every adjournment thereof is held within one month of the date of the general annual licensing meeting. A petty sessions must be held at least twenty-one days before licensing day to appoint the time and place of the annual meeting. The annual meeting must be adjourned, even though all the business has been concluded, to a date within a month, but not within five days, from the annual meeting. By this system of adjournment an applicant has an opportunity to comply with such requirements of the justices as through inadvertence or misadventure he had failed to satisfy at the general meeting. Thus where the annual value of premises has been insufficient at the time of the original application it may be made sufficient by the adjourned hearing. Then, too, where an applicant is refused because of the nature of his character, an opportunity is afforded by the adjourned for another person to apply whose character may be satisfactory. The justices at the general annual licensing meeting also appoint not less than four nor more than eight special or transfer sessions to be held in the division during the period between the date of that meeting and the next annual meeting at periods, as near as may be, equally distant. These sessions are appointed with a view to providing facilities for the transfer of licences in cases where, since the annual meeting, a necessity has arisen, as by the

death or bankruptcy of the licence-holder, for a person other than the latter to carry on a business and hold the licence. The justices can postpone to an adjourned meeting (whether held within one month of the date of the annual meeting or not) the consideration of an application for the grant or renewal of a licence.

Applications for the grant of new licences are dealt with by two tribunals, each differently constituted in the case of (*a*) county districts, (*b*) borough districts with more than ten justices, and (*c*) borough districts with less than ten justices. In *counties* a grant of a new licence is made by the general body of justices, but it is not valid unless confirmed by quarter sessions, or a committee thereof duly appointed in accordance with the provisions of the Act. The sessions may be divided into districts in order that each may deal with a certain defined area within the county. It may make rules as to the appointment of committees, numbers, quorum, and so forth. *In county boroughs* the new licences are granted by a committee elected by the justices annually in the fortnight preceding the general annual licensing meeting for the borough. The number of the committee must not be less than seven, and a quorum is constituted by the latter number. It should be particularly noticed that a grant of a new licence by this committee will not be valid unless it is confirmed by quarter sessions. *In boroughs* (not being county boroughs) *with less than ten justices* the new licences are granted by the qualified borough justices, but the grant is not valid unless confirmed by a "joint committee." This joint committee consists of three justices of the county in which the borough is situate and three justices of the borough, or if there are not three such justices, then the deficiency is to be supplied by county justices, to be appointed by the county quarter sessions; but no justice can be appointed a member of such committee unless he is qualified to act under the licensing laws. The three county justices on a joint committee are appointed by the County Quarter Sessions. The same county justices may be appointed members of more than one joint committee. The borough justices on a joint committee are appointed by the justices of the borough for which they act, or by the majority of such justices assembled at a meeting held for that purpose. Any casual vacancy arising in the joint committee from death, resignation, or other cause, may from time to time be filled up by the justices by whom the person creating the vacancy was appointed. The quorum of the joint committee is five members. The senior magistrate on the joint committee present at any meeting is its chairman; and in the event of an equal division of the committee the chairman will have a second vote.

As already stated, the Brewsters Sessions are not courts but meetings. Nowithstanding this, however, the justices must hear the applications made to them in public, and though evidence need not be taken upon oath, yet each application must be heard according to the rules of reason and justice, and decided simply upon its merits. Provisional grants and removal orders are in the nature of new licences. It is open to any one to oppose the grant of any kind of new licence, and the justices have no power to order an unsuccessful opponent to pay the costs of the successful party. It is specially provided by statute that the licensing justices shall be at liberty in their free and unqualified discretion, except as hereinafter mentioned, either

to refuse a licence for the sale of beer, wine, spirits, liqueurs, sweets, or cider, by retail, to be consumed *off* the premises, on any grounds appearing to them sufficient, or to grant a licence to such persons as they deem fit and proper. The above-mentioned exception is contained in the very important proviso that where a licence for the sale of wine, spirits, liqueurs, sweets, or cider, not to be consumed on the premises, was in force on the 25th June 1902, an application for its renewal, or of any licence granted by way of renewal thereof from time to time, shall not be refused to the person who held the licence on the 25th June 1902, except on any one or more of certain grounds. These grounds are as follows: (1) That the applicant has failed to produce satisfactory evidence of good character; (2) that the house or shop in respect of which a licence is sought, or any adjacent house or shop owned or occupied by the person applying for a licence, is of a disorderly character, or frequented by thieves, prostitutes, or persons of bad character; (3) that the applicant having previously held a licence for the sale of wine, spirits, beer, or cider, the same has been forfeited for his misconduct, or that he has through misconduct been at any time previously adjudged disqualified from receiving any such licence, or from selling any of the said articles; (4) that the applicant or the house in respect of which he applies is not duly qualified as by law is required; and those introduced by the Act of 1904 (see Appendix).

New licences and transfers.—A new licence is one granted at a general annual licensing meeting otherwise than by way of renewal or transfer. Generally speaking the premises to be licensed must be of a certain annual value. The applicant must be the person who intends to sell the liquor, and should be the tenant of the premises, and if he intends to retail beer either on or off the premises, he must be the real resident holder and occupier. If he is the servant or manager of a brewery company he must sleep on the premises. Twenty-one days at least before he applies, the applicant must give notice in writing of his intention to one of the overseers of the parish in which the house or shop in respect of which his application is to be made is situate, to the superintendent of police of the district, and to the clerk of the licensing justices. In this notice he must set forth his name and address, and a description of the licence or licences for which he intends to apply, and of the situation of the house or shop in respect of which the application is to be made. He must also, within the space of twenty-eight days before the application is made, cause a like notice to be affixed and maintained between the hours of ten in the morning and five in the afternoon of two consecutive Sundays on the door of the house or shop, and on the principal door or on one of the doors of the church or chapel of the parish or place in which such house or shop is situate, or if there is no church or chapel, then on some other public and conspicuous place within the parish

or place. He must also advertise the notice in some paper circulating in the place in which the premises to which the notice relates are situate, on some day not more than four and not less than two weeks before the proposed application, and on such day or days (if any) as may be from time to time fixed by the licensing justices. He must also, if the application is for a new on-licence, not less than twenty-one days before the annual licensing meeting, deposit with the clerk to the licensing justices a plan of the premises in respect of which the application is to be made. On granting a new licence the justices have power to impose conditions, as set out in the article on LICENSING in the Appendix.

Provisional licence.—Any one interested in premises about to be constructed or in course of construction for the purpose of being used as a house for the sale of intoxicating liquors to be consumed on the premises may apply to the licensing justices, and to the confirming authority, for a provisional grant and confirmation of a licence in respect of those premises. The justices, and confirming authority, if satisfied with the plans submitted to them of the house, and that if the premises had been actually constructed in accordance with such plans they would, on application, have granted and confirmed such a licence in respect thereof, can make the provisional grant and order of confirmation accordingly. A provisional grant and order of confirmation is not of any validity until it has been declared to be final by an order of the licensing justices made after such notice has been given as may be required by the justices at a general annual licensing meeting or a special sessions held for licensing purposes. This declaration is to be made if the justices are satisfied that the house has been completed in accordance with the plans, and are also satisfied that no objection can be made to the character of the holder of the provisional licence. A provisional grant and confirmation is subject to the same conditions as to the giving of notices and generally as to procedure as is a new licence, with this exception, that where a notice is required to be put up on a door of a house the notice may be put up in a conspicuous position on any part of the premises. It should be noted that a provisional licence is only possible in the case of an intended sale on the premises; there is no provisional off-licence. If the premises are not completed at the time of the following Brewster Sessions the provisional licence can then be renewed. If a licensed victualler contemplates altering his premises to such an extent that the old premises practically lose their identity, he should apply for a provisional licence in respect of the altered premises, and not risk the refusal of a renewal of his existing licence with permission to make the alterations.

Removal orders.—The above regulations relating to provisional orders extend, with the necessary variations, to the removal to any premises of an existing licence. The *ordinary removal* of a justice's license may be authorised

in the following manner:—(1) The application is to be made by the person desiring to be the holder when the license is removed; (2) The application must be made at the general annual licensing meeting, or an adjournment thereof; (3) Notice of the application to be given in the same manner as notice of an application for a new licence; (4) Copy of the notice to be served on any registered owner of the premises from which the licence is to be removed, and on the holder of the licence unless he is also the applicant; (5) The order is not made if objection is raised by the owner, the licence holder, or any other person with a right to object. A *special removal* is authorised subject to the same provisions and procedure as a transfer, except that the notice must describe the premises from and to which the removal is to operate in place of describing the person to whom the licence is to be transferred. A notice must also be affixed, on a Sunday within six weeks next before the transfer sessions, on the door of the church of the parish of the premises to which the removal is intended.

Applications for confirmation of new and provisional licences and of removal orders must now be made to Quarter Sessions—a court to which has been transferred the powers in this connection of the County Licensing Committee. This confirming authority forms an additional protection to the public in the grant of new licences; it has the same discretion as the first tribunal; it need give no reason for its decision, from which there is no appeal. Any one who has appeared to oppose before the first tribunal, but no other person, may appear to oppose before a confirming authority. But this authority, differing from the first tribunal, is a "court" and not merely a meeting, and has power to award costs to a successful party. On the hearing, further evidence may be received for or against the confirmation of a new grant. It is a condition that no application for a confirmation shall be heard until twenty-one days at least have expired since the date of the grant of the licence. And it is necessary to obtain a confirmation as well in the case of an off-licence as in any other case.

Renewals are within the discretion of the justices as summed up in the case of *Sharp* v. *Wakefield*, referred to at the commencement of this article. But to this discretion, in the case of off-licences in force on the 25th June 1902, a limit is now imposed, the details of which limit are set out above on page 332. As a rule the renewals are granted *en bloc* without any need for the attendance of the licensee, provided no notice of opposition has been given. To obtain a renewal, the licensee (1) need not attend in person at the general annual licensing meeting, unless he is required by the licensing justices so to attend. (2) The justices shall not entertain any objection to the renewal of such licence, or take any evidence with respect to the renewal thereof, unless written notice of an intention to oppose the renewal of such licence has been served on

such holder not less than seven days before the commencement of the general annual licensing meeting; provided that the licensing justices may, notwithstanding that no notice has been given, on an objection being made, adjourn the granting of any licence to a future day, and require the attendance of the holder of the licence on such day, when the case will be heard and the objection considered, as if the notice hereinbefore prescribed had been given. (3) The justices shall not receive any evidence with respect to the renewal of such licence which is not given on oath. But a requisition to attend the licensing meeting can only be sent by the justices to the licensee for some special cause personal to himself. And secondly, that the notice of intention to oppose the renewal will not be valid unless it states in general terms the grounds on which the renewal is to be opposed. Any member of the local community may object to a renewal, but on the hearing all evidence must be taken upon oath. An objector, even if unsuccessful, cannot be ordered to pay any costs. In cases where the justices have their full discretion, it would seem that renewals can be objected to upon any grounds not actually frivolous or vexatious; the character or fitness of the licensee, or of the conduct or structure of the licensed premises, or that the renewal would be void, or the character of the neighbourhood, or the needs of the locality, are those most frequently met with. But quarter sessions has the exclusive power, on reference from the justices, to refuse to renew on any ground other than either of the first three just mentioned, and then only on payment of compensation. If the renewal is refused by justices the licensee has a right of appeal to quarter sessions.

Transfers and Removals.—The justices, when assembled at the general annual licensing meeting, appoint not less than four nor more than eight special sessions in each year for the transference of licences. The applicant for a transfer, fourteen days prior to one of the special sessions, must serve a notice of his intention to transfer his licence upon one of the overseers of the parish or place in which the premises in respect of which his application is to be made are situate, and also on the superintendent of police of the district. This notice is required to be signed by the applicant or by his authorised agent, and must set forth the name of the person to whom it is intended that the licence shall be transferred, together with the place of his residence, and his trade or calling during the six months preceding the time of serving the notice. And in the case of such an application the person holding the licence and the person who it is proposed shall become the holder of the licence must attend at the special sessions at which the application is heard; and the agreement or other document, if any, under which the licence is to be transferred and held shall be produced to the licensing justices. For the purpose of compelling the attendance of any such person, or any witness,

the licensing justices have all the powers of a court of summary jurisdiction. But the justices, for good cause shown in any particular case, may dispense with the attendance of either of such persons, or both. For the purpose of preventing repeated applications for transfer or removal, the licensing justices, at the general annual licensing meeting, may make regulations determining the time which must elapse after the hearing of one application before another application may be made in respect of the same premises. The justices, however, in their discretion, for good cause shown, may dispense with the observance of these regulations in any particular case. There is a right of appeal to the quarter sessions when a transfer is refused. Any one may oppose the transfer of a licence.

