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THE LAW AND PROCEDURE

OF

MEETINGS IN INDIA

THE LAW AND PROCEDURE OF MEETINGS IN INDIA

Including Club Law, Practice, and Rules

BY

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FOREWORD

I have been asked by the author to write a foreword to this book, and I have gladly acceded to his request. I have gone over most of the printed pages that were sent to me in advance, and find that the book is a useful compendium of the principles of law and the rules of procedure relating to meetings. There is no specific right of public meeting, as such, known to the English Constitution, but English law permits any number of persons to meet together for a common legal purpose. The right is not conferred by special enactment, as in some foreign countries, but is really the outcome of the view taken by the English Courts as to individual liberty of person and liberty of speech. The book is full of information on the subjects dealt with. I feel particularly glad to note that the information is both theoretical and practical; for it is not enough to know how meetings have been or can be conducted by others, unless one also learns how one can best conduct a meeting oneself. The most important figure in every meeting is the Chairman. His task is often thankless, and his position not always enviable. But in almost all cases the success or failure of a meeting depends on his impartiality, and above all on his tact and good sense. In order that the Chairman may properly perform his duties he is invested by law or by rules and regulations with certain powers. The author has given particular attention to the powers and the duties of the Chairman, both at company meetings and meetings other than company meetings. There are, of course, meetings of many kinds. They may be unlawful as well as lawful, and they vary according to nature and object. The general rules and principles of management are, however, of common application, and in the case of statutory meetings and meetings of public bodies there are also special provisions.

We are living in times when we have meetings and gatherings of a more or less formal nature almost every day. It is a well-known fact that a successful meeting depends upon the sympathy between the speaker and his audience. That sympathy is generally ensured by a proper method in the conduct of the meeting and by a knowledge of the rules which regulate its proceedings. This book gives all the necessary

knowledge and information, and the author seems to have endeavoured to refer to all the relevant authorities and decisions obtainable upto date. The larger portion of it is devoted to company meetings, and the different rules relating to them have been explained under suitable headings. The second portion deals with public meetings generally, but many of the rules of procedure applicable to company meetings are also common to other meetings. In this connexion the author has clearly explained the important rules relating to the moving of resolutions and amendments, points of order, the gag or closure, voting, and other cognate subjects. The third portion deals with the law and rules relating to clubs, registered and unregistered societies, and trade unions. The history of modern clubs really dates from the foundation of the United Service Club in 1850, but it was not until much later that their constitution was understood and their legal position determined. There are also useful appendixes at the end of the book.

Many of the principles and rules expounded in these pages are the outcome of unwritten rules and customs which have existed for centuries, and were recognized by the English Courts as fair and reasonable. It is common knowledge, for instance, that there must be at least two persons to constitute a meeting, but it was not till the seventies of the last century that this knowledge was judicially recognized. Some of the rules and customs, even though recognized by the Courts, have required amendment by legislation. Every chairman of a meeting has always had power to eject disorderly persons, but advocates of women's suffrage in England were undeterred by the rule, and an Act was passed in 1908 in England which imposed fines and imprisonment upon persons acting, or inciting others to act, in a disorderly manner in order to thwart the business of a meeting. An Act was also passed in England about the same time giving a right to the press, subject to certain conditions, to attend meetings of local authorities which previously they had no right by custom or law to attend. In India, however, it is optional for the authorities to allow the press to be present, and conveners of public meetings have also gladly availed themselves of that option. The power of the Fourth Estate is now recognized beyond dispute.

The book will be of great use to secretaries of companies and public bodies, to practitioners, shareholders, and businessmen generally and I commend it to all of them for their information and guidance. A knowledge of the organization and control of meetings is essential for all men and women, having regard to modern conditions and requirements. Students of law will find a great deal to learn in this book, and the layman will find much in it that is instructive and interesting.

Bombay B. J. WADIA
April 1934

INTRODUCTION

Professor Davar's latest book on *The Law and Procedure of Meetings in India* embraces in one book the whole law relating to different types of meetings from an Indianized standpoint together with the authorities applying to the subject in detail. There are of course books on the subject written by English authors, but as far as I am aware this is the first book on this very important and generally useful subject written by an Indian author.

The book is divided into three parts. The first part deals with meetings of joint stock companies, where the practice, law, and procedure of joint stock company meetings are dealt with in detail, with reference to cases and sections of the Indian Companies Act of 1913. This part will be of considerable interest to all connected with joint stock companies in India, particularly to directors, managers, secretaries, and investors in companies. Many people in business are at times faced with important controversial questions in connexion with law and procedure which they can easily solve by a reference to this volume, particularly as it carries with it a detailed and elaborate index.

The second part deals with public meetings and distinguishes in some detail between public meetings and company meetings. The law applying to defamation and sedition in connexion with public speeches is also dealt with here for the guidance of our public speakers, and is a very important addition.

The third part is devoted to the law, practice, and rules applying to clubs. Clubs are divided into incorporated clubs under some Act or Statute and unincorporated Members' clubs. The law and practice applying to both these types of clubs is fully dealt with. Considering that we in India have some large and important clubs and that their number is on the increase, this part in particular, and the subject-matter of other parts in general, will be of considerable assistance to clubs and it will be an advantage to the libraries of all important clubs to have a copy of this book on their shelves.

The forms and precedents with which the book is filled are of considerable assistance to the company secretary; and

the special points dealing with a chairman's rights and duties in connexion with meetings of companies, public meetings, and club meetings are given in considerable detail. The explanations as to resolutions and rights of voting in connexion with each of the three types of meetings, also form a very important section which is useful both for practitioners and businessmen inasmuch as cases and authorities are cited for each and every principle enunciated. The right of admission of the press to meetings of different associations and institutions, as well as the law applying to unlawful meetings, form part of a special chapter. The scientific societies and trade unions are not omitted. In the appendixes, precedents from club rules of leading Indian clubs are given as a guide to those who wish to frame regulations for new clubs of this character.

With regard to company meetings as dealt with in Part I, the author has cited the regulations contained in Table A annexed to the Indian Companies Act of 1913, which apply to company meetings of directors and shareholders. These are voluntary regulations, which may be incorporated in the Articles of Association at the option of promoters of joint stock companies. In each instance the author distinguishes between and comments on alternative articles bearing on each case, as used in India by different companies.

In short the author has rendered a service to Indian public men and to the commercial community by the publication of this volume. Professor Davar has before now published several books but I am sure his present effort will appeal to a far larger public. What is more, he writes with authority by reason of the fact that he is a practising lawyer and takes an active part in the procedure of the meetings of different companies, and, as Vice-President of the Bombay Shareholders' Association his advice is frequently sought by many.

Bombay
April 1934

PHIROZ C. SETHNA

PREFACE TO SECOND EDITION

Much as the author would have liked to, it was not possible for him to bring out a second edition earlier on account of the war and the author's preoccupation with other more pressing matters. In the decade and a half that has elapsed between the two editions of this book, the law of meetings has continued to grow in importance, till a knowledge of the law and procedure of meetings has become essential to every intelligent member of society be he a legal practitioner, manager, shareholder, member of a trade union or of a social club. The Author's thanks are due to his daughter, Khorshed D. P. Madon and his son Rustom S. Davar for having thoroughly revised and brought up-to-date this edition under the author's guidance.

A special feature of this book is the appendixes. Several new appendixes have been added containing exhaustive precedents of notices, resolutions and minutes of meetings of directors, shareholders, clubs, societies, etc.

The author trusts that this new edition will continue to serve a useful purpose.

Bombay SOHRAB R. DAVAR
December 1949

PREFACE TO FIRST EDITION

In these days of democratic institutions all over the world, the growth of which has been so surprisingly rapid in India, the publication of a special book on *The Law and Procedure of Meetings in India* needs no apology. This is, as far as the author is aware, the first book on the subject by an Indian author and he trusts that it will meet with generous encouragement from the profession, as well as from intellectuals generally, because of the universal importance of the subject to every citizen engaged in public life and company practice in one capacity or another. There are numerous institutions, public as well as private, such as Councils and Assemblies, Local Boards, Municipal Corporations, joint stock companies, clubs, professional and other associations, etc. where one stumbles over the Law and Procedure of Meetings at almost every step in one's daily career. In the case of clubs, besides the questions of Law and Procedure, points applying to the responsibilities of those engaged in their management and the rights, powers, and liabilities of the members themselves have to be considered and decided on, in the course of normal business. The author has kept this aspect in view during the preparation of this book. He trusts therefore that the legal practitioner, the company director, the managing agent, the councillor in Municipal and Legislative Assemblies, members of committees of clubs and associations will all find in it a medium of handy and ready reference whenever difficulties or doubts arise. The man in the street is generally apt to take it for granted that he knows all about meetings, until frequent complications and differences in the course of his experience bring forcefully to his notice the fact that the Law of Meetings is a highly specialized branch of jurisprudence, which cannot be trifled with in such a take-it-for-granted manner and that all who have to deal with meetings must constantly be guided by a reliable book on the subject. There are, no doubt, a limited number of books written by English authors on this subject; but as they deal exclusively with English statutes, law, and cases, a reference is likely to mislead, for the simple reason that the Statute and Case Law of this country has, to a considerable degree, its own peculiarities.

The author has divided the book into three Parts. *Part I* is devoted to the Practice, Law, and Procedure of joint stock companies, applying to meetings. Here all decided cases, as well as important sections of the Indian Companies Act of 1913 dealing with the subject, are carefully quoted for reference. The duties and powers of the Chairman of a company, the procedure and law with regard to meetings of directors and shareholders, as well as their liabilities, are dealt with here in great detail. The Law and Practice applying to resolutions and voting at company meetings is here very carefully and clearly stated. The meetings of creditors and contributories in connexion with the winding-up of joint stock companies are dealt with in a separate chapter.

Part II deals at some length with public meetings distinguishing between public and company meetings in detail. The law applying to defamation, privileges in connexion with speeches in public meetings, etc. receives its due share of treatment as a guidance to the average speaker who takes part in public and company meetings, and it is hoped to the practitioner also. Here the rights of admission of the press, and unlawful meetings also receive special attention in a separate chapter.

Part III is devoted to the Law, Practice, and Rules applying to clubs, registered and unregistered societies, and trade unions. As there are numerous clubs all over the country, it is hoped that this Part and, of course, the book in general will be of assistance to those engaged in club management, as well as to those interested in club membership.

SOHRAB R. DAVAR

Davar's College of Commerce
Bombay
April 1934

BOOKS BY THE SAME AUTHOR

1. A MANUAL OF INDIAN COMPANIES LAW, PRACTICE, FORMS AND PRECEDENTS (in two volumes), 3rd Edition (under preparation).

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PART I

COMPANY MEETINGS

CHAPTER I

ORGANIZATION AND FORMATION OF COMPANIES

Introductory

Joint stock companies are formed either by (1) the grant of a Royal Charter or (2) a special Act of Parliament, in which case they are usually known as Statutory Companies, or (3) by being registered under the Indian Companies Act of 1913.

Formation under Royal Charter is one of the oldest methods of company incorporation known to English history. These companies originated in England with the idea of raising loans for financing the Government and securing in return monopolies or special privileges for themselves. The original East India Company was established in 1600 by the grant of a Charter from Queen Elizabeth. Its business was that of financing the Government with the carrying on of its own trade. The Hudson Bay Company was founded in 1670 under a Royal Charter. The Bank of England was established in 1694 under a Royal Charter to finance the Government of William III. These companies were all formed either through the grant of a Royal Charter, or by incorporation under a special Act of Parliament. The mode of incorporation under ordinary Companies Acts, so familiar to us nowadays, was not introduced until 1844. Incorporation on the limited liability principle was not allowed until the year 1855. In 1862 the Company Law of England was properly codified, and during subsequent years frequently modified. In the year 1908, however, a consolidating Act was passed called the Companies (Consolidation) Act of 1908, and thereafter a complete amended Act of 1929 was passed. This Act of 1929 was in many respects amended by an Act of 1947 followed by the Companies Act, 1948, which is a consolidating Act and represents the present-day Company Law of England. Our Indian Companies Act of 1913, a consolidating Act, is on the footing of the English Consolidation Act of 1908. The Indian Companies Act of 1913 has been amended in many respects from time to time, the most drastic amendments being made by the Indian Companies (Amendment) Act of 1936.

We have of course companies formed specially by special Acts of our Legislative Assembly, such as the Imperial Bank of India Act of 1920 and the Reserve Bank of India Act of 1934. Similarly in England companies have been formed by special Acts of Parliament. Such companies are called Statutory Companies. The object of this treatise, as far as this part is concerned, will be to deal with the law and practice, or procedure, applying to meetings connected with joint stock companies registered under our Indian Companies Act, 1913, as amended to date.

Memorandum and Articles of Association

All registered joint stock companies are governed first by the Indian Companies Act, 1913, and secondly by their own constitution as laid down by their Memorandum of Association and Articles of Association. The Memorandum of Association constitutes the charter of a company and lays down principally the objects for which the company is formed, in its 'objects clause', and sometimes this 'objects clause' also enumerates the powers which the company is to exercise in carrying out these objects. The other clauses of the Memorandum of Association state the name under which the company is registered, the situation of its registered office, the capital of the company and its division into shares, if it be a company whose capital is divided into shares, and, if it be a limited company, the statement that the liability of the company is limited.

On the other hand the Articles of Association of a joint stock company are the bye-laws of the company, governing its management and embodying the powers of the Directors and Officers of the company as well as the powers of the shareholders as to voting, etc. The Articles of Association are not compulsory and a company may be formed without possessing its special Articles of Association. In such case, a schedule which is attached to the Companies Act, called 'Table A', becomes the Articles of Association of such a company. When a company possesses its specially framed Articles of Association, but the Articles are silent on some of the points of management, etc. the clauses relating to these points in 'Table A' come into operation unless 'Table A' is expressly excluded by the special Articles of the company concerned. There are instances where companies do not possess their

own Articles of Association, but draft out a few special rules and state that 'Table A shall be the Articles of Association of this company excepting so far as they are modified by the following rules'. Nowadays, however, management and work has become so complicated that it is difficult, if not impossible, for a company of any magnitude and importance appropriately to adopt 'Table A' as the Articles of Association, and therefore the reader may take it that ordinarily every company of importance gets its own Articles of Association specially framed before incorporation.

Importance of Articles in Company Meetings

For our purpose Articles of Association are of great importance regarding the procedure and law applying to meetings, because they lay down rules and regulations of meetings, voting powers, quorums, notice of meetings, class of resolutions to be passed at meetings, the number entitled to ask for a poll, rules for proxies, etc. and thereby considerably alter the ordinary common law and procedure applying to meetings. Thus while deciding a question which may arise about procedure, or a point of order that may be raised at a meeting, besides the ordinary law of meetings and the Company Law sections relating to meetings, the Articles of Association of the particular company concerned have to be consulted because much will depend on the construction and meaning of the clauses in the Articles that may have been specially introduced in those Articles.

In short the procedure at company meetings is nowadays largely governed by Articles of Association for the simple reason that the present practice is to draft such Articles in great detail, i.e. in an amplified form, taking care to see that all possible incidents in connexion with the procedure are incorporated in, or provided for, by these clauses.

Principle of Majority Rule

Joint stock companies are worked on the principle of what is known as domestic forums, and thus the tendency of the Courts of Law has always been not to interfere in the internal affairs of the company as decided on by the majority of its members or by its duly empowered Board of Directors. That principle, no doubt, is of general application, with certain well-known exceptions. Later on we shall deal with the

details as to how this majority rule is actually carried out in practice and with the exceptions which are well established by decisions of the Courts of Law, but for the present it is sufficient to state that according to the old rule as enunciated in the well-known case of *Foss* v. *Harbottle* (1843), 2 Hare 461, followed in India in *Bhajekar* v. *Shinker* (36 Bom. L.R. 483), the Courts will not interfere generally in the internal affairs of a company where any irregularity has been committed, so long as that irregularity is capable of being confirmed by the company; and that generally speaking, in connexion with internal disputes between shareholders, the Courts will not interfere unless there be something illegal or oppressive or fraudulent or where it is proved to the satisfaction of the Courts that something which is *ultra vires* of the company, that is, beyond its scope and powers, has been or is being done. Of course the majority cannot force the Directors to act in a particular manner when the Articles have confided to the Directors the control and management of the company's business [*Automatic Self-Cleansing Filter Syndicate* v. *Cunninghame* (1906), 2 Ch. 34].

CHAPTER II

THE CHAIRMAN

His Election

The first business of every meeting is to elect a Chairman. In the case of a joint stock company the articles generally provide for the appointment of the chairman. Where the articles are silent Table A will apply unless expressly excluded. Table A provides as follows :—

> *Art. 53.* The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.
>
> *Art. 54.* If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman, the members present shall choose someone of their number to be chairman.
>
> *Note.*—The relevant provisions in the English Act of 1948 are given in Articles 55 and 56 of Table A.

Where the Articles are silent and Table A has been expressly excluded, the Indian Companies Act provides that any member elected by the members present may be the chairman.

Thus in the case of a joint stock company, there is a more or less permanent Chairman, who if present, takes the chair as of right. If, however, the Chairman is not present the members present have to elect a Chairman. This is done by anyone present proposing the name of one of the members present, which proposal if seconded may be put to the vote. If more than one name be proposed and seconded, they may all be put to the vote simultaneously and the person securing the largest number of votes takes the chair.

In those joint stock companies, however, where the Directors' Board is mentioned in the Articles of Association from the very beginning, the name of the Chairman, i.e. the Director who is going to occupy the office of Chairman, is also mentioned and indicated. In this case it will not be necessary to have either the Chairman or the Directors elected by a meeting of the shareholders or members of the company. If the Chairman is to be elected at the meeting there is nothing to prevent the person whose name is proposed from voting

on that proposition. At meetings of creditors the usual practice is for the largest creditor to be voted to the chair.

The appointment of a Chairman is absolutely necessary for every meeting, whether it is a meeting held under a joint stock company organization or a public meeting, or in fact, any other meeting of responsible people where decision must be arrived at on certain questions that are to be placed before the meeting. Where the Chairman is to be elected the usual practice is to propose in more or less the following form: 'Ladies and Gentlemen—I propose that Mr. Pestonji take the chair.' This proposition is usually seconded but there is no common law rule requiring a seconder [*Horbury Bridge Co., Re* (1879), 11 Ch.D. 109]. For this election of a Chairman it is better that the scrutineers, or the returning officer in the case of a public election, should not themselves be candidates for the chair (*R.* v. *Owens* (1858), 28 L.J. Q.B. 316]. If the election of a Chairman is done in more or less irregular fashion, but no one raises an objection to the proceeding at the time of election, the tendency of the Courts is to overlook the irregularity [*Longfield Parish Council* v. *Wright* (1918), 88 L.J. Ch. 119].

Necessary Qualifications

The person selected to act at any meeting as Chairman should be one possessed of infinite tact. He should be patient, impartial, methodical, logical, firm without being autocratic, good-tempered and preferably one who brings with him special knowledge of the business which is to be disposed of at the meeting. In the words of Mr. Gordon Palin, in his book *The Chairman's Manual*: 'A man without any method of habit who cannot, at least on occasions, be judicial and unbiassed; whose mental make-up lacks logic; who cannot think and decide pretty quickly; who is not fortified by knowledge of procedure and who cannot express himself well, should not voluntarily take the chair on any occasion, or, if he does, should see that there is a back exit handy; it may be useful.' The same author however adds: 'But there is not one of these shortcomings which may not be largely remedied by assiduous study and practice. Industry and self-training quickly impress the seal of superiority; but he who must avoid this must remain out of the crowd.' It will thus be seen that good Chairmen are generally made and not born. Of

course though there are men—albeit rare—who by force of personality and the prestige of their general reputation, can keep a large meeting in control, even when the most delicate questions are at issue, the general run of Chairmen as a class is made up of men who are self-made and who owe their position of eminence to persevering hard work. The only idea that should supervene in the mind of the Chairman all throughout a meeting is to see its business transacted in as orderly and expeditious a manner as possible. In the words of Mr. Albert Crew in his book *Procedure at Meetings* : 'The Chairman should remember that men at meetings are often but children of a larger (sometimes not much larger) growth, and should combat their petulance, unreasonableness, and pettiness by common sense, sweet reasonableness and quiet determination. He must believe in himself, but not allow his masterfulness to obtrude too much.'

For joint stock companies the point to be remembered is that a person who is not a member of the company cannot be a Chairman or be present at a meeting, but of course there is no objection to a Chairman remaining in office, as is usually done, until his successor is appointed, whether he is a member or not [*Blair Open Hearth Furnace Co.* v. *Reigart* (1913), 108 L.T. 665 ; *R.* v. *Jackson* (1913), 3 K.B. 436]. It is said that one of the greatest qualifications of the Chairman is calmness and a judicial mind because he has to hold the reins of the whole meeting and feel its pulse carefully so that matters may not get to a stage where he cannot control them.

The Duties of the Chairman

The general duties and powers of the Chairman at a meeting of members of a joint stock company correspond to those of the Chairman of any assembly.

The duties of the Chairman, subject to the regulations in the Articles of Association are as follows :—

1. To see that a quorum is present and the meeting is properly constituted and only those who have a right to be present are there.
2. That all legal requirements with regard to calling of the meeting, giving notices, presence of the quorum, etc. are complied with.
3. To make himself acquainted with the objects and business of the meeting.

4. To see that all the regulations of the company or the body concerned are strictly observed and that the business as far as possible continues in the order of the agenda paper, unless the same is altered with the consent of the meeting.
5. That all questions are brought forward before the meeting in proper order in the form of resolutions proposed and seconded, and amendments also proposed and seconded.
6. To give an opportunity to speak in reasonable terms for a reasonable time to every shareholder or member present who wishes to speak on a proposition before the meeting [*Wall* v. *London & Northern Assets Corporation* (1898), 2 Ch.D. 469; *Parashuram Dattaram Shamdasani* v. *Tata Industrial Bank Ltd.* (1923), 47 Bom. 915]. He should see that unless a proposition is in the proper manner moved and placed before the meeting no one is allowed to speak, i.e. no discussion should be allowed.
7. To see that the discussion is confined to points relevant to the proposition before the meeting, and that no one uses improper or insulting language.
8. To give his ruling on any point of order that may be raised or where he himself discovers anything irregular or irrelevant being done or said.
9. To see that proper minutes of the meetings are kept and to sign them.
10. To ascertain the sense of the meeting by putting the question before it after everyone present has said what he wanted to say, or after the question has been sufficiently discussed in his opinion and a closure asked for and passed by the majority, or according to the rules and regulations of the company, if any, bearing on that point. The sense of the meeting is usually ascertained, as we shall see in a later chapter, by a show of hands; in the case of joint stock companies if the requisite number of persons present are dissatisfied with the results of the show of hands and demand a poll, he has to allow this. Of course the application for a poll has to be made according to the regulations of the company or under the common law [*Campbell* v. *Maund* (1836), 5 A. & E. 865].
11. To adjourn the meeting, if necessary, according to the regulations contained in the Articles of Association of the company, and next to declare the meeting closed.

The Powers of the Chairman

1. The first and foremost is to enforce order, but if a person has to be ejected after due notice, no more force should be used than is actually necessary.
2. He can speak on any question or move any resolutions himself.
3. Where there is great disorder he has the power to adjourn the meeting. He cannot adjourn at Common Law if the meeting does not want to adjourn but the Articles generally give him the power to adjourn with or without the consent of the meeting.

4. If a poll is demanded he has the right to fix the day, time and place for it.
5. He has a right to vote by giving his casting vote when there is a tie, though there is no Common Law right by virtue of his appointment to give a casting vote. Of course in a joint stock company meeting he has a right to use his votes as a shareholder or member on the resolution in the first instance. The casting vote, if given by the Articles of Association, is his special additional right as chairman.
6. When time is limited he can take votes of the meeting if he likes, binding each speaker to the occupation of a specific time only for his speech.

When opening the meeting it is usual for the Chairman to introduce the subject-matter in his opening speech or remarks. In a joint stock company meeting this is done by commenting on the report and explaining by a review of the position during the year for which the report was submitted, at the same time giving a forecast of what the Directors of the company want to do in the near future. In public meetings held for a definite object by a special notice, the same process is followed of an opening speech of the Chairman, but here, of course, the Chairman has to explain the purpose for which they have met and give his own opinion on the salient points, on which he invites discussion and resolutions or motions to be passed or considered by the meeting.

At general meetings of joint stock companies, after the conclusion of the Chairman's opening speech on the reports and accounts, in the Annual General Meetings the Chairman asks if there are any questions or whether the members present desire any information. The Chairman and the Directors of joint stock companies are not, however, bound to answer all questions or give information, particularly where they consider it undesirable in the interests of the company as a whole to divulge such information. The report and accounts are generally put to the vote. If they are not carried it amounts to a vote of censure on the Board of Directors. This vote of censure does not of course force the Directors to retire or resign; but the shareholders may, if they are in sufficient number, appoint a 'Committee of Inspection' by a resolution to that effect, as we shall see in later chapters. It should be also remembered that after the result of voting has been declared the Chairman is not *functus officio* [*Hickman* v. *Kent Sheep Breeders* (1920), 36 T.L.R. 528]. In this

particular case the Chairman counted the votes and declared the motion carried, but having some doubt he had a recount. This was objected to on the ground that having declared the motion carried he was *functus officio* and could not therefore enforce a valid recount. It was held that that argument was wrong in view of the fact that though the Chairman declared the motion carried, he was in doubt whether he was right or not and was therefore entitled immediately to have the votes counted again. If the Chairman, in breach of his duty, wrongfully leaves the meeting before the business is completed, another qualified person may be selected by the meeting to occupy the chair, and the business carried on under these conditions will be valid. If, however, the Chairman has rightly closed the meeting anything done thereafter is void [*R.* v. *Winchester* (1806), 7 East, 573; *R.* v. *Buller* (1807), 8 East, 389].

With regard to the order of business as appearing on the agenda paper, at one Directors' Board Meeting the agenda showed the first business as 'the consideration of transfer of shares sent to the Secretary for consideration', the next business being 'the consideration whether a call should be made to meet the company's liabilities'. It was held that the Directors were entitled to take the business at the meeting in any order they thought proper and if they so desired to pass a resolution for a call as their first business [*Re Cawley & Co.* (1889), 42 Ch.D. 209]. The Chairman has a *prima facie* authority to decide all incidental questions which arise at meetings and require his immediate decision. Here the minutes taken by him in the minute book of the result of the poll or of his decisions as to those questions which incidentally arose will be a *prima facie* evidence [*Re Indian Zoedone Co.* (1844), 26 Ch.D. 70].

The fact that according to the Indian Companies Act, 1913, S. 81, it has been laid down that the declaration of the Chairman that the resolution has been carried shall, unless a poll is demanded, be deemed conclusive evidence of the fact, without proof of the number or the proportion of votes, does not prevent the Court from inquiring into the question whether the requisite proportion of votes was in fact given or whether the majority is sufficient or insufficient. The Court has a right to grant injunction on the company preventing it from proceeding further on the resolution until this inquiry is made

[*South African and Australian Exploration and Development Syndicate* (1896), 2 Ch. 268], and the decision of the Chair has been held to be conclusive where the declaration on the face of it showed that the statutory majority had not voted in favour of the resolution [*Re Caratal New Mines Ltd.* (1902), 2 Ch. 498]. The general rule however is that apart from law the declaration of the Chairman to the effect that a special resolution has been carried in conclusive on a show of hands [*Re Hadleigh Castle Gold Mines Ltd.* (1900), 2 Ch. 419; *Arnot* v. *United African Lands Ltd.* (1901), 1 Ch. 518]. The conclusiveness of the declaration of the Chairman contemplated by Cl. (3) of S. 81, attaches to the declaration where the Chairman does not find by his declaration the figures for and against the resolution. But where the Chairman by his declaration finds the figures and erroneously in point of Law holds, that the resolution has been duly passed (e.g. where a special resolution is declared by the Chairman in these terms: "218 votes for, 78 against, Resolution carried"), the resolution cannot be said to have been passed according to law [*Dhakeswari Cotton Mills Ltd.* v. *Nil Kamal Chakravarty*, I.L.R. (1938), 1 Cal. 90; A.I.R. 1937, Cal. 645].

We have already noted that the Chairman has the right to enforce order. If a person present behaves in a disorderly manner, the Chairman has the right to order him to behave himself, or else withdraw, and if the person persists in the misbehaviour he may be forcibly ejected. Frequently, in order to strengthen his own hands, the Chairman fortifies himself by taking the sense of the meeting by a motion moved by himself, though of course under common law that is not necessary. In ejecting a person no more force should be used than is actually necessary. If the member who is being ejected resists and uses violence he may be prosecuted [*Doyle* v. *Falconer* (1866), L.R., 1 P.C. 328]. When, however, the Chairman finds that it is impossible to maintain order, he has the right to adjourn the meeting. With regard to this it may be noted that the Chairman's right to adjourn a meeting depends on the constitution of the company or the association, at whose meeting he is presiding. If the constitution does not provide for such powers the Chairman cannot adjourn the meeting until the business is done without the consent of the members present. Chitty, J., in *National Dwellings Society* v. *Sykes* (1894), 3 Ch. 159 laid down as follows: 'In

my opinion the power which has been contended for, is not within the scope of the authority of the Chairman—namely, to stop the meeting at his own will and pleasure'. He has the right to decide all points of order raised by any member present and his rulings on points of procedure are final. It was also laid down by Lopes, L.J. [*Henderson* v. *Bank of Australasia* (1890), 45 Ch.D. 330] that when a Chairman deliberately rules that a certain amendment cannot be put, it would be improper and indecent for any shareholder to proceed to discuss the propriety of the Chairman's ruling. In Articles of Association, power to adjourn the meeting is usually given to the Chairman on condition that it be exercised with the consent of the meeting. In such cases the Chairman is not bound to adjourn simply because the meeting wants him to do so if he himself is not inclined to do so; in other words, the legal effect of such an Article is that both the Chairman and the meeting must be in agreement on this point [*Salisbury Gold Mining Co.* v. *Hathorn* (1897), A.C. 268]. In such cases the usual wording in the Articles is 'the Chairman may, with the consent of the meeting, adjourn the same'. If the word 'shall' were to be used instead of 'may' the Chairman must obey the majority resolution of the meeting to adjourn. It is thought however that the Chairman only has power to adjourn the meeting where it is impossible to conduct business properly [*R.* v. *D'oyly* (1840), 12 A. & E. 139; *R.* v. *Chester* (1834), I.A. & E. 342; *R.* v. *Wimbledon Local Board* (1882), 8 Q.B.D. 459]. If the Chairman wrongfully adjourns a meeting and leaves the chair, the meeting may appoint another Chairman and proceed with the business [*National Dwellings Society* v. *Sykes* (1894), 3 Ch. 159].

An adjourned meeting is merely a continuation of the original meeting [*Wills* v. *Murray* (1849), 4 Exq. 483; *McLaren* v. *Thomson* (1917), 2 Ch. 261]. If the Articles do not require a special notice as to the date and time of the adjourned meeting the same is not necessary. An adjourned meeting can only continue and transact the business which was left over at the original meeting and cannot go outside its scope.

The Chairman has the right of voting according to his qualification, i.e. according to the regulations of the body whose meeting he is presiding over, and where the votes are equal on either side on any question before the meeting, he

has, if provided by the Articles of Association or other regulations in his capacity as Chairman, what is called a 'casting vote', by the use of which he may help the meeting to arrive at a decision. It will thus be seen that the Chairman has generally two rights of vote, viz. (1) his deliberative vote, which he gives in his capacity as a member of the body, and (2) the casting vote, which he gives in case there is a tie. The first-named right has been conceded on the ground that otherwise a person with a large voting power may be conveniently got rid of by being placed in the chair. It would be a great hardship indeed if a large shareholder who also happened to be the Chairman of a company, were to be prevented from voting on a question on which he is vitally interested, because he happens to occupy the chair, and thus a resolution were to be carried, or lost, contrary to his wishes, which actually could easily have been prevented through the use of his votes. The question of the casting vote, however, will be dealt with fully a little later.

When there are interruptions, the Chairman no doubt has the remedy open to him of calling the offenders to order and in the last resort of removing them from the meeting. Many a chairman has, however, found that a little tact, or a slight touch of humour, has frequently greater effect in bringing a troublesome person to order. Mr. Gordon Palin relates, in his book from which we have already quoted, an incident from his own experience which occurred at a meeting he was presiding over. He says:

> 'I once had a buffoon whose fancy that night was to stand on his chair—a fruitful cause of disorder not so much from the antic itself, as from the vocal attention it attracts; however, announcing that the gentleman might (if that was his mood) listen to the speeches in that posture, tranquillity was restored, and a sense of the ridiculous soon melted the clown down into his seat.'

The Chairman should also see that no discussion is allowed until there is some duly proposed and seconded motion or proposition before the meeting, as otherwise the meeting may indefinitely keep on discussing irrelevant matters without arriving at a decision. Anyone present who sees such an irregularity in practice at a meeting may rise to a point of order on the ground that there is no question before the meeting.

Passing of the Minutes

We have already noticed that the duty of the Chairman is to have the minutes of the previous meeting read out and verified as correct by the meeting. This is done with a view to ascertain whether the record of the minutes of the previous meeting, as made out by the Secretary, is accurate. Very often when the minutes have already been circulated instead of reading them aloud at the meeting, they are taken as read. In such a case the chairman generally moves such a proposition. When votes are called for, only those who were present at the meeting of which the minutes purport to form a record, have a right to vote, as those who were absent at such meeting cannot claim any personal knowledge as to the proceedings in question. If the majority are in favour of the minutes being accepted as accurate, the Chairman should sign the same. If any member present raises an objection and wishes some part of the record to be altered, he should move an amendment to that effect. This amendment should be seconded and put to the vote in the usual form. If passed, the Chairman should instruct the Secretary to give effect to the correction as indicated by the amendment. It is, however, not necessary that the Chairman who signs the minutes should have been present at the meeting of which the minutes are a record.

It should be remembered that under section 83 of the Indian Companies Act (S. 145 of the English Companies Act, 1948) every company must cause minutes of all proceedings of general meetings and of its Directors to be entered in books kept for the purpose. Any such minutes, if they purport to be signed by the Chairman of the meeting at which the proceedings were held, or by the Chairman of the next succeeding meeting, shall be evidence of the proceedings. The position as defined by this section is that 'until the contrary is proved, every general meeting of the company or meeting of directors in respect of the proceedings whereof minutes have been so made shall be deemed to have been duly called and held, and all proceedings had thereat to have been duly had, and all appointments of Directors or liquidators shall be deemed to be valid'. Thus anyone who challenges the accuracy of the minutes must prove his case [*Re Indian Zoedone Co.* (1884), 26 Ch.D. 70]. The Chairman signing the minutes is not res-

ponsible for what was done at the meeting if he was not presiding or present at the meeting of which the minutes happen to be a record [*Burton* v. *Bevan* (1908), 2 Ch. 240]. It should also be remembered that it is not necessary that a resolution should be recorded in the minutes book in order to be valid, because even in cases where the same has been omitted but proved by oral evidence it will be held to be valid and binding [*Umney* v. *Fireproof Doors, Ltd.* (1916), 2 Ch. 142]. Thus a resolution as to allotment which was not minuted was upheld [*Re Great Northern Salt Co., Ex. p. Kennedy* (1890), 44 Ch.D. 472], and similarly a resolution of forfeiture was presumed to have been passed though not minuted [*Knight's Case* (1867), 2 Ch.D. 321]. Thus it will be seen that even though the minutes book is not produced, it is quite open to the parties concerned to prove by evidence what actually happened at the meeting [*Lane's Case* (1863), 33 L.J. Ch. 84]. Thus the minutes are neither exclusive evidence of what took place at the meeting, as an unrecorded resolution may be proved by other evidence [*Knight's Case* (1867), 2 Ch.D. 321], nor are they conclusive evidence, as they may be contradicted by other evidence [*Tothill's Case* (1865), L.R. 1 Ch. 85]. They are only *prima facie* evidence of the proceedings. When the minutes are signed it nearly means that their accuracy has been verified by the meeting, it does not necessarily mean that the minutes are adopted or that the resolutions as recorded are ratified or confirmed. Thus it is not accurate to say that the minutes have been " confirmed " as the meeting merely approves the minutes as a true record of what actually took place.

The Quorum

With reference to the quorum the Chairman has to see that not only is the quorum present when the meeting is opened, but that it is present all throughout the meeting. A quorum is the minimum number which according to the constitution of a company as represented by its Articles of Association, or in absence of any provision in the Articles to that effect, the majority, who are capable of meeting and passing resolutions which will have legal and binding effect [*Attorney-General* v. *Davy* (1745), 2 Atk. 212]. The number of members necessary to form a quorum is generally fixed by the Articles. Table A (Art. 51) as well as section 79(2) (*b*)

of the Indian Companies Act fixes the quorum at two members "personally present" in the case of a private company and five members "personally present" in the case of any other company. (Table A of the English Act, 1948, fixes the quorum at three members "present in person", and section 134(c) provides for two members "personally present" in the case of a private company and three in the case of any other company.)

In joint stock companies the Articles usually provide for a quorum both for the Board of Directors' meetings as well as the meetings of the company and they must in that case be strictly followed. Otherwise any resolution passed at the meeting would be invalid [*Howbeach Coal Co.* v. *Teague* (1860), 5 H. & N. 151; *In Re Cambrian Peat Co.* (1874), 31 L.T. 773]. Generally speaking where a specified majority of those present is necessary in order to form a quorum such persons must be counted, but otherwise, persons who are present but, who are not competent to participate in the matters to be transacted by a meeting, cannot be counted in the quorum in relation to the transaction of these matters [*Re Greymouth Point Elizabeth Rly. & Coal Co. Ltd.* (1904), 1 Ch. 32; *John T. Clark & Co.* (1911), S.C. 243; *Re Eynsham* (1849), 12 Q.B. 398; *Horbury, Bridge Coal, Iron & Waggon Co.* (1879), 11 Ch.D. 109]. This rule is excluded with regard to special and extraordinary resolutions under section 81 of the Indian Companies Act as well as under section 153 of the same Act. Section 81 deals with the above-mentioned two resolutions passed in connexion with a meeting of shareholders or members of a joint stock company and lays down that 'a resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given'. The sub-section (2) of the same section deals with the special resolution in similar terms. This makes it clear that in counting, the whole of the members present and entitled to vote, whether they all vote or not, are to be counted and therefore any person present but not voting must be counted as voting against the resolution. Section 153 deals with meetings of creditors or a class of creditors, or

members or a class of members, in connexion with a compromise or arrangement which is proposed between the company and its members or any class of them.

The other point to be noted is that in computing the quorum persons who are appointed to represent other joint stock companies, or corporations, holding shares in the company whose meeting is being held, are to be counted, but members who are not entitled to vote and proxies are not to be counted [*Kelantan Coconut Estates* (1920), 64 Sol. J. 700; *Greymouth Point Elizabeth Railway & Coal Co.* (1904), 1 Ch. 32; *Cambrian Peat & Fuel Co.* (1875), 23 W.R. 405]. It has also been held that the consent of every member of the company separately given will not have the effect of a resolution passed at a meeting [*Re George Newman & Co.* (1895), 1 Ch. 674], though of course the presence of all the members of the company at a meeting will regularize any resolution passed even if a notice has not been sent out to call the meeting or the notice does not contain a statement as to the purpose for which the meeting is called [*Re Express Engineering Works* (1920), 1 Ch. 466]. In one case of a class meeting of shareholders it was held that where only one person held all the shares of that class the resolution requiring consent is satisfied by getting the same in writing and signed by that one shareholder or member. Thus virtually speaking one shareholder constitutes a meeting, in spite of the common law rule which wants at least two persons to constitute a meeting, and a paper signed by that shareholder with a resolution which is required to be passed is considered sufficient [*East* v. *Bennett Bros. Ltd.* (1911), 1 Ch. 163].

As regards Directors, if no quorum is prescribed by the Articles a majority of the Board will form a quorum [*York Tramways Co.* v. *Willows* (1882), 8 Q.B.D. 685]. It has however been held in another case that a quorum can be established by the practice of the Board [*Regents Canal Iron Works* (1867), W.N. 79; *Lyster's Case* (1867), 4 Eq. 233]. Frequently Articles incorporate a clause to the effect that the continuing Directors may act notwithstanding vacancies, in which case even a number less than the minimum number prescribed as quorum can act and bind the company [*Scottish Petroleum Co.* (1883), 23 Ch.D. 413]. In one case where, though the Articles fixed the minimum as well as the maximum number, and stated that no less than the minimum

number were to act, and at the same time the Articles nominated only two Directors, it was held that these two could not act until a complete Board of the minimum number of Directors as required by the Articles was formed [*Re Sly Spink & Co., Hertsler's Case* (1911), 2 Ch. 430]. Those Directors who are not entitled to vote because they are personally interested in the question of the quorum or for any other reason cannot be counted in the quorum [*Yuill* v. *Greymouth Point E. R. & C. Co.* (1904), 1 Ch. 32]. It has also been held that even if a resolution is passed with a view to reducing the quorum, excluding those interested in the passing, it will be invalid [*North Eastern Insurance Co.* (1919), 1 Ch. 198]. In the same case it was decided that if two Directors are interested in a transaction which the Board is considering, the objection will not be removed if the resolution is split and each Director votes only on the part affecting the other. The question of the quorum will be considered at a later stage in greater detail, and all that we have stated above is that it is the duty of the Chairman that the rules of the quorum as enunciated above be strictly observed.

Casting Vote

At common law the Chairman has no casting vote [*Bishop of Chichester* v. *Harward* (1787), 1 T.Rep. 650]. Thus in joint stock companies also, unless the Articles of Association have provided a casting vote, the Chairman has no such vote. Table A, Art. 58 (English Companies Act, 1948, Art. 60 of Table A), provides for a second or casting vote in the case of a tie on a show of hands or on a poll.

Even if the Chairman is given a casting vote by special regulations of the company or the association or body concerned, he is not bound to exercise that vote if he is not disposed to do so, and in many assemblies such as the Corporation of Bombay and the House of Lords, the convention is that if the present order of things has to be altered a proposition is moved to that effect; if there is a tie, the Chairman usually refuses to exercise his right of the casting vote and thereby allows the *status quo* to remain. There are occasions when the convention makes it a fixed practice not to pass a motion by a casting vote if there is an equality of votes on either side; but of course it is only the convention that brings about that position, since the regulations do give a casting

vote to the Chair. For assemblies, clubs, associations, etc. of which the Chairman is a member, the Chairman has his own vote as a member as well as his casting vote, on the same principle that in a joint stock company the Chairman has his votes as a shareholder or member as well as his casting vote. In the former case, in order to show his impartiality, the Chairman usually does not exercise the right of his own personal vote, but in a joint stock company, of course, the position stands on a different footing as the property rights have to be exercised. Frequently this happens at an election such as that of a Municipal Corporation, where the Mayor of a Corporation exercises his vote at the election of his successor. If the Mayor has a casting vote he may give a contingent or hypothetical casting vote at the time of the election, which vote is to come into operation if in the course of subsequent proceedings it appears that there is an equality of valid votes on either side. In one particular case this was done because at this election the authority of the vote of one of the Councillors was challenged and a petition had been already presented against his election as a Councillor; thus the Mayor could not know in advance whether there would be an equality of votes on either side because if that particular Councillor's election were declared invalid his vote would leave the vote with a majority of one on the opposite side [*Bland* v. *Buchanan* (1901), 2 K.B. 75].

CHAPTER III

THE DIRECTORS

Meetings

Directors are defined by Section 2(5) of the Indian Companies Act of 1913 as including 'any person occupying the position of a Director by whatever name called'. Another section, viz. 83A, makes it compulsory for every public company to have at least three Directors, and Section 83B lays down that in default of and subject to any regulations in the Articles of a company, other than a private company, the subscribers of the Memorandum shall be deemed to be the Directors of the company until the first Directors shall have been appointed. Thus, if the company has not appointed Directors, as is usually done by mentioning them in the Articles of Association, the subscribers of the Memorandum are to act as Directors. In such cases the regular Directors have to be appointed by the members at a general meeting and casual vacancies occurring among the Directors may be filled up by the Directors, but a person so appointed shall be subject to retirement at the same time as if he had become a Director on the day on which the Director in whose place he is appointed was last appointed a Director. It will thus be seen that Company Law expects that a Board of Directors of a public company shall control and manage the affairs of the company, subject of course to the powers given to them under the Articles of Association and also implied by the nature of their appointment.

Summary of Important Points

In connexion with Board Meetings the following points must be noted :—

1. The Directors must act as a Board and a single Director as such has no power to bind the company unless given a special delegation under the constitution of the company.
2. Proper notice should be given of a Board Meeting to all those Directors who are at a considerable distance from the place of meeting.
3. The Board must act as a quorum and the quorum must be properly constituted.

4. Unless specially authorized by the Articles, the Directors must meet in the meeting and decide questions by resolutions.
5. There must be a Chairman present at the meeting or one must be appointed.
6. Every Director has one vote unless the Articles otherwise provide.
7. The Directors may divide their function or work into committees when so authorized by the Articles of Association.
8. The Directors must see that the Minutes form a proper record of the meetings they have attended and while confirming or passing the Minutes only those who were present at the meeting of which the Minutes are being considered can vote.
9. The Directors have a right to inspect the Minute Books and may not be prevented from so doing unless it is proved to the satisfaction of the Court that there are no reasonable grounds for inspection or when they are not acting *bona fide* and in the best interests of the company [*R.* v. *Hampstead B. C.* (1917), 116 L.T. 212].

1. Directors must act as a Board

It is the first principle of Company Law that the Directors can only validly act when assembled at a Board Meeting [*Re Haycraft Gold Reduction & Mining Co.* (1900), 2 Ch. 230] unless of course the Articles by special provision permit the Directors to pass resolutions by circulars [*D'Arcy* v. *Tamar Railway Co.* (1867), L.R. 2 Ex. 158] or an individual director has been authorized to enter into transactions as agent of the company. In one case it was held that where only two directors of a company meet casually, one director cannot treat the meeting as a Board Meeting against the consent and wishes of the other [*Barron* v. *Potter* (1914), 1 Ch. 895]. In connexion with the Articles of Association that authorize the Directors to pass resolutions by circulars, it may be noted that the stock exchanges of London and Bombay object to such regulations and refuse to grant a quotation to public companies who embody such an Article. The Board while acting must possess the proper quorum because any business done by a number smaller than the quorum will have no legal effect. In one case where the Articles laid down that the minimum Directors' number should be four and also that three Directors should be a quorum it was held that that could not be a valid quorum as it was less than the specified minimum number of Directors who could constitute the Board [*In Re Sly Spink & Co.* (1911), 2 Ch. 430].

No share qualification is necessary under the Companies Act but generally the Articles provide for a certain share qualification, in which case the Directors appointed must acquire the qualification within the time laid down by the Articles or by the Companies Act whichever is applicable to the case of the company, otherwise their appointments after the expiry of such time shall be vacated. A Director may provide for his qualification share by joint holding unless the Articles provide for a separate holding [*Dunster's Case Re Glory Paper Mills* (1894), 3 Ch. 473]. Even where a Director holds shares as an executor that will be good qualification, unless the Articles provide that the share shall be held by him 'in his own right' [*Grundy* v. *Briggs* (1910), 1 Ch. 444]. The Directors cannot accept their qualification shares as a present from promoters or vendors [*Hay's Case* (1875), 10 Ch.D. 604]. The Companies Act provides that where the Articles prescribe a share qualification, the holding of share warrants will not be sufficient qualification. Under Section 85 of the Indian Companies Act if the Director does not acquire his qualifications within two months, or any shorter time that may be provided for in the Articles, after his appointment, not only his office will be vacated, as we saw above, but if such an unqualified person acts as a Director of the company after the expiry of the said period he is liable to a fine not exceeding Rs. 50 for every day after the expiration of the said period. Even if a Director pledges his share by a blank transfer that will not disqualify him [*Pulbrook* v. *Richmond Consolidated Mining Co.* (1878), 9 Ch.D. 610]. The Director who acts without qualification in breach of the requirement of the Act is likely to be prevented by an injunction restraining him from acting and is also liable to refund the fee paid to him by the company by mistake while he so acts [*In Re Bodega* (1904), 1 Ch. 276].

Even though there may be irregularities in the constitution of the Board it was held in *Changamal* v. *Provincial Bank Ltd.* (1914), I.L.R. 36, All. 412, that an allotment made by an irregularly constituted Board is *prima facie* invalid but that this fact may sometimes be cleared if the Articles of Association of the company provided for the validation of an act done by a *de facto* Director in a *bona fide* manner. In another Indian case, viz. *Hope Mills Ltd.* v. *Sir Cawasji J. Ready-*

money (1911), 13 Bom. L.R. 162, it was laid down that as between the company and the third person, having no notice to the contrary, the Directors *de facto* are Directors *de jure*. The general principle of course is that an outsider is entitled to assume that the domestic affairs of the company are properly conducted [*Royal British Bank* v. *Turquand* (1856), 6 E. & B. 327].

A further requirement is that under Section 91B of the Indian Companies Act, 1913, a Director cannot vote on any contract or arrangement in which he is either directly or indirectly concerned or interested and if he does so vote his vote shall not be counted. This of course applies to a public company and not to a Board constituted under a private company arrangement. Now as the quorum of a Board of Directors has to be made up of those who are qualified to vote, the interested Directors cannot be counted in the quorum [*Yuill* v. *Greymouth Point E. R. & C. Co.* (1904), 1 Ch. 32]. Here if two Directors are interested in a particular transaction the objection that they cannot vote or cannot be counted in the quorum cannot be removed by splitting up the resolution and each Director voting on the part affecting the other, nor would it do to reduce the quorum for the purpose of enabling those not interested to pass the resolution [*North Eastern Insurance Co.* (1919), 1 Ch. 198].

We have seen that a single Director cannot act, but if regulations authorize it, the Directors can delegate some one or more of their number, such as the Managing Director, to exercise some of the powers of the Board. The powers of course must be expressed as otherwise the maxim of agency law, viz. *delegatus non potest delegare*, meaning that a delegate or an agent cannot delegate his authority to someone else, will apply [*Howard's Case* (1866), 1 Ch. 561]. The Committee may consist of one person or more than one person because it means one or more to whom the powers are committed [*Taurine Co.* (1884), 25 Ch.D. 118].

2. Notice of Board Meetings

The other point to be clearly noticed is that unless a notice has been given to all the Directors a meeting of Directors is not considered to be duly convened [*Young* v. *Ladies Imperial Club* (1920), 2 K.B. 523 C.A.; *H. M. Ebrahim Sait* v. *S. India Industrial, Ltd.* (1938), Mad. 962]. The Secretary

is the correct person to convene a meeting of a Board of Directors, but a single Director may in the absence of special regulations summon a meeting of Directors, which seems to be the common law rule [*Bhutt* v. *Fellowes* (1843), 3 Curt 680]. If notice is not given and in consequence of that some Directors are not able to be present, the proceedings will be invalid [*Harben* v. *Phillips* (1883), 23 Ch.D. 14] and this is so even where a director has expressly waived his right to be sent notices, because of the principle that coupled with the right to receive notice is the corresponding obligation to perform his legal duty of participating in the discussions at Board Meetings [*Young* v. *Ladies Imperial Club* (1920), 2 K.B. 523] and he cannot therefore effectively waive notice [*Portuguese Consolidated Copper Co., Steele's Case* (1889), 42 Ch.D. 160]. Where no notice has been given, but all the directors are present and consent to a meeting being held, the proceedings at such a meeting will be valid [*Smith* v. *Paringer Mines Ltd.* (1906), 2 Ch. 193]. In such a case, however, if one of the directors objects to the holding of the meeting and does not waive his right to notice, no business can be transacted as the proceedings will be invalid [*Barron* v. *Potter* (1914), 1 Ch. 895]. It has, however, been held that there is no duty to send a notice to a Director abroad or to one who is travelling about without any known address [*Halifax Sugar Refining Co.* v. *Francklyn* (1890), 62 L.T. 563]. However, every director within reach must be sent notice of every Board Meeting of the company unless there is any specific provision to the contrary [*Halifax Sugar Refining Co. Ltd.* v. *Francklyn* (1890), 62 L.T. 563].

The notice should be so given as to allow a reasonable time, but generally this is determined by the custom and practice prevailing in each company if the regulations themselves do not lay down the period [*Browne* v. *La Trinidad* (1887), 37 Ch.D. 1]. If a notice is given as a peremptory notice with the deliberate idea of excluding certain Directors, it would be invalid because the Court would always interfere and prevent such wrongful exclusions [*Homer Gold Mines* (1888), 39 Ch.D. 546; *Pulbrook* v. *Richmond Consolidated* (1878), 9 Ch.D. 610]. Objection to a notice not being given should be taken as soon as this fact comes to the notice of the Directors aggrieved [*Browne* v. *La Trinidad* (1887), 37 Ch.D. 1]. When a notice is given it is usual to state particulars of the

business to be done, but it is not compulsory, unless the Articles require it, for the simple reason that Directors, being a selected body, are expected to attend every meeting [*La Compagnie de Mayville* v. *Whitley* (1896), 1 Ch. 788].

There are, however, occasions when the Directors have fixed certain specific days of the week or month for holding meetings, e.g. the first and third Monday of the month. In these cases it is not strictly necessary for the notices to be sent to them, though in actual practice it is usual and desirable to do so by way of reminder, with, if possible, an agenda. At a Board Meeting it is not necessary for Directors to follow the order of the agenda and they can take their business in any order they like [*Cawley & Co.* (1889), 42 Ch.D. 209].

No particular form of notice is prescribed by law and therefore in the absence of provisions to the contrary, even a verbal notice would be sufficient at law [*Browne* v. *La Trinidad* (1887), 37 Ch.D. 1].

3. Quorum of a Board of Directors

For joint stock companies it is usual to fix a quorum in the Articles. A quorum of course means the minimum number competent to transact business and vote, without which the resolutions will not be valid [*Greymouth Point E. R. & C. Co.* (1904), 1 Ch. 32]. Where no quorum is fixed by the Articles the Directors must act on the footing that all Directors be summoned and a majority be present [*York Tramways Co.* v. *Willows* (1882), 8 Q.B.D. 685]. In one case it was held that where no quorum is specified in the Articles the number usually acting will constitute the quorum [*Lyster's Case* (1867), L.R. 4 Eq. 233]. There is no objection to the Articles permitting one Director to be a quorum though a single Director cannot constitute a meeting [*Re Fireproof Doors Ltd.* (1916), 2 Ch. 142; *Sharp* v. *Dawes* (1876), 2 Q.B.D. 29 C.A.], and this is a case where there is power to delegate to a committee of one. In another case where though the quorum fixed was three and a seal was fixed by two on a mortgage deed, it was held that the mortgagee as the third party having no notice of irregularity was entitled to treat the deed as valid [*County of Gloucester Bank* v. *Rudry Merthyr & Co.* (1895), 1 Ch. 629]. In another case where a Board of Directors made up of two refused to attend

a meeting to consider the transfer of shares, and it was found that this was deliberate with a view to prevent such transfers, the Court ordered the company to register the transfer on the ground that the shareholder had a property in the shares which he had the right to dispose of subject only to the expressed restrictions in the Articles [*In Re Copal Varnish Co.* (1917), 2 Ch. 349]. For other points see Chapter II, under the heading of 'Quorum'.

4. Directors must meet

Looked at from the standpoint of efficient organization, the Directors must meet in order to arrive at an accurate decision after hearing all sides of a case, and though L. J. Fry in *Portuguese Copper Mines* (1889), 42 Ch.D. 160 suggested that 'without meeting the Directors cannot think', there is no objection in law to their not meeting, if the Articles provide that a letter signed by all or a majority of the Directors shall have the same effect as a resolution of the Board. But in the absence of such an Article the Directors must meet [*D'Arcy* v. *Tamar Hill Railway Co.* (1867), L.R. 2 Ex. 158].

5. Chairman of a Board of Directors necessary

We have already dealt with the position of the Chairman at joint stock company meetings as well as at meetings of public bodies. All that need be said here is that from early times the necessity of having someone to direct and guide a meeting and regulate its proceedings has been felt, and the person so appointed by the meeting is the 'Chairman'. The Chairman thus collects his authority from the meeting, by whom he is generally appointed. Even if the Chairman's appointment at such meetings be irregular that irregularity is cured by the acquiescence of the meeting. In joint stock companies, as we have seen, the Chairman of a Board of Directors is either appointed by the Board itself or by the Articles, and presides both at the Board of Directors' meetings as well as at shareholders' meetings. A person who has been appointed Chairman by the directors does not thereby obtain a contractual right to act as Chairman for the term of his election or for so long as he is a director and the directors are at liberty to appoint another Chairman at any time in his place [*Foster* v. *Foster* (1916), 1 Ch. 532].

6. Voting by Directors

Unless the Articles otherwise provide, every director has one vote at a Board Meeting, and though not entitled to vote if interested, a director cannot be precluded from attending a Board Meeting [*Grimwade* v. *B. P. S. Syndicate* (1915), 31 T.L.R. 531]. An interested director though precluded from voting at a Board Meeting, can exercise his right to vote as a shareholder at the General Meeting of the company even though the contracts which the General Meeting is considering are those in which he is interested [*North West Transportation Co.* v. *Beatty* (1887), 12 A.C. 589]. Where all the shareholders or Directors are agreed, or where there is unanimous agreement among members and the agreement is *intra vires*, it will be binding even if some of the directors who vote on it are interested [*In Re Express Engineering Works* (1920), 36 T.L.R. 275; *Salomon* v. *Salomon* (1896), 13 T.L.R. 46; *Re Oxted Motor Co.* (1921), 3 K.B. 82].

The Indian Companies Act clearly lays down in Sections 91A, 91B and 91C respectively as follows :—

91A (1) Every director who is directly or indirectly concerned or interested in any contract or arrangement entered into by or on behalf of the company shall disclose the nature of his interest at the meeting of the directors at which the contract or arrangement is determined on, if his interest then exists, or in any other case at the first meeting of the directors after the acquisition of his interest or the making of the contract or arrangement :

Provided that a general notice that a director is a director or a member of any specified company, or is a member of any specified firm, and is to be regarded as interested in any subsequent transaction with such firm or company, shall as regards any such transaction be sufficient disclosure within the meaning of this subsection and after such general notice, it shall not be necessary to give any special notice relating to any particular transaction with such firm or company.

(2) Every director who contravenes the provisions of sub-section (1) shall be liable to a fine not exceeding one thousand rupees.

91B (1) No director shall, as a director, vote on any contract or arrangement in which he is either directly or indirectly concerned or interested nor shall his presence count for the purpose of forming a quorum at the time of any such vote, and if he does so vote, his vote shall not be counted :

Provided that the directors or any of them may vote on any contract of indemnity against any loss which they or any one or more of them may suffer by reason of becoming or being sureties or surety for the company.

(2) Every director who contravenes the provisions of sub-section (1) shall be liable to a fine not exceeding one thousand rupees.

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

91C (1) Where a company enters into a contract for the appointment of a manager of the company in which contract any director of the company is directly or indirectly concerned or interested, or varies any such existing contract, the company shall, within twenty-one days from the date of entering into the contract or the varying of the contract send an abstract of the terms of such contract or variation, as the case may be, together with a memorandum clearly indicating the nature of the interest of the director in such contract, or in such variation to every member ; and the contract shall be open to the inspection of any member at the registered office of the company.

(2) If a company makes default in complying with the requirements of sub-section (1) it shall be liable to a fine not exceeding one thousand rupees ; and every officer of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty.

It may be noted that in the above case of interested directors, the director who is thus disqualified from voting must not even be counted in reckoning a quorum and this rule cannot be evaded even by splitting the resolution or reducing the quorum [*Re Greymouth Point Elizabeth Ry. Co.* (1904), 1 Ch. 32 ; *Rama Swami* v. *Madras Times Co.* (1915), 38 Mad. 991 ; *Re North Eastern Insurance Co.* (1919), 1 Ch. 198 ; *Re Sir Hormasji A. Wadia* (1921), 23 Bom. L.R. 1104].

7. Committees appointed by Directors

It is quite usual in large companies for the Board to divide itself into a number of Committees, such as the Finance Committee, the Works Committee, the Share Transfer Committee, the General Purposes Committee, etc. to each of which special functions are allocated. This can only be done where the Articles of the company concerned permit such delegation as otherwise the well-known maxim "*delegatus non potes delegare*" would apply. When appointing a Committee care should be taken to state the quorum, otherwise it will be presumed that the delegation is to the whole body and that all must be present [*In Re Liverpool Household Stores Association* (1890), 59 L.J. Ch. 616 at p. 624] ; and the power to add to the number under the delegated authority of the Committee is not presumed. Neither can they add to their number to supply a vacancy [*Re Liverpool Household Stores* (1890), 59 L.J. Ch. 616]. When moving for the appointment of a Committee, it is usual to include these powers in so many express words. These Committees look after the administration of their respective spheres of work and report at fixed intervals to the General Board who formally adopt their report. Special minute books are maintained to record minutes of the work of each of these Committees. The Finance Committee looks after the financial problems, the Works Committee deals with the work of administration, the Share Transfer Committee deals with the transfer applications for shares, etc. This division of work brings about the best results both with regard to economy of time and labour, and efficiency of administrative work, through its concentration in the hands of those who happen to be the most capable to deal with it. Where such a committee is appointed an excessive exercise of its powers may be ratified by the Directors [*Bolton Partners* v. *Lambert*

(1889), 41 Ch.D. 295 C.A.]. The simple act of delegation by the directors does not divest the Board of Directors of their own powers [*Huth* v. *Clarke* (1890), 25 Q.B.D. 391]. A committee may even consist of one person [*Re Taurine Co.* (1884), 25 Ch.D. 118].

8. Minutes of Proceedings of Directors

We shall deal with these first in connexion with practical procedure, and then from the point of view of law.

Minutes of a Board Meeting

At the close of the meeting, or as soon after as possible, the Secretary should proceed to draft the 'minutes' of the meeting. Great care has to be taken here to see that the draft represents as accurate a record as possible, because, when once passed and signed by the Chairman of the same or of the next succeeding meeting, the minutes shall constitute evidence of the proceedings. The Indian Companies Act of 1913 (Section 83) lays down that 'every company shall cause minutes of all proceedings of general meetings and of its directors to be entered in books kept for that purpose'. It further enacts that 'until the contrary is proved every general meeting of the company, or meeting of directors in respect of the proceedings whereof the minutes have been so made shall be deemed to have been duly called and held, and all proceedings had thereat to have been duly had, and all appointments of directors or liquidators shall be deemed to be valid'. The language of the section quoted here will impress the reader with the importance of seeing to the accuracy of the record. The law insists on at least one minutes book being kept, though in actual practice it is found convenient to keep separate books not only for the board and shareholders' meetings respectively, but in cases too where the board is divided into committees, a separate minutes book is maintained for each of the committees. The general minutes book is open to the inspection of members but the directors' minutes book, which records the proceedings dealing with the internal management, is not open to members, and is therefore in many important companies provided with a lock and key. The minutes book should be made of faint ruled foolscap paper, with a broad margin on the left, and an alphabetical index at the beginning or at the end. Each minute entered in this book is consecutively numbered, abbreviated in the

margin and indexed. The minutes should be written in the order in which the business was dealt with at the meeting.

Minutes are written in various forms, but the one which is the best to be followed is that which includes narration as well as conclusions. To make this clear it may be mentioned that minutes are divided roughly into two classes, viz. (1) minutes of narration, and (2) minutes of conclusions. It is the practice with some draftsmen to record only conclusions in the form of the resolutions passed. This is hardly a course to be recommended, even though this form of record may answer legal requirements. What should be aimed at by a good draftsman is a complete narrative of what actually occurred at a meeting, in a brief and compact form, which takes note of all important items of the proceedings without making the record needlessly lengthy or cumbersome. If that is done, no inconvenience or doubt is felt when, after a number of years, a reference to the record of proceedings at some prior meeting is necessitated. In short a good minute speaks for itself. It does not give rise to confusion. Even an outsider, on perusal, gets a full and complete idea as to what actually occurred at the meeting in question.

The minutes of each meeting should be kept separate and should commence on a fresh page. They should be headed with the number, date and nature (board or shareholders' meeting) of the meeting. The narration should then state in order what actually occurred, and should conclude with the actual resolution, if any, passed. This resolution should be recorded in full and in the exact wording in which it was passed. The best course to be followed here is to request the person who proposes a resolution to hand it over in writing to the Chairman. This original writing should, when passed, be copied into the minutes book. As regards formal resolutions, passed at board and general meetings, the secretary is frequently requested to draft these out. Great care, skill and a good knowledge of the principles of Company Law and practice is required in this branch of secretarial work. For resolutions involving intricate questions of law, such as those required to be passed in order to give effect to the alteration, reduction or reorganization of capital, etc. the secretary should call for legal assistance. The minutes are evidence in Law, until the contrary is proved, that the proceedings as recorded are correct. It will thus be seen that

after the minutes are verified and signed, the secretary has no right to alter them on his own responsibility. We shall now take an illustration of the minutes of a Board Meeting.

Unlike the minutes of general meetings the minutes of Board Meetings are not required by the Companies Act to be kept open for inspection by members.

A Specimen of Minutes

The fifteenth meeting of the Board of Directors was held at the registered offices of the company on Thursday, 16th of June 1949, at 4 *p.m.* (*S.T.*).

There were present:—

Mr. Dorab Saklat, *in the Chair*
Rao Saheb T. Rangneker
Mr. William Inglis
Mr. Abdul Karim

Directors

In attendance:—

Mr. D. Bhabha, *Secretary*
Mr. Raghunath Rao, *Accountant*
Mr. Dobson, *Manager*

65. The minutes of the last meeting held on the 2nd June 1949 were read, approved as correct and signed.

Cash Statements, ways and means. 66. The secretary produced the Bank Pass Book and a statement showing an abstract of cash receipts and payments during the fortnight ending on the 14th instant. It showed a balance at the Bank of Rs. 20,000 and on hand of Rs. 1,250. The statement was duly checked and formally approved.

Trading Returns. 67. The statement as to the Trading Returns was next submitted, and showed a turnover of Rs. 80,000 during the fortnight. This, as compared with the turnover of the immediately previous fortnight was in excess by Rs. 5,000, but showed a decline when compared with the corresponding fortnights of the three previous years. The manager explained that this was due to the shortage of available stock as well as to the general rise in prices. The explanation was considered satisfactory and returns were duly approved.

Resignation. 68. The resignation of Mr. Rodrigues, one of the Directors, dated 11th June 1949, was next submitted for consideration. It was suggested by Mr. Rangneker that Mr. Rodrigues should be requested to reconsider his decision. Mr. Dobson stated in reply that he had met Mr. Rodrigues the same morning at the latter's residence with this object in view, but Mr. Rodrigues' decision was final, as he was acting on the advice of his physician, who had ordered a complete rest and a change for at least a year.

It was therefore resolved:—That the resignation of Mr. Rodrigues, a Director of this company, dated 11th June 1949 is hereby accepted

by the Board with regret and is to take effect from this date. The Board, however, take this opportunity to place on record their appreciation of the services of their colleague and wish him complete recovery.

The secretary was directed to convey this expression of the Board's appreciation to Mr. Rodrigues.

Report of Transfer Committee. 69.

The report of the Transfer Committee, as recorded in that committee's minute book, was next considered. It showed that applications were received for the transfer of 50 ordinary shares from five shareholders, all of which were duly accepted, and the transfers given due effect to. It was unanimously resolved that the said report be adopted in full.

Dayabhai & Co.'s claim. 70.

The secretary next produced further correspondence regarding Messrs. Dayabhai & Co., who insisted on claiming the full amount of Rs. 15,000 for the alleged breach of contract for purchase of cotton on our part. The secretary was directed to write finally stating that the said claim was inadmissible.

Next Meeting. 71.

The next meeting was fixed to be held at the company's offices on the 1st July 1949.

Chairman's initials, D. S.

9. Law relating to Minutes

The minutes are verified and passed as correct either at the same meeting or at a subsequent meeting at which, as we have seen, only those present at the previous meeting can vote. Thus if, subsequent to the passing of the minutes, some irregularity has been discovered, the best course is to pass a resolution to the effect that the minutes on a particular date are not accurate, but the minutes should not be scored out and corrected by the secretary on his own responsibility or by the President [*Cawley & Co.* (1889), 42 Ch.D. 226].

Minutes are not conclusive evidence of what actually took place at the meeting and if anyone asserts that a particular resolution was not passed, it may be proved in a Court of Law by evidence [*Knight's Case* (1867), L.R. 2 Ch. 321]. The minutes when signed by the Chairman are *prima facie* evidence and not conclusive for that reason. If anything recorded is not accurate, that may also be proved in a Court of Law and the minutes thus falsified. In the absence of any contrary evidence according to the Indian Companies Act, Section 80 (3), the minutes of the proceedings shall be deemed to be correct and the meeting shall be deemed to have been duly called and held and all appointments of Directors or

liquidators shall be deemed to be valid. The same section also lays down that every company shall cause minutes of all proceedings, of general meetings and of its Directors to be entered in books kept for that purpose.

The law requires one common minutes book as the minimum but in practice separate minutes books are kept for the Board of Directors, and for each of the Committees, as well as for general meetings as we have already seen. Thus an entry of an allotment of shares to a Director who was present, and who signed the minutes at the next meeting was considered to be sufficient agreement to take shares, but not in the case of one who was not present and denied all knowledge [*Llanharry Haematite Iron Ore Co., ex parte Roney* (1864), 33 L.J.Ch. 731; *Tothill's Case* (1865), 1 Ch.D. 85]. In another case where there was a record of forfeiture of shares by a resolution on the minutes, in the absence of other evidence the Court presumed that the resolution was duly passed [*Knight's Case* (1867), 2 Ch. 321; *Re Fireproof Doors Ltd.* (1916), 2 Ch. 142].

Liability of Directors for Non-Attendance and Work done at Meetings during their absence

In this connexion Romer J. [*In Re City Equitable Fire Insurance Company* (1925), 1 Ch. (407)] has laid down that 'a director is not bound to give continuous attention to the affairs of his company, his duties are of an intermittent nature to be performed at periodical Board Meetings and at meetings of any Committee of the board upon which he happens to be placed. He is not however bound to attend all such meetings, though he ought to attend whenever in the circumstances he is reasonably able to do so'. The same principle was enunciated in earlier cases such as *Perry's Case* (1876), 34 L.T. (716), viz. that it was not a part of the duty of the director to take part in every transaction which is considered at a Board Meeting; neither that neglect or omission to attend meetings is the same thing as neglect or omission of duty which ought to be performed at such meetings [*Marquis of Bute's Case* (1892), 2 Ch. 101]. In old days and in old cases the view taken by the Courts was more serious, but recently the tendency is towards much more liberalization. Besides these, the Articles of Association contain what are known as 'Indemnity Clauses' by which directors are exonerated from

liability through negligence 'unless the same should happen by or through their own wilful neglect or default respectively'. Both in India and in England the Companies Acts declare such clauses to be void.

In the above mentioned case of *City Equitable Fire Insurance Company* (1925), 1 Ch. 407, it was further held that 'a director need not exhibit in the performance of his duties a greater degree of skill than may reasonably be expected from a person of his knowledge and experience'. This virtually means that if directors are men of third class capacity, you cannot expect second or first class work from them.

If a Director is present at a meeting he will naturally be held liable for anything done which is not regular, but he will not be liable for anything done at a Board meeting at which he was not present. In one case, viz. *Burton* v. *Bevan* (1908), 2 Ch. 240, it was laid down that a Director who simply confirmed the minutes of a prior Board meeting which were complete, without confirmation, was not liable as he was not present at the said prior Meeting; but if it is found that though he was not present at the Board Meeting where certain resolutions were passed, he had taken a very active and important part in the transaction itself and at a subsequent General Meeting acknowledged it, then he would be liable [*Lands Allotment Co.* (1894), 1 Ch. 616].

Defamatory Statements at Board Meetings

Generally a Board Meeting is a privileged occasion and statements made thereat *bona fide* and without malice are protected, but if anything is proved to have been said or done maliciously—such as a false statement made out of rancour or spite—the privilege would be lost and the director would be liable [*Royal Acquarium* v. *Parkinson* (1892), 1 Q.B. 443].

It may be added that if the minutes with such defamatory statements are printed and circulated as is the case with some non-trading companies, the printers would be liable for defamation.

Powers of Directors

The exact powers of the directors largely depend on the clauses in the Articles of Association of the company concerned. Articles frequently lay down, as is provided for by

'Table A', Clause. 71, that "the business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Indian Companies Act, 1913, or any statutory modification thereof for the time being in force, or by these Articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation of the Articles, to the provisions of the said Act, and to such regulations being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made'. In this case these general powers are wide and all-embracing. In other cases specific powers in detail are laid down by the Articles. The directors should see that they are strictly within their powers. If the directors exceed their powers and do some acts beyond their powers, the company in general meeting may ratify this act, provided the said act is within the scope of the company's power [*William Irvine* v. *The Union Bank of Australia* (1877), 2 Ap. Case 366]. This ratification may be made by an ordinary resolution. We have already seen how far a director can contract personally with the company. If the directors have done an act which is *ultra vires* the directors, but *intra vires* the company, and the said company not only wants to ratify it, but also desires to give power to its directors to do similar acts in the future, that would amount to altering the Articles and would have to be done by a special resolution [*Grant* v. *United Kingdom Switchback Rly Co.* (1888), 40 Ch.D. 138-39]. In a recent case where the Articles authorized the directors to provide for the welfare of employees and their widows and children, the Board of Directors entered into a Deed of Covenant by which it granted a pension of £500 a year to the widow of the Managing Director. Here it was held that the transaction was not for the benefit of the company or reasonably incidental to the company's business and that the pension did not come within the terms of the Articles as the Managing Director or other director is not a person 'in the employment of the company' [*Re Lee Behrens & Co. Ltd.* (1932), 2 Ch.D. 46].

In one other case where it was agreed that the person who guaranteed the dividends on preference shares was to be reimbursed by the company for any sum paid by him in respect of this guarantee, the Court held that the agreement was *ultra vires* the company [*Walters' Palm Toffee Ltd.* v. *Walters* (1933), 49 T.L.R. 192]. The Directors must act in the interest of the company and must not make any secret profit while allotting shares [*Parker* v. *McKenna* (1875), 10 Ch. 96] ; or while making calls [*Gilbert's Case* (1870), 5 Ch. 559] ; and while forfeiting shares the same rule has to be observed because the power to forfeit is to be exercised for the benefit of the shareholders [*Harris* v. *The North Devon Ry. Co.* (1855), 20 Beav. 384]. The same principle applies when dealing with a transfer [*Cameron's C. S. L. Ry. Co.* (1867), 5 De.G.M. & G. 284].

Power to make Bye-laws

A clause in the Articles is sometimes found giving the directors the power to make bye-laws. There is no doubt that these bye-laws could only be made in connexion with the internal office rules and regulations, such as for officers and servants of the company, if they are to be made and varied by the Board of Directors. If however this clause empowers the directors to make and vary bye-laws applicable to the 'members' of the company that would also be *ultra vires* the Board of Directors, because it would amount to making or altering the Articles of Association which, under the Act, can only be done by a special resolution of the company. Thus if such an Article were to be framed in connexion with bye-laws it should take the following form : —

> From time to time to make, vary, and repeal bye-laws for the regulation of the business of the Company, its officers and servants.