The transferee must be a fit and proper person, in the opinion of the justices, to be the holder of the licence. The provisions affecting the renewal of an old on-licence apply to the transfer of an old on-licence as they apply to a renewal. In the following cases the transferee can only be a person of a certain class. These are the cases:—(*a*) where the licensee dies; or (*b*) by sickness or other infirmity is rendered incapable of keeping an inn; or (*c*) becomes bankrupt; or (*d*) where the licensee or his heirs, executors, administrators, or assigns removes from or yields up the possession of the house specified in the licence; or (*e*) if the occupier of any such house, being about to quit it, shall have wilfully omitted or shall have neglected to apply for a renewal of the licence; or (*f*) cases where the owner of the licensed premises or some person on his behalf on the forfeiture of the license, or the personal disqualification of the holder of the licence, has obtained temporary authority under the Act to carry on business until the next transfer sessions and applies for a transfer at those sessions. In these cases the persons to whom a transfer may be granted are respectively:—(*a*) the representatives of the deceased or a new tenant or occupier; (*b*) the assignees or new tenant or occupier; (*c*) the trustee or new tenant or occupier; (*d*) and (*e*) the new tenant or occupier; (*f*) the owner or any person applying on his behalf.

The licensed premises.—Unlicensed premises are not qualified to receive a licence authorising the sale of intoxicating liquor unless the following conditions are satisfied:—(*a*) The premises, unless they are a railway refreshment-room, must be of not less than the following annual value: If situated within the city of London or the liberties thereof, or any parish or place subject to the jurisdiction of the London County Council, or within the four-mile radius from Charing Cross, or within the limits of a town containing a population of not less than 100,000 inhabitants, £50 per annum; or if the licence does not authorise the sale of spirits, £30 per annum: If situated elsewhere and within the limits of a town containing a population of not less than 10,000 inhabitants, £30 per annum; or if the licence does not authorise the sale of spirits, £20 per annum: If situated elsewhere and not within any

such town, £15 per annum; or if the licence does not authorise the sale of spirits, £12 per annum. (*b*) The premises must be, in the opinion of the licensing authority, structurally adapted to the class of licence for which a certificate is sought; but no house will be qualified to have a licence attached thereto authorising the sale of intoxicating liquors for consumption on the premises unless the house contains, exclusive of the rooms occupied by its inmates, if the licence authorises the sale of spirits, two rooms, and if the licence does not authorise the sale of spirits, one room, for the accommodation of the public. The justices take such means as seem to them best for ascertaining the annual value of the premises, and may, if they think fit, order a valuation of them to be made by a competent person appointed by them for the purpose, and may order the costs of the valuation to be paid by the applicant for a licence.

The annual value of premises for the purposes of the Licensing Acts is the annual rent which a tenant might be reasonably expected, taking one year with another, to pay for the same, if he undertook to pay all tenants' rates and taxes, and tithe commutation rent-charge (if any), and if the landlord undertook to bear the cost of the repairs and insurance and other expenses (if any) necessary to maintain the premises in a state to command the said rent, and if no licence were granted in respect thereof; but no land can be included in the valuation other than any pleasure-grounds or flower or kitchen garden, yard, or curtilage usually held and occupied and used by the persons residing in and frequenting the house.

Premises are disqualified for the purposes of a licence under the Act—(1) If the justices' licences of two persons licensed in respect of the premises (being persons neither of whom held such a licence in respect of the premises on the 10th August 1872) are forfeited within any period of two years, the disqualification to continue for one year from the date of the last forfeiture; (2) If by virtue of any other Act a justice's licence cannot be granted in respect of these premises. As mentioned elsewhere, the owner of the premises will receive notice of any conviction tending itself to create a disqualification, whereupon he should proceed to obtain the protection order referred to below. An "owner" is "any person possessing an estate or interest in premises, whether as owner, lessee, or mortgagee, prior or paramount to that of the immediate occupier." On payment of a fee of one shilling to the clerk of the licensing justices he is entitled to be registered as owner or one of the owners of such premises. But when the estate or interest is vested in two or more persons jointly, one only of such persons can be registered. Directly he receives notice of a conviction he should take steps to eject his tenant, and obtain another in his stead, and if necessary apply for a protection order. And see the article on LICENSED VICTUALLERS under the head therein of *protection of owners.*

It has already been noted that where a person is applying for a new licence he must deposit a plan of the premises with the clerk to the licensing justices. The Act also provides that no **alteration in any licensed premises** for the sale by retail of intoxicating liquors to be consumed thereon, which gives increased facilities for drinking, or conceals from observation any part of the premises used for drinking, or which affects the communication between the part of the premises where intoxicating liquor is sold and any other part of the premises, or any street or other public way, shall be made without the consent of the justices either at the general annual licensing meeting or at the transfer sessions. The justices, before giving their consent, may require plans of the proposed alterations to be deposited with their clerk at such time as they may determine. If any such alteration is made, save under the order of some lawful authority, without such consent as aforesaid, a court of summary jurisdiction, on complaint, may by order declare the licence to be forfeited, or direct that, within a time fixed by the order, the premises shall be restored to their original condition. And where a licence is so forfeited the owner of the premises receives notice thereof and has all the rights conferred on owners by statute. These rights are enumerated below in connection with the temporary continuance of licences. On an application for a renewal of a licence for sale by retail for consumption on the premises, the justices may require the production of a plan of the premises, and that it be deposited with their clerk. On renewing any such licence they may order that, within a time fixed by the order, such alterations as they think reasonably necessary to secure the proper conduct of the business shall be made in that part of the premises where intoxicating liquor is sold or consumed; but such an order is subject to an appeal to a court of quarter sessions. If such an order for structural alteration is made and complied with, no further requisition for the structural alteration of the premises can be made within the next five years. If the licensed person makes default in complying with any such order, he will be liable to a fine not exceeding twenty shillings for every day during which the default continues. Notice of the order must be sent to the owner of the premises.

Occasional licences are of two kinds: (1) Licences to sell elsewhere than on premises usually licensed, *e.g.* at race meetings; and (2) Licences to sell on licensed premises during hours when such premises are usually closed, as on the occasion of a ball being held there, for example. An occasional licence will be granted with the consent alone of a petty sessional court, if twenty-four hours at least before applying for that consent the applicant has served on the superintendent of police for the district notice of his intention to apply therefor, setting out his name and address, the place and occasion in respect of which the licence is required, the period for which the licence is

to be in force, and the hours to be specified in the consent of the justices. But if there is no sitting of a petty sessional court within three days before the time when the licence is required, and it is not practicable to make an application to such a court, the consent may be given by any two justices acting for the division and sitting together, of which consent notice must be sent to the superintendent of police. The hours during which an occasional licence will authorise the sale of intoxicating liquor extend from "such hour not earlier than sunrise until such hour not later than ten o'clock at night, as may be specified in that behalf in the consent given by the justice for the granting of the occasional licence." The hours authorised upon the occasion of a public dinner or ball are such as are allowed and specified in the justice's consent for the occasional licence therefor. In all cases of fairs and races the person attending them for the purpose of selling intoxicants must obtain an occasional licence. This licence can only be obtained by licensed victuallers, or if the accommodation of the public requires it, by holders of refreshment-house licences, retail wine or beer on-licences, and tobacco licences.

Protection orders.—A person, as for example an owner, who desires a protection order must serve on the superintendent of police for the district, one week at least before the holding of the petty sessional court at which he intends applying therefor, a similar notice to that required in the case of an application for the transfer of a licence. The applicant having done this, should go before the petty sessional court. This court has power to authorise the sale of intoxicating liquor on any licensed premises until the next special sessions of the district. In a case of urgency the above notice to the police may be dispensed with if, in the opinion of the court, such notice to the police has been given as is reasonable under the circumstances of the particular case.

Six-day licences.—Where on the occasion of an application for a new licence or transfer or renewal of a licence for consumption on the premises, the applicant, at the time of his application, applies to the licensing justices to insert in his licence a condition that he shall keep the premises in respect of which the licence is or is to be granted closed during the whole of Sunday, the justices must insert that condition in the licence. The holder of such a licence (referred to as a six-day licence) must keep his premises closed during the whole of Sunday (but need not on Christmas Day or Good Friday), and the provisions of the Licensing Acts with respect to the closing of licensed premises during certain hours on Sunday apply to the premises in respect of which a six-day licence is granted as if the whole of Sunday were mentioned in those provisions instead of certain hours only. The holder of a six-day licence may obtain his excise licence upon payment of six-sevenths of the duty which would be payable for a similar licence not limited to six days; and if he sell any intoxicating liquor on Sunday, to any person not lodging in his house, he will be deemed to be selling intoxicating liquor without a licence. The notice required to be kept painted or fixed on his premises must contain words indicating that his licence is for six days only. In calculating the amount to be paid for a six-day licence any fraction of a penny will be disregarded.

Early closing licences.—And in like manner a licence can be obtained

in which is inserted a condition that the licensee shall close his premises at night one hour earlier than the ordinary hours of closing. The holder of such a licence pays less than the usual duty in order to obtain his excise licence.

The registration of clubs which supply intoxicating liquor is now compulsory in England and Wales, as from the 1st January 1903. This registration has been introduced by the Licensing Act, 1902, section 24 of which provides that—"(1) The secretary of every club which occupies a house or part of a house or other premises which are habitually used for the purposes of a club, and in which any intoxicating liquor is supplied to members or their guests, shall cause the club to be registered in manner provided by this Act. (2) The registration of a club under this Act shall not constitute the club premises licensed premises, or authorise any sale of intoxicating liquor therein which would otherwise be illegal." The expression "secretary" includes any officer of a club or other person performing the duties of a secretary, and in the case of a proprietary club where there is no secretary, the proprietor of the club.

The clerk to the justices of every petty sessional division keeps a register of all such clubs within the division. This register is in a prescribed form and contains: (*a*) the name and objects of the club; (*b*) the address of the club; (*c*) the name of the secretary; (*d*) the number of members; (*e*) the rules of the club relating to—(i) the election of members and the admission of temporary and honorary members and of guests; (ii) the terms of subscription and entrance fee, if any; (iii) the cessation of membership; (iv) the hours of opening and closing; and (v) the mode of altering the rules. The secretary of every such club, in the month of January 1903, and in the month of January in each succeeding year, must furnish to the clerk to the justices a return, signed by himself, giving the above-mentioned particulars, together with a signed statement that there is kept upon the club premises a register of the names and addresses of the club members, and a record of the latest payment of their subscriptions. Where after the 1st January 1903 a new club requiring registration is about to be opened, the secretary, before the opening of the club, must furnish a return, signed by him, to the clerk to the justices giving the above-mentioned particulars. The clerk to the justices keeps the register of clubs corrected up to date in accordance with the returns furnished by the secretaries, and the register, at all reasonable hours, is open to the inspection of an inspector or superintendent of police, or an officer of the inland revenue, without fee, and of any other person on payment of a fee not exceeding one shilling. A fee of five shillings is payable to the clerk to the justices on each return made by the secretary of a club. In the application to Oxford of this provision for registration, the Registrar of the Court of the Chancellor of the University takes the place of the clerk to the justices in the case of any club mainly composed of members past or present of the University.

If any intoxicating liquor is supplied or sold to any member or guest on the premises of *an unregistered club*, the person supplying or selling the liquor, and every person authorising its supply or sale, will be liable on summary conviction to imprisonment, with or without hard labour, for a term not exceeding one month, or to a fine not exceeding £50, or to both. If any intoxicating liquor is kept for supply or sale on the premises of an unregistered club, every officer and member of the club will be liable on summary conviction to a fine not exceeding £5, unless he proves to the satisfaction of the Court that the liquor was so kept without his knowledge or against his consent. By an "unregistered club" is meant a club which should be, but is not registered, or which has been struck off the

register. Intoxicating liquor is not to be supplied in a club for consumption off the premises except to a member on the premises; and if any person supplies or obtains any intoxicating liquor in contravention of this provision, he will be liable on summary conviction, to a fine not exceeding £10.

Striking off register.—Where a club has been registered in pursuance of the Act, a court of summary jurisdiction on complaint in writing by any person may, if it thinks fit, make an order directing the club to be struck off the register on all or any of the following grounds, namely:—(*a*) that the club has ceased to exist, or that the number of members is less than twenty-five; or (*b*) that it is not conducted in good faith as a club, or that it is kept or habitually used for any unlawful purpose; or (*c*) that there is frequent drunkenness on the club premises; or (*d*) that illegal sales of intoxicating liquor have taken place on the club premises; or (*e*) that persons who are not members are habitually admitted to the club merely for the purpose of obtaining intoxicating liquor; or (*f*) that the club occupies premises in respect of which, within twelve months next preceding the formation of the club, a licence has been forfeited or the renewal of a licence has been refused, or in respect of which an order has been made that they shall not be used for the purposes of a club; or (*g*) that persons are habitually admitted as members without an interval of at least forty-eight hours between their nomination and admission; or (*h*) that the supply of intoxicating liquor to the club is not under the control of the members or the committee appointed by the members. For the purpose of determining whether a club is conducted in good faith as a club, the Court will have regard to the nature of the premises occupied by the club. If a summons is granted, it is to be served on the secretary and on such other person, if any, as the Court may direct. Where the Court makes an order striking a club off the register the Court may, if it thinks fit, by that order further direct that the premises occupied by the club shall not be used for the purposes of any club which requires registration for a specified period, which may extend to twelve months in case of a first order or in case of a second or subsequent order to five years; but such a direction may, for good cause shown, be subsequently cancelled or varied by the Court. In the application of this provision to Oxford, the court of summary jurisdiction will be the Court of the Chancellor of the University in the case of a club mainly composed of members past or present of the University; but that court will not have power to make an order that premises occupied by any such club shall not be used for the purposes of a club.