Directors' right of inspection of Minutes

Generally speaking a director has a right to inspect and take copies of the documents or books of a company, this being a right of his office according to J. North in *Burn* v. *London and South Wales Coal Co.* (1890), 7 T.L.R. 118. But where there has been a quarrel among the directors and one

of the directors has wished to inspect the minutes from a hostile motive, the inspection has been refused [*Turner L. J. Nichol's Case* (1858), 3 De G. & J. 387].

Convening of Meetings of Directors and Shareholders

'Table A' under the Companies Act provides that a director may, and the secretary must, at the direction of any director at any time summon a meeting of the Board of Directors. These regulations are generally incorporated in the Articles of Association of every joint stock company. It should however be remembered that when it is a question of calling a General Meeting of shareholders a single director cannot do so, nor can the secretary on his own responsibility call a General Meeting. Of course the Articles of Association of every company also provide for this incident [*Haycraft Gold Reduction and Mining Company* (1900), 2 Ch. 230]. If the Articles provide specifically that the resolution in writing through a circular signed by the directors without meeting shall be as effective as a resolution of the Board, the General Meeting can be called by such a resolution in writing. If the secretary calls a General Meeting of shareholders without sanction of the directors as above, the said meeting will be invalid, but the directors may by passing a Board resolution before the date of the said meeting so called, ratify the secretary's act, in which case the meeting will be valid [*Re State of Wyoming Syndicate* (1901), 2 Ch. 431; *Hooper* v. *Kerr Stuart & Co.* (1900), 83 L.T. 729]. It has also been held that a resolution passed by a meeting which looks as if it has been regularly convened will not be invalidated because of the fact that some of the acting directors who joined in calling the meeting were not duly appointed [*Browne* v. *La Trinidad* (1887), 37 Ch.D. 1]. It also happens that in certain companies, particularly private limited companies, all the directors are the only shareholders of the company. Here a meeting convened as a Directors' Board Meeting may also be valid as the meeting of the company if all the members are present [*Express Engineering Works* (1920), 1 Ch. 466]. In a Bombay case, viz. *Sorabji* v. *Scind and Punjab Co.* (1906), 8 Bom. L.R. 478, where a resolution of the directors of the company provided that three members should form a quorum

and of these three two resigned leaving one in charge of the affairs of the company, the question arose as to how to call a meeting of shareholders for dealing with the accounts of the company, and the Court directed that the sole director so left can get the requisite members or shareholders of the company to call the meeting as provided for under the Indian Companies Act of 1913, or that the director can move the Court to call a General Meeting.

Even where the Articles of Association or any regulations contained therein do not provide for the calling of the meeting the requisite members may call it under Section 79. The resolutions of a General Meeting called by *de facto* directors are not invalidated simply because the Board which called it was irregular [*Boschoek Proprietary Co. Ltd.* v. *Fuke* (1906), 1 Ch. 148]. Section 79 can be invoked particularly where the existing regulations of a company and the circumstances that have arisen make it impossible to call a meeting under the said regulations [*Brick and Stone Co.* (1878), W.N. 140].

Preparation and Work for Board Meetings

The Board Meetings of directors may be held as frequently as the directors may in their opinion think necessary and convenient to hold in the interests of the company. The secretary should carefully study the Articles of Association of his own company and strictly follow the procedure laid down there. Proper notices as to the meetings should be sent to each and every director, and in the case of Committee Meetings, to every member of the Committee. This is very important, as it has been held that failure to send such a notice to a single director entitled to attend such meetings will invalidate all business that is done or considered on that occasion. In some companies the practice is to fix certain dates, or week-days in advance, on which the Board Meetings are to be held ; in others they are fixed by the secretary in consultation with the Chairman. To the notice convening a Board Meeting a slip is frequently attached, showing the date of the meeting as well as the name of the director, which the director concerned is requested to hand to the clerk at the entrance of the Board Room for the convenience of recording his attendance, both in the Directors' Attendance Book, and in the Board Minute Book.

Form of Notice of a Board Meeting

The Bombay Spinning and Weaving Company, Limited,
51, Hornby Road,
Bombay, 15th April 1949.

DEAR SIR,

I beg to inform you that a meeting of the Directors of the Company will be held at the Registered Offices of the Company on Friday, the 22nd inst. at 5 p.m. (S.T.), when your presence is requested.

Yours faithfully,
J. Fernandez,
Secretary.

To
Sir Solomon Isaac, Kt.,
The Reclamation,
Bombay.

The following business is to be transacted:—
(1) General,
(2) Consideration of the Report of Works Committee re: proposed additions.

The secretary should next see that the Board Room is properly arranged on the date fixed for the meeting, and that all figures, documents, papers and books which are likely to be wanted for the purpose of the meeting, are kept on a side table in proper order. He should prepare the Agenda, i.e. the list of business to be done at the meeting. The items on the Agenda should be arranged in their order of importance, preferably in consultation with the Chairman or one of the most active directors. The Agenda may be prepared on loose sheets of foolscap paper, copies of which are placed in front of the seat of each of the directors. The Chairman's copy, as well as the one retained by the secretary, should have a wide margin on the left with a blank space left between each item of the Agenda. This is done with a view to enable both these functionaries to take careful notes of the proceedings in front of the appropriate item on the Agenda. The secretary should take care not only to see that his own notes are ample, but that the Chairman also takes down full notes of the proceedings. This enables the secretary to produce the Chairman's notes when the minutes of previous meetings come up for confirmation, or if any objection or doubt should be raised by one of the directors as to the accuracy of the record as taken down by the secretary. The secretary should preserve both his own and the Chairman's notes in a separate file after the fair minutes are written out in the Minute Book.

Form of the Agenda

The form of a Board Meeting agenda varies according to the nature of the business which has to be placed before the Board at each meeting as arising in the regular course of the career of the company concerned. The first and the last items invariably recur in almost every Board Meeting agenda (except that of the first meeting), viz. 'Read minutes of the previous meeting', and 'Fix date of the next meeting'. The agenda of the first Board Meeting of a joint stock company will appear in a form similar to the one given below :—

AGENDA
of

Board Meeting, Friday, 15th April 1949, to be held at the Registered Offices of the Company.

1. Incorporation of the Company, solicitor to report on same.
2. Election of Chairman and Directors.
3. Appointment of officers, viz. the secretary, the manager and the accountant.
4. Approval of the draft prospectus and consideration of its issue.
5. Fixing of the date of the next Board Meeting.

The agenda of a Board Meeting held in the midst of the busy life of a successful joint stock company will exhibit such items as the following :—

AGENDA
of

Board Meeting, Monday, 16th May 1949, to be held at the Registered Offices of the Company.

1. Minutes of the last meeting.
2. Bank pass book and cash account as prepared by the accountant to be submitted for approval.
3. Trading returns for the quarter as prepared by the general manager to be submitted.
4. Resignation of Mr. Rodrigues, a Director, to be considered.
5. Report of the transfer committee to be submitted for adoption.
6. Correspondence re : J. Dayabhai and Co.'s claim to be submitted for further directions.
7. Date of the next meeting.

Responsibility of Directors re Board Meetings

The directors, after allotting the shares, must see that cheques received are immediately cashed ; in fact the correct course under the present Indian law would be to postpone allotment until the cheques are cashed because cheques are not considered as cash [*Glasgow Pavilion* v. *Motherwell*

(1903), Court of Sess. 6 F. 116]. Doubt was thrown on this problem in *Mears* v. *Western Canada Pulp and Paper Co.* (1905), 2 Ch. 353 C.A.; *Burton* v. *Bevan* (1908), 2 Ch. 240. It may be mentioned incidentally that by the English Companies Act, 1929, this law has been altered and cheques are allowed to be received in lieu of cash. The other important point is that under Section 101 of the Indian Companies Act, 1913, no allotment shall be made of any share capital of the company offered to the public for subscription unless among other things the amount (if any) fixed by the Memorandum or Articles of Association, and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment, has been subscribed for. If no amount is so fixed and named, then the whole amount of the share capital offered for subscription has been subscribed. Here, the other condition is that the amount payable on application on each share shall not be less than 5 per cent of the nominal amount of the share concerned. If the directors violate the requirements of the law and allot in contravention of this provision, under Section 102 the allotment shall be voidable at the instance of the applicant within one month and not later, after the holding of the statutory meeting of the company or where the allotment is made after the holding of the statutory meeting or where the company is not required to hold a statutory meeting, within one month after the date of the allotment and not later; it will make no difference even though the company by that time is in course of being wound up. Over and above this the same section lays down that all the directors who knowingly contravene or permit or authorize the contravention of these requirements shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby. The time limit within which the proceedings for damages or costs in such cases are allowed to be taken is two years from the date of allotment. The directors must thus be very careful while passing a resolution for allotment.

If the conditions as to minimum subscription are not complied with in accordance with Section 101, within 180 days from the first issue of the prospectus of the company, all money received from applicants for shares must be forthwith repaid to them without interest and should any money

be not so repaid within 190 days after the issue of the prospectus, the directors are jointly and severally liable to repay that money with interest at the rate of 7 per cent per annum from the expiration of the 190th day provided, of course, that a director shall not be liable if he proves that the loss of money was not due to any misconduct or negligence on his part.

A director is not responsible for acts at a Board meeting at which he was not present simply because he voted for confirmation of the minutes [*Burton* v. *Bevan* (1908), 2 Ch. 240]. Another case on the point is *The Lands Allotment Co.* (1894), 1 Ch. 616, where two Directors, Messrs. Brock and Theobold, were not present at a meeting where a resolution to invest £25,000 in the shares of a particular company was passed. This resolution was *ultra vires*. When it was sought to fix the liability on both the Directors the Court relieved Theobold from all responsibility but in the case of Brock, who at a subsequent meeting presided and stated that he had carefully considered the matter and deemed it desirable to exercise the right of subscription, etc. he was held liable.

In one famous case [*In Re City Equitable Fire Insurance Co. Ltd.* (1925), 1 Ch.D. 407] it has been laid down that 'the manner in which the work of a company is to be distributed between the Board of Directors and the staff is a business matter to be decided on business lines. The larger the business carried on by the company, the more numerous and more important the matters that must be left to the managers, accountants and the rest of the staff'. Thus in ascertaining the duties of a director of a company it is necessary to consider the nature of the company's business and the manner in which it is reasonable, in the circumstances, and consistent with the Articles of Association, to distribute the work of the company between the directors and the other officers of the company. 'A director must act honestly and must exercise such degree of skill and diligence as would amount to the reasonable care which an ordinary man might be expected to take in the circumstances on his own behalf', but at the same time it was laid down that 'a director is not liable for mere errors of judgment, nor is he bound to give continuous attention to the affairs of the company because his duties are of an intermittent nature, to be performed at periodical Board Meetings and at meetings of any committee to which

he is appointed'. It was further laid down that 'though a director is not bound to attend all such meetings he ought to attend them when reasonably able to do so. A director who signs a cheque that appears to be drawn for a legitimate purpose is not responsible for seeing that the money is in fact required for that purpose, or that it is subsequently used for that purpose, provided of course the cheques come before him for signature in the regular way having regard to the usual practice of the company. A director has, of necessity, to trust the officials of the company to perform properly and honestly the duties allotted to them. It is also the duty of each director to see that the company's moneys are from time to time in a proper state of investment, except so far as the Articles of Association may justify him in delegating that duty to others'. The proposition that a director is not bound to attend every meeting of the directors or to take part in every transaction which is considered at the Board Meeting is an old one [*Perry's Case* (1876), 34 L.T. 716]. In one case where a Director had not attended a Board Meeting for four years he was held not responsible for fraudulent reports and balance sheets [*Denham Co.* (1883), 25 Ch.D. 752].

It was formerly the general practice of all Indian companies to provide for the protection of directors, officers and trustees of the company. A clause was therefore inserted in the Articles known as the Indemnity Clause, under which the directors and other officers were exonerated from all losses or damages arising from their acts, neglects or default; unless caused by their own wrongful neglect or default. A similar clause used to be common in England in connexion with British companies' Articles, before the passing of the English Companies Act of 1929 which rendered this clause void and inoperative. In India, also, the Indian Companies (Amendment) Act of 1936 changed the old position, i.e. the one which existed in England before the passing of the English Companies Act of 1929.

FORMS OF RESOLUTIONS

Appointment of a Committee for a particular purpose

RESOLVED:—That a Committee made up of Messrs. Raghuji and Babaji, Members of this Board, be and is hereby appointed to investigate and report on the question of the

desirability of opening a branch office in Poona, and to report to this Board their opinion and recommendations on this question after investigation.

Appointment of a Branch Manager

RESOLVED :—That Mr. R. Simpson be and is hereby appointed a Branch Manager of the Office of this Company in Surat, on a salary of Rs. 500 per month, for a period of three years, commencing from 1st January 1949 ; and that Mr. Ramnant, the Chairman and Director, and Mr. Handiman, the Secretary, be and are hereby empowered to execute on behalf of the company, a power of attorney in favour of Mr. Simpson, the said Branch Manager, in such form as the Company's legal advisers may deem necessary, to enable him to act in the capacity of the Branch Manager of Surat.

Appointment of Secretary

RESOLVED :—That Mr. A of etc. be and is hereby appointed secretary of this company at a salary of Rs. 500 per month, and that Mr. B, a director of this company, be and is hereby authorised to sign on behalf of this company an agreement with Mr. A, in terms of the draft produced at this meeting and approved by the board, for his engagement as the secretary of this company.

Appointment of Solicitors

RESOLVED :—That Messrs. X, Y, Z & Co. of etc. be and are hereby appointed to act as solicitors to this company and be paid for their services as such solicitors the usual professional charges.

Appointment of Bankers

RESOLVED :—That the National Bank of India Ltd., Bombay Branch, be and are, hereby appointed this company's bankers and that the secretary be directed to communicate with the branch manager with a view to open a Current Account with the said bank.

Appointment of Auditor to fill Casual Vacancy

RESOLVED :—That Messrs. A, B, C. of etc. be and are hereby appointed the auditors of this company in the place of Mr. X who has resigned until the next annual general meet-

ing of this company and their remuneration be fixed at the sum of Rs. 800.

Appointment of a Committee for General Purposes

RESOLVED :—That a Committee of the following Directors, viz. Messrs. A, B, C, and D, be styled the 'General Purposes Committee', and that a monthly report of such Committee's proceedings be duly entered in a 'General Purposes Committee Minute Book', to be specially provided for that purpose, and that such reports, when duly approved by the Board, be considered as part of the minutes of the Board, and read in conjunction therewith.

Appointment of a Finance Committee

RESOLVED :—That a Finance Committee, consisting of three Directors, viz. Messrs. A, B and C, of which Mr. A shall be the Chairman, be and is hereby appointed to take effect from this day and to hold office for a period of six months from the date hereof ; and that the Secretary is hereby directed that all propositions relating to outlay or expenditure, immediate or prospective, as well as all financial statements, such as abstracts of receipts and payments prepared periodically as may be fixed by the said Committee, or any other financial arrangement whatsoever, must be first submitted to the said Finance Committee to be reported upon, before being placed before the Board.

Closing of Transfer Books

RESOLVED :—That Transfer Books of the Company be and are hereby closed from 17th June 1949 to 2nd July 1949.

Resolution for Adoption of Seal and Custody of Keys

RESOLVED :—That the Seal of the Company produced by the Secretary an impression of which is affixed on to these minutes be hereby adopted as the signature of the company.

That the Key of Lock No. 1 of the said seal be kept in the custody of the Chairman and a Key of Lock No. 2 be held by the Secretary and that the duplicate Keys thereof be kept with the Company's Bankers in Safe Custody.

Adoption of Draft Prospectus

RESOLVED :—That the Draft Prospectus as read out to the Board by Mr. X, the Lawyer of the Company, be approved and adopted. That the said Prospectus be signed by all the Directors and dated the 15th March 1949 and that the Secretary be instructed to file one copy of same duly signed with the Registrar of Joint Stock Companies.

Adoption of Annual Reports and Accounts

RESOLVED :—That the Reports and Accounts for the year ended 31st December 1949 and as audited and certified by the company's Auditors as produced before the Board be approved and adopted.

Fixing of Registered Office

RESOLVED :—That the principal business of the company shall be 51 Esplanade Road, Bombay, and that the secretary be directed to register that address with the Registrar of Joint Stock Companies as the registered office of this company.

Filling of Casual Vacancy

RESOLVED :—That Mr. X of etc. be and is hereby appointed a director of the company in the place of Mr. Y retired until the next annual general meeting.

Recording Disqualification of Director

RESOLVED :—that the secretary do inform Mr. X that he has ceased to be a director of the company on 13th day of June 1949, by reason of his having ceased upon that day to hold the necessary share qualification.

Fixing of Day for Board Meetings

RESOLVED :—That ordinary meetings of the Board be held on the fourth Monday of every month at the company's registered office at 10 a.m. (S.T.) and that the secretary be directed to give notice of this resolution to all the directors as are not present at this meeting and also to send to every director at least seven days before the meeting a list of business on the agenda to be transacted at such meeting.

Convening Extraordinary General Meeting

RESOLVED :—That an extraordinary general meeting of this company be convened for the 5th day of September 1949

for the following purposes (*set out the purposes*) and that the draft notice for convening of such notice submitted to this meeting be and is hereby approved.

Declaring Interim Dividend

RESOLVED :—That an interim dividend of Rs. 5 per share on the ordinary shares of this company be and is hereby declared.

Calling upon an Officer to resign

RESOLVED :—That Mr. X the Accountant of the Company be requested to resign from his office as from 31st December 1949 and that the Secretary is authorized and instructed to communicate to him the terms of this resolution.

For Allotment of Shares

RESOLVED :—That the 100 Ordinary Shares of Rs. 1,000 each numbered consecutively from 1 to 100 be allotted to the applicants on the List A whose applications have been recommended for acceptance by the Allotment Committee according to the numbers set opposite to their respective names and that the Secretary be instructed to forward letters of allotment to the said allottees and letters of regret to those applicants to whom no allotment has been made returning therewith their application money.

Making a Call

RESOLVED :—That a Second Call of Rs. 100 per share be made upon all the Ordinary Shares of the Company making in all Rs. 500 per share called up, the said Call to be payable on or before 5th January 1949 to the Company's Bankers, the Bank of India Ltd., at their Esplanade Road Head Office, and that the Secretary is hereby instructed to issue the necessary Call Notices and arrange with the Company's Bankers for the collection of Call money.

Forfeiture of Shares

RESOLVED :—That Mr. X, a shareholder of the company having failed to pay the Second Call of Rs. 100 each made on the 10 Ordinary Shares held by him and payable on or before 15th January 1949 numbered consecutively from 101 to 110 (inclusive) in spite of the Notice served upon him on

1st January 1949 in the terms of the Articles of Association Nos. 36 and 37 the said Shares be and are hereby forfeited.

Passing of Transfers

RESOLVED :—That the Transfer Applications Nos. 65 to 89 (inclusive) be and are hereby passed and the Seal be affixed to the New Certificates Nos. 3030 to 3054 (inclusive) and that the names of the said Transferee be entered in the Register of Members of this Company.

CHAPTER IV

SHAREHOLDERS' MEETINGS

The ordinary business of a joint stock company is usually transacted by the Board of Directors, particularly in the case of public companies, but there are a large number of transactions which according to the requirements of the Indian Companies Act of 1913, or of the Articles of Association of the companies concerned, can only be made with the approval of the shareholders or members of the company in a general meeting duly convened. This is because according to the first principles of law laid down as early as 1745 by Lord Hardwicke in *Attorney General* v. *Davy* (1745), 2 Atk. 212, and which applies to all corporations, i.e. bodies incorporated under some Act, 'whenever a certain number are incorporated a major part may do any corporate act; so if all are summoned and part appear, a major part of those that appear may do a corporate act'. Frequently this rule is surmounted by the Articles of Association of a particular company providing that a certain number, which may not be a majority number, shall form a quorum, in which case even a majority of the minority present are legally qualified to do a corporate act. As we shall see later, certain rules and regulations as to the convening of meetings and proper notice being given to each and every member within summonable distance, have to be complied with, though the general principle is that where all the members of a company are present any irregularity as to the giving of the notice is set right by their consent [*Express Engineering Works* (1920), 1 Ch. 466].

The Common Law rule of meetings is that there shall be at least two members to constitute a meeting and that a single member cannot constitute a meeting [*Sharp* v. *Dawes* (1876), 2 Q.B.D. 26]. In company matters, however, an exception is conceded for class meetings. In the meetings of shareholders of one particular class, say preference shareholders, if one person were to hold all the shares of that class, the requirements as to the meeting of that class are satisfied when that one person who holds all the shares signs the resolution which is sought to be passed [*East* v. *Bennett Bros.* (1911), 1 Ch. 163].

Classification of Company Meetings

The meetings of a joint stock company may be classified as under :—

1. The Statutory Meeting.
2. The Annual General Meeting.
3. Extraordinary General Meeting.
4. Class Meetings.
5. Board Meetings.

The Companies Act does not define a general meeting. This term is used to denote any meeting which may be attended by all those members who are entitled to vote. The first three types of meetings mentioned above would be included in the term " general meeting ".

Statutory Meeting

This meeting is virtually the first meeting that a joint stock company usually convenes. The object seems to be to ensure that at the earliest opportunity the members of the company should secure first-hand information as to the exact position of the company, particularly in relation to its financial success in floatation, as well as other information as to the investment of its capital in the different branches of the enterprise for which the company is incorporated.

The Indian Companies Act, Section 77, lays down that :—

(1) Every company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than one month nor more than six months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called the statutory meeting.

(2) The directors shall, at least twenty-one days before the day on which the meeting is held, forward a report (in this Act referred to as the statutory report) certified as required by this section to every member of the company.

(3) The statutory report shall be certified by not less than two directors of the company or by the chairman of the directors if authorised in this behalf by the directors and shall state—

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

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

(*c*) an abstract of the receipts of the company and of the payments made thereout, upto a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company, showing separately any commission or discount paid on the issue or sale of shares;

(*d*) the names, addresses and descriptions of the directors, auditors, managing agents and managers, if any, and secretary of the company and the changes, if any, which have occurred since the date of the incorporation;

(*e*) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification;

(*f*) the extent to which underwriting contracts, if any, have been carried out;

(*g*) the arrears, if any, due on calls from directors, managing agents and managers; and

(*h*) the particulars of any commission or brokerage paid or to be paid in connexion with the issue or sale of shares to any director, managing agent or manager or partner of the managing agent if the managing agent is a firm or if the managing agent is a private company, a director thereof.

(4) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash

received in respect of such shares and to the receipts and payments of the company, be certified as correct by the auditors of the company.

(5) The directors shall cause a copy of the statutory report certified as required by this section to be delivered to the registrar for registration forthwith after the sending thereof to the members of the company.

(6) Every director of the company who knowingly and wilfully authorizes or permits a default in complying with the provisions of sub-section (2) or sub-section (5) shall be liable to a fine not exceeding twenty rupees for every day during which the default continues.

(7) The directors shall cause a list showing the names, descriptions and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(8) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the Articles may be passed.

(9) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(10) If a petition is presented to the Court in the manner provided by Part V for winding-up the company on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may, instead of directing that the company be wound-up, give directions for the statutory report to be filed or a meeting to be held, or make such other order as may be just.

(11) In the event of any default in complying with the provisions of this section every director of the company who is guilty of or who knowingly and wilfully authorizes or permits the default shall be liable to a fine not exceeding five hundred rupees.

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

From the above section it will be noticed that the meeting has to be held not earlier than one month but within a period of six months 'from the date at which the company is entitled to commence business'. The word 'month' means a calendar month. A private company is entitled to commence business from the date of registration, whereas a public company cannot commence business unless after incorporation it has carried out various regulations of the law and satisfied the Registrar of joint stock companies that this has been done. The Registrar, when satisfied, issues a certificate called a 'certificate entitling the company to commence business'. The other requirement is that the notice convening the Statutory Meeting must state that it is the Statutory Meeting [*Gardner* v. *Iredale* (1912), 1 Ch. 700]. The default in holding this Statutory Meeting or in filing the Statutory Report is under Section 162 of the Indian Companies Act of 1913 a ground for winding-up the company. The Statutory Report has to be sent to all members together with a notice of the meeting at least twenty-one days before the day on which the meeting is held ; this includes not only the holders of ordinary shares, but also those who hold preference shares. The debenture holders are also entitled to receive this Statutory Report (Section 146 of the Indian Companies Act). The Statutory Report, as far as it relates to the shares allotted by the company and the cash received in respect of the shares, plus receipts in payment of the company on capital account, must be certified as accurate by the auditors of the company. This report must be filed with the Registrar forthwith after having been sent to the members of the company.

The provisions as to Statutory Meetings and Statutory Reports do not apply to private companies.

Preparation and Drafting of the Report

In drafting a report the best course is to divide it under appropriate headings and to deal with each in a separate paragraph. The Statutory Report is compulsory under the

Indian Companies Act of 1913, Section 77 (this corresponds to Section 130 of the English Companies Act of 1948), and is to be prepared and submitted to shareholders of every joint stock company limited by shares, or limited by guarantee and having a share capital, twenty-one days (fourteen days in England) before the Statutory Meeting, to be held not earlier than one month but within six months (three months in England) of the company's commencement of business. The items to be included in this Report are given above under Section 77 (3).

Precedent of the Statutory Report

THE HEERAMANECK SPINNING AND WEAVING COMPANY, LTD.

Report

Pursuant to Section 77 of the Indian Companies Act of 1913.

(1) The total number of shares allotted is 2,000 of Rs. 1,000 each. Of this 500 are Founders' Shares allotted fully paid and 1,500 Ordinary Shares, of which 200 were paid to Vendors in part payment of the purchase consideration as provided by the Agreement of 10th January 1949.

(2) The total amount of Cash received by the Company on the 1,300 Ordinary Shares is Rs. 6,50,000.

(3) The following is an abstract of receipts and payments of the Company on Capital Account to the date of this Report.

Receipts	Rs. a. p.	*Payments*	Rs. a. p.
Ordinary shares Applications and Allotments ..	6,50,000 0 0	On account of Preliminary Expenses	4,950 0 0
		On account of Purchase to Vendors	20,000 0 0
		Office Furniture ..	5,000 0 0
		Machinery ..	1,12,000 0 0
		Building ..	50,000 0 0
		Balance :—	
		Imperial Bank of India ..	4,57,000 0 0
		In hand ..	1,050 0 0
Rs.	6,50,000 0 0	Rs.	6,50,000 0 0

(4) The Preliminary expenses of the Company are estimated at Rs. 10,000.

(5) The names, addresses, and descriptions of the Directors, Auditors and Secretaries of the Company are the following :—

I. *Directors*

Raja Saheb Shivlal Nanchand (Chairman),
Address :—Malabar Hill, Bombay.
Sir Robert Mackinley (Baronet),
Address :—Colaba, Bombay.
Sir Bholabhai Nathuchand (Knight),
Address :—Bhuleshwar, Bombay.
Cawasji M. Indorewala, Esq. (Merchant),
Address :—Grant Road, Bombay.

II. *Auditors*

Robertson & Chandulal (Registered Accountants),
Address :—Churchgate Street, Bombay.

III. *Secretary*

J. Hardwork, Esq.
Address :—Wodehouse Road, Fort, Bombay.

We, the undersigned Directors of the abovenamed Company certify that the above Report is correct.

Dated the 16th day of June 1949.

SHIVLAL NANCHAND
ROBERT MACKINLEY
BHOLABHAI NATHUCHAND
CAWASJI M. INDOREWALA
} *Directors*

We hereby certify that the foregoing Report, so far as it relates to the Shares allotted by the Company and to the Cash received in respect of the Shares, and to the receipts and payments of the Company on Capital Account is correct.

Bombay, 15th July 1949.

ROBERTSON & CHANDULAL,
Auditors.

Notice re: Statutory Meeting

The Notice convening the Statutory Meeting will have to be made out in a form similar to the one given below :—

THE BOMBAY TRADING & MANUFACTURING CO., LIMITED

Notice of the Statutory Meeting

Notice is hereby given that the Statutory Meeting of the above Company pursuant to Section 77 of the Indian Companies Act of 1913, will be held at the Registered Office of the Company at 15 Esplanade Road, Bombay, on Thursday, the 5th May 1949, at 4 p.m. (S.T.).

Bombay, 3rd April 1949.

By Order of the Board,
G. UMRIGAR,
Secretary.

Proceedings

At this meeting only the shareholders can attend and they are at liberty to discuss matters covered by the report sent to them, viz. the formation of the company, particulars as to the amounts collected against paid-up capital, how such amounts were spent in the form of preliminary expenses, purchase of the various assets, etc. and any matter relating to the formation of the company, or arising out of the report of it, whether previous notice has been given or not. Besides this it is the Directors' duty at this meeting to cause a list showing names, descriptions and addresses of members of the company and the number of shares held by them respectively, to be produced at the commencement of the meeting and to remain open and accessible to any member during the continuance of the meeting. There is no objection to the Statutory Meeting being adjourned from time to time, and any resolution passed at this adjourned meeting will have the same force as one passed at the original meeting, provided proper notice, as required by the Articles of Association of the company concerned, has been given. The Statutory Report must be certified by not less than two Directors of the company or by the Chairman duly authorized by the Directors.

Precedent of the Agenda of a Statutory Meeting

AGENDA.

(1) To read the notice convening the meeting: the statutory report circulated may be taken as read.

(2) The Chairman to explain the purpose for which the meeting has been called under Section 77 of the Indian Companies Act of 1913.

(3) Chairman's statement as to the general position of the company in connexion with the flotation, etc. and invitation to members to ask such questions as may arise out of the report or relating to the formation of the company.

Precedent of the Minutes

BOMBAY TRADING COMPANY, LIMITED

The Statutory Meeting of the above company was held at the registered office of the company on Thursday, the 5th May 1949, at 4 p.m. (S.T.).

There were present :—

Sir Sorabji Framji, Kt. (*Chairman*)
Mr. W. Lalchand
Mr. Mohamed Karim
Mr. M. S. Karanjia
} *Directors*

In attendance :—

Mr. Merwanji Cawasji (*Solicitor*)
Mr. M. Pochkanawalla (*Secretary*)

Shareholders according to the separate list filed.

The notice convening the meeting was read out by the secretary on instructions from the Chairman and it was resolved that the report which was duly circulated among members might be taken as read.

Sir Sorabji (Chairman) then explained that the meeting was called to comply with the requirements of Section 77 of the Indian Companies Act of 1913 where the shareholders were invited to meet in order to ascertain the precise position as to flotation and the prospects of the company, that the list showing the names, descriptions and addresses of the members of the company and the number of shares held by them respectively, was available at the meeting and would remain open and accessible to any of the members of the company present for inspection during the continuance of the meeting.

The Chairman then dealt with details as to the general position of the company and referred to and explained some of the items of the report. He then invited those present to discuss any matter relating to the formation of the company,

or arising out of the Statutory Report, whether previous notice had been given or not. He pointed out however that no resolution could be passed of which no notice had been given.

A certain number of the shareholders asked questions which were duly answered. After a short discussion the meeting terminated with a vote of thanks to the Chair.

Note : The consequences of default in holding the meeting or filing the Statutory Report are :

(1) That the company may be ordered to be wound-up by the Court (Section 162) ; or

(2) the Court may, when the petition is presented to it for winding-up the company on this ground, instead of ordering winding-up, order the filing of the Statutory Report or holding of the Statutory Meeting [Section 77 (9)].

Annual General Meeting (Ordinary General Meeting)

A General Meeting of a joint stock company is a meeting of its members, or its shareholders, duly convened according to the terms and conditions of the Articles of Association or requisition of members as provided for by Section 78 of the Indian Companies Act. *Prima facie* all shareholders of the company are at liberty to attend this meeting. Section 76 of the Indian Companies Act lays down in connexion with the General Meeting as follows :—

76 (1). A general meeting of every company shall be held within eighteen months from the date of its incorporation and thereafter once at least in every calendar year and not more than fifteen months after the holding of the last preceding general meeting.

(2). If default is made in holding a meeting in accordance with the provisions of this section, the company and every director or manager of the company who is knowingly and wilfully a party to the default shall be liable to a fine not exceeding five hundred rupees.

(3). If default is made as aforesaid, the Court may, on the application of any member of the company, call or direct the calling of a general meeting of the company.

The above section makes it compulsory that (1) within eighteen months of incorporation; and thereafter (2) once at least in every calendar year; and (3) not more than fifteen months after the holding of the last preceding General Meeting, this Annual General Meeting has to be held. Failing compliance with any of these requirements, an offence is committed and the fine as provided for by this section will be levied. The calendar year, of course, commences from 1st January and ends on 31st December [*Gibson* v. *Barton* (1875), L.R. 10 Q.B. 329]. If the meeting is not called at least once in the calendar year and is also not called within the fifteen months from the date of the last meeting, two separate offences are committed and the party charged will be separately fined for each offence [*Smedley* v. *Companies' Registrar* (1919), 1 K.B. 97]. Section 76 demands that there shall be one general meeting per year, and as many meetings as there are years. This refers to separate and distinct meetings and it does not mean that the same meeting can go on being held once in each year [*Meenakshi Mills Co. Ltd.* v. *Asst. Registrar of Joint Stock Companies, Madura*, A.I.R. (1938), Mad. 640].

A further point to be remembered is that when the Articles of Association of the company concerned make a distinction between an Ordinary and an Extraordinary General Meeting, the Extraordinary Meeting held on the requisition of shareholders does not come within the definition of a General Meeting under Section 76 [*Emperor* v. *Nasur* (1923), 25 Bom. L.R. 224]. In *Gibson* v. *Barton*, referred to above, Blackburn J. laid down that 'no individual Director, nor a manager, probably, has the power, certainly no one of them has the strict legal right to call a meeting. A meeting is to be called by order of the Directors and not by any individual person'. In one case where the secretary on a requisition sent out a notice convening an Extraordinary Meeting which purported to be issued by order of the Board, when in fact no such order was issued, it was held that on ratification by the directors of the said notice it became good for all purposes [*Hooper* v. *Kerr Stuart & Co. Ltd.* (1900), 83 L.T. 729].

In case of urgency a mandatory injunction is granted by the Court directing the directors to call a meeting forthwith as was done in England under Section 66(1) of the Act of 1908 corresponding to our Section 78 of the Indian Companies

Act of 1913 and Section 132 of the present English Act of 1948 [*Rutherford* v. *Farmery* (1915), R. No. 1524; *Ashbury* J. 12 Nov. 1915]. The expenses of requisitionists are to be paid out of the directors' remuneration if they wrongfully make default in calling a meeting. The Court is given the power to call the meeting if it is impracticable to do so in the manner prescribed by the Articles, on the application of a director or any member entitled to vote, or on its own motion [Section 79(3), Indian Companies Act, Section 135, English Companies Act, 1948].

To stop a General Meeting of the company by the Court, a very strong case has to be presented [*Isle of Wight Ry. Co.* v. *Tahourdin* (1883), 25 Ch.D. 320].

A provision in the Articles as to the place of meeting is not an essential one and provided the meeting is properly convened and regularly conducted, it may be held at any other place. If the change of place is caused by the company itself, the company is estopped from challenging the validity of the meeting [*S. Subramania Aiyar* v. *United India Life Insurance Co., Ltd.* (1928), Mad. 1215].

Where a company fails to hold its Annual General Meeting in proper time, any member of the company may apply to the Court and the Court may call, or direct the calling of, the said meeting. Minutes of the proceedings of these meetings must be recorded in books kept for the purpose, and shall be signed by the Chairman of the meeting at which the proceedings were held, or by the Chairman of the next succeeding meeting, when they shall be evidence of the proceedings. The notice of the General Meeting must be given to the members, unless otherwise provided for, because the omission to do so *prima facie* invalidates the meeting [*Smyth* v. *Darley* (1849), 2 H.L.C. 789]. The Articles of Association of a good number of companies provide that accidental omission shall not invalidate the meeting, in which case, the provision shall apply. The executors or administrators of deceased members are not entitled to notice unless registered as members, unless the Articles provide otherwise [*Allen* v. *Gold Reefs of W. Africa* (1900), 1 Ch. 56].

The usual business of this meeting is to receive the Directors' Report of the work done during the period preceding the date on which it is held, and to receive the balance sheet duly audited by the auditor of the company, together

with the auditors' report which is generally attached thereto. The auditors' report has to be read before the company in General Meeting, and shall be open to inspection by any member of the company. Following upon the Directors' Report, the next business is that of sanctioning the dividend, if any, and the election of the Directors and auditors as need be. Any other business is considered to be special, and due notice has to be given. The Articles of Association generally set out the nature of business which is to be done at this Ordinary Meeting, and in some companies they provide that this meeting be held half-yearly. It is at this meeting that the shareholders are in theory supposed to exercise control over the company, the nature of which control will undoubtedly depend upon the powers left to individual shareholders as to voting in the Memorandum or the Articles of Association of the company.

At least fourteen days' notice in writing must be given in India [Section 79 (1) (*a*)]. In England the new Act of 1948 [Section 133 (1) (*a*)] prescribes a notice in writing of at least twenty-one days' in the case of an annual general meeting and fourteen days' in other cases. In the case of special resolutions, however, twenty-one days' notice is necessary in both India and in England.

If the Directors' Report as presented at the General Meeting is not accepted, it amounts to a vote of censure on the Directors, but it has no further effect, as it is not necessary that the report should be accepted. Some Articles of Association give the members power to remove the Directors, in which case the Directors can be removed, but not otherwise. In the absence, however, of the power to remove the Directors, the shareholders may adopt the plan of waiting till each one of them retires by rotation, and re-elect whomsoever they please. Section 142 of the Indian Companies Act of 1913, gives the company the power to appoint inspectors to investigate its affairs by a special resolution, which powers may be exercised by the company if necessary. Failing this, the power under Section 138, namely that of applying to the Central Government for one or more competent inspectors to investigate the affairs of the company, and to report upon it, may be resorted to. The section leaves open the following four courses in the following circumstances :—

(i) in the case of a banking company having a share capital, on the application of members holding not less than one-fifth of the shares issued;

(ii) in the case of any other company having a share capital, on the application of members holding not less than one-tenth of the shares issued;

(iii) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members;

(iv) in the case of a company, on a report by the Registrar under Section 137(5).

These inspectors shall have the right to examine on oath any person in relation to the company, or its business, and to call upon all who have been officers of the company to produce all books and documents relating to them in their custody or power. On the conclusion of their investigations the inspectors shall present their report. This report, or a certified copy of it, authenticated by the seal of the company concerned, is admissible in legal proceedings as evidence of the opinion of the inspectors relating to matters contained therein. We have seen that there is no objection to any special business, of which due notice has been given, being done at the General Meeting, though the practice followed by many companies is to hold an Extraordinary Meeting to consider any special matter either on a separate day, or on the same day as the Annual General Meeting, soon after the conclusion of this General Meeting.

Where the Articles provide for a notice of a particular number of days to be given to each member it means so many clear days, i.e. exclusive of the day of giving the notice and the day of the meeting [*Railway Sleepers Supply Co.* (1885), 29 Ch.D. 234; *Mercantile Investment Co.* v. *International Co.* (1893), 1 Ch. at p. 489]. So long as the notice is posted in proper time, or published in the newspapers as provided for by the Articles, it is not necessary to prove that all members received it [*Sneath* v. *Valley Gold Co.* (1893), 1 Ch. 477]. We have already seen in connexion with the Statutory Meeting that notice of adjournment is not necessary to be given unless the Articles so provide, as the adjournment is a continuation of the original meeting. In some cases, however, the Articles require that if an adjourned meeting is to be held

after more than ten days (in England thirty days) a fresh notice should be given as in the case of 'Table A', Clause 55, of the Indian Companies Act. Once notice of the meeting is given, it cannot be adjourned by a subsequent notice, but the proper course will be to hold the meeting and resolve the adjournment of it at the meeting to any future convenient date [*Smith* v. *Paringa Mines Ltd.* (1906), 2 Ch. 193]. The executors or administrators, or other special representatives of a deceased shareholder, need not be given a notice of the meeting unless they have transferred their shares to their own names [*Allen* v. *Gold Reefs of W. Africa* (1900), 1 Ch. 656]. The notice of the meeting must give a fair, candid, and reasonable explanation of the business which is proposed to be done, because if the matter is wrapped up and kept back the proceedings may be invalidated [*Kaye* v. *Croydon Tramways* (1898), 1 Ch. 358; *Pacific Coast Coal Mines Ltd.* v. *Arbuthnot* (1917), A.C. 607].

Specimen Forms of Articles in Use by Joint Stock Companies in India in convening General Meetings

Statutory Meeting

The Statutory Meeting of the company shall be held not less than one month nor not more than six months from the date at which the company is entitled to commence business, and the Directors shall comply with the provisions of Section 77 of the Act.

Convening of General Meetings

A General Meeting shall be held within eighteen months from the date of its incorporation and thereafter other General Meetings of the Company shall be held once in each calendar year at such time as the Directors may determine provided however that no greater interval than fifteen months shall be allowed to elapse between two General Meetings. The Directors shall prepare the Annual List of Members, Summary, and Balance Sheet, and forward these to the Registrar of Companies in accordance with the provisions of the said Act. Such General Meetings shall be called Ordinary Meetings: all other General Meetings shall be called Extraordinary Meetings.

Directors may call Extraordinary Meetings

The Directors may call an Extraordinary Meeting whenever they think fit.

Calling of Extraordinary General Meeting on Requisition

(1) The Directors shall, on the requisition of the shareholders of not less than one-tenth of the issued share capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to call an Extraordinary General Meeting of the company.

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

(3) If the Directors do not proceed within twenty-one days from the date of the requisition being so deposited to cause a meeting to be called, the requisitionists, or a majority of them in value, may themselves call the meeting, but in either case any meeting so called shall be held within three months from the date of the deposit of the requisition.

(4) Any meeting called under this Article by the requisitionists shall be called in the same manner, as nearly as possible, as that in which meetings are to be called by the Directors.

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

Notices of Meetings

Fourteen days' notice at the least, specifying the place, the day and the hour of meeting, and in case of special business, the general nature of such business, shall be given in the manner hereinafter mentioned to all members save those as are under the provisions of these Articles not entitled to receive notices from the Company; and where a special resolution is to be passed at least twenty-one days' notice shall

be given in the manner hereinbefore mentioned, specifying the intention to propose the resolution as a special one.

Shorter Notice

With the consent of all members who under the provisions of these Articles are entitled to receive notices of meetings, a meeting may be convened by a shorter notice and in such manner as the members may approve.

Omission to give Notice not to invalidate Resolutions passed

In cases in which notice of any meeting called by the Directors is given to the shareholders individually, the accidental omission to give notice to any of the members, or the non-receipt thereof, shall not invalidate any resolution passed at any such meeting.

PROCEEDINGS AT GENERAL MEETINGS

Minutes of General Meetings

At General Meetings the rules applying to minutes are the same as for meetings of Directors or Managers. The minutes of a General Meeting must also be signed by the Chairman of that meeting or of the next succeeding meeting. In the case of joint stock companies the rule which generally prevails is that the minutes are read and signed by the Chairman at the next ensuing Directors' Meeting. If they are not so read or signed, then it would be necessary to read the minutes at the next General Meeting and to pass and sign them as a correct record. As minutes of proceedings of general meetings of a company are presumed to be true, the onus lies heavily upon those who assert to show that they are incorrect [*Punjab Industrial Bank Ltd.* v. *Byramji Hormusji Parsi*, A.I.R. (1935), Lah. 157]. It was held as early as 1864 that the minutes once passed are considered as *prima facie* a correct record and the burden of proof is thrown on those who are attempting to challenge them [*Ex parte Stock* (1864), 33 L.J. Ch. 731]. It has been held that where the articles of association of a limited company provide that the minutes made at the general meeting "shall be conclusive evidence without any further proof of the facts therein stated", and the minute book and signatures attached thereto are proved, then, in the absence of fraud

on the part of the company's officers, it is not open to a party to adduce evidence tending to prove facts inconsistent with those recorded in the minute book [*Kerr* v. *John Mottram, Ltd.* (1940), 2 A.E.R. 629].

The usual habit of stating that the minutes are now 'read and confirmed' is not strictly accurate in connexion with the passing of the minutes of the last meeting of the same body. The correct form should be 'the minutes of the last General Meeting held on 16th July 1949 were read and signed as a correct record'. This is because the minutes, when passed, are simply verified as a correct record of what occurred at the last meeting. There is nothing to confirm.

Here too, the secretary of the company prepares an Agenda, which is the list showing what business is to be transacted, and places it before the Chairman who deals with the various items on this Agenda in proper order. There are cases where regular agenda books are kept for the use of the Chairman and secretary, both for Directors' and shareholders' meetings, so that they are maintained for future reference in their proper order. There are occasions where a matter is debated once again which was already debated at the previous meeting. In such cases this fact must be recorded by a separate minute. If errors are made in the minute book the pages should not be torn, but a line may be drawn across the matter which is to be cancelled and the Chairman's initials taken at the time the minutes are passed. This is absolutely necessary because the minute book is a book of very great evidential value, and if a matter has to be proved in a Court of Law, a torn minute book would be a very poor document for that purpose. Besides writing the minutes as accurately as possible, the secretary should see that he keeps as full a record of the proceedings as circumstances will permit, so that there may not be any room for doubt or ambiguous construction. We have dealt fully with this question in connexion with the minutes of the Directors' Meetings, to which reference may be made.

Meetings on Requisition

We have already seen that a General Meeting of a joint stock company is called either by the Board of Directors or on the requisition of the shareholders. Section 78, which gives

powers to the shareholders to requisition a meeting, runs as follows :—

(1) Notwithstanding anything in the Articles, the Directors of a company which has a share capital shall, on the requisition of the holders of not less than one-tenth of the issued share capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to call an Extraordinary General Meeting of the company.

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

(3) If the Directors do not proceed within twenty-one days from the date of the requisition being so deposited to cause a meeting to be called, the requisitionists, or a majority of them in value, may themselves call the meeting, but in either case any meeting so called shall be held within three months from the date of the deposit of the requisition.

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

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

This section overrides any special Articles of the company concerned which may be inconsistent therewith. The Articles may, however, allow holders of less than one-tenth of the issued share capital of the company to requisition a meeting and for that reason are not inconsistent and thus quite effective. The requisition must state the objects of the meeting and must be signed by the requisitionists and must be deposited at the registered office of the company. The documents constituting the requisition must be substantially

the same but need not be identical [*Fruit and Vegetable Growers' Association Ltd.* v. *Kekewich* (1912), 2 Ch. 52]. The shareholders may include preference shareholders as well as holders of share warrants even though these shareholders may not have the right to vote. If joint holders sign the requisition they must all sign it unless the Articles provide otherwise [*Patent Wood Keg Syndicate* v. *Pearse* (1906), W.N. 164].

The requisition of course should be in accordance with the section, otherwise the meetings and resolutions passed thereat are invalid [see *Oriental Navigation Co.* v. *Bhanaram* (1922), 49 Cal. 399 at p. 419]. The Directors must call the meeting within twenty-one days of the requisition, failing which the requisitionists or a majority of them in value, may call a meeting which must be held within three months of the date of the deposit of the requisition. If the notice convening the meeting does not correspond with the objects of the requisition or if the meeting is not called in respect of all of those objects, the directors have not "duly convened" the meeting and the requisitionists may proceed to convene the meeting themselves [*Isle of Wight Rly. Co.* v. *Tahourdin* (1883), 25 Ch.D. 320].

Notices of General Meetings

The following points should be remembered in connexion with notices.

(1) Notices must be given as provided for by the regulations of the company, i.e. the Articles of Association.

(2) The General Meetings must be convened by a resolution of the Board of Directors or by the members according to the provisions of Section 78.

(3) All persons who have a right to receive such a notice must be sent one.

(4) The notice must state with clearness the nature of the business which is to be done at the meeting.

(5) The notice must be absolute and not conditional as unless the Articles permit conditional notices, they cannot be given.

(6) The notice must provide for a convenient time and place for the meeting.

(7) In the case of notices of Extraordinary Meetings where an extraordinary or a special resolution is to be passed, the fact that the resolution is to be an extraordinary or a special resolution must be clearly stated.

(8) Notices once given cannot be withdrawn: the correct procedure will be to hold the meeting and adjourn it.

(9) Notices of adjourned meetings need not be given unless the Articles require it.

As we have seen in the set of Articles already quoted above, the Articles of Association generally provide for the notices being given and for that purpose lay down the time. Thus the Articles make the work of the secretary and Board of Directors very easy in convening meetings. We have already seen that so many days' notice means so many clear days [*Mercantile Investment Co.* v. *International Co. of Mexico* (1893), 1 Ch. 484].

The object for which a notice has to be given is to see that a sufficiently full and frank disclosure is made to the shareholders of the facts upon which they were asked to vote, and unless that is done the resolutions passed at a meeting with such an insufficient notice are invalid and not binding upon the company [*Baillie* v. *The Oriental Telephone and Electric Co. Ltd.* (1915), 1 Ch. 503]. If all the members or shareholders of the company were present and assented to the waiver of the notice the position would be different [*Parker and Cooper* v. *Reading* (1926), 1 Ch. 975; *Express Engineering Co.* (1920), 1 Ch. 470]. Where notice of a meeting is sent to all the shareholders, if some of them do not appear at the meeting, they must be held to be bound by the resolutions passed by the majority [*Nabin Kishore Choudhri* v. *Jagneswar Sanyal* (1933), Cal. 809].

The fixing of the date and time as well as the place of the meeting is no doubt at the entire discretion of the Directors, and with which the Court generally hesitates to interfere except where the Court is satisfied that an attempt is made to hold the Annual General Meeting on a particular date for the purpose of preventing shareholders from exercising their voting powers [*Cannon* v. *Trask* (1875), L.R. 20 Eq. 669]. We have already seen that where there is a deadlock and the

Board is unable to act, a meeting of the shareholders can be called under Section 79.

The address to which the notice should be sent or forwarded is the address of the member as entered in the register of members. In this connexion it has been held that when the Articles of Association require the notice to be sent by post it need not be sent to the literal address as in the register of members, but a substantially accurate designation of the address is sufficient [*Liverpool Marine Insurance Co.* v. *Haughton* (1875), 23 W.R. 93]. When the Articles lay down as a general rule that the Directors may send the notice, it means that the notice should be sent by the duly authorized agent of the Board of Directors on behalf of the Board, and the notice given by a single Director without such authority of the Board will not be sufficient [*Browne* v. *La Trinidad* (1887), 37 Ch.D. at p. 17]. The secretary is usually the duly accredited agent of the Board, and as such sends notices of meetings under orders of the Board. If the secretary convenes a General Meeting without authority from the Board but afterwards the Board ratifies this before the date of the meeting the ratification will be sufficient [*Hooper* v. *Kerr* (1900), 83 L.T. p. 730]. It thus becomes necessary for the secretary to get a proper resolution passed by the Board at a meeting where a quorum is present, and to get the necessary authority in order to call a General Meeting which will be valid. If *de facto* Directors call a meeting, the meeting will be good in spite of any irregularity in the constitution of the Board [*Boschoek Co.* v. *Fuke* (1906), 1 Ch. 148]. Even where the notice was rather too short, or by the notice a meeting was called where there was no quorum, the irregularity has been overlooked by the Court where immediate objection was not taken [*Browne* v. *La Trinidad* (1887), 37 Ch.D. 1; *Southern Counties Deposit Bank* v. *Rider & Kirkwood* (1895), 73 L.T. 374]. The alteration of the Articles has to be made by a special resolution, but where an Article is regularly framed, and is adopted and acquiesced in for a long time it may be treated as valid and operative and as having been adopted by the shareholders. This was decided by Lord Davey in a Privy Council judgment in *Ho Tung* v. *Man On Insurance Co. Ltd.* (1902), A.C. 232, where on page 235 the learned judge states as follows :—

'It appears, therefore, that these Articles have been registered, and have been published and put forward as the company's only Articles of Association, and have been acted on, amended, and added to by the shareholders of the company, and the company's business has been conducted under the regulations contained therein for nineteen years without any objection, and the company on the record says that these Articles are its Articles of Association. Their Lordships think that in these circumstances they are entitled to draw the inference that all the shareholders have accepted and adopted the Articles as the valid and operative Articles of Association of the company. The Articles of Association stand on a very different footing from the Memorandum, and are in the power of the shareholders themselves. The apparent object of requiring the Articles to be signed before registration is to secure the adhesion of the only members of the company at that time to the regulations contained therein. It was no doubt as imperative for the Registrar to require the Articles to be signed before registering them as it was to see that they complied with the other requisitions of the Ordinance, as, for example, that they were printed and expressed in paragraphs numbered arithmetically. But there is no reason why the shareholders should not adopt them although irregularly registered. The statutory mode of doing so is by special resolution; but this again is only machinery for securing the assent of the shareholders, or a sufficient majority of them. In *The Phosphate of Lime Co.* v. *Green* (1871), L.R. 7 Ch. p. 43, it was held that the company was bound by the acquiescence of the shareholders to an act done by the Directors in direct violation of the Articles of Association, although there had been no alteration of the Articles by a special resolution.'

Notice to be given to all entitled

The Articles of almost every modern company clearly lay down details as to the class of shareholders who are entitled to be present and vote at the meeting and to whom notice is to be given. At the same time it is generally made clear that those beyond a certain area need not be given notice, such as those outside the Dominion of India. Such

Articles are certainly very desirable. However, even under the old Common Law, everyone entitled to attend at a meeting must be summoned by notice except those beyond summoning distance in order to make proceedings at the meeting legal and binding [*Smyth* v. *Darley* (1849), 2 H.L.C. 789]. The Articles also provide that accidental omission will not invalidate a meeting, and that if a notice is posted to the registered address and is not received the same must be excused. This is a very practical and necessary regulation. The Articles also provide that certain classes of members, e.g. preferential shareholders, who may have no right to vote under the terms of these shares and the Articles, shall not be entitled to get the notice, also that those who are in arrears with their calls are not entitled to the notice and in some cases again they go so far as to lay down that only those holding a minimum number of shares as provided shall be entitled to get the notice and to attend. Such Articles are valid and binding though they may be considered by some as unreasonable. If there is no Article to the contrary every shareholder must get a notice of a meeting and has a right to attend it even though he may not have a right to vote. We have seen that executors and administrators of deceased shareholders are not entitled to get notice of a meeting, and if they wish to have it they must get themselves registered as members by transferring shares to their own name [*Allen* v. *Gold Reefs of West Africa* (1900), 1 Ch. 656]. In one case it has been decided, however, that preference shareholders have no right of voting nor have they right to receive notice of a meeting [*Re Mackenzie* (1916), 2 Ch. 450].

As to when *notice* to a shareholder may be dispensed with, Lord Greene M. R. [delivering judgment *In Re The Anglo-International Bank Ltd.* (1943), 2 A.E.R. 88 (C.A.)], observes :—

> "It cannot, we think, be disputed that, if the *right of a shareholder to receive* the contractual *notice* is abrogated or suspended by operation of law—or putting it another way, if the performance of the company's obligation to serve the contractual notice upon him becomes illegal—the shareholder, during the period of abrogation, suspension or illegality must be treated as having lost his contractual right to receive notice. The effect of this must be that the articles must be treated as though they

had expressly denied to that shareholder the right to receive notices so that a meeting could be regularly called without him. . . . The shareholders whose registered addresses are in enemy territory must for present purposes be regarded as alien enemies, whatever their nationality [*V/O Sovfracht* v. *Van Udens* (1943), A.C. 203, 1 All. E.R. 76]. So long as they retain the character of alien enemies their right of voting is suspended [*Robson* v. *Premier Oil & Pipe Line Co. Ltd.* (1915), 2 Ch. 124]. They cannot appoint a proxy and any proxy previously given, like any other mandate of agency, will have ceased to be valid [see *Sovfracht Case* (1943), A.C. 203 at p. 254 per Lord Porter]. It follows, therefore, that, even if notice of the meeting had in fact been given to these shareholders they could not have voted at the meeting. But the matter does not rest there. The suspension of the rights of an alien enemy shareholder cannot, in our opinion, be limited to his right of voting. It must extend to the ancillary right conferred by the contract under which he holds his shares to receive notices of meetings of the company. That right is a right in relation to property in this country, namely, the shares, and is, in our opinion, suspended just as much as the right to vote [see per Sargant J. in *Robson* v. *Premier Oil & Pipe Line Co. Ltd* (1915), 2 Ch. 124 at p. 131]. If the matter be looked at from the point of view of the company, the same result follows. Quite apart from the suspension of the shareholder's contractual right to receive notices, the company, in our opinion, could not lawfully communicate or attempt to communicate with shareholders who at the time were enemy aliens."

It was held in this case that the company was under no obligation to apply for a licence to communicate with the shareholders in enemy or enemy-occupied territory. Such an obligation could exist only by virtue of some contractual right and no such right existed or could be implied. In *Robson's Case* (1915), 2 Ch. 124, Pickford L.J. said at p. 136 : ". . . all intercourse which could tend to such detriment (to this country) or advantage (to the enemy), whether commercial or not, is . . . inconsistent with the state of war between the two countries and therefore forbidden."

Contents of Notice

If the resolution which is proposed to be passed at a meeting of which the notice is given, alters the Articles of Association it is not necessary to say so precisely (though it is desirable that it should be done) because every shareholder is taken to have knowledge of the contents of the Articles of his company [*Campbell's Case* (1873), 9 Ch. 1]. But of course the new step which is proposed to be taken must be clearly stated in a notice [*Lawes' Case* (1852), 1 De G.M. and G. 421]. The notice of a meeting which is called to sanction an agreement for the sale of the assets of the company will not be sufficient if it does not give the special advantages the sale offers the Directors, but only gives other particulars as to the agreement. This is because there are two important items of information here and only one of them is stated [*Kaye* v. *Croydon Tramways* (1898), 1 Ch. 358; *Tiessen* v. *Henderson* (1899), 1 Ch. 861; *Clarkson* v. *Davies* (1923), A.C. 100]. It has been also held that where by alteration of the Articles it is proposed to increase the remuneration of the Directors, that fact of increase of remuneration should be clearly stated in the notice [*Baillie* v. *Oriental Telephone and Electric Co.* (1915), 1 Ch. 503]. If the new Articles are indicated in the notice without stating clearly the effects of these new Articles, this may not be considered by the Court as sufficient indication to the shareholders of the proposed alteration [*Normandy* v. *Ind. Coope and Co.* (1908), 1 Ch. 84]. It is also necessary under the Indian Companies Act of 1913 that where the company is to decide in a meeting whether it should be wound up by reason of its liability, the said fact must be stated in the notice because it is argued that otherwise the shareholder would take it for granted that a confirmatory meeting was necessary as in *Stone* v. *City and County Bank* (1878), 3 C.P.D. 282; *Bridport Old Brewery* (1867), 2 Ch. 191. Where a meeting is called to consider reconstruction of the company, the notice of the meeting must specify the section under which this is sought to be done [*Etheridge* v. *Central Uruguay Northern Extension Rly.* (1913), 1 Ch. 425; *Irrigation Company of France re Fox, ex parte* (1871), 6 Ch. 176]. We have of course seen that when special or extraordinary resolutions are to be passed as special or extraordinary resolutions respectively the notice must set out the exact resolution. It seems that no amendment to a special or

an extraordinary resolution can be accepted [*MacConnell* v. *E. Prill & Co.* (1916), 2 Ch. 57]. It is of course not competent to any meeting to drop a resolution which has been notified and substitute another resolution which is of such a nature that special notice should have been given of it [*Indian Zoedone Co.* (1884), 26 Ch.D. 70]. Of course failure to give notice to a single shareholder would, unless otherwise provided for by the Articles—as is usually done—invalidate the meeting [*British Sugar Refining Co.* (1857), 3 K. & J. 408]. If there is no special provision, notice by advertisement has been held to be sufficient [*Mercantile Investment Co.* v. *International Co.* (1893), 1 Ch. 484]. It is quite possible to do special business at the Ordinary Meeting provided proper notice is given [*Graham* v. *Van Diemen's Land Co.* (1856), 26 L.J. Ex. 73]. If the special business is not stated in connexion with the notice of the General Meeting, only the general business will hold good, and any special business done will be invalid [*Lawes' Case* (1852), 1 De G.M. & G. 421]. It must be noted that the invalidity of the meeting does not affect outsiders who are dealing with the company and who have no knowledge of the invalidity [*Royal British Bank* v. *Turquand* (1856), 6 E. & B. 327; *Irwin* v. *Union Bank of Australia* (1877), 2 A.C. 266]. The act done at an invalid meeting can of course he ratified by a subsequent meeting held within reasonable time of the date of the invalid meeting [*Re Portuguese Copper Mines* (1889), 42 Ch.D. 160]. The notice of course must be signed by properly authorized parties such as the secretary or Director or other officer of the company, though it need not be under the common seal of the company. The signature of the person signing may be either his personal signature or it may be that of an agent authorized by him in writing [*Re Whitley Partners, in re Callan's Case* (1886), 32 Ch.D. 337].

Generally speaking the resolution passed at a meeting need not be in the identical terms of that specified in the notice. All that is required by law is that it should substantially cover the subject-matter as indicated by the resolution in the notice [*Torbock* v. *Lord Westbury* (1902), 2 Ch. 871]. Where the Articles lay down the rules as to notices, usually all that is required is that they should be substantially complied with (*In Re British Sugar Refining Co.*, 3 K. & J. 408). This is because in law the notices will not be construed with

excessive strictness [*Wright's Case* (1871), 12 Eq. 331; *Grant* v. *United Kingdom S. Ry. Co.* (1888), 40 Ch.D. 135]. The rule of general application is that notices should be construed as businessmen would understand them [*Alexander* v. *Simpson* (1889), 43 Ch.D. 139]. But of course the simple expression 'special business' will not do in a notice, particularly when convening an Extraordinary Meeting [*Wills* v. *Murray* (1850), 4 Exch. Reps. 843]. In one case where the notice stated that a remuneration was to be allowed to the Directors without giving the actual amount, and when as a matter of fact a large amount was to be payable, that information was not considered sufficient [*Baillie* v. *Oriental Telephone & Electric Co.* (1915), 1 Ch. 503]. Even where it was stated in a notice that the capital would be increased without stating to what amount it was to be so increased, the information was held to be insufficient [*MacConnell* v. *E. Prill & Co.* (1916), 2 Ch. 57]. In one case where notice was given of a particular resolution being considered and a particular scheme being adopted, and at the meeting a part only of it was adopted, this adoption of the part was held not to be justifiable on the ground that shareholders might have abstained from attending the meeting as they were perhaps satisfied with the originally suggested course [*Clinch* v. *Financial Corporation* (1868), 5 Eq. 450]. When a contract in which the Directors are personally interested is to be considered at a meeting, the notice should give particulars as to such interest of the Directors [*Kaye* v. *Croydon Tramways Co.* (1898), 1 Ch. 358; *Normandy* v. *Ind Coope & Co.* (1908), 1 Ch. 84]. The notice must be clear, unconditional and explicit about the meeting being held because a notice in the form that in a certain contingency the meeting will be held is not considered to be a notice [*Alexander* v. *Simpson* (1889), 43 Ch.D. 139].

Usual Business at Annual General Meetings

General Meetings are held annually as required by the Indian Companies Act of 1913 (Section 76), to do the usual business which is laid down in the Articles of Association of every company. The usual business is (1) receiving the Directors' report and accounts together with the balance sheet, (2) passing resolutions as to the payment of dividends from the balance of profit declared available for the purpose by the Directors, (3) replacement of Directors who have

died, or resigned or retired by rotation, (4) fixing the remuneration of the auditors and appointment of the auditors for the year to come. All other business will be considered as special and must be transacted at an Extraordinary General Meeting, or if it has to be done at this meeting a special notice must be given. The usual practice is to do the special business at an Extraordinary Meeting specially convened, and if it is thought convenient to do this special business on the same day as the date of the Annual General Meeting the practice is to notify that 'soon after the conclusion of the business of the Annual General Meeting an Extraordinary General Meeting will be held where the following business will be done'. Thus two types of meetings are held under this arrangement on the same day and under the same notice.

The exact wording of the Articles in use in Indian Companies, concerning the proceedings at General Meetings is as follows :—

> 'Every ordinary meeting shall be competent, without special notice having been given of the purposes for which it is convened or of the business to be transacted thereat, to receive and discuss any report and any accounts presented thereto by the Directors, including the Auditors' report and to pass resolutions in approval or disapproval thereof, and to sanction or declare a dividend in terms of these Articles and to elect Directors and Auditors in place of those retiring by rotation and to fix the further remuneration of Directors (if any) and the remuneration of the Auditors and shall also be competent to enter upon, discuss, and transact any other business whatsoever, of which special mention shall have been made in the notice or notices upon which the meeting was convened and all such business and all business transacted at an extraordinary meeting shall be deemed special.
>
> With the exceptions mentioned in the foregoing Articles as to the business which may be transacted at any ordinary meeting without notice, no General Meeting, ordinary or extraordinary, shall be competent to enter upon, discuss or transact any business, which has not been specially mentioned in the notice or notices upon which it was convened.'

Extraordinary General Meetings

It will be seen that Extraordinary General Meetings are convened for the purpose of doing any special business which cannot be transacted at an ordinary Annual General Meeting. These extraordinary meetings can be convened by the Board of Directors if they so desire or, as we have seen above, under Section 78 by requisition of shareholders holding not less than one-tenth of the share capital of the company or by the Court under Section 79 (3). The usual Articles to be found in our Indian companies in connexion with these Extraordinary Meetings have already been given under the heading ' General Meetings '.

Form of Notice for convening an Annual General Meeting

THE PROSPECTIVE MANUFACTURING CO. LTD.

NOTICE

The Tenth Ordinary General Meeting of the Shareholders of the Company will be held on Friday, 6th May 1949, at 3 p.m. (S.T.) at the Registered Office of the Company, 85 Esplanade Road, Bombay, to transact the following business :

1. To receive and adopt the Directors' Report and Audited Balance Sheet for the year ended 31st December 1948.
2. To elect two Directors in place of Sir Saklatvala, Kt., and Mr. R. N. Mudaliar who retire by rotation, but are eligible for re-election.
3. To appoint Auditors for the current year, and fix their remuneration.
4. To transact such other business as may be brought forward.

The Transfer Books of the Company have been closed from Thursday, the 23rd December 1948, and will remain closed upto Monday, the 3rd January 1949, both days inclusive.

By Order of the Board of Directors,
The Prospective Manufacturing Co., Ltd.
K. N. PETTIT,
Secretary.

Bombay, 10th December 1948.

Form of Notice for convening an Extraordinary General Meeting

THE PROSPECTIVE MANUFACTURING CO. LTD.

Notice is hereby given that an Extraordinary General Meeting of the Members of this Company will be held at 85 Esplanade Road, Bombay, on Monday, 3rd January 1949, at 4 o'clock in the afternoon, when the subjoined Resolution will be submitted to the Meeting to be passed in the manner required for the passing of a Special Resolution :—

That in pursuance of the recommendation of the Committee of Investigation appointed at the Extraordinary General Meeting held on the 2nd December 1948 the Ordinary Share Capital of the Company be reduced from Rs. 1,00,00,000 to Rs. 50,00,000 by writing down each fully-paid Ten Rupees Ordinary Share to the value of Five Rupees fully-paid, and that a Petition be made to the Court for an order confirming the reduction.

By order of the Board,
K. N. PETTIT,
Secretary.

Bombay, 10th December 1948.

The forms of notice convening meetings for passing an Extraordinary or a Special Resolution, are as follows :—

THE PROSPECTIVE MANUFACTURING CO. LTD.

Notice is hereby given that an Extraordinary General Meeting will be held at 85 Esplanade Road, Bombay on 16th June 1949 at 3 p.m. (S.T.) when the subjoined resolution will be proposed as an Extraordinary Resolution :—

That in Article No. 59 of this Company the following words be added :—

(*Set out the addition*)

By Order of the Board,
K. N. PETTIT,
Secretary.

Bombay, 28th May 1949.

THE PROSPECTIVE MANUFACTURING CO. LTD.

Notice is hereby given that an Extraordinary General Meeting of the above Company will be held at 85 Esplanade Road, Bombay on Wednesday, 29th June 1949 at 5 p.m. (S.T.)

when the subjoined resolution will be proposed as a special resolution.

(*Set out the resolution*)

By Order of the Board,
K. N. PETTIT,
Secretary.

Bombay, 2nd June 1949.

Form of Notice convening Meeting on Requisition

THE PROSPECTIVE MANUFACTURING CO. LTD.

Notice is hereby given that in accordance with the requisition deposited by the shareholders of the above company under powers conferred on them by Section 78 of the Indian Companies Act of 1913 an Extraordinary General Meeting will be held on Monday, the 27th June 1949 at 5 p.m. (S.T.) at 85 Esplanade Road, Bombay, when the following resolution will be submitted to the meeting to be passed in the manner required for passing a special resolution :—

(*Set out the resolution*)

By Order of the Board,
K. N. PETTIT,
Secretary.

Bombay, 2nd June 1949.

When the company has issued share warrants and the holders of share warrants are also entitled to attend and vote at the meeting, the notice also includes a paragraph in more or less the following form :—

THE PROSPECTIVE MANUFACTURING CO. LTD.

The holders of share warrants in the above company who are desirous of attending the aforesaid meeting are reminded that according to the requirements of the Articles of Association they must deposit their warrants together with a statement in writing of their names and addresses with the secretary of the company at its registered office at 85 Esplanade Road, Bombay, four clear days before the date fixed for the meeting. On such deposit the depositor will receive a certificate of deposit and a ticket of admission to the meeting. The warrants shall be returned to the depositors the day after the meeting is held on their surrendering the certificates of deposit.

By Order of the Board,
K. N. PETTIT,
Secretary.

Bombay, 2nd June 1949.

CHAPTER V

RESOLUTIONS AND VOTING

Annual General Meeting

As we have already seen, in a joint stock company it is usual that the Chairman of the Board of Directors is the Chairman of the company, and he takes the Chair as of right at all General Meetings, and when he is absent some other Director takes the Chair. If no Director is willing to take the Chair the meeting can appoint its own Chairman from amongst the members present, as an outsider cannot be the Chairman at a meeting of members of a joint stock company [*Blair Open Hearth Furnace Co.* v. *Reigart* (1913), 108 L.T. 665]. The usual practice in all meetings happens to be for the Chairman to introduce the report, or the subject-matter of the meeting, by an opening speech, at the conclusion of which he moves the adoption of the report if the meeting is an Annual General Meeting, met to consider the report and accounts as prepared and presented by the Directors to the shareholders. At this annual meeting, if the shareholders are dissatisfied with the report and accounts, they can reject the report by refusing to pass the resolution, and the usual practice is for them to move a resolution to appoint a Committee of Inspection either by an amendment, or by an original resolution. The form of the resolution for rejecting the report and the appointment of a Committee of Inspection is as follows :—

> 'That the report and accounts be received but not adopted.'

Where it is desired that a portion of the report be rejected, the proposition will be moved as follows :—

> 'That the report and accounts be received and adopted except . . . (here state the exception).'

Where it is also intended to appoint a Committee of Inspection the following paragraph will be added to the resolution :—

> 'That a Committee made up of Messrs. X, Y & Z shareholders of this company be and is appointed to investigate the affairs of this company and to submit a

report within one month from this date as to the results of their investigations. That this meeting stands adjourned to 1st March 1949 with a view to receive the said report at 4 p.m. (S.T.) on 1st March 1949 at the same place.'

This committee, however, formed in order to investigate will have very limited powers unless the Directors are willing to give facilities and information. The correct and more efficacious method of getting a Committee of Inspection appointed is under Section 142 of the Companies Act. This section empowers the shareholders on their own motion by a special resolution to appoint inspectors for examining the affairs and accounts of the Company and reporting on them. The Section runs as follows :—

Sec.142 (1) A company may, by special resolution, appoint inspectors to investigate its affairs.

(2) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the Central Government, except that, instead of reporting to the Central Government, they shall report in such manner and to such persons as the company in General Meeting may direct.

(3) All persons who are or have been officers of the company shall incur the like penalties in case of refusal to produce any book or document required to be produced to inspectors so appointed, or to answer any question, as they would have incurred if the inspectors had been appointed by the Central Government.

Other sections also relevant where the Central Government appoints inspectors on the application of members or shareholders, are the following :—

Sec. 138. The Central Government may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as the Local Government may direct :

(1) in the case of a banking company having a share capital, on the application of members holding not less than one-fifth of the shares issued ;

(2) in the case of any other company having a share capital, on the application of members

holding not less than one-tenth of the shares issued;

(3) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members;

(4) in the case of any company, on a report by the Registrar under Section 137 (sub-section 5).

Sec. 139. An application by members of a company under Section 138 shall be supported by such evidence as the Central Government may require for the purposes of showing that the applicants have good reason for, and are not actuated by malicious motives in, requiring the investigation; and the Central Government may, before appointing an inspector, require the applicants to give security for payment of the costs of the inquiry.

Sec. 140. (1) It shall be the duty of all persons who are or have been officers of the company to produce to the inspectors all books and documents in their custody or power relating to the company.

(2) An inspector may examine on oath any such person in relation to its business, and may administer an oath accordingly.

(3) If any person refuses to produce any book or document which under this section it is his duty to produce, or to answer any question relating to the affairs of the company, he shall be liable to a fine not exceeding fifty rupees in respect of each offence.

Sec. 141. (1) On the conclusion of the investigation, the inspectors shall report their opinion to the Central Government, and a copy of the report shall be forwarded by the Central Government to the registered office of the company, and a further copy shall, at the request of the applicants for the investigation, be delivered to them.

(2) The report shall be written or printed, as the Central Government directs.

(3) All expenses of, and incidental to, the investigation shall be defrayed by the applicants unless the Central Government directs the same to be paid by the company, which the Central Government is hereby authorized to do.

If, however, the report is passed, the subsequent business is taken on hand. The Chairman's duty is to see that everyone present is given a fair opportunity to be heard on every question before the meeting [*Wall* v. *London and Northern Assets Corpn. No. 1* (1898), 2 Ch. 469], and that none but the mover of the proposition is allowed a second speech, except by way of a brief explanation. When the discussion is finished the Chairman generally rises to speak with a view to meet the criticisms and answer questions that may have been raised in the course of the discussion. The next business at this Annual General Meeting is to declare a dividend in accordance with the recommendation of the Directors. This may be done after either adopting or rejecting the Directors' Report. The meeting generally closes with a vote of thanks to the Chair.

Extraordinary General Meeting

In cases of Extraordinary General Meetings, the procedure as to the putting of resolutions, seconding them, voting, demands for polls, and proxy is the same as in the case of Annual General Meetings. As these meetings are specially convened to consider some particular question which has been notified, the Chairman opens the proceedings, after the notice convening the meeting has been read by the secretary, with an explanatory speech in the course of which he gives reasons which led to the meeting being called and speaks on the merit of the proposition before the meeting. After this the resolution is generally moved in due form and seconded. Amendments, if any, of which due notice has been given if required by the Articles, or which arise naturally from the original proposition being relevant to it, may be moved and dealt with in the usual form. The amendments have to be relevant to the original motion, and supposing that a meeting is called with a view to pass a resolution for reconstruction, and an amendment is passed resolving that the company should be wound up, this would not be in order [*Teede and*

Bishop Ltd. (1901), W.N. 52]. This is because the shareholder when he receives a notice and sees that a particular thing is going to be done, naturally may not attend if he sees no objection to it, but if he had known that winding-up was to be considered he may have attended to express his views and to oppose the amendment.