Search warrant.—If a justice of the peace is satisfied by information on oath that there is reasonable ground for supposing that a registered club is so managed or carried on as to constitute a ground for striking it off the register, or that intoxicating liquor is sold or supplied, or kept for sale or supply, on the premises of an unregistered club, he may grant a search warrant to any constable named therein. Such a search warrant will authorise the constable named therein to enter the club, if need be by force, and to inspect the premises of the club, to take the names and addresses of any persons found therein, and to seize any books and papers relating to the business of the club.

Other penalties.—If the secretary of a registered club, or of any club which requires to be registered, omits to make any return required by the Act, he will be liable on summary conviction to a fine not exceeding £20, and in the case of a second or subsequent offence to imprisonment, with or without hard labour, for a term not exceeding one month, or to a fine not exceeding £50, or to both. If he should knowingly make a return which is false in any material particular, he will then be liable on summary conviction to imprisonment, with or without hard

labour, for a term not exceeding three months, or to a fine not exceeding £50, or to both.

In the application of the provisions of the Act relating to clubs Act to London, the clerk to a metropolitan police court is substituted for the clerk to the justices as regards any place within the jurisdiction of a metropolitan police court, and as regards the city of London the clerk of special sessions is so substituted

APPENDIX

Articles and duties in the

CUSTOMS TARIFF OF THE UNITED KINGDOM

additional to those enumerated in the article on the Customs in Volume II. The following List, when read together with the List in that article, shows the Tariff as now in operation.

Import duties.

Article.	Quantity.	Rate of Duty.
		s. d.
SUGAR:		
Not exceeding 76 degrees of polarisation	per cwt.	0 10
Exceeding 76 and not exceeding 77	,,	0 10·9
,, 77 ,, ,, 78	,,	0 11·2
,, 78 ,, ,, 79	,,	0 11·6
,, 79 ,, ,, 80	,,	0 11 9
,, 80 ,, ,, 81	,,	1 0·3
,, 81 ,, ,, 82	,,	1 0·6
,, 82 ,, ,, 83	,,	1 1
,, 83 ,, ,, 84	,,	1 1·4
,, 84 ,, ,, 85	,,	1 1·8
,, 85 ,, ,, 86	,,	1 2·2
,, 86 ,, ,, 87	,,	1 2·6
,, 87 ,, ,, 88	,,	1 3
,, 88 ,, ,, 89	,,	1 3·4
,, 89 ,, ,, 90	,,	1 4
,, 90 ,, ,, 91	,,	1 4·b
,, 91 ,, ,, 92	,,	1 5
,, 92 ,, ,, 93	,,	1 5·6
,, 93 ,, ,, 94	,,	1 6·1
,, 94 ,, ,, 95	,,	1 6·6
,, 95 ,, ,, 96	,,	1 7 1
,, 96 ,, ,, 97	,,	1 7·7
,, 97 ,, ,, 98	,,	1 8·2
,, 98	,,	1 10
BLACKING, Solid, containing sugar or any other sweetening matter	,,	0 5
,, Liquid, containing sugar or any other sweetening matter (Together with the duty on any spirit contained therein.)	,,	0 5
CANDIED AND DRAINED PEEL	,,	1 4
CARAMEL, Solid	,,	1 10
,, Liquid	,,	1 4
CHERRIES, Drained, imported in Bulk	,,	1 0
CHUTNEY	,,	0 10
COCOANUT, Sugared	,,	0 10
CONFECTIONERY:		
Hard, such as:		
Sugared Almonds, Caraway Seeds, &c.	,,	1 10
Sugared Almonds, where sugar-coating does not exceed 72 per cent. total net weight	,,	1 4
Soft, viz.:		
A.B. Gums imported in Bulk, in Barrels or Cases, on the Entry for which the Importer has declared that duty on the combined quantity of Sugar and Glucose used in the manufacture of the goods did not exceed the rate of 10d. the cwt.	,,	0 10
Other A.B. Gums, Caramels, Chewing Gums, Jelly Beans, Turkish Delight, &c.	per lb.	1 4
Containing Chocolate, viz.:		
When the Chocolate exceeds 50 per cent. of the total net weight	,,	0 1½
When the Chocolate does not exceed 50 per cent. of the total net weight	,,	0 1¼
Made from Sugar, and containing no other ingredients except flavouring	per cwt.	1 10
LIQUORICE, not containing more than 30 per cent. added sweetening matter	,,	0 0·7
FLOWERS, as Violets and Rose Petals, &c., in Crystallized Sugar as Crystallized Fruit	,,	1 10

Article.	Quantity.	Rate of Duty.
		s. d.
FRUIT:		
Canned and Bottled, other than Fruit liable to duty as such, preserved in *thin* Syrup containing not more than 17 per cent. added sugar	per cwt.	0 8
Canned and Bottled, other than Fruit liable to duty as such, in other cases	,,	0 5
Canned and Bottled, other than Fruit liable to duty as such, preserved in *thick* Syrup	,,	1 1
FRUITS:		
Crystallized, Glacé and Metz, except Fruit liable to duty as such	,,	1 10
Imitation Crystallized (Orange and Lemon slices, &c.), not exceeding 80 per cent. sugar	,,	1 6
Imitation Crystallized (Orange and Lemon slices, &c.), in other cases	,,	1 10
FRUIT, except Currants, liable to duty as such, preserved in Sugar, or otherwise, whether mixed with other Fruit or not	,,	7 0
FRUIT-PULP:		
Excepting Fruit-pulp liable to duty as such preserved in *thin* Syrup	,,	0 5
Excepting Fruit-pulp liable to duty as such preserved in *thick* Syrup, as Jam	,,	1 4
GINGER, preserved in Syrup or Sugar	,,	1 4
GLUCOSE:		
Solid	,,	1 2
Liquid	,,	0 10
MARMALADE, JAMS, AND FRUIT JELLIES, if not made from Fruit liable to duty as such	,,	1 4
MARZIPAN	,,	1 1
MILK:		
Condensed, sweetened, whole	,,	0 9
,, ,, separated or skimmed	,,	0 10
,, ,, ,, ,, not containing more than 18 per cent. added Sugar	,,	0 4
MOLASSES and Invert and all other Sugar and extracts from Sugar which cannot be completely tested by the Polariscope, and on which Duty is not specially charged:		
If containing 70 per cent. or more of sweetening matter	,,	1 2
If containing less than 70 per cent. and more than 50 per cent. of sweetening matter	,,	0 10
If containing not more than 50 per cent. of sweetening matter	,,	0 5
MOTOR SPIRIT (Finance Act, 1910)	per gal.	0 8
SACCHARIN: including substances of a like nature or use	per oz.	0 7
SOY, when containing molasses or other sweetening matter	per cwt.	0 5
SPIRITS: unsweetened	per gal.	15 2
CUSTOMS CHARGES:		
On delivery from customs and excise warehouses for home consumption in addition to Customs and Excise Duties, and on British Compounded Spirits, for every £100 of Duty, and in proportion for every fractional part thereof.		
In respect of Tobacco	per cwt.	2 6
In respect of other goods	,,	5 0
Where any manufactured or prepared goods contain, as part or ingredient thereof, an article liable to customs duty, then duty will be charged in respect of such quantity of the article as appears to the Treasury to be used in the manufacture or preparation of the goods. In the case of goods so containing more than one such article, the duty will be charged in a similar manner on each article liable to duty at the rates of duty respectively applicable thereto. But these rules will be ignored when necessary for the protection of the revenue.		
A rebate allowable on an article when separately charged will be allowed in charging goods in respect of the quantity of the article used in the manufacture or preparation of the goods.		
Note.—The minimum sizes of packages of Saccharin, Tobacco, and Casks of Spirits allowed to be imported into the United Kingdom and the Channel Islands are as follows:—		
Minimum *legal* quantity.		
SACCHARIN — In packages of not less than 11 lbs. net weight.		
TOBACCO — In packages of not less than 80 lbs. *gross* weight.		
SPIRITS (Imported otherwise than in cases) — In casks or other vessels of the size or content of not less than *nine* gallons.		
Packages of Tobacco must contain Tobacco only, and under Tobacco are included Cigars, Cigarillos, Cigarettes, and Snuff.		
WINE:		
Not exceeding 30 degrees proof spirit	per gal.	1 8
Exceeding 30 degrees but not exceeding 42 degrees	,,	3 0
And for every degree beyond	,,	0 8
Additional.—On Still Wine imported in Bottles	,,	1 9
On Sparkling Wine imported in Bottles	,,	3 6

Drawbacks.

Article.	Quantity.	Rate of Duty.
TOBACCO:		
Containing 14 per cent. of moisture manufactured, not in bond, in the United Kingdom upon which Customs Duties have been paid, on the same being exported as merchandise or on deposit thereof in any bonded warehouse for ships' stores, packed in complete cases or packages, each weighing not less than 80 lbs. gross:		
Cigars	per lb.	4 2
Cigarettes	,,	4 1
Cut, Roll, or Cake	,,	4 0
And in proportion if the moisture exceeds or is less than 14 per cent.		
SNUFF:		
Manufactured in the United Kingdom, on the exportation thereof, provided the quantity of inorganic matter contained therein does not exceed the proportion of 18 lbs. in every 100 lbs. exclusive of water; or on every pound deposited by a licensed manufacturer in a bonded warehouse approved by the Commissioners of Customs, for the purpose of being either converted into sheep-wash, hop-powder, or other similar compounds for exportation under Bond, or of being mixed with such substance or combination of substances as the Commissioners of Customs may prescribe, so as to de-nature the snuff	,,	3 10
If the snuff contains more than such proportion of inorganic matter, a deduction is to be made from the drawback in respect of every pound of the excess above such proportion.		
Stalks, shorts, or other refuse of tobacco (including offal snuff)	,,	3 9
FOREIGN BEER:		
Of an original gravity of 1055 degrees	per 36 gals	7 9
And so on in proportion for any difference of gravity.		
COFFEE, Roasted	per 100 lbs.	14 0
SUGAR:		
Which has passed a refinery in the United Kingdom is allowed a drawback equal to the duty on sugar of like polarisation.		
MOLASSES:		
When produced in Great Britain or Ireland, there is allowed to the refiner upon delivery by him to a licensed distiller for use in the manufacture of spirits	per cwt.	0 5
GENERAL REGULATION:		
On goods (other than beer) in the manufacture or preparation of which, in Great Britain or Ireland, any of the articles liable to duty has been used, a drawback equal to the duty in respect of the quantity of that article which appears to the satisfaction of the Treasury to have been used in the manufacture or preparation of the goods, or in the case of residual products to be contained therein.		

APPENDIX

DISTRESS COMMITTEES.—After much agitation, and many processions of unemployed workmen, demanding that something should be done to regulate and make provision for the periodical fluctuations or slackness in employment, the Unemployed Workmen Act of 1905 was passed as an experiment, to continue in force for three years, unless Parliament should further extend it. The object of this legislation is to assist those who are able and wish to work, but are unable to find employment, so that they may not be forced into the ranks of the pauper. Since the expiration of the Act it has been annually renewed, but now, as a consequence of the Labour Exchanges Act, 1909 (*see* LABOUR EXCHANGES), its operation is confined mainly to the relief of the unemployed. The Act provides separately for London and for the rest of the United Kingdom and Ireland. *London.*—There is a distress committee in every metropolitan borough consisting of members of the borough council, of the board of guardians, and of persons experienced in the relief of distress. The Central Body is made up of members of and selected by these distress committees, appointed by the London County Council, persons co-opted to be additional members, and others chosen by the Local Government Board. The two latter classes of members are not to number more than one-fourth of the total, and one member of the committee or body must be a woman. The committee is required to make itself acquainted with the conditions of labour in its area and, if required by the Central Body, to receive inquiries into and discriminate between all applications made by the unemployed. But no application can be entertained from any one who has not resided for the twelve months preceding in London. The committee has no power to provide or contribute towards work for the unemployed. If they think a case is genuine and can be dealt with under the Act better than under the poor law, they may endeavour to obtain work for the applicant or send him to the central authority. The Central Body co-ordinates the work of the different committees by collecting information, assisting emigration or removal to another area of the applicant and his dependents, or providing or contributing towards temporary work, and furthering his obtaining regular employment or supporting himself. Until the Act of 1909 it controlled the labour exchanges. The expenses of the committees are provided out of a central fund, under the control of the Central Body. The fund is made up from voluntary contributions, and contributions on demand by the Central Body from each borough council according to their rateable value. A separate account is kept of all sums contributed by the councils, and no expenses are paid out of this account except establishment charges for

the various bodies, and for collecting information; expenses of the Central Body towards emigration or removal to another area; and the cost of acquiring land by that body for the purposes of the Act. No contribution by a council can exceed one halfpenny in the pound on the rateable value, or if the Local Government Board approve, up to one penny in the pound. The provision of temporary work or assistance is not to disenfranchise the recipient for parliamentary, county, parochial, or other elections. The city of London is the same as a borough for this Act. The Local Government Board may extend the provisions as to London to any borough or district near London upon application by its council, with or without modifications.

Outside London.—Every borough or urban district of 50,000 population may have a distress committee similar to those in London, with the same duties and powers. If a borough or district of from 10,000 to 50,000 population makes application to the Local Government Board, the latter can consent to the provisions of the Act being extended thereto. The Local Government Board can on application or without in any county borough or district establish a central body and distress committees similar to those in London with the same powers and duties. A county borough under 50,000 is included in the county of which it forms part for this purpose. If no central body has been established for any county or a committee for any county borough, the councils of such shall constitute a special committee from their members with power to co-opt members to the extent of one-fourth. Such special committee collects information as to conditions of labour, and supplying such information when required. The rules as to London apply in such cases with the necessary modifications. A body already established for dealing with the unemployed or a special committee may act temporarily as a central body or distress committee until such is formed, by consent of the Local Government Board.

Regulations.—The Local Government Board can provide by order for the constitution and proceedings of these bodies, or the incorporation of a central body by an appropriate name, the transfer of any property or liabilities, or special provisions for any body. The Board may make regulations for (*a*) regulating conditions as to dealing with applications, by the committee, the emigration or removal, &c., by the central body, or any of the duties of these bodies or a special committee; (*b*) the establishment of farm colonies or temporary accommodation for those working upon the land provided; (*c*) acquiring land and the disposal thereof; (*d*) the employment of officers, the provision of offices, and the attendance of a Local Government inspector at any meeting of such bodies; (*e*) authorising the accepting of money or property and regulating the administration thereof; (*f*) the payment of funds, and the apportionment thereof between the voluntary contribution and the rate accounts; (*g*) audit of such accounts; (*h*) enforcing rate contributions, and borrowing; (*i*) facilitating co-operation between bodies, or with local authorities, and mutual assistance; (*k*) applying to a committee with powers of a central body, the provisions as to the latter; (*l*) local inquiries and returns; (*m*) applying any provision in any Act of Parliament dealing with like matters with or without modifications.

Provision is made for the differences in local authorities in the application of the Act to Scotland and Ireland.

GAMBLING POLICIES.—Gambling on loss by maritime perils is now prohibited by the Marine Insurance (Gambling Policies) Act, 1909. By section 1 of that Act it is provided that a contract of marine insurance shall be deemed a contract by way of gambling on loss by maritime perils if (*a*) any person effects a contract of marine insurance without having any *bonâ fide* interest, direct or indirect, either in the safe arrival of the ship in relation to which the contract is made, or in the safety or preservation of the subject matter insured, or a *bonâ fide* expectation of acquiring such an interest; or if (*b*) any person in the employment of the owner of a ship, not being a part owner of the ship, effects a contract of marine insurance in relation to the ship, and the contract is made "interest or no interest," or "without further proof of interest than the policy itself," or "without benefit of salvage to the insurer," or subject to any other like term. The person effecting such a contract renders himself liable, on summary conviction, to imprisonment for six months with hard labour, or to a fine not exceeding £100, and in either case to forfeit to the Crown any money he may receive under the contract. A similar liability attaches to any broker or other person through whom, and any insurer with whom, any such contract is effected, if he acted knowing that the contract was by way of gambling on loss by maritime perils within the meaning of the above Act. But proceedings cannot be instituted without the consent of the Attorney-General in England or Ireland, or of the Lord Advocate in Scotland. Nor, too, can proceedings be instituted against a person (other than one in the employment of the owner of the ship in relation to which the contract was made) alleged to have effected a gambling policy until an opportunity has been afforded him of showing that the contract was not one of gambling. A contract made "interest or no interest," or "without further proof of interest than the policy itself," or "without benefit of salvage to the insurer," or subject to any like term, is, if proceedings are taken against any person (other than one in the employment of the owner of the ship in relation to which the contract was made), *prima facie* a gambling policy. There is an appeal to Quarter Sessions.

GAMING (*see* also article on p. 21).—The latest legislation on the subject of gaming and betting is the Street Betting Act of 1906. By this Act any person frequenting or loitering in streets or public places on behalf of himself or any other person, for the purpose of book-making, betting, wagering, agreeing to bet or wager, paying, receiving, or settling bets is liable (*a*) for a first offence, £10 on summary conviction; (*b*) second, £20 on summary conviction; (*c*) third, or subsequent, or on proof of betting with any one under sixteen on indictment, £50, or six months' imprisonment without the option of a fine, and on summary conviction, £30, or three months' imprisonment without the option of a fine. All books, cards, papers, and other articles, relating to betting, found in his possession are to be forfeited. A constable may without warrant take into custody any person found committing an offence and seize any forfeitable article. Any one appearing to be under sixteen is to be held to be under that age, unless the contrary is proved or the defendant satisfies the Court he had reasonable grounds for believing otherwise. "Street" includes any highway, public bridge,

road, lane, footway, square, court, alley or passage, whether a thoroughfare or not. "Public place" includes any public park, garden, sea-beach, unenclosed ground to which the public have free access, or enclosed ground (not a park or garden) to which the public have restricted access, whether on payment or not, if the owners have put up a notice forbidding betting, at the entrance. The Act does not apply to race-courses or land adjacent thereto on race days. In Ireland, if the defendant is sentenced to a month's imprisonment without the option of a fine, he has the same right of appeal as if his sentence was over a month. And *see* GAMBLING POLICIES.

INSURANCE COMMITTEES hold an important position in the machinery of national health insurance. They are among the chief means of administering the National Insurance Act, largely taking the place of approved societies, which cannot possibly be occupied by the Post Office, in regard to persons who are not members of such societies. A glance at their functions as set out below is sufficient to indicate the great importance of these Committees. And though in some respects—local public health administration in particular—their office is very similar to, and even a check upon that of the regularly constituted local sanitary or public health authorities, yet their constitution is by no means democratic in the sense that it depends upon direct popular election. Perhaps that is a fact in their favour. One of the objects of the statute is to prevent sickness. These committees, almost independent of popular suffrage, are empowered to inquire into local conditions of employment, and housing, sanitary and water conditions, and take action for their improvement where necessary. An Insurance Committee is a body corporate by the name of "The Insurance Committee for the Borough [*or* County] of ——," and has perpetual succession and a common seal, and may sue and be sued in the above name. Local committees elected by persons and firms supplying drugs, medicines, and appliances must also be formed, for consultation with the Insurance Committees on all general questions affecting the supply of drugs, medicines, and appliances to insured persons, and also for the performance of such duties as may be determined by the Insurance Commissioners.

Constitution.—In each county and county-borough there is a committee. The membership of each must not exceed 80 nor be less than 40, according as, in each case, the Insurance Commissioners may determine. Of the members of a committee—(*a*) *three-fifths* are appointed under the regulations of the Commissioners, so as to secure representation of the insured persons resident in the county or county-borough who are members of approved societies, and who are deposit contributors in proportion, as nearly as may be, to their respective numbers; (*b*) *one-fifth* are appointed by the council of the county or county-borough; (*c*) *two* are elected under the regulations, either by any duly formed association of medical practitioners resident in the county or county-borough, or, if there is no such association, by such practitioners; (*d*) *one*, or, if the total number of the committee is sixty or upwards, *two*, or, if the total number is eighty, *three* medical practitioners appointed by the council; (*e*) *the remaining* members are appointed by the Commissioners. The local approved societies and associations of deposit contributors take part in the appointment of their representatives under (*a*), as above. Of the members appointed by a council two at least must be women; and of those appointed by the Commissioners one at least is to be a medical man, and two at least must be women. At least one woman must be on every sub-committee for dealing with the administration of any benefit. The representation of a council may be increased where any part of the cost of medical benefit or sanatorium benefit is defrayed by it, but in such a case the representation of the insured persons is correspondingly decreased. General regulations for the committees are made by the Commissioners. *District Insurance Committees.* The appointment of these is provided for in counties. Each County Council, saving in

certain special cases, must appoint such a committee for each borough within the county having a population of not less than 10,000, and for each urban district having a population of not less than 20,000. But in general the Commissioners, together with the County Councils, have power to create special areas for these District Committees wherever expediency suggests. In London a committee is appointed by the County Council for the City of London and each metropolitan borough. Arrangements may be made for combinations of Insurance Committees.

Powers and Duties of Insurance Committees.—These are very many; and a committee may be assisted by the advice and attendance of the local Medical Officer of Health, with the consent of his council. The following is a brief summary—(1) Exemption of insured persons from the compulsory class; (2) insurance of persons resident abroad; (3) provision of additional benefits; (4) valuation of compensation or damages; (5) reception of employer's notice as to agreement under the Workmen's Compensation Act; (6) making claims at law against employers on behalf of injured workmen, and advancing benefits to such a person; (7) determining as to whom are dependants of an insured person, and receiving benefits of such a person in a hospital who has no dependants, or paying the benefits to his dependants where there are any; (8) administering the benefits under the Act to post-office contributors; (9) administering medical and sanatorium benefits to all classes; (10) making arrangements with medical practitioners for the administration of medical benefit; (11) fixing the income limit for receipt of medical benefit, and making arrangements for the supply and prices of drugs and medicine and appliances; (12) the receipt from approved societies of monies in respect of the medical benefits administered by the committee; (13) the provision of sanatorium treatment for insured persons suffering from tuberculosis; (14) the administration of maternity benefits to deposit contributors; (15) subscriptions to hospitals, and provision of nurses; (16) fixing the contributions of deposit contributors in respect to medical benefit; (17) receiving from approved societies monies paid in respect to medical and sanatorium benefits of aliens; (18) dealing with the benefits of soldiers and sailors not members of approved societies; (19) reporting as to the health of area; (20) providing lectures and publications as to health; (21) obtaining a Government inquiry if excessive sickness is alleged to exist in area.

The Finance.—A committee derives its income as follows—(*a*) annually from monies credited to an approved society which has members residing within its district such sum in respect of medical benefit for every such member as, in default of agreement, may be determined by the Commissioners; (*b*) all sums payable in respect of deposit contributors resident in the area, for the purpose of medical benefit and administrative expenses in each year; (*c*) 1*d.* per annum per member (or not more than 2*d.* if the travelling expenses of the committee are repaid to them) from each approved society in respect of members resident in the area; (*d*) monies available for sanatorium purposes; and (*e*) such contribution as the local authority may think fit. And *see* NATIONAL INSURANCE and APPROVED SOCIETIES.

INSURANCE COMPANIES.—The law relating to life assurance companies has now, by the Assurance Companies Act, 1909, been amended, and also extended to other companies carrying on assurance or insurance business.

Companies to which Act applies. — All partnerships, societies, and companies, other than registered friendly societies and trade unions, who carry on business within the United Kingdom, are subject to the provisions of the above-mentioned Act where such business is that of assurance of all or any of the following classes: (*a*) *Life assurance* business: that is to say, the issue of, or the undertaking of liability under, policies of assurance upon human life, or the granting of annuities upon human life; (*b*) *Fire insurance* business: that is to say, the issue of, or the undertaking of liability under, policies of insurance against loss of or incidental to fire; (*c*) *Accident insurance* business: that is to say, the issue of, or the undertaking of liability under, policies of insurance upon the happening of personal accidents, whether fatal or not, disease or sickness, or any class of personal accidents, disease or sickness; (*d*) *Employers' liability* insurance business: that is to say, the issue of, or the undertaking of liability under, policies insuring employees against liability to pay compensation or damages to workmen in their employment; (*e*) *Bond investment* business: that is to say, the business of issuing bonds or endowment certificates by which the company, in return for subscriptions payable at periodical intervals of two months or less, contract to pay the bondholder a sum at a future date, and not being life insurance as above defined. An insurance company registered under the Companies Acts is subject to the provisions of the Act in whatever part of the world it may carry on business.

General provisions.—*Deposit.*—Every insurance company is bound to deposit and keep deposited a sum of £20,000 with the Paymaster-General in respect of each class of assurance business it may carry on. The deposit is invested in such funds approved by the Supreme Court as are selected by the company. The interest is paid to the company, but must be credited to the department of the class of business in respect of which the deposit from which it arises was made.