Chairman's Duties

The Chairman has to put all motions or resolutions, and amendments correctly brought forward, to the vote, and it is he who declares the result. The Chairman has the Common Law right to enforce order, and if a person present behaves in a disorderly manner, the Chairman after giving him proper opportunity to correct his conduct, or to withdraw, may order him to be forcibly ejected. In case of ejection, no more force should be used than is actually necessary. When the Chairman finds it impossible to maintain order, he has a right to adjourn the meeting. This right to adjourn the meeting particularly depends on the constitution of the company, which has to be carefully consulted, as in the absence of express powers, the Chairman cannot adjourn the meeting without the consent of the members present. The Chairman decides all points of order raised by any member present and his ruling on points of procedure is final. It was held in *Henderson* v. *Bank of Australasia* (1889), 40 Ch.D. 170, that when a Chairman deliberately rules that a certain amendment cannot be moved, it would be improper and indecent for any member to proceed to discuss the propriety of the Chairman's ruling.

In *National Dwellings Society* v. *Sykes* (1894), 3 Ch.D. 159 it was laid down that the duty of the Chairman was to preserve order, conduct proceedings regularly, and to take care that the sense of the meeting is properly ascertained with regard to any question before it, but he has no power to stop the meeting, or adjourn it, unless the Articles give him the power. If the Articles lay down that the Chairman 'may' adjourn, he has a discretion and may decline to adjourn even though the majority of shareholders desire the adjournment [*Salisbury Gold Mining Co.* v. *Hathorn* (1897), App. Cases 268]. Table A of the Indian Companies Act provides that the Chairman may, with the consent of the meeting, and shall if so directed by the meeting, adjourn it. If he wrongfully

adjourns, the meeting can proceed by appointing another Chairman.

In *Wall* v. *Exchange Investments Corporation Ltd.* (1926), 1 Ch. 143, where the Articles laid down that no objection should be taken to the validity of any vote except at the meeting at which it was tendered and that every vote, whether given in person or proxy, not disallowed at any meeting, should be valid for all purposes, it was held that the decision of the Chairman who, in *bona fide* exercise of the power conferred upon him by the Articles, had refused to disallow a vote by proxy to which objections had been taken at the meeting was final and would not be reviewed by the Court [*Wall* v. *London and Northern Assets Corporation No 2* (1899), 1 Ch.D. 550].

Resolutions

Resolutions that can be passed at the meetings held by a joint stock company may be divided under three different headings, viz. (1) Ordinary resolutions, (2) Extraordinary resolutions, and (3) Special resolutions.

An ordinary resolution is one passed by a simple majority of such members as are entitled to vote, who are present in person or by proxy.

An extraordinary resolution, is a resolution passed by a majority of not less than three-fourths of such members as are entitled to vote, and who are present, either personally or by proxy (where proxies are allowed), at a General Meeting of which due notice, specifying the intention to propose the said resolution as an extraordinary resolution, has been given (Section 89).

An extraordinary resolution is necessary wherever it is required by the Articles. In the following matters the Indian Companies Act requires an extraordinary resolution :—

(1) To remove a director (S. 86G).
(2) To wind up a company voluntarily when it cannot, by reason of its liabilities, continue its business [S. 203 (3)].
(3) To sanction the powers of a liquidator in a members' voluntary winding up [S. 212 (1) (*a*)].
(4) To sanction any arrangement between a company about to be, or in the course of being, wound up and its creditors (S. 215).

A special resolution is one which has been passed in the manner required in the passing of an extraordinary resolution, at a General Meeting of which notice of not less than twenty-one days, has been given (Section 81).

A special resolution is necessary under the Indian Companies Act in the following cases :—

(1) To change the company's name with the sanction of the Central Government [S. 11(4)].
(2) To change the place of the registered office from one province to another with the sanction of the Court (S. 12).
(3) To alter the objects of the company with the Court's sanction in certain cases (S. 12).
(4) To alter the articles [S. 20(1)].
(5) To reduce or cancel share capital with the Court's confirmation (S. 55).
(6) To create reserve liability of limited company (S.69).
(7) To make the liability of directors unlimited [S. 71(1)].
(8) To assign the office of a director or manager (S. 86B).
(9) To sanction additional remuneration of managing agent (S. 87C).
(10) To appoint inspectors to investigate company's affairs (S. 142).
(11) To procure a winding up by the Court (S. 162).
(12) To wind up voluntarily [S. 203(2)].
(13) To empower the liquidator in voluntary winding up to sell or transfer assets to another company (S. 208C).
(14) To substitute memorandum and articles for a deed of settlement (S. 267).

It is not compulsory for a special resolution to be passed in the exact terms of the notice, and it may be amended [*Torbock* v. *Lord Westbury* (1902), 2 Ch.D. 871].

After a special or an extraordinary resolution has been passed, according to Section 82 of the Indian Companies Act, 1913, a copy of the resolution must be printed or typewritten and filed with the Registrar within fifteen days from the passing thereof.

When convening a meeting for passing an extraordinary resolution, the notice must specify the intention to propose

the resolution as an extraordinary resolution. The form of wording used is that the meeting is 'convened to consider and, if thought fit, pass the following resolution, which will be proposed as an extraordinary resolution' [*MacConnell* v. *E. Prill & Co.* (1916), 2 Ch. 57]. If these words are by any chance omitted, the resolution will be irregular and void unless all the shareholders happen to be present and waive this omission in the notice, as may happen in the case of private limited companies, where the limited number of shareholders belong to a partnership, or to a family holding all the shares [*Oxted Motor Co., Ltd.* (1921), 3 K.B. 32].

A resolution which has been carried at a duly constituted meeting in conformity with the provisions of the Act and the Articles, in a matter which is *intra vires*, i.e. within the powers of the company, is valid and binding upon the company and its members unless it amounts to a fraud on a class of shareholders [*Griffith* v. *Paget* (1877), 5 Ch.D. 894] or is unduly prejudicial to a minority of members without being for the benefit of the company as a whole [*Brown* v. *British Abrasive Wheel Co.* (1919), 1 Ch. 290].

A valid resolution is binding on all members whether they were present at the general meeting or not and they are affected by any disclosures made by any director or other officer at the meeting [*Re Norwich Yarn Co., Ex parte Bignold* (1856), 22 Beaven 143].

Third parties are only affected by a resolution if they have actual notice of it or where the resolution is required by the Act to be filed with the Registrar, they will be deemed to have notice of it when it has been duly filed [*Irvine* v. *Union Bank of Australia* (1877), 2 App. Cas. 366].

Rescission of Resolutions

A resolution cannot be amended or rescinded at the same meeting even though all present consent. It can, however, be rescinded at a later meeting because the acts of one meeting are not absolutely binding on a succeeding meeting [*Mawley* v. *Barbet* (1803), 2 Esp. 687].

How Propositions and Amendments are to be moved

When propositions are to be moved, of which due notice has been given, the Chairman calls upon the proposer to move the proposition. This has to be seconded by some other

member present. It may be here mentioned that when the Articles of Association make it compulsory that notice of the business at a meeting of a special nature must be given, the notice must give substantial information as to what is proposed to be done, otherwise the business done will be invalid [*Pacific Coast Coal Mines Ltd.* v. *Arbuthnot* (1917), Ap. Cases 607].

The motion must always be framed in an affirmative form.

A motion which is not seconded has to be dropped and no note will be taken of it in the minutes. On the other hand, when once the motion is proposed and seconded, it becomes the property of the meeting, and neither the proposer nor the seconder has the right to withdraw it without the unanimous consent of the meeting. The mover of a motion which is not seconded has no right to speak on it.

After a motion is proposed and seconded, an amendment of which due notice has been given, may be moved. The amendment is to amend the original resolution either by adding words, substituting words or omitting certain words. The amendment should not be in the negative form of the proposition, because if a person does not want the resolution to be passed he could carry out that object by asking those present to vote against it. It was laid down in a recent Bombay case [*T. H. Vakil* v. *Bombay Presidency Radio Club* (1945), 47 Bom. L.R. 428] that as a general rule amendments to a proposition must be germane to its subject-matter, and must not be in substance, a direct negative of it. In this case at a meeting called for reception and adoption of accounts, a proposition was moved that the report of the managing committee and the audited balance sheet and profit and loss account be 'received and adopted'. It was held that an amendment to it saying that the above be 'received but not adopted' and 'that a committee be appointed to look into them and to report thereon' is not a direct negation of the proposition and can be properly moved.

When a number of amendments to the same motion are put forward, it is at the discretion of the chairman to arrange the order in which they are to be taken. If the amendments are lost, the original motion must be put to the meeting, but if the amendment is carried, the original motion, as altered by the amendment, is taken up and put to the meeting as a

substantive motion. If the chairman refuses to put an amendment which has been lawfully moved, the resolution of which it is an amendment, will be invalidated. After the close of the poll, no amendment can be moved [*R.* v. *Roberts* (1863), 3 B. & S. 495]. An amendment gives no right of reply to the mover, and once put, it cannot be withdrawn without the consent of the meeting. If, however, a motion to which an amendment is proposed to be moved is properly withdrawn, the amendment is *ipso facto* withdrawn.

The usual practice is for the Chairman to ask the mover of the resolution, as well as the mover of the amendment, to put his amendment in writing, sign it, and then offer that paper to him so that there may not be any misunderstanding thereafter as to the actual wording that was used. The amendment must be relevant to the main question and within the scope of the meeting. It need not be seconded. A proposition put by the Chairman himself from the Chair also need not be seconded [*In Re Horbury Bridge Coal Co.* (1879), 11 Ch.D. 109].

It should however be remembered that the rule as to the presentation of motions and amendments in writing, though usually followed voluntarily, cannot be enforced, and the Chairman cannot refuse to submit a motion or amendment to vote simply because it has not been handed over to him in writing [*Henderson* v. *Bank of Australasia* (1890), 45 Ch.D. 330].

It has been decided that, where no notice as to an amendment on a motion was given, if the amendment falls within the scope of the original notice, it may be moved [*Torbock* v. *Lord Westbury* (1902), 2 Ch. 871]. On the same principle, where notice of a meeting for the appointment of other persons as Directors was duly given it was held that it was within the rights of the parties to add more names by way of amendments. When more than one amendment of a motion is proposed the Chairman may use his discretion in arranging the order in which they are to be taken in hand. After dealing with the amendments, the original motion may be taken in hand, i.e. if the amendments are lost, the original motion is put to the meeting, but if the amendment is carried, the original motion, as altered by the amendment, is taken up and put to the meeting as a 'substantive motion'. If the Chairman refuses to put an amendment lawfully moved,

the resolution of which it is the amendment will be invalidated.

The Right of Speech of a Member

As to the right of the shareholder to speak at a meeting, Pratt J. in *Parshuram Dattaram Shamdasani* v. *The Tata Industrial Bank Ltd.* (1923), 47 Bom. 915 laid down that 'a shareholder is not entitled to speak as much as he pleases but has a right to be heard in reasonable terms for a reasonable time'. See also *Wall* v. *London and Northern Assets Corporation No. 1* (1898), 2 Ch.D. 469. It is the chairman's right to regulate the order in which members should speak. The other points of interest laid down in this decision of Pratt J. were (1) where the Articles lay down that the Chairman 'may adjourn the meeting with the consent of the meeting' the Chairman cannot be compelled to adjourn the meeting; (2) irregularities are not a matter for the Court, but for a majority of the company to deal with; (3) the Court will interfere only if the rights of the shareholders are infringed or if a case of fraud or *ultra vires* action is made out.

The Closure

When the discussion on any motion or amendment drags on, if the constitution of the company permits, anyone present who thinks that the mind of the meeting is made up, and that the motion should now be put to the vote without any further waste of time, may propose "that the question be now put". This is known as the closure or "the gag". If seconded, the Chairman should put it to the vote, and if carried, no further discussion on the original proposition, or the amendment on which the closure was proposed, should be allowed. Here it will be interesting to note two other types of closures, adopted sometimes in the House of Commons, viz. "the guillotine" and "the kangaroo". In case of the *guillotine*, or closure by compartments, certain periods of time are allotted by resolution of the House of Commons to the different parts of a bill. At the end of each period, the guillotine falls on the discussion and that part of the bill is put to the vote. In case of the *kangaroo*, the chairman is allowed to jump over amendments and select which should be discussed.

We have just seen above that every member of a company has a right to be heard for a reasonable time on the

question at issue. On this point it was laid down in *Wall* v. *London and Northern Assets Corporation No. 1* (1898), 2 Ch.D. 469 that at the meeting of a corporation it is not competent to the majority to come determined to vote in a particular way on any question and to refuse to hear any arguments to the contrary; but when the views of the minority have been heard, it is competent to the Chairman with the sanction of the vote of the meeting to declare the discussion closed and to put the question to vote.

Dilatory Motions

These are resolutions moved with a view to prevent or delay the discussion and are in order if moved in furtherance of the object for which the meeting has been called. They may be for any of the following objects:—

(1) With a view to adjourn the meeting. The forms of the resolution will be 'that this meeting be now adjourned'.

(2) With a view to drop an item on the Agenda from discussion, e.g. 'That this meeting do proceed to the next business'.

(3) With a view to adjournment of the debate. Here the mover of the resolution is allowed a right of reply.

(4) With a view to prevent further discussion on a proposition which is considered by a large number of members at the meeting undesirable or unwise to discuss, in the general interest of the body at the meeting, or from the discussion of which no good is likely to result to anyone. In other words it is a device to shelve the motion. This resolution is technically known as the 'Previous Question'. The form in which it is moved is 'that this question be not now put'. As soon as seconded, the Chairman usually puts this resolution to the meeting and it takes precedence over all other motions. No amendment is allowed on a 'Previous Question' nor can it be discussed, or superseded by a motion for adjournment. The 'Previous Question' should be put either when the original proposition is before the meeting for discussion, or after the amendment is passed and the amended motion is put before the meeting as a substantive motion. It cannot be put during the

course of the discussion of the amendment itself. The mover of this question has no right of reply.

It may be further added that a company which is a member of another company may, by resolution of the Directors, authorize any of its officials, or any other person, to act as its representative at any meeting of that other company, and the person so authorized shall be entitled to exercise the same powers on behalf of the company which he represents, as if he were an individual shareholder of that other company whose meeting he attends (Section 80).

Voting Rights

The usual practice, as well as the rules, generally lay down that the Chairman should ascertain the sense of the meeting by a show of hands unless on declaration of the result by show of hands a requisite number as provided for by the Articles ask for a poll.

The voting rights of members or shareholders in joint stock companies are determined by the Articles of Association. Usually each share carries one vote but there is nothing in law to prevent the company from giving one vote for five, ten or even a hundred shares by specific clauses in the Articles of Association. There are cases even where a certain class of shareholders such as preference shareholders may not be given any vote [*Re Mackenzie & Co.* (1916), 2 Ch. 450].

It should be remembered that a right to vote is property and once the shareholder possesses that right it will be protected by the Court [*Pender* v. *Lushington* (1877), 6 Ch.D. 70; *Osborne* v. *Amalgamated Society of R. S.* (1911), 1 Ch. 540]. The company, of course, considers shareholders on the register entitled to vote and when shares are held by trustees or mortgagees, the company cannot interfere if they vote as principals even against the wishes of the original shareholder, although no interest is in arrear and the principal has not yet become payable [*Siemens Bros. & Co.* v. *Burns* (1918), 2 Ch. 324]. In short, the register of shareholders or members is considered to be the only evidence of members' right to vote at a General Meeting [*Pender* v. *Lushington* (1877), 6 Ch.D. 70; *Wise* v. *Lansdell* (1921), 1 Ch. 420]. Where the Articles so provide, the Chairman's decision as to whether a vote is valid or not will be conclusive if no fraud is proved

[*Wall* v. *London & Northern Assets Corporation* (1898), 2 Ch. 469].

The right to vote may by contract be assigned to some other person and enforced by mandatory injunction as where the mortgagee of shares agrees for valuable consideration to vote at general meetings of the company according to the directions of the mortgagor [*Puddephatt* v. *Leith, No. 1* (1916), 1 Ch. 200], or an agreement by a shareholder on a sale of shares held by him, whether personally or in a representative capacity, that he will vote in a particular way [*Greenwell* v. *Porter* (1902), 1 Ch. 530]. In the absence of a contract a person in whose name shares are registered, e.g. a mortgagee, can vote as he pleases [*Siemens Bros.* v. *Burns* (1918), 2 Ch. 324]. It has been held that directors cannot refuse to register transfers on the ground that it involves a distribution of shares in order to secure full voting powers on behalf of certain members [*Re Stanton Iron Co.* (1873), L.R. 16, Eq. 559]. The right of bearers of share warrants to vote depends upon the regulations of the company: in some cases the Articles do not give them any voting power, whereas in others the voting power is given. The Articles usually provide that the warrants should be left at the office of the company for a particular period prior to the date of the meeting. There is nothing in law to prevent members or shareholders from transferring or purchasing shares in the name of nominees with a view to increase their voting powers where there are restrictions in the Articles limiting the number of votes to a certain number of shares or laying down the maximum number of votes which a member could have irrespective of the large number of shares he may hold [*In Re Stranton Iron & Steel Co.* (1873), 16 Eq. 559].

An alien enemy however cannot vote either personally or by proxy during war [*Robson* v. *Premier Oil & Pipe Line Co.* (1915), 2 Ch. 124]. The Articles usually forbid directors to vote as directors on contracts in which they are interested, but they may vote as shareholders [*East Pant du United Lead Mining Co.* v. *Merryweather* (1864), 2 H. & M. 254]. Questions have arisen as to whether shareholders can vote in case of class meetings against the interest of that class simply because the other class to which they also belong and of which they hold a larger number of shares will benefit thereby. The Courts have always decided that they can do

so so long as they act without fraud [*British-America Nickle Corporation* v. *M. J. O'Brien* (1927), A.C. 369; *North-West Transportation Co.* v. *Beatty* (1887), 12 App. Cases, 589; *Burland* v. *Earle* (1902), A.C. on p. 94; *Dominion Cotton Mills* v. *Amyot* (1912), A.C. 546]. The Courts however have interfered where the Directors and their friends, through shares issued by the Directors to themselves and their friends with a view to obtaining control of the voting power, have tried to pass resolutions by restraining their issue [*Punt* v. *Symons & Co.* (1903), 2 Ch. 506]. It is however held that an agreement made for a monetary consideration to vote for the advantage of another person in course of a winding-up is void [*Elliot* v. *Richardson* (1870), 5 C.P. 744]. A corporation which is a member of a company votes through its duly authorized representative. When there are joint holders, the Articles usually provide as to how they should vote and these provisions must be strictly followed. These joint holders are entitled to have their names entered in any order they like.

The Casting Vote

Generally speaking, the Chairman has two rights of votes, (*a*) that of voting in his capacity as a member according to the voting power reserved to individual members and, known as the 'deliberative vote', and (*b*) in case of a tie, i.e. where the votes are equal on either side, he has what is known as the 'casting vote', by the use of which, he may help the meeting to arrive at a decision if he so desires. At Common Law the chairman has no casting vote but this power is usually given in the Articles. The chairman is not bound to exercise his casting vote and if he does not exercise it in spite of an equality of valid votes, the motion is not carried.

Mode of Voting

The following are the usual modes of obtaining the sense of a meeting:—

(1) Voice.
(2) Show of hands.
(3) Division.
(4) Poll.

The first method is only used when the Chairman feels that the result of the voting will be almost unanimous. He generally reads the motion to the meeting and says, "As

many as are in favour of the motion, say 'Aye'". After listening to the volume of the voices in the affirmative, he says, "As many as are against the motion say, 'No'". After listening to the voices in the negative he gives his opinion as to whether the motion is carried or not by saying "I think the Ayes (or the Noes) have it". At this stage unless anyone present demands a vote by a show of hands, the motion is duly carried.

The most usual mode of voting at company meetings is by a show of hands. In such a case everyone present who is entitled to vote can do so by putting up one hand only and each hand duly held up at the meeting will represent one vote. The chairman will count the hands held up both for and against the proposition and declare the result. At this stage any person present may object by demanding a second show of hands or a poll.

Voting by a division is where the members for and against the motion separate themselves by going into different rooms and the members on each side are counted by 'tellers'.

Chairman's Declaration as to result of Voting

If a poll is not demanded the chairman's declaration as to the result of voting on an extraordinary or special resolution is conclusive [S. 81(3)]. Table A also contains a similar provision as regards ordinary resolutions. Thus it follows that if a poll is not demanded in time the declaration of the chairman that an extraordinary or a special resolution has been carried cannot be challenged on the technical ground that the requisite majority did not vote in favour of it [*Re Graham's Morocco Co.* (1932), S.C. 269]. It has been held, however, that the chairman's declaration can be challenged where it is an apparent error, e.g. where he announces the number of votes for and against the proposition and the proportion is insufficient to justify the passing of the resolution [*Re Caratal New Mines* (1902), 2 Ch. 498]. The chairman's declaration can also be challenged on some substantial ground, e.g. in case of the resolution being *ultra vires* the company or in fraud of the minority. If there is no quorum, there is no properly constituted meeting and in such a case the chairman's declaration is not conclusive.

The Poll

Members of a company have a Common Law right to demand a poll unless this right is excluded by the Articles. The advantage of a poll is that whereas on a show of hands every person present has only one vote, in a poll the voting of each member is counted on the footing of the shares he or she holds according to the provisions of the Articles of Association and even the votes of absent members can be recorded through their proxies. Every person who wishes to demand a poll must do so immediately on the declaration of the result by show of hands and before the next business is proceeded with. The Articles of Association of most companies contain regulations as to the demand for a poll which must be strictly followed. The Chairman decides whether the poll has been properly demanded and if satisfied grants it. It is his discretion whether to take the poll immediately, as is frequently done, when the representative shareholders are present and the counting of votes can be conveniently done on the spot [*Chillington Iron Co.* (1886), 29 Ch.D. 159]. Of course the shareholder who has not voted at the meeting can vote on the poll. If the counting of the votes is likely to take time the Chairman fixes the hours and dates during which the poll is to be held. Here he should fix the date and hour at which the poll closes because if he fails to do so he must take in votes as long as they come in [*Reg.* v. *St. Pancras* (1839), 11 A. & E. 15]. The Chairman should not improperly exclude any voter as that would invalidate the poll [*Reg.* v. *Lambeth* (1838), 8 A. & E. 356]. The usual practice is for the Chairman to appoint scrutineers to assist him in counting votes and these scrutineers are selected from both sides. If there is some irregularity in the appointment of scrutineers this can be remedied later. It may be added that though scrutineers are desirable they are not necessary unless the Articles expressly provide for their appointment [*Wandsworth & Putney Gas Co.* v. *Wright* (1870), 22 L.T. 404]. The only means of finding out whether there was a lawful meeting or a lawful demand for a poll where scrutineers are appointed is the register of members or shareholders [See *Pender* v. *Lushington* (1877), 6 Ch.D. p. 78].

With reference to the poll itself it should be remembered that the persons demanding the poll must be present in person [*R.* v. *Government Stock Investment Co.* (1878), 3 Q.B.D. 443]. A member who was not present when the poll was demanded may vote personally at the poll [*Campbell* v. *Maund* (1836), 5 A. & E. 865]. When the demand for a poll is challenged the Chairman must justify the same [*Re Phoenix Electric Light Co.* (1883), 48 L.T. 260]. If a poll is not taken after a proper demand therefor the resolution which has been challenged is void [*R.* v. *Cooper* (1870), L.R. 5 Q.B. 457]. Proxies lodged after the date of the original meeting, but before the adjourned meeting, are invalid [*McLaren* v. *Thomson* (1917), 2 Ch. 261], although, of course, if the Articles of Association permit this to be done the position would be different. In one case where a poll was granted and fixed to be taken at a future date, but the Chairman did not adjourn the meeting, it was held that the meeting was adjourned only for the purpose of the poll and therefore continued for the purpose with the result that no fresh proxies could be taken [*Shaw* v. *Tati Concessions* (1913), 1 Ch. 292]. The Chairman's declaration as to the result of voting is of course conclusive unless fraudulent [*Arnot* v. *United African Lands* (1901), 1 Ch. 518; *Re Caratal (New) Mines Ltd.* (1902), 2 Ch. 498]. Once the demand for a poll is made it is very doubtful whether it can be withdrawn without the consent of the meeting [*Rex* v. *Mayor of Dover* (1903), 1 K.B. 668]. If the Articles lay down that a poll can be demanded by persons holding a specified number of shares, two or more joint holders holding the necessary shares can demand a poll [*Siemens Bros.* v. *Burns* (1918), 2 Ch. 324]. There are Articles which say that the proxy if signed by a joint stock company shareholder must bear the seal of the company signing. Here if the company or corporation is a foreign company or corporation registered in a country where it need not possess a common seal the use of the common seal may be dispensed with [*Colonial Gold Reefs Ltd.* v. *Free State Rand* (1914), 1 Ch. 382]. No doubt the proxy can be cancelled at any time before the person acts upon it, but if the Articles provide that a notice of the revocation of the proxy must be received before the meeting, it cannot be cancelled after the poll has been directed to be held [*Spiller* v. *Mayor (Rhodesia) Development Co. Ltd.* (1926), W.N. 78]. There

is nothing wrong if Directors acting *bona fide* in the interests of the company send out proxies with their own names inserted therein accompanied by circulars in which they advocate their policy, at the expense of the company [*Peel* v. *London and North-Western Railway* (1907), 1 Ch. 5]. If there are a number of resolutions dealt with in a meeting, separate voting must be taken on each resolution because a vote taken together will be invalid [*Patent Wood Keg Syndicate* v. *Pearse* (1906), W.N. 164].

Proxies

The word 'proxy' is used to denote a person appointed to represent another, or an instrument by which a person is so appointed. There is no Common Law right for a member of a company to have his vote accepted by proxy [*Harben* v. *Phillips* (1883), 23 Ch.D. 14]. Such a right can only be created by express contract and the Articles of Association of almost all joint stock companies incorporate this right of voting by proxy, and if the form of the instrument of proxy is given in the Articles, that form alone should be used. An instrument appointing a proxy is generally in the following form provided by Table A :—

> ..... Company, Limited.
>
> "I ..... of ..... in the district of ..... being a member of the ..... Company, Limited, hereby appoint ..... of ..... as my proxy to vote for me and on my behalf at the ordinary or extraordinary, as the case may be, general meeting of the company to be held on the ..... day of ..... and at any adjournment thereof."
>
> Signed this ..... day of .....

It is provided generally that only a member can be appointed to act as a proxy and not an outsider. Here the proxy need only be a member on the date of the meeting even though he was not one at the date of his appointment [*Bombay Burma Trading Co.* v. *Shroff* (1905), App. Ca. 213]. A proxy may be appointed for a particular meeting, or the proxy may be general, to be used at a number of meetings. The importance here lies mainly in the amount of the stamp duty. If the instrument of proxy is stamped with an

adhesive stamp, it should be cancelled preferably by the signature of the shareholder being written across the stamp or in any other manner so as to make the cancellation effective [*McMullen* v. *Sir Alfred Hickman Steamship Co. Ltd.* (1902), 71 L.J. Ch. 766].

The proxies must be filled in and dated before they are handed to the secretary because the present practice of issuing blank signed proxies is doubtful [*Ernest* v. *Loma Gold Mines* (1897), 1 Ch. 1]. The secretary should carefully inspect all proxies before he accepts and acts on them and report all irregular proxies to the Directors. If the Articles require proxies to be attested, an unattested proxy should not be accepted [*Harben* v. *Phillips* (1883), 23 Ch.D. p. 32]. The proxies have to be lodged according to the regulations of the Articles of Association about two to four days prior to the holding of the meeting. When proxies are signed by an authorized agent of the shareholder or member, the power of attorney so authorizing him to do this must also be lodged with the proxy. When the Chairman declares that the poll should continue for a number of days the meeting is in law continuing during these days [*Reg.* v. *Wimbledon Local Board* (1882), 8 Q.B.D. 459]. In the case of foreign shareholders, the proxies may be lodged at the company's office abroad and the result telegraphed to the head office [*English, Scottish and Australian Bank* (1893), 3 Ch. 385].

A proxy may be revoked at any time before the person appointed thereby has acted upon it, and a message sent to the Chairman, or the secretary, either orally, or in writing, is sufficient for that purpose. Where the proxies have been lodged and shareholders attending the meeting wish to exercise their votes, the proxies are considered as cancelled. As the right of a shareholder to vote is paramount to the right of the proxy in the absence of any special agreement between the shareholder and the company expressly excluding the right to vote in person where a proxy has been given [*Cousins* v. *International Brick Co.* (1931), 2 Ch. 90]. The death of the appointor revokes the proxy. A proxy is also revoked if the appointor duly deposits a later proxy.

It is essential that the member appointing the proxy is himself entitled to vote, e.g. a member who has not paid calls may be disqualified from voting by a provision in the Articles. The person appointed as proxy must also be quali-

fied to vote, e.g. certain Articles require a proxy to be a member of the company and in the case of a class meeting, it has been held that a proxy must himself be a member of that class [*Re Madras Irrigation Co.* (1881), W.N. 120]. When the voting takes place by show of hands, the person appointed proxy can only cast one vote even though he may also be entitled to vote in his own right [*Ernest* v. *Loma Gold Mines Ltd.* (1897), 1 Ch. 1].

As a meeting includes an adjournment of it, a proxy duly lodged for the original meeting will be good for an adjourned meeting but a proxy is invalid which is lodged after the date of the original meeting but before the adjourned meeting [*McLaren* v. *Thomson* (1917), 2 Ch. 261].

Forms of Articles of Indian Companies in connexion with Polls

By whom a poll may be demanded—A poll shall be taken if before or immediately upon the declaration by the Chairman of the meeting of the result of the show of hands, it be demanded by the Chairman or by or on behalf of at least three members present and entitled to vote at the meeting. If a poll is demanded as aforesaid it should be taken in such manner and at such time and place as the Chairman of the meeting directs and either at once or after an interval or adjournment or otherwise, and the result of the poll should be deemed to be the resolution of the meeting at which the poll was demanded.

At General Meeting unless poll demanded : Chairman's decision to be final—At any General Meeting unless a poll be demanded a declaration by the Chairman that a resolution has been carried or has been carried unanimously or has been carried by a particular majority and an entry to that effect in the book of proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes given for or against such resolution.

In what case poll taken without adjournment—Any poll duly demanded on the election of a Chairman of a meeting or on any question of adjournment shall be taken at the meeting and without adjournment.

Demand for poll not to prevent transaction of other business—The demand for a poll shall not prevent the continuance

of a meeting for the transaction of any business other than the question on which the poll has been demanded.

An alternative set of Articles to the same effect runs as follows :—

Form of demand for poll—A demand for a poll shall be made in the following or similar forms :—

> We, the undersigned members of The Prospective Manufacturing Co. Ltd. hereby demand that the votes of this day's meeting on the undermentioned proposition submitted to it may be taken by poll.
>
> Dated this ..... day of ..... 19....

Poll, how to be taken—If a poll is duly demanded as aforesaid, the same, if on the election of a Chairman of a meeting, or on any question of adjournment, shall be taken at the meeting and without adjournment, and if on any other question, shall be taken in such manner, and at such time and place in Bombay, and either by open voting or by ballot, as the Chairman of the meeting shall direct, and either at once, or after an interval or adjournment, or otherwise, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded, as of the date of taking the poll. Two scrutineers shall be appointed by the Chairman from amongst those present at the meeting at which the poll is demanded, but in the event of no one accepting the post, the Chairman alone shall be the scrutineer. The demand for a poll may be withdrawn.

Form of Articles of Indian Companies with regard to Votes at Meetings and Proxies

Votes—Upon a show of hands every member entitled to vote and present in person or by a person duly authorized under a power of attorney shall have one vote, and upon a poll every member entitled to vote and present in person or by a person duly authorized under a power of attorney or by proxy shall have one vote for every share held by him.

No voting by proxy on show of hands—No member not personally present shall be entitled to vote on a show of hands unless such member is present by a person duly authorized under a power of attorney or unless such member is a corporation present by proxy or a company present by a representative duly authorized under Section 80 of the Act

in which case such person, proxy or representative may vote on a show of hands as if he were a member of the company.

No member to vote unless calls are paid up—No member shall be entitled to be present or to vote at any General Meeting either personally or by proxy or attorney or as a proxy or attorney for any other member or to be reckoned in a quorum whilst any call or other sum shall be due and payable to the company in respect of any of the shares of such member.

Votes in respect of shares of deceased, or insolvent members—Any person entitled under the transmission (clause 37 hereof) to transfer any shares may vote at any General Meeting in respect thereof as if he were the registered holder of such shares provided that at least forty-eight hours before the time of holding the meeting or adjourned meeting as the case may be, at which he proposes to vote he shall satisfy the Directors of his right to transfer such shares, unless the Directors shall have previously admitted his right to vote at such meeting in respect thereof.

Votes may be given by proxy or attorney—Votes may be given either personally or by a person duly authorized under a power of attorney or by proxy or in the case of a company by a representative duly authorized as aforesaid.

Appointment and qualification of proxy—Every proxy shall be appointed in writing under the hands of the appointor, or by a person duly authorized under a power of attorney or if such appointor is a company or corporation under the common seal of such company or corporation or the hand of its attorney who may be the appointor. Every instrument or proxy shall be attested by at least one witness. No person shall be appointed a proxy who is not a member of the company and qualified to vote, save that a company or corporation being a member of the company may appoint as its proxy any person though not a member of the company.

Deposit of instrument of appointment—No person shall act as proxy unless the instrument of his appointment and the power of attorney, if any, under which it is signed, shall be deposited at the office of the company at least forty-eight hours before the time for holding the meeting or adjourned meeting, as the case may be, at which he proposes to vote; but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution

unless in the case of the adjournment of any meeting first held previously to the expiration of such time.

Custody of the instrument—If any such instrument of appointment be confined to the object of appointing an attorney or proxy or substitute for voting at meetings of the company it shall remain permanently, or for such time as the Directors may determine, in the custody of the company; if embracing other objects, a copy thereof, examined with the original, shall be delivered to the company to remain in the custody of the company.

Form of proxy—Every instrument of proxy whether for a specified meeting or otherwise shall, as nearly as circumstances will admit, be in the form or to the effect of the following:—

THE PROSPECTIVE MANUFACTURING CO. LTD.

I, ... of ..... a member of The Prospective Manufacturing Co. Ltd. do hereby appoint ..... of ..... or failing him ..... of ..... as my proxy to attend and vote for me and on my behalf at the Ordinary (or Extraordinary, as the case may be) General Meeting of the company to be held on the ..... day of .... and at any adjournment thereof or at any meeting of the company that may be held within the period of twelve months from the date hereof.

As witness my hand this ..... day of ..... 19.... signed by the said ..... in the presence of .....

Validity of votes given by proxy notwithstanding death of member, etc.—A vote in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal, or revocation of the proxy or of any power of attorney under which such proxy was signed, or the transfer of the share in respect of which the vote is given, provided that no intimation in writing of the death, revocation or transfer shall have been received at the office before the meeting.

Time for objections to votes—No objection shall be made to the validity of any vote except at the meeting or poll at

which such vote shall be tendered and every vote, whether given personally or by proxy, not disallowed at such meeting or poll shall be deemed valid for all purposes of such meeting or poll whatsoever.

Chairman of any meeting to be the judge of validity of any vote—The Chairman of any meeting shall be the sole judge of the validity of every vote tendered at such meeting. The Chairman present at the taking of a poll shall be the sole judge of the validity of every vote tendered.

The Mode of Address

Every member addressing the meeting should make it a rule to address the Chairman, not the members, and must remain standing while doing so. He should not call the Chairman by name, but refer to him by his official designation, viz. 'Mr. Chairman'. The member addressing the Chair should speak out his remarks *extempore*, as reading from manuscripts may be objected to by the meeting. The language must be courteous and on no account should it be offensive or personal. Unnecessary repetition must be avoided. Apart from committee meetings no one has the right of a second speech, except the mover of the proposition.

If anyone present finds that anything irregular is being done, or any objectionable language or remark is being made, he may rise to interrupt the speaker with the remark: 'Mr. Chairman, I am very sorry to interrupt, but I must rise to a point of order that . . .' and may state his grounds. The Chairman's ruling on a point of order must be taken as final. Even if the speaker thinks that the ruling of the Chair was wrong, he must acquiesce for the time being, reserving his right to take in the future such action at law as may be thought necessary. This question was decided in *Henderson* v. *Bank of Australasia* (1890), 45 Ch.D. 330 where the member concerned rose to a point of order and on the ruling of the Chairman against him acquiesced and did not even protest. He thereafter took part in the debate on the resolution concerned and voted on it. When thereafter he applied to the Court with a view to get the Chairman's ruling declared to be wrong, it was urged against him that he, having acquiesced without even protest, and taken part in the proceedings, was precluded from bringing this action. Fry, L.J. supported the attitude taken by the member. In his

judgment he laid down that by mere acquiescence not only did the member not lose his rights, but he acted as a decent man should do. According to Lopes, L.J. he was not bound to challenge the ruling of the Chair, for the simple reason that it would be improper and indecent to do so.

If the speaker is referring to something in a previous speaker's address, or to any other course of conduct about someone present, the party so referred to may also rise and address the Chair with the remark : 'Mr. Chairman, I am sorry to interrupt, but as a matter of personal explanation I must state . . .' This personal explanation should be a brief explanation and should not in any circumstances be a second speech.

As soon as the Chairman calls out 'Order, Order' the meeting must obey. The person to whom the words are addressed must immediately take the hint and the rest should support the Chair. If the Chairman proves to be an unreasonable autocrat, the remedy is not to create a disturbance and break up the meeting, but to take such constitutional steps as will ensure his removal. As far as the meeting is concerned, every member should readily submit to the disciplinary control of the Chair, as he is there to co-operate with the Chair both to preserve order and to facilitate the dispatch of business as laid down in the Agenda.

Adjournments

Generally speaking, in Common Law it is the inherent right of the meeting of any corporate body to decide by a majority that it should adjourn and such motions may be brought in at any time during the course of proceedings, when they will take precedence over all other matters as soon as they are proposed. At Common Law it is not even necessary that these motions should be seconded, or that they should be presented to the Chairman in writing [*Reg* v. *Wimbledon Local Board* (1882), 8 Q.B.D. 459 ; *R.* v. *Gaborian* (1809), 11 East 90]. In a joint stock company, however, Section 77 (8) of the Indian Companies Act of 1913 lays down in case of a Statutory Meeting that 'the meeting may adjourn from time to time, etc.', which signifies that at the Statutory Meeting the power to adjourn is entirely in the hands of the majority of the meeting as laid down by the Statute and that the Chairman has no voice in it. In General Meetings, how-

ever, the clauses in the Articles of Association govern the position. The usual Article used in India is the adaptation of Article 55 of 'Table A' which runs as follows :—

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

In some cases Indian companies use a more simple form as follows :—

> The Chairman may with the consent of the meeting adjourn any meeting from time to time and from place to place in Bombay.

An alternative clause to the above runs as follows :—

> The Chairman may, with the consent of a majority of the members personally present at any meeting, adjourn such meeting from time to time and from place to place in Bombay, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

In connexion with the last two forms it should be noted that the Chairman may adjourn when requested by a majority, which means that it is entirely at his discretion to adjourn or not, even though the majority may resolve that he should do so [*Salisbury Gold Mining Co.* v. *Hathorn* (1897), A.C. 268], although in the first form adapted from 'Table A' he is bound to adjourn the meeting if the majority resolves to do so. Unless specific powers are given to him in the Articles, the Chairman cannot adjourn the meeting at his will and pleasure without the consent of the meeting so as to prevent the meeting from transacting the business for which it was convened. The only exception where it is said that the Chairman may adjourn on his own initiative is where circumstances have arisen which make it impossible to conduct the business properly [*R.* v. *D'Oyly* (1840), 12 A. & E.

159]. If the Chairman were to improperly adjourn or stop the meeting the members can proceed by electing a new Chairman [*National Dwellings Society* v. *Sykes* (1894), 3 Ch. 159; *Catesby* v. *Burnett* (1916), 2 Ch. 325]. Where, however, the chairman has duly adjourned or dissolved the meeting, members cannot remain behind and continue the business [*Rex* v. *Gaborian*, 11 East 77]. It would not be advisable for the chairman to improperly adjourn a meeting even where he has the support of the majority. This is because such an irregular adjournment may make it possible for the minority, which is sufficient to form a quorum, to validly continue the business of the meeting [*Catesby* v. *Burnett* (1916), 2 Ch. 325].

When a meeting is adjourned under Indian Law, the adjourned meeting is legally the continuation of the original meeting and therefore the date of the original meeting is the date of the meeting, irrespective of the number of times which the said meeting is adjourned [*R.* v. *Hedger* (1840), 12 A. & E. 139]. The English Law on this point was altered by the English Companies Act of 1929, Section 119 by which it is laid down that in case of a resolution passed after the commencement of the Act at an adjourned meeting the same will for all purposes be deemed to have been passed on the date on which the said resolution in fact was passed and shall not be deemed to have been passed on any earlier date. S. 144, English Companies Act, 1948 still retains this position.

As regards notice, however, both in India and in England, the adjourned meeting will be a continuation of the same meeting and a fresh notice will not be necessary, unless the Articles of Association require it [*Scadding* v. *Lorant* (1851), 3 H.L.C. 418; *Wills* v. *Murray* (1850), 4 Ex. 843]. In case of an adjournment *sine die*, however, fresh notice will be necessary [*Wills* v. *Murray* (1850), 4 Ex. 843]. As an adjourned meeting is the continuation of the original meeting, any irregularity in convention of the original meeting will equally affect the adjourned meeting [*Re Portuguese Consolidated Copper Mines Ltd.* (1889), 42 Ch.D. 160].

It is interesting to note that both in India and in England Table A makes provision for an automatic adjournment in case the quorum is not present at the meeting (other than a requisition meeting) within half an hour from the time appointed for the meeting (Article 52, Indian Companies Act).

Postponements

We have already seen that when a meeting has been called and notice given, the Directors have no power in the absence of a specific Article to that effect, to postpone the meeting [*Smith* v. *Paringa Mines* (1906), 2 Ch. 193]. The only manner in which the matter can be arranged is by holding the meeting as notified and thereat fixing another date through an adjourned motion.

DEFAMATORY STATEMENTS AT MEETINGS

Board Meetings

As far as Board Meetings are concerned it has been held that the Directors of a company have a duty to discuss the affairs of the company and may discuss the conduct of the company's affairs so long as they do so honestly. In short, the occasion is, as the law calls it, a privileged one. There should however be no evidence of malice or spite in connexion with the making of any statement, which must be made as a matter of duty disclosed for the benefit of the company which the brother Directors must know in order to be able to arrive at a correct decision on the question under discussion. Thus the party who brings a charge of defamation against a Director must prove that the words spoken were spoken maliciously [*Royal Aquarium* v. *Parkinson* (1892), 1 Q.B. 443].

Not only is the Director responsible, but technically speaking, if the minutes are printed and circulated, the printer is also responsible for publication of the libel if he published the minutes containing the defamatory statement made at a Directors' meeting. In such cases of publication by printers there is no question of malice but the printer is liable for defamation.

Meetings of Shareholders

No doubt there is the qualified privilege of fair comment in meetings of shareholders. This privilege of fair comment is available only with regard to statements made on matters of public interest and statements made at a company meeting which are vital to the interests of the shareholders. Of course, there should be no malice and it should be remembered that 'malice' is not confined to personal spite and ill-will, but also

includes every unjustifiable intention to inflict injury on the person defamed or every wrong feeling in a man's mind [*Stuart* v. *Bell* (1891), 2 Q.B. 341]. A privileged communication is one which is made *bona fide* in pursuance of a duty or with a fair and reasonable purpose of protecting the interests of the party using the words [*Watt* v. *Langsdon* (1929), 45 T.L.R. 619]. In a shareholders' meeting the speaker, who generally is a shareholder, has to speak on a matter in which he is himself interested as a shareholder and in which his brother shareholders are also interested and thus if he speaks without malice it being a privileged occasion he will be protected.

Definition of Defamation

Defamation has been defined in Halsbury's Laws of England (*Hailsham's Edn.* Vol. XX, p. 493, para 406) as follows :—

> " A statement which being published of another in the way of his lawful trade, business, profession, calling or office, conveys a reflection on him calculated to disparage or injure him therein, is a defamatory statement, even though it be not calculated to hold him to hatred, contempt or ridicule."

The Indian Penal Code of 1860, lays down in Section 499 the following rules and exceptions which make clear the law on the subject. The Code makes defamation punishable with simple imprisonment for a term which may extend to two years, or with a fine, or with both. Apart from the criminal side of it the party injured by the defamation has a right to bring a suit in a Civil Court for damages sustained by him through his being defamed.

Section 499. Whoever by words either spoken or intended to be read, or by signs or by visible representation, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person is said, except in the cases hereinafter excepted, to defame that person.

Defamation.

Explanation 1—It may amount to defamation to impute anything to a deceased person, if the imputation would harm

the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered disgraceful.

Illustrations

(*a*) A says—"Z is an honest man; he never stole B's watch"; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it falls within one of the Exceptions.

(*b*) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it falls within one of the Exceptions.

(*c*) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it falls within one of the Exceptions.

First Exception—It is not defamation to impute anything which is true concerning any person, if it be for the public good and that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Imputation of truth which public good requires to be made or published.

Second Exception—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Public conduct of public servants.

Third Exception—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character so far as his character appears in that conduct, and no further.

Illustration

It is not defamation for A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Publication of reports of proceedings of Courts.

Fourth Exception—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation—A Justice of the Peace or other officer holding an inquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Merits of case decided in Court or conduct of witnesses and others concerned.

Fifth Exception—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Illustrations

(*a*) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest". A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(*b*) But if A says—"I do not believe what Z asserted at that trial because I know him to be a man without

veracity". A is not within this exception, inasmuch as the opinion which he expresses of Z's character, is an opinion not founded on Z's conduct as a witness.

Sixth Exception—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Merits of public performance.

Explanation—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations

(*a*) A person who publishes a book, submits that book to the judgment of the public.

(*b*) A person who makes a speech in public, submits that speech to the judgment of the public.

(*c*) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(*d*) A says of a book published by Z—"Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind". A is within this exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(*e*) But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine". A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Seventh Exception—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Censure passed in good faith by person having lawful authority over another.

Illustrations

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

Accusation preferred in good faith to authorized person.

Eighth Exception—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of the accusation.

Illustration

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master, or if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this exception.

Imputation made in good faith by person for protection of his or other's interests.

Ninth Exception—It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.

Illustrations

(*a*) A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty". A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(*b*) A, a Magistrate, in making a report to his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the Exception.

Tenth Exception—It is not defamation to convey a caution, in good faith, to one person against another, provided

that such caution be intended for the good of the person to whom it is conveyed or of some person in whom that person is interested, or for the public good.

It will thus be seen that the ingredients of defamation are (1) making or publishing any imputation concerning any person. (2) Such imputation should have been made either by words spoken or intended to be read or by signs or by visible representations. (3) The said imputation should have been made with the intention of harming or when there was reason to believe that it would harm the reputation of the person concerning whom it was made. In the words of the authors of the Indian Penal Code, " the essence of the offence of defamation consists in its tendency to cause that description of pain which is felt by a person who knows himself to be the object of the unfavourable sentiments of his fellow-creatures, and those inconveniences to which a person who is the object of such unfavourable sentiments is exposed ".

Indian Law differs from the English Law fundamentally in this matter because in English Law the essence of the crime is the tendency to bring about a breach of peace through a libel. Under the Indian Law, however, there is no question of the chance of a breach of peace occurring, but the defamation has been made an offence by itself. In this connexion, the authors of the Indian Penal Code observe : " It appears to us evident that between the offence of defaming and the offence of provoking to a breach of the peace, there is a distinction as broad as that which separates theft and murder. Defamatory imputations of the worst kind may have no tendency to cause acts of violence. Words which convey no discreditable imputation whatever may have that tendency in the highest degree. . . . A scurrillous satire against a friendless woman, published by a person who carefully conceals his name, would be defamation in one of its most odius forms. But it would be only by a legal fiction that the satirist could be said to provoke a breach of the peace. On the other hand, an imputation on the courage of an officer contained in a private letter, meant to be seen only by that officer and two or three other persons, might, considered as defamation, be a very venial offence. But such an imputation would have an obvious tendency to cause a serious breach of the peace."

The General Law on the Subject

If the matter is matter of public interest, and the party who publishes it owes a duty to communicate it to the public, the publication is privileged [Per Buckley L.J. in *Adam* v. *Ward* (1915), 31 Times L.R. 299, 304]. The mere belief of the party making a defamatory statement that it was his duty to do so will not save or protect him, but the circumstances must be such as to make it his duty to speak [*Whiteley* v. *Adams* (1863), 15 C.B. 392]. Thus no privileged occasion occurs where a person makes a defamatory statement about another to a third person under a mistaken belief that there is a duty to make such a communication and a communication made in such circumstances is accordingly not privileged [*Davidson* v. *Barclays Bank Ltd.* 8 (1940), 1 A.E.R. 316, 56 T.L.R. 343]. On one occasion at an election meeting of an overseer a statement was made to the effect that the candidate had misappropriated parish moneys while holding the office before it was considered privileged; but it was pointed out to the jury by the judge that the privilege would be lost if the making of it was a malicious abuse of the occasion [*George* v. *Goddard* (1861), 2 F. & F. 689]. (For further details regarding the law of defamation, see Part II, Chapter VII.)

Presence of the Press and Press Reports

Generally speaking when the press happens to be present uninvited at a meeting of a corporation or board of guardians or where it is usual for their reporters to be present at a meeting, it has been held that the privilege is not taken away by the presence of reporters or persons other than the guardians [*In re Pittard* v. *Oliver* (1891), 1 Q.B. 474]. In another case where the press was expressly invited to a shareholders' meeting and defamatory statements were made it was held that though they were of great interest and importance to shareholders the defamatory statements would have been excused if the shareholders alone had been present, but as outsiders were expressly invited it was no longer a privileged occasion [*In Re Parsons* v. *Surgey* (1864), 4 F. & F. 247]. It will thus be seen that in this case the speaker lost his privileges because the press attended by special invitation, in this case an invitation by the speaker himself.

In one other case the question of the privilege of the press was considered. Here at a shareholders' meeting the Chair-

man made certain defamatory statements against the cashier of the bank imputing dishonesty. These statements were false and the cashier received damages in a defamatory case filed against the Chairman. The *Financial Times*, however, published the whole report of the proceedings of the shareholders' meeting. It was not denied that the report was fair and accurate but it was held that there was no privilege here since the matter was not of any public concern and the publication was therefore not of public benefit or interest. It may be noted here that a newspaper is in no different position from an individual [*H. K. Hales* v. *H. Smiles*, A.I.R. (1937), Rang. 105]. The range of criticism allowed to a newspaper is as wide as and no wider than that of any other subject [*Mitha Rustomji Murzban* v. *Nusserwanji Nowroji Engineer*, 43 Bom. L.R. 631]. As to the right of a reporter to attend company meetings it has been decided that a reporter in his capacity as a reporter has no right to attend such meetings but if he happens to be a shareholder he can attend and make a report [*Tenby (Mayor of)* v. *Mason* (1908), 1 Ch. 457].

The usual practice of companies is to print the report of a meeting and send it to its members. In this connexion it has been held that the report is *prima facie* privileged and therefore in the absence of malice no action can be taken [*Lawless* v. *Anglo-Egyptian Cotton Co.* (1869), L.R. 4 Q.B. 262]. In a similar case where an order for injunction was discharged, a solicitor on behalf of some shareholders in a company, printed and circulated a certain circular among the shareholders containing matter reflecting on certain officers of the company and the mode of the company's promotion. Here the circular was declared to be a privileged communication [*Quartz Hill Gold Mining Co.* v. *Beall* (1882), 20 Ch.D. 501]. When these circulars are issued the communication naturally becomes known in the ordinary course of business to clerks of the company or the party sending it out, and in such cases also it has been decided that the privileged occasion covers such a publication of these statements [*Edmondson* v. *Birch & Co.* (1907), 1 K.B. 371].

Malice

The existence of malice would defeat both the defences of 'qualified privilege' as well as of 'fair comment' as in both these defences the state of mind of the defendant when he

published the alleged libel is a matter directly in issue [*Plymouth Mutual Co-operative Society* v. *Traders' Publishing Association Ltd.* (1906), 1 K.B. 418].

Malice in common acceptation means ill-will against a person. In its legal sense, however, it means a wrongful act, done intentionally, without just cause or excuse [Per Bayley J., in *Bromage* v. *Prosser* (1825), 4 B. & C. at p. 255]. Malice in the actual sense may exist even in absence of spite or vengeance in the ordinary sense. In defamation cases the dicta and decisions are broad in their scope [*Pratt* v. *British Medical Association* (1919), 1 K.B. 275]. "Any indirect motive other than a sense of duty is what the law calls malice" [Per Lord Campbell C.J., in *Dickson* v. *Earl of Wilton* (1859), 1 F. & F. 275].

Presumption of Malice

There are, of course, occasions when malice may be inferred, such as where unauthorized publications are issued which happen to be to the detriment of somebody [*Brown* v. *Croome* (1817), 2 Starkie 301]. Where the circular is issued in exceptionally violent language, unjustifiable by the circumstances, such an inference of malice may arise [*Spill* v. *Maule* (1869), L.R. 4 Ex. 232]. The fact that the language of the defendant is "unnecessarily strong or utterly disproportionate to the exigency of the occasion is some evidence of malice" [Per Lord Finlay L.C., in *Gilpin* v. *Fowler* (1854), 5 Exch. 615, 627]. However, if the language used is *bona fide* though intemperate it may not be inferred as evidence of malice [*Edmondson* v. *Birch* (1907), 1 K.B. 371]. The question as to how far excessive language is evidence of malice is discussed in detail in *Adam* v. *Ward* (1917), A.C. 309. Of course where the party is fully aware of the fact that the statements are untrue or utters words with the deliberate intention of injuring the other side or is actuated by personal resentment or any wrong or improper motive, malice would be inferred [*Gerard & Dickenson* (1590), 4 Rep. 18; *Hooper* v. *Truscott* (1836), 2 Bing. N.C. 457; *Rogers* v. *Clifton* (1803), 3 B. & P. 587].

REQUISITIONED MEETINGS

The Indian Companies Act of 1913 in Section 78 specifically gives power to the shareholders, notwithstanding

anything that may have been stated in the Articles of Association of the company which is inconsistent with the section, to requisition the Directors to call an Extraordinary General Meeting of the company. For this purpose shareholders holding not less than one-tenth of the issued capital of the company upon which all calls and other sums then due have been paid must join. This requisition must state the objects of the meeting and must be signed by the requisitionists. It must then be deposited at the registered office of the company. The said requisition may be either in the form of one document or may consist of several documents of like form signed by one or more requisitionists. If the Directors do not proceed within twenty-one days from the date of the requisition being so deposited to call a meeting, the requisitionists or a majority of them in value are authorized by the section to call the meeting themselves, but in either case the meeting must be held within three months from the date of the deposit of the requisition. In such a case, the requisitionists are entitled to be repaid by the company all reasonable expenses incurred by them in convening such meeting caused by the failure of the directors to duly convene the meeting. The company in its turn can retain such reasonable expenses paid to the requisitionists out of sums due to or which become due to such defaulting directors by the company by way of such directors' fees or other remuneration for services rendered. The actual language of Section 78 is as follows :—

(1) Notwithstanding anything in the Articles, the Directors of a company which has a share capital shall, on the requisition of the holders of not less than one-tenth of the issued share capital of the company upon which all calls or other sums then due have been paid forthwith proceed to call an Extraordinary General Meeting of the company.

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

(3) If the Directors do not proceed within twenty-one days from the date of the requisition being so deposited to cause a meeting to be called, the requisitionists, or a majority of them in value, may them-

selves call the meeting, but in either case, any meeting so called shall be held within three months from the date of the deposit of the requisition.

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

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

The English Acts of 1929 (S. 114) and of 1948 (S. 132) also contain similar provisions in this respect.

In the above matter the question arose as to whether the several documents which make up the requisition must be identical; it was held that they need not be identical but must be substantially the same [*Fruit and Vegetable Growers' Association Ltd.* v. *Kekewich* (1912), 2 Ch. 52]. The number (one-tenth) of the issued capital who have to sign the requisition would include preference shareholders and bearers of warrants even though according to the conditions of issue or the Articles these classes of shareholders do not have voting powers. This is because the right is given to all shareholders by statute in so many words, and thus the Articles of Association of any particular company or any other document cannot deprive them of it. If joint holders of shares join in the requisition, all must sign unless the Articles otherwise provide [*Patent Wood Keg Syndicate* v. *Pearse* (1906), W.N. 164]. The requisition must be in accordance with the Section as otherwise the meetings held and the resolutions passed thereat would be invalid [*Oriental Navigation Co.* v. *Bhanaram* (1922), 49 Cal. 399 at page 419]. It has also been held that in case of these proposed resolutions, the Directors can circularize the shareholders at the company's expense with a view to place before them their point of view as to the prudence or propriety of passing such a resolution, and also in order to procure proxies in their own favour [*Campbell* v. *Australian Mutual Provident Society*

(1909), 77 L.J. P.C. 117; *Peel* v. *London & North-Western Rly. Co.* (1907), 1 Ch. 5]. Where the Articles of Association of the company make a distinction between an Ordinary and Extraordinary General Meeting, the Extraordinary Meeting held under the requisition as above cannot be construed as a General Meeting within the meaning of Section 76 [*Emperor* v. *Nasurbhai A. Lalji* (1923), 25 Bom. L.R. 224].

FORM OF REQUISITION

THE DIRECTORS OF THE BOMBAY TRADING Co. LTD.

Take notice that we the undersigned shareholders in the above named company holding in the aggregate not less than one-tenth of the issued capital of the said company upon which all calls and other sums due have been paid, do hereby require you to convene an Extraordinary General Meeting of the aforesaid company for the following objects :—

Note.—Here state the resolution concerned beginning with :—

'To pass a resolution to the effect that . . .'

We have seen that if the Directors fail to convene this meeting within twenty-one days of the deposit of the said requisition, the requisitionists may themselves call a meeting. In calling such a meeting, the notice to be given will take the following form :—

NOTICE

Notice is hereby given that an Extraordinary Meeting of the Bombay Trading Co. Ltd., will be held on ..... at ..... at 5 p.m. (S.T.) in accordance with the requisition mentioned below :—

Note.—Here state the requisition verbatim.

This notice has been given by the undersigned shareholders of the company holding in aggregate upwards of one-tenth of the issued capital in exercise of the powers conferred by Section 78 of the Indian Companies Act of 1913, the Directors having failed for twenty-one days from the date of the deposit of the requisition in writing signed by such members to convene a meeting for the purposes mentioned above.

Dated .....

Rules and Regulations as given in 'Table A' of the Indian Companies Act of 1913, being the First Schedule to the said Act applying to Meetings generally

It may be added here that 'Table A' gives a set of rules and regulations which would form the requisition of joint stock companies incorporated under the Act, which have either adopted 'Table A' as their Articles, or whose Articles of Association are silent on certain points where 'Table A' automatically applies, unless the said 'Table A' has been expressly excluded by the companies' special Articles of Association. Thus where a company has its own set of Articles of Association and has clearly stated in its own Articles that 'Table A' shall not apply to that company; the only rules that could be followed are those given in the company's special Articles of Association, and in case the Articles are silent on any of the points, 'Table A' would not apply here for the simple reason that it has been excluded. However, the object of 'Table A' is to suggest what form of Articles would be desirable, and the draftsman of the special Articles for a company generally takes his ideas from this most important set of rules, modified here and there as the circumstances of his own company may suggest. We shall here deal only with those clauses of 'Table A' which relate to the meetings of shareholders, directors and voting, etc. The numbers given against each Article are those assigned to each clause in 'Table A'.

General Meetings

45. The Statutory General Meeting of the company shall be held within the period required by Section 77 of the Indian Companies Act of 1913.

Note:—The above regulation simply repeats that which is required by the Companies Act. In some cases the actual purport of the section is also incorporated in the Articles by the addition of the clause: 'be held within a period of not less than one month nor more than six months from the date at which the company shall be entitled to commence business, and at such place as the Directors may determine and the Directors shall comply with the other requirements of that section as to the report to be submitted and otherwise'. Some Indian companies also follow the following form:—

> The Statutory Meeting of the Company shall be held at such place and time (not being less than one

month nor more than six months from the date on which the Company is entitled to commence business in accordance with Section 103 of the said Act) as the Directors may determine, and in connexion therewith the Directors shall comply with the provisions of Section 77 of the said Act.

46. A General Meeting shall be held within eighteen months from the date of its incorporation and thereafter once at least in every year at such time (not being more than fifteen months after the holding of the last preceding General Meeting) and place as may be prescribed by the company in General Meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place as the Directors shall appoint. In default of a General Meeting being so held a General Meeting shall be held in the month next following, and may be called by any two members in the same manner as nearly as possible as that in which meetings are to be called by the Directors.

Note:—Here also the clause reiterates the rule for holding the General Meeting as given in the section of the Indian Companies Act for the holding of these meetings (See Section 76).

47. The above-mentioned General Meetings shall be called Ordinary Meetings; all other General Meetings shall be called Extraordinary.

Note:—Here a distinction is sought to be made between a General Meeting held annually and an Extraordinary Meeting which is called specially in the course of the year at any time as may be necessary to consider some special or extraordinary business.

48. The Directors may, whenever they think fit, call an Extraordinary General Meeting, and Extraordinary General Meetings shall also be called on such requisition, or in default, may be called by such requisitionists, as provided by Section 78 of the Indian Companies Act of 1913. If at any time there are not within British India sufficient Directors capable of acting to form a quorum, any Director or any two members of the company may call an Extraordinary General Meeting in the same manner as nearly as possible as that in which meetings may be called by the Directors.

Note:—This clause briefly lays down the principle to be followed in connexion with the calling of meetings by requisitionists as provided for by Section 78 of the Indian Companies Act of 1913. In some cases this is elaborated in actual practice in the case of Indian companies more or less in the following form:—

The Managing Agents may, whenever asked by the Directors, and they shall, on the requisition of the holders of not less than one-tenth of the Ordinary Shares of the company for the time being issued, upon which all calls or other sums then due have been paid,

forthwith proceed to convene an Extraordinary General Meeting of the company, and in the case of such requisition the following provisions shall have effect:—

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

(*b*) If the Managing Agents of the company do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists or a majority of them in value may themselves convene the meeting but any meeting so convened shall not be held after three months from the date of the deposit.

(*c*) Any meeting convened under this clause by the requisitionists shall be convened in the same manner as nearly as possible as that in which meetings are to be convened by the Managing Agents.

49. Subject to the provisions of sub-section (2) of Section 81 of the Indian Companies Act, 1913, relating to special resolutions, fourteen days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and, in case of special business, the general nature of that business, shall be given in the manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in General Meeting, to such persons as are under the Indian Companies Act, 1913, or the regulations of the company, entitled to receive such notices from the company; but the accidental omission to give notice to or the non-receipt of notice by any member shall not invalidate the proceedings at any General Meeting.

Note:—In the above case 'Table A' provides for fourteen days' clear notice for the calling of General Meetings. In actual practice also the requisition provides for fourteen days' clear notice of every General Meeting as provided for by the Indian Companies Act. Again the Indian companies generally specify the form in which the notices are to be sent more or less in the following words:—

> Fourteen clear days' notice of every General Meeting specifying the place, day and hour of meeting and in case of special business, the general nature of such business shall be given to the members by advertisement or notice, sent by post or otherwise served as hereinafter provided, and with the consent in writing of the Directors. In case of urgent business a meeting may be convened by a shorter notice, and in any manner the members may think fit.

When, however, a notice has to be given to pass a special resolution twenty-one days' notice as required by Section 81 of the Indian Companies Act must be given of such meeting. However, a special resolution may be passed at a meeting of which less than twenty-one days' notice has been given if all the members who are entitled to attend and vote at such meeting so agree. The special resolution must be passed, as in case of an extraordinary resolution, by a majority of not less than three-fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed by the Articles). The notice convening such a meeting must also specify the intention to propose the resolution as a special resolution. At such meeting the members present have the right to demand a poll.

The Articles also generally contain a clause which provides that:

The accidental omission to give any such notice to any of the members shall not invalidate any resolution passed at any such meeting.

50. All business shall be deemed special that is transacted at an Extraordinary Meeting, and all that is transacted at an Ordinary Meeting with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets and the ordinary report of the Directors and auditors, the election of Directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

Note:—The above rule distinguishes between ordinary and special business and lays down the nature of the business to be done at an Ordinary Meeting as distinguished from a Special or Extraordinary Meeting.

The Articles of certain Indian companies also lay down in detail the business of the Ordinary General Meeting in more or less the following form:—

The business of an Ordinary General Meeting other than the first one shall be to receive and consider the Profit and Loss account, the Balance Sheet, and the reports of the Directors and of the Auditors; to elect Directors and other officers in the place of those retiring by rotation; to declare dividends and to transact any other business which ought to be transacted at an Ordinary General Meeting. All other business transacted at an Ordinary Meeting and all business transacted at an Extraordinary Meeting shall be deemed special.

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

case of a private company and five members in the case of any other company personally present shall be a quorum.

Note:—The above Article reiterates the usual rule of Company Law. It should be noticed, however, from the wording that a quorum of members is required to be present at the time when the meeting proceeds to business, that is to say, the meeting need not stop working if, later, a number less than the requisite quorum happens to remain because some members have left.

52. If within half an hour from the time appointed for the meeting, a quorum is not present, the meeting, if called upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week at the same time and place, and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

Note:—This rule provides for the emergency of a quorum not being present, and the steps to be taken if such an occasion should arise. It also provides a very convenient rule that if a quorum is not present at the first meeting which has to be adjourned, at the next meeting convened, the number present may form a quorum and proceed with the business.

53. The Chairman, if any, of the Board of Directors shall preside as Chairman at every General Meeting of the company.

54. If there is no such Chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as Chairman, the members present shall choose someone of their number to be Chairman.

Note:—The above rules are generally followed by all the Articles of Association of Indian companies. Frequently the above two Articles are combined into one common Article.

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

Note:—This is the usual clause which gives the Chairman discretion to dissolve a meeting with the consent of the meeting. Here the Chairman is not bound to dissolve the meeting because the words 'the Chairman *may*' have been used. If, however, it is the desire that the Chairman should be compelled to adjourn if the meeting so resolves, the word-

ing may be altered by substituting 'shall' in place of 'may'.

56. At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded in accordance with the provisions of clause (c) of sub-section (i) of Section 79 of the Indian Companies Act, 1913, and, unless a poll is so demanded, a declaration by the Chairman that a resolution has, on a show of hands, been carried, or carried unanimously or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against that resolution.

Note :—Section 79(1)(c) referred to above provides that in case of a private company where not more than seven members are personally present two members can demand a poll and that in other cases a poll may be demanded either (i) by five members present in person or by proxy or (ii) by the chairman of the meeting or (iii) by members holding not less than one-tenth of the issued capital carrying voting rights.

57. If a poll is duly demanded, it shall be taken in such manner as the Chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

Note :—The above Articles lay down the usual common law rules of taking votes by a show of hands in the first instance and provides for the declaration of a poll and the procedure in connexion therewith. Frequently these words are added : 'If a poll is duly demanded, it shall be taken in such manner and at such time and place as the Chairman of the meeting directs and either at once or after an interval for adjournment or otherwise and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.' Again when it is desired that the persons who have demanded the poll may be permitted to withdraw it, the words 'the demand of the poll may be withdrawn' are added.

58. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

Note :—The above rule provides for the casting vote of the Chairman in case the votes are equal on either side.

59. A poll demanded on the election of a Chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the Chairman of the meeting directs.

Note :—This rule provides for special steps to be taken in connexion with the demand for a poll either at the time the votes are taken for the election of the Chairman, or on the question of adjournment. These steps are that the poll be taken immediately. Some Articles are worded as follows :—

> Any poll duly demanded on the election of a Chairman of a meeting or on any question of adjournment shall be taken at the meeting and without adjournment.

A further Article is also incorporated in some Indian companies with a view to prevent the adjournment of business other than that on which the poll was demanded.

Votes of Members

60. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote in respect of each share or each hundred rupees of stock held by him.

Note :—In the above Article it may be noticed that the provision is for one vote for each share of which the member is the holder in cases where a poll is demanded. In practice this may be varied and there are cases where shareholders are given votes on a varying footing as may be deemed necessary by the promoters. It is therefore common to find in some Articles one vote for ten shares, or less or more. Thus a person holding less than the fixed number of shares has no voting power. There have been cases, though, where one vote only has been given to the holder of a hundred shares. In some old-fashioned companies it was the practice to give one vote for each share upto ten shares and thereafter one vote was given for each block of ten additional shares. The law, of course, does not object to any such arrangement, this being left entirely to the option of those who prepare the Articles. Every subscriber who applies for shares does so on the basis that he has read the Memorandum and the Articles of Association and agrees to the terms and conditions as set out therein. In this clause it is also usual to provide for a company shareholder, i.e. some other company which may be holding shares in the company whose Articles are being considered. This is done by the addition of words to the effect that 'where a corporation being a member is present by a proxy who is not a member, such proxy shall, be entitled to vote for such corporation on a show of hands'.

There are occasionally cases also where no votes are provided for a certain class of shareholders and thus Articles such as the following are common :—

Members who are the holders of preference shares shall not be entitled to vote in connexion with such shares but shall be entitled to be present at the meetings and take part in the discussions.

There are, however, cases where it is not certain whether new preference shares would be issued and whether these shareholders should be given the right to vote. In such cases, an Article such as the following providing for this future contingency is usually inserted :—

Members who are holders of preference shares, if and when issued, shall have the right to vote or not as may be determined at the time of the issue thereof.

61. In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders ; and for this purpose seniority shall be determined by the order in which the names stand in the Register of Members.

Note :—It will be noticed that this Article suggests that the right of voting should be given in case of joint holders to the senior who tenders a vote whether in person or by proxy and that the others should be excluded. Here seniority is determined by the order in which the name stands in the Register of Members. These clauses are common in almost all Articles in India either in the same wording or with slight alterations. In one Article the wording added is : 'several executors or administrators or survivors of a deceased member in whose name any share stands shall for the purposes of this clause be deemed joint holders thereof'.

Frequently power is given to all the joint holders to be present at the meeting but only the senior is entitled to vote. With reference to the counting of the quorum also, a provision is frequently made in our Indian Articles such as the following :—

Any one but not more than one of the joint holders of a share or shares may be counted in a quorum.

62. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.

Note :—This Article provides for the exercise of voting power on shares held by a person of unsound mind. It is common among Indian companies to have a more detailed and elaborate clause than the one indicated above and on the lines of the following :—

Though not a member of the Company, the parent or guardian of any infant member, the committee or legal curator of any lunatic or idiot member, the husband of any female member not entitled to her share as separate estate, or the executor or administrator of any deceased member, or, if more than one of such persons as aforesaid, authorized by the rest of them, shall be entitled to vote in the place of such infant, lunatic, idiot, female, or deceased member, in person or by proxy. But no such person as aforesaid shall be entitled to vote in the stead of any infant, lunatic, idiot, female, or deceased member, unless he shall have deposited in the office of the company not less than three days before the time of holding the meeting at which he proposes to vote, all such evidence as the Directors may require, of his filling any such character in respect of which he claims to vote.

There is a special clause also inserted and known as a transmission clause, providing for votes in respect of shares of deceased and bankrupt members which runs as follows :—

Any person entitled under the Transmission Clause to transfer any shares (which entitles the holder thereof to vote), may vote at any General Meeting in respect thereof in the same manner as if he were the registered holder of such shares, provided that forty-eight hours at least before the time of holding the meeting or adjourned meeting, as the case may be, at which he proposes to vote, he shall satisfy the Directors of his right to transfer such shares, or the Directors shall have previously admitted his right to vote at such meeting in respect thereof.

63. No member shall be entitled to vote at any General Meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

Note :—The object of this clause is to disqualify shareholders who are in arrear in connexion with their calls. Frequently, some Articles not only disqualify such members from voting in connexion with their own shares but also prevent them from voting as proxies on shares held by other members. A more comprehensive clause in such circumstances would be :—

No member shall be entitled to be present or to vote on any question, either personally or by proxy, or as proxy for another member at any General Meeting, or upon a poll, or be reckoned in a quorum whilst any call or other sum shall be due and payable to the company in respect of any of the shares of such member.

64. On a poll, votes may be given either personally or by proxy: Provided that no company shall vote by proxy as long as a resolu-

tion of its Directors in accordance with the provisions of Section 80 of the Indian Companies Act of 1913, is in force.

65. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorized in writing, or, if the appointor is a corporation, either under the common seal, or under the hand of an officer or attorney so authorized. No person shall act as a proxy unless he is a member of the company.

66. The instrument appointing a proxy and the power of attorney or other authority (if any), under which it is signed, or a notarially certified copy of that power or authority, shall be deposited at the registered office of the company not less than seventy-two hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

Note:—The Article 64 as given above contemplates the case of a company which is a member of another company. Here it is provided by Section 80 that an official of such member company or any other person can act as the representative at any meeting of the company whose shares the member company holds, provided he is authorized by a resolution of the Directors of that member company to that effect. The person so authorized has the same powers on behalf of the company he represents as he would have had were he an individual shareholder of that other company.

In Article 65 the ordinary rule of law is reiterated to the effect that no person shall act as a proxy unless he is a member of the company. Frequently it is provided that 'a proxy, attorney or substitute need not be a member at the time of his appointment but he must be a member and qualified to vote as such at the time of his being present at any meeting or tender his vote by a proxy, attorney or substitute'.

Clause 66 provides for the lodging of the proxy and the power of attorney or any authority under which it is signed. Frequently words are added to the effect that 'no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of this authorization. This is done when it is the desire of the managers or promoters that a general proxy authorizing the party to vote for an indefinite time should not be encouraged. The time provided by clause 66 above is 'seventy-two hours' which may be modified to suit the circumstances. The usual time provided for in Articles of Indian companies is 'forty-eight hours' before the time for holding the meeting, or adjourned meeting as the case may be, where the proxy form is to be used. Frequently an Article is added to provide for the contingency of the previous death of the principal in the following form:—

A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal, or revocation of the proxy, or transfer of the share in respect of which the vote is given, provided no intimation in writing of the death, revocation or transfer shall have been received at the office before the meeting.

Of course in each case the circumstances of the company concerned must be considered before deciding whether such a clause as the above is desirable or not.

67. An instrument appointing a proxy may be in the following form, or in any other form which the Directors shall approve :—

"I, ... of ..... in the district of ....., being a member of the ..... Company, Limited, hereby appoint ..... of ..... as my proxy to vote for me and on my behalf at the Ordinary or Extraordinary, as the case may be, General Meeting of the company to be held on the .... day of ..... and at any adjournment thereof."