Separation of funds.—Many insurance companies transact other business besides that of assurance, or transact more than one class of assurance business. In such a case an account of the receipts in respect of the assurance business, or of the various classes of such business, must be kept separately, and be carried to and from a separate assurance fund. The investments of such a fund need not, however, be kept separate from the investments of any other fund. Each assurance fund thus created is absolutely the security of the policy-holders of the class to which it belongs. It is not, therefore, liable for any contracts of the company for which it would not have been liable had the business of the company been only that of assurance of that class; and it cannot be applied, directly or indirectly, for any purposes other than those of the class of business to which the fund is applicable.

Accounts and balance-sheets.—At the expiration of every financial year an insurance company is required to prepare—(*a*) A revenue account for the year, in the statutory form, applicable to the class or classes of assurance business carried on by the company; (*b*) A profit and loss account, also in the statutory form, except where the company carries on assurance business of one class only and no other business; (*c*) A balance-sheet following the form prescribed by statute. Every five years, too, or at such shorter

intervals as may be prescribed by the company's regulations, an investigation must be made into its financial condition, including a valuation of its liabilities, by an actuary. An abstract of the actuary's report must also be made. If at any other time an investigation is made into the financial condition of the company with a view to the distribution of profits, or the results of which are made public, the foregoing provisions must be complied with. A statement of its business must also be prepared. If, however, the investigation is made annually the statement may be prepared at any time not less than once in five years. These accounts, balance-sheets, statements, and abstracts are afterwards deposited with the Board of Trade, then printed and forwarded, if applied for, to the shareholders and policy-holders.

An assurance company, whenever it publishes a statement of its authorised capital, must always accompany that statement with a statement of the amount of the capital which has been subscribed, and the amount paid up. In the case of a proposed amalgamation of assurance companies, or transfer of assurance business to another company, the life-endowment, sinking-fund, or bond-investment policy-holders are entitled to receive certain information as to the detail of the proposals. Ten policy-holders, owning policies of an aggregate value of not less than ten thousand pounds, may petition the court to wind up their company.

Special Classes of Business.—*Life assurance.*—The foregoing provisions apply to a company, with respect to its life assurance business, subject to several modifications, for example: (*a*) "Policy on human life" means any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life; (*b*) Where the company grants annuities upon human life, "policy" includes the instrument evidencing the contract to pay such an annuity, and "policy-holder" includes annuitant; (*c*) The obligation to deposit and keep deposited the sum of £20,000 applies notwithstanding the company has previously made and withdrawn its deposit, or been exempted from making any one deposit under any enactment repealed by the Act of 1909; (*d*) A proposed amalgamation or transfer will not be sanctioned by the Court where the proposal is opposed by life-policy holders representing one-tenth or more of the total amount assured in the company; (*e*) Contracts entered into by a company before the 9th August 1870 are not affected by the provisions for exclusive separate liability of different funds; (*f*) The provisions of the Act relating to the separation of funds, and the exclusive liability thereof, do not apply in the case of a company established before the 9th August 1870, by whose deed of settlement the whole of the profits of all the business of the company are paid exclusively to the life-policy holders, and on the face of whose life policies the liability of the life-assurance fund in respect of the other business distinctly appears; (*g*) A business treated by special statute as life assurance shall continue to be so treated; (*h*) In the case of a mutual company whose profits are allocated to members wholly or mainly by annual abatements of premium, the abstract of the report of the Actuary may be made and returned at intervals not exceeding five years, provided that, where such return is not made annually, it shall include particulars as to the

rates of abatement of premiums applicable to different classes or series of assurances allowed in each year during the period which has elapsed since the previous return.

Fire insurance.—In regard to a company carrying on this class of business the following are the modifications:—(*a*) It need not prepare a statement of its fire insurance business; (*b*) The deposit need not be made if the company has commenced business before the 1st July 1909, nor where the company is an association of owners or occupiers and the business is the mutual insurance of their own property, nor where the company has already made a deposit in respect of another class of insurance business; (*c*) Separate funds are not required in the case of fire insurance business; (*d*) The provisions in respect to amalgamation and transfer do not apply.

Accident insurance.—The modifications in regard to a company carrying on this class of business are as follows: (*a*) A special statement of its business is prescribed; (*b*) A deposit is not necessary if the company commenced to carry on business before the 1st July 1909; (*c*) The deposit is not necessary if a deposit has been made in respect of any other class of business; (*d*) Separate funds are not requisite; (*e*) The provisions relating to amalgamation and transfer do not apply.

Employers' Liability Insurance Company.—Here the modifications are: (*a*) An association of employers for mutual insurance against liability to pay compensation or damages to workmen, either alone or in conjunction with insurance against any other risk incident to their trade or industry, is not subject to the provisions of the Act; (*b*) A company is not subject to the provisions of the Act which carries on the employers' liability insurance business as incidental only to the business of marine insurance by issuing marine policies, or policies in the form of marine policies, covering liability to pay compensation or damages to workmen as well as losses incident to marine adventure or adventure analogous thereto; (*c*) An annual statement of business and actuarial investigation must be made in the prescribed form; (*d*) A company which commenced business within the United Kingdom before the 28th August 1907 is not required to make a deposit; (*e*) A deposit is recoverable and may be retained when and so long as the employers' liability fund set apart and secured for the satisfaction of the policy-holders amounts to £40,000.

Bond Investment Companies.—Where a company carries on bond investment business, the Act applies with respect to that business, subject to the following modifications: (*a*) The expression "policy" includes any bond, certificate, receipt, or other instrument evidencing the contract with the company, and the expression "policy-holder" means the person who for the time being is the legal holder of such instrument; (*b*) A deposit need not be made by a company which commenced to carry on business within the United Kingdom before the 1st July 1909; (*c*) As soon and so long as the bond investment fund set apart and secured for the satisfaction of the claims of the policy-holders of that class amounts to £40,000 the deposit is recoverable and may be retained by the company; (*d*) The first statement of the bond investment business of the company must be deposited on or before the 30th June 1911; (*e*) The company cannot give the holder of any policy issued after the 1st July 1909 any advantage dependent on lot or chance.

IRISH LINEN.—Every one who weaves in a handloom in Ireland any linen damask table-cloth or napkin, or any piece of linen damask goods, is required by statute (the Irish Handloom Weavers Act, 1909) to weave on the selvedge or hem thereof the words "Irish handwoven linen damask." A person who so weaves a piece of cambric or linen diaper goods must, as soon as the piece is woven, stamp or print, or cause to be stamped or printed, thereon the words "Irish hand-woven" in legible character. To fail to comply with these requirements is to become liable to a penalty of £10. A similar penalty is incurred by a manufacturer, agent, or other person who causes or procures any one to weave in a handloom in Ireland any linen damask table-cloth or napkin, or any piece of linen damask goods, or cambric or linen diaper goods, otherwise than in accordance with the foregoing requirements. So, too, by any person who sells or exposes for sale any goods falsely marked as above.

KNACKERS.—The business of slaughtering horses has already been dealt with in the article on SLAUGHTER HOUSES, but recent legislation—the Protection of Animals Act 1911—makes it necessary to deal further with the subject. A "knacker" is now defined as meaning "a person whose trade or business it is to kill any cattle not killed for the purpose of the flesh being used as butcher's meat." A "knacker's yard" is any building or place used for the purpose, or partly for the purpose, of such trade or business, and the expression "cattle" includes any horse, ass, mule, bull, sheep, goat, or pig.

A knacker must now observe and conform to the regulations set out hereunder. These regulations, introduced by the Act of 1911, should be compared with the provisions of the Knackers Acts 1786 and 1844, though there is no provision that those Acts are to be read together with the Act of 1911. Contravention or failure to comply with these regulations renders a person liable, on summary conviction, to a fine not exceeding £10. Any constable has a right to enter a knacker's yard at any hour by day, or at any hour when business is or apparently is in progress or is usually carried on therein. But such entry is permissible only for the purpose of examining whether there is or has been any contravention or noncompliance with the provisions of the Act. Any one who refuses obstructs or impedes such an entry is liable, on summary conviction, to a fine not exceeding £5. For the purposes of offences of cruelty, a knacker is deemed to be the owner of any animal delivered to him, and an animal is deemed to be delivered to a knacker if delivered either to the knacker himself, or to any person on his behalf, or at his yard.

No person who is licensed to slaughter horses can lawfully, during the time while such license is in force, carry on the trade or business of a dealer in horses—penalty £10.

Regulations.—1. The name of the knacker, together with the word "knacker," shall be painted or affixed in a conspicuous manner over the door or gate of the knacker's yard. 2. The hair shall be cut from the neck of any horse, ass, or mule directly the animal has been delivered to the knacker. 3. All animals shall be slaughtered, with as little suffering as possible, within two days from the time they have been delivered to the knacker. Any animal which is in pain shall be so slaughtered without delay. 4. All animals shall be properly fed and watered after they have been delivered to the knacker. 5. No animal shall be used or employed for any work after it has been

delivered to the knacker. 6. The knacker shall enter in a book kept for the purpose such a full and correct description of the colour, marks, and gender of every animal delivered to him as may clearly distinguish and identify the same, and the name and address of the owner thereof, and the book shall be produced by him before any justice of the peace upon the requirement of such justice, and the knacker shall allow such book to be inspected and extracts to be made therefrom at all reasonable times by any police constable or by any other person authorised by a justice of the peace. 7. No person who is under the age of sixteen years shall be admitted to, or permitted to remain in, the knacker's yard during the process of slaughtering or of cutting up the carcase of any animal. 8. No animal shall be killed in the sight of any other animal awaiting slaughter. 9. The knacker shall not sell or part with alive, or cause or procure or permit any person to sell or part with alive, any animal which has been delivered to him.

LABOUR EXCHANGES—In order to assist those who are able and wish to work, but are unable to find employment, so that they may not be forced into the ranks of the pauper, the Unemployed Workmen Act, 1905, made provision for the establishment, in London and provincial centres, of labour or employment exchanges by and in connection with the local municipal authorities and distress committees. Such exchanges were thereupon established in considerable numbers throughout the country. Many circumstances, however, militated against their success, *e.g.* each exchange existed in a state of almost absolute indifference to and independence of the others; there was therefore no interchange of demand for and supply of labour; the association of the exchanges with the distress committes strongly suggested that the former were largely in the nature of charitable organisations; employers made little use of the agency of the exchanges because of want of knowledge of their possibilities and doubt as to their practical ability to supply the right class of worker; and trade unions and the better class of workers hesitated to co-operate, inasmuch as the foundations of the system appeared to be laid in charity and the actual applicants for work had the reputation of being largely of the shiftless and almost pauper element. An experience of these circumstances, and the example of other countries, such as France, Germany, Switzerland, and Belgium, where national systems of labour exchanges entirely dissociated from anything suggestive of charity have been for some time established with satisfactory results, eventually determined the legislature to establish a national and centralised system of exchanges in this country. Hence the Labour Exchanges Act, 1909. Under this statute the Board of Trade, on the 1st February 1910, took over all the then existing labour exchanges, and the powers and duties in relation thereto of the local authorities and distress committees thereupon ceased.

The term "labour exchange" is defined by statute as meaning "any office or place used for the purpose of collecting and furnishing information, either by the keeping of registers or otherwise, respecting employers who desire to engage work-people and work-people who seek engagement or employment." Any worker is entitled, without payment of fee, to register his name as requiring employment in a particular occupation. Any employer, too, is entitled, also without payment of fee, to apply to the exchange

for the supply of any particular class of worker. The exchange inquires into the character of the registered workers and introduces them to the employers. It is hoped that as the system develops it will operate in the direction of minimising unemployment by, amongst other things, exchanging information amongst the exchanges, and moving bodies of workers from districts where work is scarce to other districts where labour is in demand. A local exchange has power to advance railway fares by way of loan to workmen for whom employment has been found, on the distinct understanding that such loans are to be refunded from the early earnings. No money is handed to the men, but vouchers are given which are exchangeable for railway tickets at the various booking offices. There is a penalty for making a false statement or representation to a person acting for or for the purposes of a labour exchange for the purpose of obtaining employment or procuring work-people. *See* DISTRESS COMMITTEES.

LAND VALUES DUTIES.—These, introduced by the Budget for 1909–10 (the Finance (1909–10) Act, 1910), as amended by the Revenue Act, 1911), for the first time, bring the practical application of the principle of the taxation of land values into the domain of British public finance. Though the Act itself was passed in the teeth of strenuous and powerful opposition, yet before the introduction of the Budget all political parties were undoubtedly agreed on the principle that land values should pay their quota to public revenue. America, Germany, and many of our colonies had already led the way. The Budget, however, as originally introduced, provided that the whole of the revenue to be derived from the taxation of land values should be applied to imperial and national services. But land values had always been regarded as essentially the creation of local needs, services, and enterprise. So, in the countries above mentioned, land values were generally a source of local or municipal revenue rather than imperial or national. During a quarter of a century before the Budget all the great municipal and rating authorities of the United Kingdom had advocated the rating as distinguished from the taxation of these values, and non-party Bills for the rating of land values had been repeatedly introduced into the House of Commons. These facts were duly pressed upon the notice of the Government, with the result that the municipalities and local authorities were largely appeased by an amendment to the original scheme being carried into the Finance Act (section 91), which provided that half the proceeds of the land values duties should be appropriated for the benefit of local authorities. This appropriation has been since suspended, however, by the Revenue Act, 1911, until parliament shall determine, but not beyond the 31st March 1914. None of the taxes will be charged on land held by local authorities, or upon land occupied by institutions for public or charitable purposes, or, subject to the provisions of section 6 of the Revenue Act, 1911, on land belonging to statutory companies, such as railways, which cannot be used for other than statutory purposes (sections 35–39).