Signed this ..... day of .....

Note :—This gives the form of the proxy which is usually provided for in the Articles. All Indian companies provide for a similar form in their Articles of Association which must be used at the time of voting by proxy. Generally the language is to the effect that 'the proxy is to be in the following form or as near thereto as possible'. In such cases a little variation in the form will not matter but where the wording is imperative such as 'every instrument of proxy shall be in the form or to the effect following', the form given should be strictly followed.

Directors

68. The number of the Directors and the names of the first Directors shall be determined in writing by a majority of the subscribers of the Memorandum of Association.

Note :—The above form as suggested by 'Table A' is very rarely, if at all, followed in practice in India. It is usual to state exactly both the maximum and minimum number of the Directors specifically in the Articles in more or less the following form :—

'The number of Directors shall not be less than four and not more than eight excluding *ex-officio* Directors'. In some companies it is added nowadays that among the Directors 'eighty per cent shall always be Indians'.

'Table A' does not suggest a clause appointing Directors by the Article. The present universal practice is to appoint

the first Directors by the Articles in more or less the following form :—

The persons hereinafter named shall be the first Directors, that is to say :—

(1) Sir Rustomji Framji,
(2) Lakshmidas Sundardas, Esq.,
(3) Jagmohandas Ghordhandas, Esq.,
(4) Khan Bahadur Mohd. Abubaker,
(5) Pestonji F. Jinwalla, Esq.

Frequently an Article is introduced providing for the appointment of what is called an 'alternate Director'. This is worded more or less in the following form :—

The Director who is out of ..... or about to go out of ..... may, with the approval of the Directors by notice in writing under his hand appoint any duly qualified person to be an alternate Director during his absence, and such appointment shall have effect and such appointee while he holds office as Director shall be entitled to notice of meetings of the Directors and to attend and vote thereat accordingly, but he shall forthwith vacate office if and when the appointor returns or vacates office as Director or removes the appointee from office by notice in writing under his hand.

The form for the appointment of additional Directors by a special power to the Directors is also to be found in some Articles as follows :—

The Directors shall have power at any time, and from time to time, to appoint any other persons as Directors either to fill a casual vacancy or as an addition to the Board, but so that the total number of Directors shall not at any time exceed the maximum fixed as above, and so that no such appointment shall be effective unless two-thirds of the Directors concur therein. Any Directors so appointed shall hold office until the next following Ordinary General Meeting of the company and shall then be eligible for re-election.

In Indian companies managing agencies are generally appointed to manage the companies and thus arises the question of *ex-officio* Directors, nominated by the firm of the Managing Agents. The form of the Articles in such a case runs more or less as follows :—

Bulsara Co. Limited shall be entitled to nominate from time to time two Directors of the company so long as Bulsara Company Limited are the Managing Agents of the company and such nominees shall not be subject to retirement by rotation and shall not be counted in determining the rotation of retirement of Directors nor shall they be required to have the necessary share qualification. The Directors so nominated by the Managing Agents shall be called *ex-officio* Directors. Articles 78, 79 and 86 shall not apply to *ex-officio* Directors.

Note :—In the above Article it should be noted that the Articles 78, 79 and 86 which are mentioned relate to the retirement by rotation of Directors and removal of Directors by an extraordinary resolution of the company. These are not made applicable in the case of *ex-officio* Directors nominated by the Managing Agents.

69. The remuneration of the Directors shall from time to time be determined by the company in General Meeting.

Note :—The usual practice is to fix the remuneration by the Article itself instead of leaving it open as suggested in the above form of 'Table A'. The form in general use in Indian companies is more or less as follows :—

> The remuneration of every Director shall be Rs. ..... for every meeting of the Board attended by him. The Directors shall also be remunerated for any extra service done by them outside their duties as defined by these regulations. The Directors shall also be paid any travelling and other expenses of attending and returning from meetings of the Board (including hotel expenses) and any other expenses properly incurred in connexion with the business of the company.

Frequently in this clause words are added to the following effect :—

And the Directors shall be paid such further remuneration (if any) as the company in General Meeting shall from time to time determine ; and such remuneration and further remuneration shall be divided among the Directors in such proportion and manner as the Directors may from time to time determine, and in default of such determination within one year, equally.

The above form reserves power to the General Meeting for further remuneration to be given as the General Meeting may determine in addition to that provided for by the Articles.

As regards travelling expenses, there are, however, additions made in some Articles of Association more or less in the following terms :—

The Directors may allow and pay to any Director, who is not a *bona fide* resident in ..... and who shall come to ..... for the purpose of attending a meeting, such sum as the Directors may consider fair compensation for his expenses and loss of time in connexion therewith, in addition to his fee for attending such meeting as above specified.

70. The qualification of a Director shall be the holding of at least one share in the company, and it shall be his duty to comply with the provisions of Section 85 of the Indian Companies Act of 1913.

Note :—It is usual to provide a number of shares, large or small in the same form as given above as the qualification of Directors in the Articles of Indian companies.

Powers and Duties of a Director

71. The business of the company shall be managed by the Directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Indian Companies Act, 1913, or any statutory modification thereof for the time being in force, or by these Articles, required to be exercised by the company in General Meeting, subject nevertheless to any regulation of these Articles, to the provisions of the said Act, and to such regulations being not inconsistent with the aforesaid regulations or provisions as may be prescribed by the company in General Meeting; but no regulation made by the company in General Meeting shall invalidate any prior act of the Directors which would have been valid if that regulation had not been made.

Note :—In this case the Indian companies usually follow the above 'Table A' form with slight variations here and there. In addition to this the Articles frequently give in detail the powers which the Directors are to exercise from time to time in an additional or extra Article more or less in the following form :—

> Without prejudice to the general powers conferred by Article No. .... and so as not in any way to limit or restrict those powers and without prejudice to the other powers conferred by these presents, it is hereby expressly declared that the Directors shall have the following powers (provided they are not exclusively vested in the Agents by these presents) * that is to say, power :—
>
> (*a*) To purchase or otherwise acquire any lands, buildings, machinery, premises, hereditaments, property, effects, assets, rights, credits, royalties, business, and goodwill of any joint stock company, firm or person carrying on the business of spinning and weaving or any other business which this company is authorized to carry on, in any part of India.
>
> (*b*) To purchase, or take on lease for any term or terms of years, or otherwise acquire any mills or factories or any land or lands, with or without buildings and outhouses thereon, situated in any part of India, at such price or rent, and under and subject to such terms and conditions as the Directors may think fit; and in any such purchase, lease

* The words in parentheses are used when a firm of Managing Agents is managing the company.

or other acquisition to accept such title as the Directors may believe or may be advised to be reasonably satisfactory.

(*c*) To let or lease the immovable property of the Company in part or in whole, for such rent, and subject to such conditions as may be thought advisable. To sell such portions of the lands or buildings of the company as may not be required for the purposes of the company. To mortgage the whole or any portion of the property of the company for the purposes of the company.

(*d*) At their discretion to pay for any property, rights, or privileges acquired by, or services rendered to the Company either wholly or partially in cash or in shares, bonds, debentures or other securities of the Company and any such shares may be issued either as fully paid up or with such amount credited as paid up thereon as may be agreed upon; and any such bonds, debentures, or other securities may be either specifically charged upon all or any part of the property of the Company and its uncalled capital or not so charged.

(*e*) To secure the fulfilment of any contracts or engagement entered into by the Company, by mortgage or charge of all or any of the property of the Company, and its unpaid capital for the time being, or in such other manner as they may think fit.

(*f*) To give to any officer, or other person employed by the Company a commission on the profits of any particular business or transaction, or a share in the general profits of the Company, and such commission or share of profits shall be treated as part of the working expenses of the Company.

(*g*) Before recommending any dividend, to set aside such portion of the profits of the Company as they may think fit, to form a fund to provide for such pensions, gratuities or compensation; or to create any Provident or Benefit Fund in such manner as the Directors may deem fit.

(*h*) To pay or allow dividends or bonuses from time to time on all shares held by the Company, however acquired.

(*i*) Before declaring any dividend, to set aside out of the profits of the Company such sums (such sums being not less than those recommended or approved by the Agents) as they may think proper, for Depreciation or Depreciation Fund, Reserve Fund or Sinking Fund or any special fund to meet contingencies, or to repay debentures or debenture stock, or for special dividends, or for equalizing

dividends, or for repairing, improving, extending and maintaining any of the property of the Company; or for the welfare and education of the employees, etc. of the Company; or for providing for bad debts and for other purposes, as the Directors may, in their absolute discretion, think conducive to the interests of the Company, with powers from time to time to transfer moneys standing to the credit of one Fund or any part thereof to the credit of any other Fund; and to divide the Reserve Fund into such special fund as the Directors may think fit and to employ the assets consisting of all or any of the above Funds, including the Depreciation Fund, in the business of the Company or in the purchase or repayment of debentures or debenture stock; and that without being bound to keep the same separate from the other assets and without being bound to pay interest on the same. If the assets constituting any of the share funds are employed in the business of the Company, the Directors may allow or pay to the credit of such funds interest at such rate as the Directors may think proper, but not exceeding 9 per cent per annum.

(*j*) To appoint any person or persons (whether incorporated or not incorporated) to accept and hold in trust for the Company any property belonging to the Company, or in which it is interested or for any other purposes; and to execute and do all such deeds and things as may be requisite in relation to any such trust and to provide for the remuneration of such trustees.

(*k*) To accept from any member, so far as may be permissible by law, a surrender of his shares or any part thereof, on such terms and conditions as shall be agreed.

(*l*) To execute in the name and on behalf of the Company in favour of any Director or other person who may incur, or be about to incur, any personal liability whether as principal or surety for the benefit of the Company, such mortgages of the Company's property (present and future) as they think fit; and any such mortgages may contain a power of sale and such other powers, provisions, covenants and agreements as shall be agreed upon.

(*m*) At any time and from time to time, by Power of Attorney or under the Seal of the Company, to appoint any person or persons, to be Attorney or Attorneys of the Company, for such purposes and with such powers, authorities and discretions (not

exceeding those vested or exercisable by the Directors under these presents) and for such period and subject to such conditions as the Directors may from time to time think fit.

(*n*) Notwithstanding anything herein contained, to give usual commission to the branch firms of the Agents' firm, or firm in which they are interested in anywise, for purchasing cotton, stores and other merchandise and selling goods, etc. and bonus or interest in any particular business or transaction of the Company or a participation in the profits thereof.

(*o*) To pay the costs, charges and expenses, preliminary and incidental, to the promotion, formation, establishment and registration of the Company.

(*p*) To delegate to any or more of them or to an outsider or outsiders any of the powers vested in them.

(*q*) For, or in relation to, any of the matters aforesaid or otherwise for the purposes of the Company to enter into all such negotiations and contracts, and rescind and vary all such contracts, and execute and do all such acts, deeds and things in the name and on behalf of the Company, as they may consider expedient.

(*r*) To sanction and authorize all such matters and things as may be necessary to be done, authorized or sanctioned in and about the business and affairs of the Company in absence of the Agents, caused either by resignation or removal or otherwise, and till such other Agents be appointed; and in that case to exercise all the powers and rights and perform all the duties and obligations as would be exercised and performed in pursuance of these presents by the Agents of the Company, if in office.

72. The Directors may from time to time appoint one or more of their body to the office of Managing Director or Manager for such term, and at such remuneration (whether by way of salary, or commission or participation in profits, or partly in one way and partly in another) as they may think fit, and a Director so appointed shall not, while holding that office, be subject to retirement by rotation or taken into account in determining the rotation of Directors, but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be a Director, or if the company in General Meeting resolve that his tenure of the office of Managing Director or Manager be determined.

Note :—The above form contemplates the appointment of Managing Directors or Managers in companies which have no managing agents. This is usually adopted in India, otherwise special managing agency clauses are introduced specifying

the powers of such agents and referring to the various agreements entered into with them by the company in connexion with their agencies.

73. The amount for the time being remaining undischarged of moneys borrowed or raised by the Directors for the purposes of the Company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in General Meeting.

Note :—This clause, although desirable in the Articles of Association, is not universal in Indian companies, and in point of fact is very rarely used.

74. The Directors shall duly comply with the provisions of the Indian Companies Act of 1913, or any statutory modification thereof for the time being in force, and in particular with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the Company or created by it, and to keeping a register of the Directors, and to sending to the Registrar an annual list of members, and a summary of particulars relating thereto and notice of any consolidation or increase of share capital, or conversion of shares into stock, and copies of special resolutions and a copy of the register of Directors and notifications of any changes therein.

Note :—The above clause also simply reiterates as a reminder the duties of the Directors in connexion with mortgages and charges which have to be registered under the Indian Companies Act, as otherwise the mortgage or charge becomes inoperative though the money borrowed on such a mortgage or charge can be recovered as an unsecured loan.

75. The Directors shall cause minutes to be made in books provided for the purpose :—

(*a*) of the appointments of officers made by the Directors,

(*b*) of the names of the Directors present at each meeting of the Directors and of any committee of the Directors,

(*c*) of all resolutions and proceedings at all meetings of the company, and of the Directors, and of committees of Directors,

and every Director present at any meeting of Directors or committee of Directors shall sign his name in a book to be kept for that purpose.

Note :—This clause again is a form of reminder to the Directors about their duties to cause proper minutes to be taken in books dealing and defining the said minutes. It is generally incorporated bodily in the Articles of Association of our Indian companies. 'Table A' suggests that every Director present at the meetings of Directors or committees of Directors should sign his name in a book to be kept for this purpose. This requirement is not made compulsory in Indian companies but in its place a paragraph is added to the following effect: 'and any such minutes of any meetings of the Directors or of any Committee, or of the

Company, if purporting to be signed by the Chairman of such meeting, or by the Chairman of the next succeeding meeing, shall be receivable as *prima facie* evidence of the matters stated in such minutes'.

The Seal

76. The Seal of the company shall not be affixed to any instrument except by the authority of a resolution of the Board of Directors, and in the presence of at least two Directors and of the secretary or such other person as the Directors may appoint for the purpose; and those two Directors and secretary or other person as aforesaid shall sign every instrument to which the Seal of the company is so affixed in their presence.

Note:—The above form is usually adopted bodily in Indian companies. Sometimes the following words are also added: 'the Directors shall provide a Common Seal for the purpose of the company and shall have power from time to time to destroy the same and substitute a new Seal in lieu thereof and the Directors shall provide for the safe custody of the Seal for the time being'.

Disqualification of a Director

77. The office of Director shall be vacated if the Director

(*a*) fails to obtain within the time specified in sub-section (1) of Section 85 of the Indian Companies Act, 1913, or at any time thereafter ceases to hold the share qualification, if any, necessary for his appointment; or

(*b*) is found to be of unsound mind by a Court of competent jurisdiction; or

(*c*) is adjudged insolvent; or

(*d*) fails to pay calls made on him in respect of shares held by him within six months from the date of such calls being made; or

(*e*) without the sanction of the company in general meeting accepts or holds any office of profit under the company other than that of a managing director or manager or a legal or technical adviser or a banker; or

(*f*) absents himself from three consecutive meetings of the directors or from all meetings of the directors for a continuous period of three months, whichever is larger, without leave of absence from the board of directors; or

(*g*) accepts a loan from the company; or

(*h*) is concerned or participates in the profits of any contract with the company; or

(*i*) is punished with imprisonment for a term exceeding six months:

Provided, however, that no Director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is a

Director; but a Director shall not vote in respect of any such contract or work, and if he does so vote, his vote shall not be counted.

Note:—The above clause is bodily adopted by most of the Indian companies.

Retirement by Rotation of Directors

78. At the first Ordinary Meeting of the company the whole of the Directors shall retire from office, and at the Ordinary Meeting in every subsequent year, one-third of the Directors for the time being, if their number is not three or a multiple of three, then the number nearest to one-third shall retire from office.

79. The Directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became Directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

80. A retiring Director shall be eligible for re-election.

81. The company at the General Meeting at which a Director retires in the manner aforesaid may fill up the vacated office by electing a person thereto.

Note:—The above form as given in Article 78 of 'Table A' is generally followed but in the case of companies with managing agents, provision is made to the effect that the Director who so retires by rotation is not the nominee of the managing agents. This is necessary because retirement by rotation is not to apply to the nominees of the managing agents who being *ex-officio* are more or less permanent Directors.

In connexion with this Article, Indian companies usually embrace an additional requirement providing that in case new Directors are to be proposed at a General Meeting in place of those retiring by rotation, their names should be submitted in advance. In such cases the following words would be used: 'and no Director shall be elected unless his name shall be submitted two days prior to the meeting'. Some companies also add: 'and that they shall be approved by the Directors'. It is very doubtful whether the last condition of prior approval by Directors would be valid at law and it is clearly a most undesirable addition.

It may be mentioned here that a further Article is usually added to provide for the contingency of vacancies occurring and the minimum number being exceeded. This is in more or less the following form:—

The continuing Directors may act notwithstanding any vacancy in their body; but so that if the number falls below the minimum above fixed the Directors shall not, except for the purpose of filling vacancies, act so long as the number is below the minimum.

82. If at any meeting at which an election of Directors ought to take place, the places of the vacating Directors are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place, and, if at the adjourned meeting the places of the vacating Directors are not filled up, the vacating Directors or such of them as have not had their places filled up shall be deemed to have been re-elected at the adjourned meeting.

Note :—The above form is usually adopted by Indian companies.

83. Subject to the provisions of Section 83A and 83B of the Indian Companies Act, 1913, the company may from time to time in General Meeting increase or reduce the number of Directors, and may also determine in what rotation the increased or reduced number is to go out of office.

Note :—The above form seeks to empower a General Meeting by an ordinary resolution to alter the maximum and minimum number of Directors as laid down in the Articles. This is not usually followed in this country. Section 83A of the Indian Companies Act makes three directors obligatory in case of all public companies and also in case of a private company which is a subsidiary company of a public company. Thus the above article does not empower the members of a company in General Meeting to reduce the number of directors below three in case of such companies.

84. Any casual vacancy occurring on the Board of Directors may be filled up by the Directors, but the person so chosen shall be subject to retirement at the same time as if he had become a Director on the day on which the Director in whose place he is appointed was last elected a Director.

Note :—This form is usually followed by Indian companies. It may be added that Articles are also inserted empowering the company in General Meeting to remove a Director other than the *ex-officio* Directors because *ex-officio* Directors' appointments depend on a separate agreement with the managing agents.

85. The Directors shall have power at any time, and from time to time, to appoint a person as an additional Director, who shall retire from office at the next following Ordinary General Meeting, but shall be eligible for re-election by the company at that meeting as an additional Director.

86. The company may by extraordinary resolution remove any Director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead ; the person so appointed shall be subject to retirement at the same time as if he had become a Director on the day on which the Director in whose place he is appointed was last elected a Director.

Note :—This Article is absolutely necessary, and is generally incorporated in the Articles of Association of Indian companies. Where it is not so inserted, the shareholders

would not have the power of removing a Director. In Indian forms, however, the removal is qualified by the following words: 'remove any Director other than the Director *ex-officio*'. These words are added because the *ex-officio* Directors, being nominees of managing agents under a separate agreement, are excluded.

Proceedings of Directors

87. The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the Chairman shall have a second or casting vote. A Director may, and the secretary on the requisition of a Director shall, at any time summon a meeting of Directors.

88. The quorum necessary for the transaction of the business of the Directors may be fixed by the Directors and unless so fixed shall (when the number of Directors exceeds three) be three.

Note:—The above forms are usual in the case of Indian companies, except that the quorum is usually fixed by the Articles of Association of Indian companies.

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

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

Note:—The above form is usual in most companies. When, however, a Directors' Meeting is to be convened in companies under managing agencies, an addition is usually inserted in the following form:—

> The managing agents may at any time and shall upon the request of a Director convene a meeting of the Director at such place as the managing agents may think fit for the disposal of business. It shall not be necessary to give notice of a meeting of the Directors to a Director who is not in India.

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

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

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

Note:—The above forms are usually incorporated bodily in the Articles of Association of Indian companies with slight variations here and there in the language. Sometimes an addition is made to Article 91 to the effect that 'any committee so formed shall in exercise of the powers so delegated conform to any regulations that may from time to time be imposed upon it by the Directors'. A further Article is frequently added as follows:—

> The meetings and proceedings of any such Committee when consisting of two or more members, shall be governed by the provisions herein contained for regulating the meeting and proceedings of the Directors so far as the same are applicable thereto and are not superseded by any regulations made by the Directors under the preceding clause.

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

Note:—The above is a saving clause most necessary in order to avoid the confusion which might be caused through any irregularity, innocently practised in the Board meeting and discovered sometime later when the position may have been entirely altered. This form is usually bodily incorporated in the Articles of Association of Indian companies.

Frequently provision is made for a resolution in writing signed by the Directors to be followed as if it were a resolution of a meeting of the Board of Directors itself. Whatever may be said as to the desirability of giving such powers, they are valid and binding if the Articles provide for them. The form in which this Article runs is as follows:—

A resolution in writing, signed by all the Directors shall be as valid and effectual as if it had been passed at a meeting of Directors duly called and constituted.

Articles applying to the resignation of Directors, are usually to be found in the Articles of Association of Indian Companies. These run in more or less the following form :—

A Director may at any time give notice in writing of his wish to resign by delivering such notice to the company, and thereupon his office shall be vacated.

Frequently an Article is also added to the effect that the Register of Directors should be maintained as provided by Section 87 of the Indian Companies Act of 1913. This is one of the Articles which serves to remind the Directors of what they have to do under the Act and runs as follows :—

The company is to keep at its offices a Register containing the names and addresses and occupations of the Directors and is to send to the Registrar of Companies, a copy of such Register and shall from time to time notify the Registrar of any change that takes place in such Directors, as required by Section 87 of the Act.

CHAPTER VI

MEETINGS OF CREDITORS AND CONTRIBUTORIES FOR WINDING-UP A JOINT STOCK COMPANY

Meetings of Creditors

Meetings of the creditors of joint stock companies have frequently to be called to decide questions concerning them, as for example, when a compromise or arrangement has to be made with the creditors. There are three methods of compromise provided for by the Indian Companies Act of 1913. The first of these methods is under Section 153, in which a compromise may be made in case of reconstruction, etc. with all creditors or any class of them without the company going into liquidation.

Meetings of Creditors for a Compromise

In this connexion the most accommodating section is Section 153 of the Indian Companies Act of 1913, sub-sections (1) and (2) of which lay down that :—

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

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors, or on all the members or class of members, as the case may be, and also on the company:

or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

The above section is available either when the company is in liquidation or when it is a going concern and wants to make some compromise or arrangement with its creditors without being wound up. Under this section a petition for sanction to compromise or make an arrangement may be made by the company or any creditor or member of the company, or where the company is in liquidation by the liquidator himself. The Chairman is appointed by the Court and is directed to convene the meeting. The Court orders a meeting of creditors or of a class of creditors to be called, held and conducted in the manner it directs. When calling this meeting, care should be taken that all creditors are notified, including those resident abroad or at distant places [*English, Scottish and Australian Chartered Bank* (1893), 3 Ch. 385]. Proxies by creditors will be allowed in forms which the judge who makes the order has settled [*Re Magadi Soda Co. Ltd.* (1925), 94 L.J. Ch. 217; *In Re Tata Iron & Steel Co. Ltd.* (1928), 30 Bom. L.R. 197]. In this case the proxies of creditors must be stamped on the footing of powers of attorney, and holders of debentures to bearer must produce the original debentures in order to be entitled to vote [*Wedgewood Coal Co.* (1877), 6 Ch.D. 627].

The Section here says, in order to pass this compromise the creditors must be a majority in number and must represent in addition three-fourths in value of the total creditors, or the class of creditors who are called upon to approve this compromise or arrangement. If the compromise is thus agreed to by the requisite majority, the Court's sanction would be obtained as the next step. As soon as that is done, the compromise will be binding on all the creditors or the class of creditors, as well as on the company, and if the company is in liquidation, it will also be binding on the liquidator and the contributories of the company. Any order made under sub-section (2) of Section 153 shall have no effect until a certified copy of the order has been filed with the Registrar and a copy of every such order shall be annexed to every copy of the memorandum or instrument constituting or defining the constitution of the company issued after the order has been made. Any default in compliance with this

rule would entail a fine not exceeding Rs. 10 for each copy in respect of which the default is made on the company and every officer of the company who is knowingly and wilfully in default. The object of Section 153(1) is to ascertain the wishes of the creditors or members and not to get a verdict from the Court as to the feasibility or practicability of the proposed scheme. The policy of the Act seems to be to ascertain the wishes of the majority of the creditors subject to protection of the rights of the minority. Under sub-section (2) of Section 153 the Court is vested with certain discretion but the scope of such discretion is limited. The Court should not, however, decline to order a meeting of the creditors to be called unless the proposals are either illegal being in contravention of the provisions of the Companies Act, or incapable of modification in view of facts already ascertained so that it would be a waste of time and expenditure to circulate them [*In Re Travancore Quilon Bank Ltd. (In Liqn.)*, 1939 Mad. 318, 330, 331].

Where such compromise or arrangement was made for the purpose of amalgamation or reconstruction or absorption under the old law, companies had frequently to resort to winding-up, as there was no means of avoiding it. Now Sections 153A and 153B of the Indian Companies (Amendment) Act of 1936 have simplified the process of reconstruction or amalgamation and absorption and makes it possible for preservation of the name and the goodwill of the company or companies concerned and at the same time avoids winding-up. This method also saves the unnecessary expenditure which was involved by the compulsory winding-up through the usual process of winding-up of the absorbed company. Here the company transferring is called the "transferor company" and the other company to whom the undertaking or property is to be transferred is termed the "transferee company". The Court is here authorized to make provision for persons who dissent from the compromise or arrangement.

It may be added here that as soon as a company is in liquidation, the shareholders are called contributories and are placed on a list called 'the list of contributories'. This list is binding on all creditors or every person who has a pecuniary claim against the company, whether actual or contingent [*Raghubar* v. *Bank of Upper India* (1919), 46 Indian App. 123; 41 All. 566]. The Court naturally sanctions

any scheme which it thinks reasonable and in good faith [*Re Alabama T. & P. Rail Co.* (1891), 1 Ch. 213]. Even where the scheme proposes that the debenture holders should be given shares in place of their debentures for the full value of their debentures, it would not be objected to and the Court in such cases may compel the dissentient debenture holders to surrender their securities [see the above *Alabama Case* as well as *Empire Mining Co.* (1890), 44 Ch.D. 402]. The only point that the Court will consider while sanctioning in this case is whether the majority are acting *bona fide* and are not taking a wrong advantage of the minority. The Court also sees whether the scheme of compromise is reasonable (*English, Scottish & A. C. Bank* (1893), 3 Ch. 385; *Bombay Cotton Manufacturing Co.* (1910), 12 Bom. L.R. 525]. When a company happens to be in liquidation the scheme generally contains terms to the effect that on their being sanctioned the proceedings of winding-up shall be stayed and the company shall resume business.

The second method is where a meeting of creditors may be called to make an arrangement between a company which is about to be, or is in course of being wound up voluntarily, and its creditors. In connexion with this, Section 215 of the Indian Companies Act of 1913 is important. It reads as follows:—

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

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

Thus under Section 215 an extraordinary resolution of the company as well as the assent of three-fourths in number and value of the creditors is necessary to sanction the arrangement which will thereafter bind the company and its creditors. The sanction of the Court is not required but the right is given to any creditor or contributory to appeal to the Court

within three weeks of the completion of the arrangement and the Court is given the power either to amend, vary or confirm the arrangement as it pleases. It will be noticed that what is required here is the assent of three-fourths in number and value of the creditors and that the sanction of the Court for confirming the arrangement is not made compulsory. Where, however, it is impossible or difficult to get this three-fourths number and value to assent, the correct course would naturally be to proceed under Section 153 as described above, where only a majority in number is made compulsory, though there also three-fourths in value is required.

The third method whereby the liquidator is given the power to compromise with creditors with the sanction of an extraordinary resolution as well as that of the Court, is given in Section 234 which runs as follows :—

(1) The liquidator may, with the sanction of the Court when the company is being wound up by the Court, or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the company in the case of a voluntary winding-up, do the following things or any of them :—

(i) pay any classes of creditors in full ;

(ii) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim, present or future, whereby the company may be rendered liable ;

(iii) compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims present or future, certain or contingent subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding-up of the company, on such terms as may be agreed, and take any securities for the discharge of any such call, debt, liability or claim, and give complete discharge in respect thereof.

(2) The exercise by the liquidator of the powers of the section shall be subject to the control of the Court, and any creditor or contributory may apply to the

Court with respect to any exercise or proposed exercise of any of these powers.

The above section gives a wide scope to the liquidator as to the exercise of his power of compromising with creditors and contributories with the sanction of the Court which is to be obtained according to the rules of the High Courts concerned applying to this section. This compromise can be effected in case of liquidation by the Court under its supervision and also with the sanction of an extraordinary resolution of the company if the company is in voluntary winding-up [*Liquidator, Union Bank of India* v. *Gobind Singh* (1923), I.L.R. 4, Lahore 239]. If, however, the company in voluntary liquidation happens to be in an insolvent condition, the liquidator should obtain the sanction of the Court instead of the sanction of the company because in such cases the contributories or shareholders have no interest in the assets of the company.

Meetings of Contributories

When a company is being wound up either compulsorily or voluntarily or under the supervision of the Court, its members or shareholders are called contributories. These contributories have certain rights and privileges which they can exercise at meetings called by the liquidator. Compulsory liquidation is referred to in the Indian Companies Act of 1913, Section 155, as winding-up by the Court. Besides every existing or present member of a company at the commencement of its winding-up, every past member who has ceased to be a member within one year of the commencement of the winding-up is also called a contributory. These persons are called contributories because they are liable to contribute to the assets of the company to an amount sufficient for the payment of its debts and liabilities and costs of winding-up and for the adjustment of rights of the contributories among themselves, provided the amount they are called upon to pay or contribute, in case of a limited liability company does not exceed the face value of the shares they have subscribed for. If they have paid for these shares fully, though they may be brought on the list of contributories, they need contribute nothing, but if there is a surplus of assets left over, after paying the crediors' debts and expenses in full, the surplus will be divided among them.

There are two lists of contributories prepared by the liquidator: one is called the 'A' list, on which are placed the names of the present members, and the other is the 'B' list, on which the names of the past members who were members within twelve months of the date of the winding-up, are entered. The members on the 'A' list of contributories, i.e. the present members, are of course primarily liable for all the debts of the company in the course of winding-up, whereas the liability of the 'B' list of contributories is secondary because they cannot be called upon to pay until the 'A' list of contributories has been exhausted. Section 158 of the Act defines the contributories as follows:—

> The term 'contributory' means every person liable to contribute to the assets of a company in the event of its being wound up, and, in all proceedings for determining and in all proceedings prior to the final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory.

Winding-up by the Court

According to Section 162, a company may be wound up by the Court:—

(i) if the company has by special resolution resolved that the company be wound up by the Court;
(ii) if default is made in filing the statutory report or in holding the statutory meeting;
(iii) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
(iv) if the number of members is reduced, in the case of a private company below two or, in the case of any other company, below seven;
(v) if the company is unable to pay its debts;
(vi) if the Court is of opinion that it is just and equitable that the company should be wound up.

It will thus be seen from the above section that in order to bring about a winding-up by the Court, the petition must make out one or more of the above six grounds before a winding-up order can be passed by the Court. It may be added that with regard to clause six above, the Privy Council has held that this clause is not confined to cases *ejusdem generis* of the first five sub-clauses but may include any

ground which in the opinion of the Court is just and equitable [*Loch* v. *John Blackwood Limited* (1924), A.C. 783; *Sabapathy* v. *Sabapathy Press Co. Ltd.* (1925), 48 Mad. 448]. The test in such a case would be whether at the date of the presentation of the winding-up petition there was any hope that the object of trading at a profit was attainable, the burden of proof being of course on the petitioner [*Davis Ltd.* v. *Brunswick Ltd.* (1936), Comp. Cas. 227; see also *Bihar National Insurance Co.'s Case* (1942), 12 Comp. Cas. 66].

Winding-up Petition

A petition for winding-up by the Court may be presented by any of the following:—

(1) *A Shareholder or contributory*—When a petition is presented by the shareholders they should take up one or more of the first four grounds. In one case it was laid down that where a petition for winding-up a company compulsorily makes allegations relating to the internal management or mismanagement, the matter is not one that would call for the interference of the Court but is one for the shareholders themselves to deal with [*In Re The Pioneer Bank, Ltd., In Re Chainrai Veleram* (1914), 16 B.L.R. 508]. It was further held that a petition by a shareholder to wind up the company stands on a different footing from a creditor's petition. The shareholders' petition should be scrutinized more closely on presentation. Further, the grounds taken by the shareholder in his petition should be either one or more of those laid down in sub-sections (i), (ii), (iii) and (iv) of Section 162, and that if any other grounds are alleged, the petition does not satisfy the requirements of the Act.

The same rule is partially laid down in Section 166(*a*) and (*b*) which run as follows:—

Provided that:—

(*a*) a contributory shall not be entitled to present a petition for winding-up a company unless:

(i) either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven; or

(ii) the shares in respect of which he is a contributory or some of them either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding-up, or have devolved on him through the death of a former holder;

(*b*) a petition for winding-up a company on the ground of default in filing the statutory report or in holding the statutory meeting shall not be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held.

(2) *The Company*—The company may be wound up compulsorily through the petition of the company itself for which purpose the company must have passed a special resolution declaring that it should be wound up compulsorily. This course, however, is not often adopted as it is more convenient to pass a resolution to wind up voluntarily.

(3) *A creditor or creditors*—When a petition is presented by a creditor or creditors it must be shown that the debt for which the person is a creditor is an existing debt which he can enforce against the company. Again it should be proved that the company is in an insolvent condition, though it is not absolutely necessary to prove that sufficient assets will be left to pay all unsecured creditors. This right of the creditor is not exactly an individual right, but it is a right which he is supposed to exercise in his representative character of a creditor or class of creditors, and the Court may refuse the order if it is not likely to benefit the majority of the creditors [*Greenwood & Co.'s Case* (1900), 2 Q.B. 306], or where the majority in value of the creditors oppose the petition [*Chapel House Colliery Co.'s Case* (1883), 24 Ch.D. 259]. The assignee of a debt may also petition [*Paris Skating Co.'s Case* (1877), 5 Ch.D. 959], but this assignment by the creditor concerned must have been made before the petition was lodged. A

debenture-holder whose debt has become due may therefore petition, though a trustee on behalf of debenture-holders cannot petition as he is not considered to be a creditor [*Uruguay Central Rly. Co.'s Case* (1879), 11 Ch.D. 372]. The prospective or contingent creditor may not petition until such security for costs has been given as the Court thinks reasonable, and until a *prima facie* case for winding-up has been established to the satisfaction of the Court [Section 166(*c*)' of the Indian Companies Act of 1913].

(4) *The Registrar*—The Indian Companies Act, 1913 [S. 166(*aa*)] now gives the Registrar of Companies the right to petition on the ground that from the financial condition of the company as disclosed in its balance sheet or from the report of an inspector appointed under Section 138 it appears that the company is unable to pay its debts. This is the only ground on which the Registrar can petition for winding-up a company. Where the Registrar wishes to petition for winding-up under this section he must first obtain the sanction of the Central Government before presentation of his petition.

Voluntary Winding-up

In the case of voluntary winding-up, the action is as the term implies, ' voluntary ', i.e. members of the company concerned, of their own accord, resolve to liquidate the company's affairs and for that purpose appoint their own liquidator and manage their own affairs. The Indian Companies (Amendment) Act, 1936, now divides voluntary winding-up into two denominations, viz. (1) members' voluntary winding-up, and (2) creditors' voluntary winding-up. A company may be wound up voluntarily under Section 203 of the Indian Companies Act of 1913 in the following circumstances :—

(1) When the period (if any) fixed for the duration of the company by the Articles expires, or on the occurrence of any event for which the Articles provide that the company is to be dissolved and the company in General Meeting has passed a resolution requiring the company to be wound up voluntarily ;

(2) if the company resolves by special resolution that the company be wound up voluntarily;

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

From this it will be seen that when there is a provision in the Articles to the effect that by the happening of a particular event, or expiry of a certain period, the company is to be wound up, as soon as the event does occur or the time provided expires, the Directors must call a meeting of the company and place before them the resolution to wind up voluntarily. Here an ordinary resolution is sufficient. The proper notice should be given under the direction of a properly constituted Board of Directors at which a quorum must be present [*In Re Bridport Old Brewery Co.* (1867), 2 Ch. 191; *Harben* v. *Phillips* (1883), 23 Ch.D. 14]. In drafting the notice as well as the resolution it is best to follow the wording of the Act.

The winding-up commences from the time that the resolution is passed [*Weston's Case* (1869), 4 Ch.D. 20]. It may be noticed that it will still be open to any member of the company, who in case of liquidation is known as a contributory, to petition the Court for compulsory winding-up of the company. A provision in the Articles, it has been held, does not in any way deprive a member of this statutory right. The usual course, however, is to pass a special resolution for the purpose of winding-up voluntarily. An extraordinary resolution is generally passed in the case of companies which are unable to carry on business by reason of their liabilities. It will thus be seen that in the first case an ordinary resolution is wanted; in the second a special resolution is necessary; and in the third an extraordinary resolution must be passed. Liquidation commences from the time of the passing of the resolution for voluntary liquidation (Section 204).