Classes of Duties.—There are four separate duties: (1) The Increment Value Duty; (2) the Reversion Duty; (3) the Undeveloped Land Duty; (4) the Mineral Rights Duty.

Definitions.—The duties, other than the Mineral Rights Duty, which is the subject of a separate article, are based upon four definitions contained in sect. 25 of the Act, and which must be carefully studied in order that

the character and incidence of the duties may be understood. These definitions are concerned with four terms—Gross Value, Full Site Value, Total Value, and Assessable Site Value. Of these, then, in their order.

The **Gross Value** of land means the amount which the fee simple of the land, if sold at the time in the open market by a willing seller in its then condition, free from encumbrances, and from any burden, charge, or restriction (other than rates or taxes), might be expected to realise. The *Full Site Value* of land means the amount which remains after deducting from the gross value of the land the difference (if any) between that value and the value which the fee simple of the land, if sold at the time in open market by a willing seller, might be expected to realise if the land were divested of any buildings and of any other structure (including fixed or attached machinery) on, in, or under the surface, which are appurtenant to or used in connection with any such buildings, and of all growing timber, fruit trees, fruit bushes, and other things growing thereon. The *Total Value* of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to any fixed charges and to any public rights of way or any public rights of user, and to any right of common and to any easements affecting the land, and to any covenant or agreement restricting the use of the land entered into or made before the 30th April 1909, or to any covenant or agreement restricting the use of the land entered into or made on or after that date, if, in the opinion of the Commissioners, the restraint imposed by the covenant or agreement so entered into or made on or after that date was when imposed desirable in the interests of the public, or in view of the character and surroundings of the neighbourhood. The opinion of the Commissioners is in this case subject to an appeal to the referee, whose decision is final.

The *Assessable Site Value* of land means the total value after deducting: (*a*) the same amount as is to be deducted for the purpose of arriving at full site value from gross value; and (*b*) any part of the total value which is proved to the Commissioners to be directly attributable to works executed, or expenditure of a capital nature (including any expenses of advertisement) incurred *bonâ fide* by or on behalf of or solely in the interests of any person interested in the land for the purpose of improving the value of the land as building land, or for the purpose of any business, trade, or industry other than agriculture; and (*c*) any part of the total value which is proved to the Commissioners to be directly attributable to the appropriation of any land or to the gift of any land by any person interested in the land for the purpose of streets, roads, paths, squares, gardens, or other open spaces for the use of the public; and (*d*) any part of the total value which is proved to the Commissioners to be directly attributable to the expenditure of money on the redemption of any land tax, or any fixed charge, or on the enfranchisement of copyhold land or customary freeholds, or on effecting the release of any covenant or agreement restricting the use of the land which may be taken into account in ascertaining the total value of the land, or to goodwill or any other matter which is personal to the owner, occupier, or other person interested for the time being in the land; and (*e*) any sums which, in the opinion of the Commissioners, it would be necessary to expend in order to divest the land of buildings, timber, trees, or other

things of which it is to be taken to be divested for the purpose of arriving at the full site value from the gross value of the land, and of which it would be necessary to divest the land for the purpose of realising the full site value. Works executed or expenditure incurred to improve the value of the land for agriculture, and which have improved its value as building land, or for the purpose of any business, trade, or industry other than agriculture, are treated as having been executed or incurred also for the latter purpose. The assessable site value as at 30th April, 1909, is termed the "original site value."

The Valuation.—The first step towards the imposition and collection of these duties is necessarily a grand valuation of the site value of all land, whether built upon or not, in the United Kingdom. This valuation is made by the Commissioners so that it shows separately, first the total value, and secondly the site value of the land; and also, in the case of agricultural land, the value of the land for agricultural purposes where that value is different from the site value. The value is estimated as on the 30th April 1909. Each piece of land under separate occupation must be separately valued. So, too, must be valued, if the owner requires, any part of any land under separate occupation. On being required by notice from the Commissioners a return is to be furnished them by every owner of land and any person receiving rent in respect of any land. This return should contain certain requisite information necessary for the purpose of valuation—*e.g.* the rent received, particulars as to the ownership, tenure, area, character and use of the land, and the consideration given on any previous sale or lease of the land. Default in making a return subjects the responsible person to a penalty of £50. An owner of land may, if he thinks fit, furnish to the Commissioners his own estimate of the total value or site value or both of the land, and the Commissioners, in making their valuation, are bound to consider an estimate so furnished.

Provisional Valuation.—The Commissioners, from the information thus received by them, having made a provisional valuation of the land, serve the owner with a copy. The values stated in this provisional valuation thereupon become the original total value and the original site value respectively, unless the owner takes objection thereto. Should, therefore, the stated values appear to the owner to be incorrect, he must take objection with a view to the amendment of the provisional valuation. He does this by giving the Commissioners notice of his objection, stating the grounds of his objection and the amendment he desires. The notice must be given within sixty days of the date on which the copy of the provisional valuation is served, or such extended time as the Commissioners may in any special case allow. If the Commissioners amend the provisional valuation so as to be satisfactory to all persons making objections, the total and site value as stated in the amended valuation will be adopted as the original total and original site value. If a satisfactory amendment is refused the objector may appeal. And here it should be noted that any person interested in the land, though not an owner, may obtain from the Commissioners a copy of the provisional valuation, and object, and, if necessary, appeal. A lessor having a reversion in fee simple or for a term exceeding twenty-one years stands, in this connection, as if he were an owner.

Undeveloped land is valued periodically every five years as on the 30th April, from and including the year 1914.

Assessment on separate Parcels of Land and Apportionment of Duty.—Any of the duties may be assessed on any such pieces of land whether under separate occupation or not, as the Commissioners think fit. They must, moreover, make such apportionments and re-apportionments of any original site value or any site value fixed on a periodical valuation as may be required by the landowner.

Determining Value of Consideration.—Where the consideration for a transfer or a lease consists of the payment of a capital sum, the value of the consideration is that sum. Where such a consideration is a periodical money payment, the capital value of that payment is the value of the consideration. Suitable additions to the value of such consideration as the foregoing may be made—(*a*) in respect of any covenant or undertaking or liability to discharge an encumbrance; or (*b*) in cases where a nominal rent only has been reserved, in respect of any covenant or undertaking to erect buildings or to expend sums upon the property.

The Commissioners—*Duties and Powers.*—The making of this valuation is entrusted to the Commissioners of Inland Revenue, known generally in this connection as the Commissioners simply. Their duties also include the keeping of records of valuations, apportionments, re-apportionments, assessments, deductions, and duties paid. Certified copies of particulars so recorded must be furnished by them to any person interested in the land to which they relate, or to any one authorised by him. For this the payment of a fee not exceeding 2s. 6d. may be required. Persons who pay and persons who receive rent must, within thirty days after application by the Commissioners, furnish the latter with the names and addresses of the recipients and payers respectively. The Commissioners also have power to appoint agents to inspect land and to report thereon, and any person having the custody or in possession of any land must, on production of an agent's authority, allow him to inspect the land at such reasonable times as the Commissioners think necessary. Non-compliance with the foregoing may be met with a penalty of £50.

Appeal—*To a Referee.*—The decision or action of the Commissioners in a particular case may, in general, be appealed against by the person aggrieved, the appellate authority being called a "Referee." The referee is selected from a panel of referees. The panel is composed of persons who have been admitted Fellows of the Surveyors' Institution, or other persons having experience in the valuation of land or minerals, and is constituted, and the individual members of the panel are appointed by the "Reference Committee." The selection of the referee from the panel is made in accordance with the Rules, which also provide for the form of his decision. Subject to appeal to the court, the decision of a referee is final. His fees are paid by the Treasury.

The *Reference Committee* consists, in England, of the Lord Chief Justice, the Master of the Rolls, and the President of the Surveyors' Institution. For Scotland and Ireland, there is each a committee of a like character. The office of the committee is not only to appoint the panel of referees, as already stated, but also to make Rules of Procedure in references, for the selection of referees, for the form of decisions, and with respect to any other matter for which rules may be necessary. These rules should be consulted when an appeal to a referee is contemplated.

There is *Ground for Appeal* when a person is dissatisfied with (*a*) the first or any subsequent determination of total value or site value; (*b*) the amount of an assessment of duty; (*c*) a refusal of an allowance where the Commissioners have power to make one; (*d*) an apportionment of the value of land or of duty, or an assessment or apportionment of the consideration on a transfer or lease; or (*e*) the determination of any matter which the Commissioners have power to determine. In regard, however, to a provisional valuation of total or site value, it should be noted that an appeal will lie only on the part of a person who has made due objection to the provisional valuation. And where it is intended to question the original total value and the original site value and the site value, as ascertained under a subsequent valuation, it must be by way of appeal against the Commissioners' determination of that value. It cannot be questioned in any case on an appeal against an assessment of duty.

Any matter referred to a referee must be determined by him in consultation with the Commissioners and the appellant, or with persons nominated by the Commissioners and the appellant respectively for the purpose. The costs of the appellant may be ordered to be paid by the Commissioners or *vice versa*, according to the discretion of the referee, and his order as to expenses may be made a rule of court.

To the Courts.—There is, also, an appeal from a reference to the County Court of the place where the appellant resides, or the property is situate, in cases where the total or site value, as alleged by the Commissioners, does not exceed £500; and thence a further appeal may be carried to the Court of Appeal. In every other case an appeal from a referee must be taken to the High Court.

Increment Value Duty.—The object of this duty is to appropriate for the public benefit a percentage of any increase in the value of land, whether built upon or not, subsequent to the 30th April 1909. Its rate is one-fifth of the increment value, and is payable as a stamp duty. The increment value of land is the amount (if any) by which the site value, at the time when the duty is collected, exceeds the original site value. The duty is collected (*a*) on a sale of the land, or whenever a lease for a term exceeding fourteen years is granted; (*b*) on a succession by reason of a death; (*c*) in the case of land held by corporations or other bodies, so that it is not liable to death duties, at certain periodical occasions. The duty is calculated, in the case of a sale of the fee simple, on the value of the consideration; in the case of a lease or the transfer on sale of any interest in the land, on the value of the fee-simple, estimated on the basis of the value of the consideration for the grant of the lease or the transfer of the interest; in the case of a succession to a fee-simple, on the principal value of the land; or where the succession is to an interest in the land, on the value of the fee-simple, estimated on the basis of the principal value of the interest; in the case of a periodical occasion, on the total value.

Whenever this duty is collected the amount payable is, in general, the amount due on the then increment value, less the amount paid on previous occasions, and is payable in accordance with rules made by the Commissioners. On a first occasion for the collection of the duty the increment value is reducible by an amount equal to 10 per cent. of the original site value; and on any subsequent occasion, by an amount equal to 10 per cent. of the site

value on the last preceding occasion for collection. The amount of duty collected is to be remitted in whole or in part accordingly; but in practice, the remitted duty will not be actually collected. No remission will be given on any occasion, however, if it makes the amount of the increment value, on which duty has been remitted during the preceding period of five years, exceed 25 per cent. of the site value on the last occasion for collection prior to the commencement of that period, or of the original site value if there has been no such occasion.

Collection on transfers or leases.—The Commissioners assess the duty on a transfer on sale or the grant of a lease, and it is paid by the transferor or lessor as the case may be. On such an occasion the transferor or lessor must, subject to a penalty of £20 and payment of interest, present to the Commissioners the conveyance or lease or a copy, or such other particulars as the regulations may require, and the document will not be duly stamped unless it bears, in addition to the revenue stamp, a stamp denoting compliance with the foregoing.

On successions, &c.—Special provisions are made for the collection of the duty in the case of a succession on a death, and where it is payable by a corporation periodically.

Exemption.—Five cases for exemption may be noted—(1) agricultural land, (2) small properties in the owner's occupation, (3) public recreation-grounds, (4) crown lands; (5) on minerals worked or leased. (1) Agricultural land having no higher value than its market value at the time for agricultural purposes only is exempt from this duty. In this connection the value of the land for sporting purposes, or for other purposes dependent upon its use as agricultural land, is treated as value for agricultural purposes only, except where the value for any such purposes exceeds the agricultural value. Nor is the duty charged in the case of agricultural land not exceeding fifty acres at an average total value of £75 per acre, and a dwelling-house (together not exceeding £30 annual value for the purposes of Schedule A of the Income Tax), where the same, immediately before the occasion on which the duty is to be collected was, and had been for twelve months previously, occupied and cultivated by the owner. (2) Certain small houses and properties in the owner's occupation are also exempt. The duty is not charged on the increment value of land—the site of a dwelling-house in which the owner has resided during the twelve months immediately before the occasion on which the duty is to be collected; but this exemption applies only where the annual value of the house, as adopted for the purpose of income tax under Schedule A does not exceed—(*a*) in the case of a house situated in the administrative county of London, £40; and (*b*) in the case of a house situated in a borough or urban district with a population according to the last published census for the time being of 50,000, or upwards, £26; and (*c*), in the case of a house situated elsewhere, £16. A dwelling-house is frequently valued for the purposes of income tax together with other land. In such a case, in order to determine its annual value with a view to exemption, the total annual value is divided between the dwelling-house and the other land as determined by the Commissioners. The expression "owner," in the foregoing exemption, includes a person who holds lands under a lease which was originally granted for a term of fifty years or more,

and the "site of a dwelling-house" includes any offices, courts and yards, and gardens not exceeding one acre in extent, occupied together with the dwelling-house. (3) Land held by a body corporate or incorporate for games and recreations, is not in general subject to the duty. (4) Crown lands. (5) The conditions of this exemption are set out in the article on MINERAL RIGHTS DUTY (Appendix, Vol. IV.). There are also the exemption in the case of land held by a statutory company and in the case of flats as mentioned in the next paragraph.

Flats.—A sale or lease of, or a succession to, a separate flat or tenement, part of a block of separate flats or tenements, is not an occasion for the collection of the duty.

Claims for deductions.—No claim can be made for a deduction for the purpose of ascertaining a site value if the deduction is one which could have been, but was not, claimed for the purpose of ascertaining the original site value.

A Contract between a transferror and transferee or a lessor and lessee that the transferee or lessee, as the case may be, shall pay the increment value duty or expenses incidental thereto is void.

Reversion Duty is charged, on the determination of any lease of land, on the "value of the benefit" accruing to the lessor by reason of such determination, at the rate of 10 per cent., or £1 for every complete £10 of that value. The "value of the benefit" is the amount by which the "total value" (see above) of the land at the time the lease determines (subject to the deduction of any part of the total value which is attributable to any works executed or expenditure of a capital nature incurred by the lessor during the term of the lease and of all compensation payable by him at the determination) exceeds the total value of the land at the time of the original grant of the lease. The basis of calculation is the rent reserved and payments made in consideration of the lease including, in cases where a nominal rent only has been reserved, the value of any covenant or undertaking to erect buildings or to expend any sums upon the property. Where, however, the lessor is himself entitled only to a leasehold interest, the value of the benefit as so ascertained is reduced in proportion to the amount by which the value of his interest is less than the value of the fee simple. If the lessee buys the lessor's interest, and the lease merges, the lessor pays the duty.

Exemptions and allowances.—Exemption from the duty may be claimed in either of the following eight cases: (1) Where the reversion was purchased before the 30th April 1909, and the lease determines, apart from agreement between the lessor and the lessee, within forty years of the date of the purchase; (2) where the land, on the determination of the lease, is agricultural land; (3) where the original term of the lease did not exceed twenty-one years; (4) where the interest of the lessor expectant on the determination is a leasehold interest not exceeding twenty-one years; (5) on the termination of a mining lease; (6) on land held by a statutory company, such as a railway company, for the purposes of their undertaking; (7) where the lessee acquires the lessor's interest, if at the time of the determination of the lease it has at least fifty years to run and the total value of the land does not exceed five hundred pounds; (8) where a lease of land held upon trust for a body of persons is surrendered upon the terms that the lessor shall grant to those persons

severally leases of various plots of the land for a term in each case equal to the unexpired term of the original lease and at rents amounting in the aggregate to but not exceeding the rent reserved by the original lease.

There are also three cases in either of which the Commissioners may make allowances. (1) Where a reversion has been mortgaged before the 30th April 1909, and the mortgagee has foreclosed before the lease on which the reversion is expectant determines. Here he is not liable to pay reversion duty in excess of the difference between the total value of the land at the time of the determination and the amount payable under the mortgage at the date of the foreclosure. (2) Where increment duty is due and reversion duty has been paid in respect of a benefit, or part of a benefit, identical with the increment value, the duty paid is set off against the duty payable. (3) There is a similar set-off when increment value duty has been paid and reversion duty is payable in respect of identical value and benefit.

Recovery of duty.—The lessor deriving benefit from the determination of a lease is the party liable to pay the duty. It may be recovered from him as a debt, ranking *pari passu*, however, with all his other debts. On the determination of a lease on which duty is payable, the lessor must deliver an account to the Commissioners setting forth the particulars of the land and the estimated value of the benefit accruing to him by such determination. If this account is not delivered within three months after the determination, the lessor, if knowingly in default, is liable to a penalty of 10 per cent. upon the amount of duty payable, and a further penalty of like amount for every three months after the first month during which the failure continues.

Undeveloped Land Duty.—The object of this is to place a tax upon undeveloped land, thus, while benefiting the public revenue, tending to force land-owners to throw their land on to the market or develop it for the use and advantage of the community. It is levied annually at the rate of ½d. in the £1 on its site value. "Undeveloped land" (which is revalued periodically as already stated) is defined as land which "has not been developed by the erection of dwelling-houses or of buildings for the purposes of any business, trade, or industry other than agriculture (but including glasshouses or greenhouses), or is not otherwise used *bonâ fide* for any business, trade, or industry other than agriculture." Developed or used land which reverts to the condition of undeveloped land is treated, after the expiration of one year, as undeveloped land for the purposes of the duty until it is again developed or used. It would be taken to have so reverted in case the buildings became derelict, or the land ceased to be used for any business, trade, or industry other than agriculture. Land included in a scheme of development and in respect to which expenditure has been incurred, with a view to development, on roads (including paving, curbing, and metalling, or other works in connection with roads) or sewers, is, to the extent of one acre for every complete £100 of that expenditure, treated as developed, but only as regards expenditure within the preceding twenty years. If after the date of the expenditure the land, having been developed, reverts to the condition of undeveloped land, the part of the land to be treated as land developed is determined by the Commissioners. So, too, in a case where the amount of the expenditure does not cover the whole of the land included in the scheme of development.

"Site value," in connection with this duty, is the value adopted as the

original site value, or where the site value has been ascertained under any subsequent periodical valuation of undeveloped land for the time being in force, the site value as so ascertained. Where, however, increment value duty has been paid on undeveloped land, the site value, for the purpose of undeveloped land duty, will be reduced by a sum equal to five times the amount paid as increment value duty. Undeveloped land does not include the minerals.

Payment of the duty.—This duty is payable by the owner notwithstanding any contract to the contrary. It is assessed and payable at any time after the 1st January of the year for which it is charged. If not assessed within that year it may be assessed at any time within three years after the expiration of the year for which it is charged, and is payable after two months from the date of the assessment. Such a postponement of assessment may be the result of there being no value either shown in the provisional valuation or finally settled on which the duty can be assessed, or for some other cause.

Exemptions and allowances.—There are twelve instances: (1) Land, the site value of which does not exceed £50 per acre; (2) Agricultural land, having a site value exceeding £50 per acre, is only charged on the amount by which the site value exceeds the value for agricultural purposes; (3) Parks, gardens, or open spaces open to the public as of right; (4) Woodlands, parks, gardens, or open spaces, reasonable access to which is enjoyed by the public or by the inhabitants of the locality (including access regularly enjoyed by any of the naval or military forces of the Crown for the purpose of training or exercise) where, in the opinion of the Commissioners, that access is of public benefit; (5) Land kept free of buildings in pursuance of some definite scheme, whether framed before or after the passing of the Act, for the development of the area of which the land forms part, where it is reasonably necessary in the interests of the public, or in view of the character of the surroundings or neighbourhood, that the land should be so kept free from buildings; (6) Land *bonâ fide* used for games or other recreation where the land is so used under some agreement with the owner which, as originally made, could not be determined for a period of at least five years, or where other circumstances render it probable that the land will continue to be so used. Land kept free from buildings in pursuance of a scheme, and which has received an exemption, can be built upon only with the consent of the Local Government. Such consent may impose restrictions, and will not be given unless the Board is satisfied that it is desirable in the interests of the public that the restriction on building should be removed. The opinion of the Commissioners on these matters is final and not subject to any appeal; (7) Land not exceeding an acre in extent occupied together with a dwelling-house; (8) Land being gardens or pleasure grounds so occupied, when the site value of the garden and pleasure grounds together with the site value of the dwelling-house does not exceed twenty times the annual value of the gardens, pleasure grounds, and dwelling-house as adopted for the purpose of income tax under Schedule A. This exemption does not apply, however, so as to exempt more than five acres. In the case of excess those five acres are exempted which are determined by the Commissioners to be most adapted for use as gardens or pleasure grounds in connection with the dwelling-house. The total annual value is divided between the dwelling-house, gardens, and pleasure grounds and the other land in such manner as the Commissioners

may determine in a case where these are all valued together for the purpose of income tax under Schedule A ; (9) Agricultural land held under a lease or other tenancy created before the 30th April 1909, during the original term while the tenancy continues thereunder. Where such a lease or tenancy is subject to a power of determination by the landlord, the original term is deemed to expire for the purposes of this duty on the earliest date after the commencement of the Finance (1909–10) Act, 1910, at which such determination is possible ; (10) Minerals ; (11) Land held by a statutory company, such as a railway company, for the purpose of their undertaking ; (12) The site value of any agricultural land occupied and cultivated by the owner where the total value, together with any other land belonging to the same owner, does not exceed £500. The expression "owner" here includes a person holding under a lease originally granted for fifty years or more.

Mineral Rights Duty.—*See* Appendix, Vol. IV.

LAUNDRIES.—A laundry carried on by way of trade or for the purpose of gain, or carried on as ancillary to another business, or incidentally to the purposes of any public institution, is now subject to the provisions of the Factory and Workshop Act, 1901, as if it were a non-textile factory or workshop within the meaning of that Act.

Hours of employment.—Subject to the provisions of the Act of 1901, which are summarised in the article on laundries in this volume, other than those ancillary to a business carried on in any premises which are a factory or workshop—(*a*) The period of employment of women may on any three days in the week, other than Saturday, begin at 6 A.M. and end at 7 P.M., or begin at 7 A.M. and end at 8 P.M., or begin at 8 A.M. and end at 9 P.M. ; provided that a corresponding reduction is made in the periods of employment on other days of the week, so that the total number of hours of the periods of employment of women, including the intervals allowed for meals, shall not exceed sixty-eight in any one week ; (*b*) Where the occupier of a laundry so elects, the following provisions shall apply to the laundry in lieu of the preceding :—The period of employment of women may, on not more than four days, other than Saturday, in any one week, and on not more than sixty days in any calendar year, begin at 6 A.M. and end at 7 P.M., or begin at 7 A.M. and end at 8 P.M., or begin at 8 A.M. and end at 9 P.M. ; (*c*) Different periods of employment may be fixed for different days of the week. It is not permissible, however, to change from system (*a*) to system (*b*), or *vice versâ*, oftener than once a year. In reckoning the sixty hours for system (*b*) every day on which any woman has been employed overtime must be taken into account. Entries in the register are to be made in accordance with the prescribed conditions.

LEGAL AID.—The Poor Prisoner's Defence Act, 1903, which applies only to England, makes a new departure in criminal law. It provides that where it appears, having regard to the nature of the defence, as disclosed in the evidence or a statement made by the poor prisoner before the committing justices, that it is desirable in the interests of justice that he should have legal aid for his defence and that his means are insufficient, (*a*) the justices upon committal or (*b*) the judge at the assizes or the chairman at quarter-sessions after reading the depositions, can certify for legal aid. The prisoner is then entitled to have solicitor and counsel

assigned to him. The expense of the defence, including a copy of the depositions, the fees of solicitor, counsel, and witnesses are paid in the same manner as that of the prosecution in indictments for felony, under regulations as to rates and scales of payment to be made by the Secretary of State. In this Act "prisoner" includes a person committed for trial on bail. "Committing justices" includes a metropolitan police magistrate and a stipendiary magistrate. "Chairman" includes a recorder, deputy recorder, or deputy chairman. *Regulations*, dated 14th June 1904.—The expenses to be allowed are for legal and medical witnesses attending in the place where they reside, £1 1s. per day; if two or more distinct cases, not more than £2 2s. per day; if elsewhere, and whether in one or more cases, not more than £2 2s. per day. The solicitor for the prosecution, if called, 6s. 8d. only. The Court is to fix the fees of expert witnesses for appearing and for preparing their evidence; also for interpreters. Police officers appearing as prosecutors or witnesses outside their own area, for constable or sergeant, up to 4s. per day and 4s. per night; inspectors, up to 5s. per day and 5s. per night; superintendents and chief constables, up to 7s. per day and 5s. per night. Prison warders as prosecutors, witnesses, or in charge of prisoners: chief warders, 8s. per day and night, and meals, 4s. 6d.; principal warders, 6s. 6d., meals, 4s. 6d.; warders and assistant warders, 6s., meals, 4s. For the prisoner's meals, the amount the warder has been authorised to spend for that purpose. Witnesses, 7s. per day and 5s. per night. When not detained for a night, children, 1s. per day; paupers and vagrants, 1s. per day; others not losing wages, &c., 2s. 6d. per day; if losing wages, unskilled, 3s. 6d.; skilled artisans, 5s.; clerks and shop assistants, 5s.; but on a certificate by the employer that the wages lost are in excess of these sums more can be allowed. No night allowance within the limit of 5s. shall exceed the expense reasonably incurred. Seamen may get extra allowances for detention on shore. The witness must be kept from business four hours at least, otherwise only half is allowed, except when the amount is not over 1s. or the Court decides he will lose a whole day's wages. Night allowance is allowed only when the witness is kept from home for the night. The prosecutor, though not called as a witness, may get the same allowances. *Travelling allowances.*—Railway fare, third class return; but police witnesses, only the cheap fares under the Cheap Trains Act, 1883, unless the amount is not over 1s. or the Court allows more. If hiring is necessary, not over 1s. a mile each way, the same for two or more persons from the same place unless the Court finds more vehicles were necessary. If they travel on foot or in private conveyances, 2d. per mile each way. For witnesses suffering from illness or in the case of heavy exhibits extra may be allowed by the Court, and warders may be allowed the cost of travelling as directed by the governor of the prison.

LICENSING (*see* also article on p. 326).—The Licensing Act, 1904 (which has now been repealed, but incorporated in the Licensing Act, 1910), was a measure of great and far-reaching importance—not only from the point of the licensed trade and those financially interested in licensed property, but also from that of the public. Shortly, it sought to extinguish all redundant licences, and also to ensure that to grants of new licences should be

attached such conditions, in regard to their term and consideration therefor, as should secure to the public any monopoly value likely to accrue to premises in consequence of the licence. The machinery for the extinction of licences includes, however, provision for compensation to the dispossessed.

Renewal.—The justices now have power to refuse to renew an existing "on-licence" only on one or more of the following specified grounds. Of these grounds, then, in their order:—(A) In the case of old on-licences which are "old beerhouse" licences—(1) that the applicant has failed to produce satisfactory evidence of good character; (2) that the house or shop in respect of which a licence is sought, or any adjacent house or shop owned or occupied by the applicant is of a disorderly character, or frequented by thieves, prostitutes, or persons of bad character; (3) that the applicant having previously held a licence for the sale of wine, spirits, beer, or cider, the same has been forfeited for his misconduct, or that he has through misconduct been at any time previously adjudged disqualified from receiving any such licence, or from selling any of the said articles; (4) that the applicant, or the house in respect of which he applies, is not legally qualified. (B) In the case of any old on-licences other than old beerhouse licences—(1) the ground that the licensed premises have been ill-conducted or are structurally deficient or structurally unsuitable; (2) grounds connected with the character or fitness of the proposed holder of the licence; (3) the ground that the renewal of the licence would be void. If the refusal is on the ground that the licensee has persistently and unreasonably refused to supply suitable refreshment (other than intoxicating liquor) at a reasonable price, or on the ground that he has failed to fulfil any reasonable undertaking given to the justices on the grant or renewal of the licence, the refusal will stand as on the ground that the premises had been ill-conducted.

In the case of a certain class of on-licence, the power of refusal to renew is vested in the compensation authority and not in the licensing justices, but it can be exercised only on a reference from those justices and on payment of compensation. The grounds of refusal by justices must be specified in writing to the applicant. The class of on-licence just referred to is made up of justices' on-licences which were in force on the 15th August 1904, including—(*a*) removals of such licences; and (*b*) licences which, though not in force on that date, had been before that date provisionally granted and confirmed under section 22 of the Licensing Act, 1874, in cases where the provisional grant and order of confirmation was subsequently declared final, whether the licence continues to be held by the same person or has been transferred. Licences for the sale of wines alone or sweets alone are not included in the expression "on-licence." And "old beerhouse" licences are old on-licences for the sale of beer or cider, with or without wine, which were granted in respect of premises for which a corresponding excise licence was in force on 1st May 1869, including renewals of such licence and transfers.

Compensation on non-renewal.—On refusal by the compensation authority of a renewal the persons interested in the licensed premises are entitled to be paid a certain compensation. Such compensation would be "a sum equal to the difference between the value of the licensed premises (calculated as if the licence were subject to the same conditions of renewals as were applicable immediately before the passing of the Licensing Act, 1904, and including in that value the amount of any depreciation of trade fixtures arising by reason of the refusal to renew the licence) and the value which those premises would bear if they were not licensed premises." The sum may be agreed upon by the persons appearing to the compensation authority to be interested in the licensed premises, subject to the approval of the authority. In default of such agreement and approval, the amount payable as compensation is determined by the Commissioners of Inland Revenue, in the same manner and subject to the like appeal to the High Court as on the valuation of an estate for the purpose of estate duty. The compensation is divisible amongst the persons interested in the licensed premises (including the holder of the licence) in such shares as may be determined by quarter sessions.

In the case of the licence-holder, regard must be had not only to his legal interest in the premises or trade fixtures, but also to his conduct and to the length of time during which he has been the holder of the licence, and the holder of a licence cannot, in any case, notwithstanding any agreement, receive a less amount than he would be entitled to as tenant from year to year of the licensed premises.

The ascertainment of the shares into which a sum payable as compensation should be divided, may be referred by the compensation authority to a county court. Costs of the Commissioners of Inland Revenue of an appeal to the High Court from their decision are payable out of the compensation, unless it is otherwise ordered by that Court.

Compensation Fund.—This compensation is payable out of a fund created and maintained by those interested in licensed premises, and to which they are bound to contribute. In each year quarter sessions, unless they certify to the Home Secretary that it is unnecessary to do so in any year, impose, in respect of all existing on-licences renewed in respect of premises within their area, certain charges at specified graduated rates. These charges are levied and paid by the licensee, together with and as part of the duties on the corresponding excise licence. A separate account, however, is kept by the Inland Revenue authorities of the amount produced by those charges in the area of any quarter sessions, and that amount is, in each year, paid over to that quarter sessions. Such is the "compensation fund." It is local, too, and not national, for each district creates its own fund for its own benefit. A licence-holder who pays a charge, and also any person from whose rent a deduction is made in respect of the payment of such a charge, is entitled to make such deductions from rent as are set out below.

Procedure in assessing compensation.—The following are the scales of maximum charges and deductions from rent:—

SCALE OF MAXIMUM CHARGES

Annual Value of Premises to be taken as for the purpose of the Publican's Licence Duty.										Maximum Rate of Charge.		
£			£							£	s.	d.
	Under		15							1	0	0
15	and under		20							2	0	0
20	,,	,,	25							3	0	0
25	,,	,,	30							4	0	0
30	,,	,,	40							6	0	0
40	,,	,,	50							10	0	0
50	,,	,,	100							15	0	0
100	,,	,,	200							20	0	0
200	,,	,,	300							30	0	0
300	,,	,,	400							40	0	0
400	,,	,,	500							50	0	0
500	,,	,,	600							60	0	0
600	,,	,,	700							70	0	0
700	,,	,,	800							80	0	0
800	,,	,,	900							90	0	0
900	and over									100	0	0

The rate of charge in the case of an hotel or other premises to which sub-section (4) of section forty-three of the Inland Revenue Act, 1880, applies, shall be one-third of that charged in other cases. An hotel means premises of the value of £50 and upwards, structurally adapted for use as an inn or hotel for the reception of guests and travellers desirous of dwelling therein, and mainly so used, and where no part of the premises is set apart and used as an ordinary public house, or, if such a part is so set aside and used, the annual value thereof does not exceed £25. In the case of any licensed premises which are certified by the justices of the licensing district on the application of the holder of the licence to be used only as public gardens, picture galleries, exhibitions, places of public or private entertainment, railway refreshment-rooms, *bonâ-fide* restaurants or eating-houses, or for any other purpose to which the holding of a licence is merely auxiliary, such rate, not less than one-third of that charged in other cases, as the justices think proper under the circumstances.

SCALE OF DEDUCTIONS

A person whose unexpired term does not exceed	1 year may deduct a sum equal to	100 per cent. of the charge.
	2 years	88 ,, ,,
	3 ,,	82 ,, ,,
	4 ,,	76 ,, ,,
	5 ,,	70 ,, ,,
	6 ,,	65 ,, ,,
	7 ,,	60 ,, ,,

SCALE OF DEDUCTIONS—*continued*

A person whose unexpired term does not exceed	8 years	may deduct a sum equal to 55 per cent. of the charge.
	9 years	50 " "
	10 "	45 " "
	11 "	41 " "
	12 "	37 " "
	13 "	33 " "
	14 "	29 " "
	15 "	25 " "
	16 "	23 " "
	17 "	21 " "
	18 "	19 " "
	19 "	17 " "
	20 "	15 " "
	21 "	14 " "
	22 "	13 " "
	23 "	12 " "
	24 "	11 " "
	25 "	10 " "
Exceeds 25 but does not exceed	30 "	7 " "
30 "	35 "	6 " "
35 "	40 "	5 " "
40 "	45 "	4 " "
45 "	50 "	3 " "
50 "	55 "	2 " "
55 "	60 "	1 " "

But the amount deducted shall in no case exceed half the rent.

Assessment on the foregoing rule has been regulated largely in accordance with the interpretation laid down in the *Ashby's Cobham Brewery Case*, in 1906. This case has been selected by agreement between the Commissioners of Inland Revenue and representatives of the brewing trade, more or less as a test case, in order that certain questions of principle might receive a judicial determination. Broadly speaking, the judgment laid it down that the proper basis for assessment of compensation is, in the case of premises let at a rack rent, the rack rent itself; and in the case of premises tied to a brewer, the rent payable by the tenant and also the profits derived by the brewer from the supply of liquor to the premises. So, by thus taking into account the profits of the manufacturer, tied houses obtain, for the benefit of the brewers, a materially inflated compensation.

New Licences.—The power of the County Licensing Committee to confirm new licences, and any other power of that committee, is now transferred to quarter sessions. And now, on the grant of a new on-licence (other than for wine alone or sweets alone), the justices may attach to the grant such conditions, both as to the payments to be made and the tenure of the licence, and as to any other matters as they think proper in the interests of the public. The idea is thus to secure to the public the "monopoly value" of new on-licences. So the Act provides as follows: (*d*) Such

conditions shall in any case be attached as, having regard to proper provision for suitable premises and good management, the justices think best adapted for securing to the public any monopoly value which is represented by the difference between the value which the premises will bear, in the opinion of the justices, when licensed, and the value of the same premises if they were not licensed—provided that, in estimating the value as licensed premises of hotels or other premises where the profits are not wholly derived from the sale of intoxicating liquor, no increased value arising from profits not so derived shall be taken into consideration; (*b*) the amount of any payments imposed under conditions attached in pursuance hereof shall not exceed the amount thus required to secure the monopoly value. A monopoly value payment may be reduced where, as a consequence of the higher duties imposed by the Finance Act, 1910, it exceeds what, having regard to those duties, reasonably should be paid. *See* LIQUOR LICENCES (Appendix, Vol. IV.).

Instead of granting a new on-licence as an annual licence, a licence may be granted for a term not exceeding seven years. Where a licence is so granted for a term—(*a*) Any application for a re-grant of the licence on the expiration of the term shall be treated as an application for the grant of a new licence, not as an application for the renewal of a licence, and during the continuance of the term the licence shall not require renewal; and (*b*) Any transfer of the licence shall, subject to any conditions attached thereto on the grant, have effect for the remainder of the term of the licence, and may be granted at a general annual licensing meeting as well as at special sessions, and any reference to special sessions in any enactment relating to transfers or protection orders shall include a reference to the general annual licensing meeting. A licence granted for a term may be forfeited, and the owner of the premises will thereupon have all the rights conferred on owners by sect. 15 of the Licensing Act, 1874. Forfeiture is possible—without prejudice to any other provisions as to forfeiture—if any condition imposed is not complied with, by order of a court of summary jurisdiction made on complaint; or, if the holder of the licence is convicted of any offence committed by him as such, by the court by whom he is convicted. On the confirmation of a new on-licence, the confirming authority may, with the consent of the justices authorised to grant the licence, vary any of the conditions which the justices may have imposed.

Transfer of existing on-licence.—The foregoing provisions apply to the transfer of an existing on-licence as they apply to the renewal of an existing on-licence, with the substitution of transfer for renewal.

Licence Duties.—For these as payable under the Finance (1909-10) Act, reference should be made to the article on LIQUOR LICENCES in the Appendix to Volume IV.

END OF VOL. III.

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