The effect of the voluntary winding-up is that from the commencement of such winding-up the company ceases to carry on business except so far as may be necessary for beneficial winding-up. The corporate state and the corporate powers of the company shall, notwithstanding anything to the contrary in the Articles, continue until it is dissolved (Section 205). In voting for resolutions of winding-up, the same rules

as to voting in the ordinary affairs of the company apply, both with regard to voting personally and by proxy. The notice of the resolution, special or extraordinary, to wind up the company voluntarily, should be advertised in the *Gazette* within ten days of its passing and also in some newspaper (if any), circulating in the district where the registered office of the company is situated (Section 206).

The Two Types of Voluntary Winding-up

As mentioned above, the Indian Companies (Amendment) Act, 1936, has divided voluntary winding-up into two classes, viz. (1) members' voluntary winding-up, and (2) creditors' voluntary winding-up. In case of members' voluntary winding-up the directors of the company, or where there are more than two directors, the majority of the directors must make a declaration, verified by an affidavit, to the effect that they have made a full inquiry into the affairs of the company and have formed the opinion that the company will be able to pay its debts in full within three years from the commencement of the winding-up. This statutory declaration, known as the " declaration of solvency " must be made before the date on which notices of the meeting at which the winding-up resolution is to be proposed are sent out. This declaration of solvency must be supported by a report of the company's auditors on the company's affairs and registered with the Registrar in order to become effective. Where no such declaration of solvency is made and delivered the voluntary liquidation will be termed " creditors' voluntary winding-up " (S. 207). In case of a members' voluntary winding-up there is a presumption that the company is solvent and will be able to pay all its debts when there is no evidence to the contrary [*Gerard* v. *Worth of Paris Ltd.* (1936), 2 All. E.R. 905].

Winding-up under Supervision

Under Section 221, winding-up may be brought about under supervision in the following circumstances :—

> When a company has by special or extraordinary resolution resolved to wind up voluntarily, the Court may make an order that the voluntary winding-up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories or

others, to apply to the Court, and generally on such terms and conditions as the Court thinks just.

It should be noted that the first step towards winding-up under supervision is voluntary winding-up, and the Court thereafter may pass the order that the winding-up should continue subject to its supervision. Thus a supervision order cannot be made unless there is a valid resolution of voluntary winding-up. The advantages of winding-up under supervision are firstly that such winding-up automatically stays all legal proceedings against the company (Sections 225 and 232) and secondly because the supervision of the Court to the extent laid down by the order may be either as vigorous as in case of compulsory liquidation or almost as slack as in case of voluntary liquidation.

Meetings in connexion with Voluntary Winding-up

In case of a members' voluntary winding-up, the liquidator is appointed by the company in general meeting for the purpose of winding-up the company's affairs and distributing its assets. The liquidator's remuneration is also fixed at such meeting. As soon as such a liquidator is appointed the directors' powers cease except so far as permitted by the company in general meeting or by the liquidator (S. 208A).

In case of creditors' voluntary winding-up, the company must cause a meeting of the creditors to be summoned for the day, or the day next following the day on which the General Meeting at which the resolution for voluntary winding-up is to be proposed. The company must also cause notices of such creditors' meeting to be sent by post with the notices of the said meeting of the company. Notice of meeting of the creditors must also be advertised by the company as provided for in Section 206(1). The directors are also required to cause a full statement of the position of the company's affairs together with a list of the company's creditors and the estimated amount of their claims to be laid before this creditors' meeting. The directors must also appoint one of their number to preside at such meeting who must attend and preside at such meeting [S. 209A (1) to (4)]. The liquidator may be nominated by the creditors and the company at their respective meetings. Where different persons are nominated by the creditors and the company, the person nominated by the creditors shall be the liquidator. In

such a case any director, member or creditor may, within seven days of the creditors' nomination, apply to the Court for an order either directing that the person nominated by the company shall be liquidator instead of, or jointly with, the person nominated by the creditors or appointing some other person to be liquidator instead of the person appointed by the creditors. If no person is nominated by the creditors, the person nominated by the company shall be the liquidator (S. 209B).

In creditors' voluntary winding-up, the creditors may at their meeting appoint a committee of inspection consisting of not more than five persons. The company may, in such a case, if permitted by the creditors, appoint not more than five persons to act as members of such committee. If the creditors do not permit such appointment such persons are not qualified to act as members of the committee unless the Court otherwise directs. The Court may on application appoint other persons to act as such members in place of the persons mentioned in the resolution of the company (S. 209C).

The remuneration of the liquidator in case of a creditors' voluntary winding-up is fixed by the committee of inspection. If there is no committee, the creditors may fix the liquidator's remuneration. If the liquidator's remuneration is not so fixed, the Court shall determine the remuneration to be paid to the liquidator. On the appointment of the liquidator, the directors' powers cease except so far as sanctioned by the committee of inspection, or if there is no such committee by the creditors (S. 209D).

In the case where a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by or by the direction of the Court, the company may in general meeting, subject to any arrangement with its creditors, fill in the vacancy if the liquidation is a members' voluntary winding-up (S. 208B). In case of a creditors' voluntary winding-up, such a vacancy is to be filled in by the creditors (S. 209E).

Where the voluntary winding-up continues for more than one year the liquidator must summon, at the end of the first year from the commencement of the winding-up and each succeeding year within ninety days of the close of the year, a general meeting of the company in case of a members'

voluntary winding-up (S. 208D). In case of a creditors' voluntary winding-up the liquidator must, in such a case, summon a general meeting both of the company and of the creditors (S. 209G). At such meeting the liquidator must submit an account of his acts and dealings and of the conduct of the winding-up during the preceding year and a statement in the prescribed form containing the prescribed particulars with respect to the position of the winding-up.

As soon as the affairs of the company are fully wound up the liquidator must make up an account of the winding-up showing how the winding-up has been conducted and the property of the company disposed of. This account must be laid by the liquidator with his explanations before a general meeting of the company in case of a members' voluntary winding-up and before a general meeting both of the company and of the creditors in case of a creditors' voluntary winding-up. These meetings have to be called by advertisements in accordance with S. 206(1). After such meeting the liquidator must send to the Registrar a copy of the accounts and make a return to him of the holding of the meeting and of its date. Where the quorum was not present at such meeting the return must state that the meeting was duly summoned and that no quorum was present at it. Three months from the registration of such return the company is deemed to have been dissolved, in absence of the Court's order to the contrary [S. 208E(4) & S. 209H(4)].

It will thus be noticed from the above that in case of a members' voluntary winding-up the whole of the conduct of the liquidation remains in the hands of the members or shareholders as the company is in a solvent position and the creditors stand to lose nothing; whereas in case of a creditors' voluntary winding-up, as the company is in an insolvent condition, the control of the liquidation is entrusted to the creditors.

Compulsory Winding-up

In a compulsory winding-up, the Court may have regard to the wishes of the creditors and contributories as to all matters relating to the said winding-up, and may for that purpose direct meetings of creditors and contributories to be called. These meetings are held and conducted according to the directions of the Court, and at such meetings the Court

may appoint any person to act as Chairman in order to report the results to the Court. In these meetings, regard shall be had to the value of each creditor's debt, and regard shall be had to the number of votes conferred on each contributory according to the Articles (Sections 174 and 239). These sections may be given effect to by the Court through the medium of its specially framed rules in which power is reserved to every High Court in connexion with (1) holding and conducting meetings to ascertain the wishes of creditors and contributories, (2) settling the list of contributories, rectifying the register of members where required and collecting and applying the assets, (3) requiring delivery of property or documents to the liquidator, (4) making calls, and (5) fixing a time within which debts and claims must be proved (Section 246). Besides this, the official liquidator himself is given the power to summon on his own initiative General Meetings of creditors or contributories in order to ascertain their wishes. He is also compelled to hold as a matter of duty, meetings of creditors and contributories where such creditors or contributories by resolution have directed, or whenever he has been requested in writing to do so by one-tenth in value of the said creditors or contributories. In the administration of the assets of the company and in the distribution thereof among its creditors, the official liquidator shall have regard to any directions that may be given by resolution of the creditors or contributories at any General Meeting or by the committee of inspection so far as they do not violate the provisions of the Act (Section 183).

When such meetings are called, either through the orders of the Court, or by the official liquidator, seven days' notice must be given in writing to every creditor or contributory as to the time and place appointed for such a meeting, and as to the matter upon which the wishes of the creditors or contributories are to be ascertained. These meetings may be advertised if the Court so directs, in the *Gazette* and in any other newspapers that may be named [Rule 720, Bombay High Court). The voting at this meeting shall be either personal or by proxy, but no creditor shall appoint a proxy who is not a creditor of the company, whose debt or claim has been allowed, and no contributory shall appoint a proxy who is not a contributory of the company (Rule 722, Bombay

High Court). The Chairman of a meeting summoned by the directions of the Court must report the result to the Court.

Besides these, meetings may be called by the order of the Court in any winding-up when the Court thinks that it is necessary to ascertain the wishes of the creditors and contributories as provided for by Section 239. These meetings are called Court Meetings. The section runs as follows : —

(1) Where by this Act the Court is authorized in relation to winding-up to have regard to the wishes of creditors or contributories, as proved to it by any sufficient evidence, the Court may, if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and may appoint a person to act as Chairman of any meeting and to report the result thereof to the Court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by the Articles.

PART II

PUBLIC MEETINGS

CHAPTER VII

CONVENING, ADJOURNMENT, THE POSITION OF CHAIRMAN AND SPEAKERS

The English Law of Libel Amendment Act of 1888 defines a "public meeting" as any meeting *bona fide* and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern whether the admission thereto be general or restricted. Thus it was decided that the report of a sermon in a chapel is not a report of a public meeting within the Act [*Challoner* v. *Lansdown and Sons* (1894), 10 T.L.R. 290].

In England, the Public Order Act, 1936, defines the term "meeting" as a meeting held for the purpose of the discussion of matters of public interest or for the purpose of the expression of views on such matters. The same Act defines a "public meeting" as including any meeting in a public place and any meeting which the public or any section thereof are permitted to attend, whether on payment or otherwise. "Public place" is defined by that Act as any highway, public park or garden, any sea beach, and any public bridge, road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not, and includes any open space to which, for the time being, the public have or are permitted to have access, whether on payment or otherwise.

On the question as to what constitutes a meeting it has been laid down in *Sharp* v. *Dawes* (1876), 2 Q.B.D. 26, that a meeting implies a concurrence or comment face to face of at least two persons. Thus the Common Law rule to the effect that there must be at least two persons to constitute a meeting, and a quorum at a public meeting, has been evolved. This rule of Common Law is also a rule of common sense, because unless there are at least two persons, they cannot be said to meet. No doubt in the extreme case of a shareholders' meeting in a joint stock company in which only one shareholder holds all the shares of that particular class, it has been conceded that there can be a meeting of one person in the sense that a resolution signed by that single shareholder is considered to be a resolution of shareholders of that class.

We have seen this in Part I, when dealing with Company Meetings [*East* v. *Bennett Bros.* (1911), 1 Ch. 168-170]. Of course the mere physical presence of a quorum does not necessarily make a meeting : there must be an intention to meet by previous arrangement or previous notice [*Barron* v. *Potter* (1914), 1 Ch. 895 ; *Foster* v. *Foster* (1916), 1 Ch. 532].

The meeting must be held at the prescribed time and place or where no time or place is prescribed, it should be held at a reasonably convenient time and place. As a highway is intended only for the purpose of passage, there is no right to hold meetings either on public highways [*M'. Ara* v. *Magistrates of Edinburgh* (1913), S.C. 1073] or on private highways [*Hampstead Garden Suburb Trust* v. *Denbow* (1913), 77 J.P. 318].

Convening of Meetings

When a public meeting is not called under any statute or statutory body, the usual means of convening the meeting is by newspaper advertisements, handbills, bill posting, circular letters, etc. issued by a body of persons who have taken the lead in calling the meeting with a particular objective. Conveners generally sign their names under the notice in the advertisements or handbills or circulars they may have issued, particularly where important persons have united to call it with a view to attract as large a number as they possibly can and thereby make the meeting successful. Meetings may also be notified through posters and placards, as is frequently done. The date, day, time and place of the meeting, through the medium of these notices, is usually communicated and made reasonably convenient to the majority of those who are invited. When a meeting of a particular class of people is called, each member entitled to be present must be given due and adequate notice in accordance with the rules and regulations or standing orders of that class, organization, or society. This is necessary because, in such cases, want of notice or insufficiency of notice, i.e. a notice which does not define the business of the meeting, may nullify the validity of resolutions passed thereat.

In meetings of statutory bodies, the omission to summon one single member renders void all acts done at the meeting [*R.* v. *Shrewsbury* (1735), Cas. Lee temp. hardw. 147]. Even those who are not within summoning distance should be sum-

moned in such circumstances [*Smyth* v. *Darley* (1849), 2 H.L. 789]. Proceedings at a meeting where even by accident a notice has not been given to an individual member who is entitled to attend may be invalidated [*Rex* v. *Langhorne* (1836), 6 N. & M. 203]. In this case it was also held that even though the individual may have given a general notice that he did not want to be summoned, it was no excuse for not giving him the notice he was entitled to.

The next step when drafting a notice, is to see that it embraces a sufficient description of the work to be done particularly with regard to items which are considered to be of importance. Once having given these items, the meeting will not have any right to deviate from the objective in hand [*Longfield Parish Council* v. *Wright* (1918), 88 L.J. Ch. 119]. This is no doubt a very wholesome rule because unless a person knows exactly what the business to be done at a particular meeting will be, he cannot possibly decide whether it is worth his while to be present, and to place his point of view before the meeting in order to make the meeting arrive at a proper decision.

We have already seen in the case of joint stock companies that if all the persons entitled to attend a meeting are present and waive the notice, it would be quite regular [*In Re Oxted Motor Co.* (1921), 3 K.B. 32; *Machell* v. *Nevinson* (1809), 11 East 84n].

With regard to a notice being explicit, it has been held that this means that it should be free from trickiness [*Kaye* v. *Croydon Tramways* (1898), 1 Ch. 358; *Henderson* v. *Bank of Australasia* (1890), 45 Ch.D. 330]. In cases where a special meeting is called to consider special business, no other business can be considered at that meeting. It has been held by most authorities on the subject that the wisest course is to send notices to all who are members and entitled to attend whether they are within summoning distance or not unless there is a specific regulation of the body concerned—as in the Articles of Association of joint stock companies—by which it is laid down that a member residing at a particular distance need not be given a notice. Of course, the usual rule applying to joint stock companies, that the notice of an adjourned meeting need not be given unless the Articles or rules provide, would apply in this case also. The adjournment of a meeting, if made *bona fide*, is a continuation of the meeting

and thus the notice that was given for the first time holds good for and includes all other meetings following upon it [*Kerr* v. *Wilkie* (1860), 1 L.T. 501]. When once the notice of a meeting has been given, whether in joint stock companies or otherwise, it cannot be withdrawn by an advertisement unless the Articles or the rules provide : the correct course would be to hold the meeting on the day and time appointed and then adjourn to such other convenient date as may be proposed [*Smith* v. *Paringa Mines* (1906), 2 Ch. 196].

Adjournment of Public Meetings

If the business of a public meeting cannot be completed at one sitting, it may be adjourned with the consent of the meeting by the Chairman with a view to complete that which is unfinished, and in such cases it is not necessary to give fresh notice of the adjournment date and time if they are fixed at the adjourned meeting itself [*R.* v. *Grimshaw* (1847), 11 Jur. 965]. Here it should be noticed that the Chairman of a public meeting which is not held under the auspices of any particular body or Society is a person who presides with the consent of those present at the meeting through the authority they have vested in him with the Common Law rights of a Chairman. These rights only relate to the regulating of the meeting, and do not mean that the Chairman can adjourn the meeting in spite of the opposition of the members present. The power to adjourn, if it is with the Chairman at all, must be established either by custom or special regulation or statute, otherwise it is in the assembly itself [*Stoughton* v. *Reynolds* (1736), 2 Stra. 1046]. There is no doubt that custom and usage of any particular community, caste or Parish may to a large extent influence the creation of Common Law, but that custom and habit must have been continuous and not dropped or given up at some particular date. If the custom is in disuse it is quite open to the community by a resolution of their own either to reaffirm or to alter it [*Shaw* v. *Thompson* (1876), 3 Ch.D. 233]. If however the meeting called is political, religious or social, and those present have no legal right to attend as in the case of a corporation, or a company, or a body under a statute or of club members, the conveners or promoters can adjourn or not as they think fit. If a meeting becomes disorderly or beyond

control the Chairman may adjourn it to a later hour or to another day.

The adjournment may be that of business by a dilatory motion such as: 'that the meeting proceed to the next business', which may be moved by anyone present, and if seconded may be put to the vote. This adjournment-of-business motion has the special advantage over a motion for a 'previous question' inasmuch as a previous question motion is not permitted when an amendment is under discussion, but the adjournment-of-business motion may be moved at any stage and at any time. Similarly, there may be a motion to the effect 'that the debate be adjourned'. If this is carried, the meeting continues, but the discussion of the particular matter in debate is postponed.

It is argued by some that a Chairman at Common Law has the power to adjourn a meeting in the absence of regulations to the contrary, but it has been also urged that such authority is only applicable to an adjournment for a purpose, such as the taking of a poll [*R.* v. *D'Oyly* (1840), 12 Ad. & E. 139]. The adjournment, even though made by the majority of those present, must be *bona fide* and in the best interest of the meeting [*R.* v. *Wimbledon Local Board* (1882), 8 Q.B.D. 459]. Even where the power is given to the Chairman by regulations to adjourn a meeting, it cannot be exercised capriciously [*National Dwellings Society* v. *Sykes* (1894), 3 Ch. 159]. In one case where a Chairman capriciously left the meeting and the meeting appointed another Chairman and went on with the business, the Court upheld the proceedings [*Catesby* v. *Burnett* (1916), 2 Ch. 325].

Where there are no regulations as to adjournment either in the body which convenes it or in the Articles of a company, the Chairman will have the right to adjourn a meeting on his own authority on the ground that the preservation of order in the meeting and the regulations of the proceedings devolve upon him [*R.* v. *D'Oyly* (1840), 12 Ad. & E. 139].

Adjournment of Debate and Business at a Meeting

When adjourning a meeting, the motion should be moved at the close of any speech or conclusion of any business; but if there is a motion for the adjournment of a debate, the debate must be interrupted for the consideration of this motion, though the mover of the original motion here is

usually allowed the right to reply, after which no further discussion is permitted, and the motion is put to the vote.

CHAIRMAN OF A PUBLIC MEETING

His Election

In a public meeting, where everyone has an equal right to preside, anyone can propose the name of any person present at the meeting, which if seconded, would immediately be put to the vote. If more than one name is proposed and seconded, they are all considered and the person who secures the highest number of votes will take the Chair. Though it is usual to second a motion of this character there is no Common Law rule which makes a seconder compulsory [*Horbury Bridge Co.* (1879), 1 Ch.D. 109]. Where the election for the Chair is contested, the names of the candidates should be presented in alphabetical order and not in the order in which they are proposed. In the election of the Chairman of a public meeting a poll cannot be demanded, and there cannot be an adjournment pending the election. Of course any dilatory motion would here be ruled out of order. If there is any objection to be raised in connexion with the election of the Chairman, it should be made immediately [*Cornwall* v. *Woods* (1846), 4 Notes of Cases 559].

It may be here added that if there is a constituted body which already has a Chairman and a new Chairman has to be elected, the person who presides cannot be so elected, i.e. he cannot be a candidate. If he wishes to be a candidate, he must keep out of the Chair, giving it to some other member. In one case where the Mayor of a Borough presided over the election of Councillors and returned himself as one of the persons elected, his election was considered invalid. This was done on the ground that no man shall be judge in his own case, and thus a returning officer would not be allowed in the election at which he presides to return himself [*R.* v. *Owens* (1858), 28 L.J. Q.B.D. 316]. This rule has been applied even to cases where the electors are very limited in number and the judicial authority or discretion to be exercised by the Chairman is limited [*R.* v. *Reynolds* (1896), L.G.C. 900].

When the elected Chairman is absent at the appointed time the Vice-Chairman should take the Chair. If the Vice-

Chairman is also absent or if no Vice-Chairman has been elected the meeting may elect a duty qualified person present to take the Chair. If the original Chairman should subsequently arrive, the newly elected Chairman need not vacate the Chair.

Duties and Powers

In this connexion Baron Pollock B. in *Lucas* v. *Mason* (1874), 10 Exch., page 251, said :—

> " It is no doubt the duty of the Chairman of a meeting, where a large body of people are gathered together, to do his best to preserve order, and it is equally the duty of those who are acting as stewards or managers to assist him in so doing, but the nature and extent of this duty on both sides cannot be very closely defined *a priori*, and must necessarily arise out of, and in character and extent depend upon the events and emergencies which may from time to time arise.'

This, however, does not include the power of removing a person or giving him in custody merely because he was putting questions to a speaker or making observations on his statements [*Wooding* v. *Oxley* (1839), 9 C. & P. 1]. In England under the Public Meetings Act of 1908, a person who at a public meeting acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called, can, on prosecution by the convenors of the meeting, be punished criminally, but in India there is no such law and he can only be removed from the meeting by the orders of the Chairman. Generally the Chairman employs those who are known as stewards, and it is thought that even if it is proved that stewards were actually employed by the Chairman, the Chairman cannot be held responsible for the acts of these stewards. It was held in *Lucas* v. *Mason*, quoted above, that there was no evidence of the relation of master and servant between the stewards of a meeting and its Chairman.

The powers of the Chairman of a public meeting are virtually the same as those of the Chairman of a joint stock company so far as preserving order and conducting proceedings are concerned. It is he who declares the result of any question which has been put before the meeting [*National Dwelling Society* v. *Sykes* (1894), 3 Ch. 159]. We have seen

that the Chairman is not *functus officio* after declaring the result of a meeting [*Hickman* v. *Kent Sheep Breeders* (1920), 36 T.L.R. 528]. If the Chairman has any doubt after declaring the result, he has the power to declare a recount as was decided in the *Hickman's Case* cited above. Of course, without the Chairman, a meeting cannot proceed and do valid business, and thus if a Chairman leaves the meeting before completing the business, no valid business can be done without electing another Chairman [*R.* v. *Buller* (1807), 8 East. 389]. If a poll is demanded at a public meeting it can be done by a division unless the regulations of the body concerned, or the custom of election without regulations, makes this inconsistent [*Campbell* v. *Maund* (1836), 5 A. & E. 865].

In Common Law, as we have already seen, the Chairman has no casting vote unless the regulations or the standing orders of the body concerned give him one, and even when he has a casting vote, the Chairman is not bound to give it. He has, however, his personal vote which he may use as a member of the body concerned. He can also give what is called a contingent or hypothetical casting vote which can be used if subsequent proceedings make it necessary through the result showing an equality of votes [*Bland* v. *Buchanan* (1901), 2 K.B. 75].

In one Bombay company case a meeting of shareholders was called at the instance of the Court and the Chairman of the meeting was also appointed by the Court. At this meeting persons who wished to be elected as Directors were proposed and seconded and whilst the poll was being taken to elect two separate sets of rival Directors, the Chairman ordered the door of the meeting room to be closed and only took the votes and proxies of those who were present. The Chairman also did not appoint scrutineers at the meeting to examine the voting, and submitted the report of the voting to the Court. When this procedure was objected to, the Court held that the objections to the closing of the doors and lack of scrutineers were void of substance inasmuch as the meeting in question was under the orders of the Court which the Chairman had to carry out, and inasmuch as the Chairman had a discretion of his own for matters lying outside the ambit of the orders : it was therefore held that there was nothing to show that anything was done at the meeting which

should affect the voting and the proper recording of votes [*Rebello* v. *Co-operative Navigation and Trading Co.* (1924), 26 Bom. L.R. 907].

Every person present at a meeting has a right to take part in the discussion for a reasonable time and in a reasonable manner so long as the subject-matter is included in the notice convening the meeting, and the Chairman cannot prevent him from doing so except where the discussion has proceeded for some time and the closure is moved and accepted. The Chairman need not accept a closure motion, however, if he thinks it unjust, and that all sides that should be heard have not had an opportunity of speaking. If, on the other hand, he thinks that enough discussion has taken place, he can put a closure motion to the vote as soon as it is seconded, and if carried, the proposition or amendment concerned must be put to the vote and the results declared. Any emergent question which arises in the course of discussion or proceedings at the meeting should be decided by the Chairman, in which decision he should act *bona fide* and in the best interest of the meeting [*In Re Indian Zoedone Co.* (1884), 26 Ch.D. 70]. The usual tendency of the Court is to uphold these decisions on emergent questions as far as possible in cases where the decision of the Chair may not be strictly accurate. Thus where in one case votes were rejected by a Chairman (which may be permissible), and such rejection did not make any difference in the final result of the election, the Court refused to interfere [*Ex Parte Mawby* (1854), 3 E. & B. 718]. In another case though the Court held that the Chairman acted in an illegal manner, the election was not declared void on the ground that there was no evidence to the effect that the poll was improperly conducted and that any voter was prevented from recording his vote. The Chairman, of course, settles the order of debate and speakers at the same time, and he has the power to settle in what order the amendments are to be discussed and put to the vote.

In connexion with the power to eject which we have discussed above, there are two interesting cases, viz. *Lucas* v. *Mason* (1874), L.R. 10 Exch. 251, with which we have already dealt, and *Hawkins* v. *Muff* (1911), 2 Glen. L.G. Cases, 151. In the former case a steward was ordered to bring to the front certain disorderly people in the gallery. In carrying out this order one Lucas was seized, who ultimately turned out to

be an innocent person, and in the scuffle Lucas was injured. The action for assault by Lucas failed on the ground that it was a *bona fide* mistake. In the latter case where the steward used more than necessary force in order to eject an interrupter with the result that he was injured, the Chairman was made to pay substantial damages. It will thus be seen that when employing stewards and ordering them to do a particular act, great care should be taken in their selection, and they should be strictly warned that powers of ejection are limited to the use of just sufficient force necessary to remove a party, and that if any further force is used resulting in an injury caused to the party, they will be held responsible.

It should be noted, however, that if a Chairman without malice refuses to put a motion to the vote, no action can be taken against him even though he may be guilty of an error of judgment. The only course open to the aggrieved party is to bring an action for injunction restraining the Chairman from refusing to put the resolution, and for a mandamus compelling him to call a fresh meeting [*Breay* v. *Browne* (1897), 41 S.J. 159; *Pender* v. *Lushington* (1887), 6 Ch.D. 70].

It is the duty of the Chairman of every public meeting to see that the speaker addresses the Chair and remains standing while speaking. When in the opinion of the Chairman any person is making an offensive personal remark against anybody, or his speech carries with it an imputation of wrong notice or want of fairness, or is worded in insulting or unparliamentary language, he should be asked to withdraw the remarks or warned to be more careful in his speech. If a speaker speaks for an undue length of time and the Chairman finds that the audience has become tired, he may warn him, but he cannot stop him from speaking further without obtaining in the first instance the sanction of the meeting by a resolution put by him from the Chair limiting the time for a speech. From a speaker's standpoint also it is undesirable in the course of a general discussion on a proposition to inflict a lengthy speech on an audience which is getting tired and impatient; it creates an impression which is not favourable and the chances are that the speaker, instead of improving, would spoil his case. It is said that about twenty to twenty-five minutes is the extreme limit for which a person

can safely speak in the course of a debate unless there are exceptional circumstances.

Minutes

One of the duties of the Chairman of every meeting, whether a public meeting, company meeting, committee meeting, or a meeting of the Board of Directors, is to see that a correct report of what took place is kept. We have already dealt fully in our discussion of minutes of company meetings (Part I), with the details of how the minutes should be written, and the Chairman's duties in this connexion. The minutes generally contain the names of those present in the case of a Board of Directors' meeting, but in other meetings it is more convenient to keep a separate paper or schedule containing a list of those present, particularly where the number is rather large, and this should be referred to in each minute and annexed to it. The minutes should be indexed for the purpose of easy reference. They are then signed by the Chairman at the end of the meeting after they are read and passed, particularly in the case of a public meeting; but if the meeting is to be held again within a reasonable length of time, it is wiser to have them read and confirmed at the next meeting. A resolution which has not been recorded in the minutes may be proved in a Court of Law by evidence [*Knight's Case* (1867), L.R. 2 Ch. 321; *In Re Fireproof Doors* (1916), 2 Ch. 142].

Points for the Chairman

The Chairman should be as impartial as possible in his opening speech at a public meeting and should not take sides or appear as if he were taking an active part in the debate by supporting one side of the case. The opening speech should be strictly confined to general remarks, describing the object of the meeting and the purpose for which it has been called. This is particularly necessary where a motion is likely to be keenly contested.

As we have already seen in Part I of this book, the Chairman has to conduct the meeting with tact and never lose sight of the fact that the object of the meeting is to get through a definite amount of business in as brief a time as circumstances will permit, without depriving anyone present of his right to speak. This can only be achieved by tact,

courtesy and firmness, and without exhibiting autocracy or ill temper. The pulse of the meeting or the audience should be constantly in the hands of the Chair and it has been the experience of all who have had to deal with meetings that where the Chairman has lost his temper because of a slight disturbance, or has threatened to call upon the assistance of the police, matters have generally got out of hand. A sweet reasonableness, or at least an appearance of it, should be maintained throughout the most trying situations, and a courteous appeal to the good sense of those present who are in favour of peace and order, has frequently succeeded.

When disorder is expected, because there is information that there is going to be an organized opposition, the wisest course is to put the persons suspected of coming to cause disturbance in the front row as far as is possible. To deal with interruptions, firmness and tact are required, particularly where they are continuous and appear to have been caused with a view to disturb the meeting. The stewards should also be men physically strong enough to remove interrupters without much difficulty or loss of time. The removal of a person should only be adopted as a last resort after due warning, but once a decision is made to do this, it should be swiftly carried out: any delay, hesitation or weakness on the part of the stewards might encourage others and cause a commotion among the audience.

Voting

Voting at a public meeting is ascertained either by a show of hands, by voice (i.e. 'Yes' or 'No') or by a division. In this connexion the remarks of the Court in *Cornwall* v. *Woods* (1846), 4 Notes of Cases 559 are important:—

> 'In order to protect those who may be affected by the declaration of the Chairman, the law has pointed out —or rather the general practice and custom of the country have provided—a mode by which his error is to be corrected. In the first place, the majority as declared by the Chairman is, *prima facie*, evidence of the fact. Then what is to be done? If the other party is dissatisfied, they may call for a second show of hands, and if that is unsatisfactory, for a division, one party going to the right hand and the other to the left or, as in the House of Commons, one party remaining in the House and the

other going into the lobby. There is still another mode, which is by poll.'

It is a Common Law rule that voting in the first instance is ascertained by a show of hands and it is thereafter that the division can be claimed.

Then once the Chairman at a public meeting has counted and declared the votes and no objection has been taken at the time, the result will be considered valid and binding unless fraud or obvious mistake is proved [*R.* v. *Tralee Urban District Council* (1912), 2 I.R. 59].

There is also frequently a demand for a poll. This may be because the count of the show of hands is not accepted by the meeting, or because the meeting wants to test the accuracy of the decision. In *R.* v. *Vicar of St. Asaph* (1883), 52 L.J.Q.B. at page 672, William J. laid down that :—

> 'Where an election is taken by a show of hands, the Chairman has to form a judgment at once, to the best of his opinion, as to who is elected, and if it is the intention to test his decision in a more formal manner, this must be done at once.'

See also *R.* v. *Thomas* (1883), 11 Q.B.D. 282 especially in connexion with an election : here, if all the electors are not present at the meeting, a poll is often demanded in order to give the whole body of electors an opportunity to vote, as the poll may remain open for a certain number of days. This was confirmed by Denman C.J. as a correct practice in *R.* v. *The Vestry of St. Pancras* (1839), 11 A. & E. page 26. In the same way that a proposition once moved cannot be withdrawn without the consent of the meeting, so a poll once asked for and accepted, cannot be withdrawn without the agreement of the whole meeting [*R.* v. *Mayor of Dover* (1903), 1 K.B. 668]. The moment the poll is accepted, the result of the original vote by a show of hands is abandoned and an entirely new voting is commenced [*Anthony* v. *Seger* (1789), 1 Hagg. Cons. 13].

On the question as to what is the exact position of those who are present at a meeting and do not vote, the leading case is that of *Labouchere* v. *Earl Wharncliffe* (1879), 13 Ch.D. 346. Here a general meeting of a club was called by the committee with a view to expel a member, and according to the

rules of the club for expulsion, a two-thirds majority was necessary to effect expulsion. The members present at this meeting were 117, of whom only 115 voted and the voting was divided as 77 for the proposition for expulsion and 38 against. Here the points that were made were, first, that as there is no Common Law rule as to the mode of giving notices, in clubs where there is no special rule as to how the notices of meetings should be given, the committee of the club concerned are entitled to say how these notices should be given on each particular occasion. The second point was that even though the meeting was illegally called, it need not have prevented the member from defending himself at it, and that act of defence would not be a waiver, on the ground that he was not bound to tell the meeting that it was irregularly or improperly called. The third point made was that when a question of expulsion is put before a meeting it should be put in the form of asking whether the meeting thinks that the committee has rightly held that the conduct of the member concerned was injurious to the welfare of the club, and not as if it were a personal matter between the committee and the member. The fourth point arrived at was that in counting the two-thirds majority, the total number present should be counted, because in the opinion of the learned Judge :—

> 'When a resolution is put to a meeting, the persons present may take one of three courses. They may vote for or against it, or not wishing to express a positive opinion on the question refrain from voting at all. This being so, those who do not vote may, by not doing so, turn the scale in favour of the accused member of the club.'

It was further laid down that it is the duty of the secretary or scrutineer at such voting to ascertain first how many persons were present when the question was put, and secondly how many of those present voted for the resolution.

It is further laid down that it is not necessary that a person while assenting to a proposition should do it in any particular form, he may give his vote either by writing or by showing his hand, or by voice or by conduct such as a nod [*Everett* v. *Griffiths* (1924), 1 K.B. 941].

Privilege of Speeches at and Reports on Public Meetings

Reports of speeches at public meetings published in newspapers are protected provided they are fair and accurate. The condition necessary in connexion with public meeting reports in a newspaper are :—

(1) that they should be fair,
(2) that they are accurate,
(3) that they are not blasphemous, and
(4) that they are not indecent.

This privilege may be rebutted on the proof that the publication was made maliciously, or that the newspaper editor or proprietor refused or neglected to insert in the same newspaper a reasonable letter by way of contradiction or explanation of such report. This privilege however is not extended to a meeting which is not a public meeting. The same principles apply to a speech delivered at a meeting which in law is a form of publication of a statement. The privilege is divided into two divisions : (1) the statements which are absolutely privileged, and (2) those in which the privilege is qualified.

It was pointed out by Lord Justice Romer in *Chapman* v. *Ellesmere* (1932), 2 K.B. 431, 474, that " it may be true in one sense to say that newspapers owe a duty to their readers to publish any and every item of news that may interest them. But this is not such a duty as makes every communication in the paper relating to a matter of public interest a privileged one ". The newspaper is in no different position from an individual with respect to the law of defamation [*H. K. Hales* v. *H. Smiles*, A.I.R. (1937), Rang. 105]. The range of criticism allowed to a newspaper is also as wide as and no wider than that of any other subject. [*Mitha Rustomji Murzban* v. *Nusserwanji Nowroji Engineer*, 43 Bom. L.R. 631].

Defences on the charge of Defamation

The defences that can be offered in a case where a party is charged with defamation are :—

(1) That the statement made concerning any person was made for the public good.
(2) That it was an opinion expressed in good faith respecting the conduct of a public servant in the

discharge of his functions or that it was a statement respecting his character, so far as his character appears in that conduct and no further.

(3) That is was an opinion expressed in good faith respecting the conduct of any person touching any public question and respecting his character so far as his character appears in that conduct and no further.

(4) That it was a substantially true report of the proceedings of the Court of Justice or the result of any such proceedings.

(5) That it was an opinion expressed in good faith respecting the merits of any case, civil or criminal, decided by a Court of Justice or respecting the conduct of any person as a party, witness, or agent in any such case, or respecting the character of such person as far as his character appears in that conduct and no further.

(6) That it was an opinion respecting the merits of any performance which the author has submitted to the judgment of the public or respecting the character of the author so far as his character appears in such performance and no further.

(7) That it was a censure passed in good faith on the conduct of a person over whom the person censuring had any authority conferred either by law or arising out of the lawful contract made with that other.

(8) That it was a petition preferred in good faith against any person to those who have lawful authority over that person with respect to the subject-matter of the petition.

(9) That it was an imputation on the character of another made in good faith for the protection of the interest of the person making it, or for any other person, or for the public good.

(10) That it was a statement made with a view to caution in good faith any person against another which caution was intended for the good of the person to whom it is conveyed or of some person in whom that person is interested or for the public good.

The above ten points, virtually speaking, sum up the defences as well as the rights of persons making imputations either in a speech at a meeting, public or private (except, of

course, in Parliament or Legislative Assemblies where absolute privilege prevails), or in their writings.

In the first case as well as in the fourth, it is necessary that the imputation made either in a speech or writing should be for the public good and should be true. The rest of the cases given above require that the imputation in the speech or writing should have been made in good faith. This is because according to the authors of the Indian Penal Code, ' to require in these cases that the imputation should be true, would be to render these exceptions mere nullities. Whether a public functionary is or is not fit for his position ; whether a person who has bestirred himself to get up a petition in favour of a public measure ought to be considered as an enlightened and public-spirited citizen, or as a foolish meddler ; whether a person who has been tried for an offence was or was not guilty ; which of two witnesses who contradicted each other in a trial ought to be believed ; whether a portrait is lifelike ; whether a song has been well sung ; whether a book is well written—these are questions about which honest and discerning men may hold opinions diametrically opposite ; and to require a man to prove to the satisfaction of a Court of law that the opinion expressed on such a question is a right opinion is to prohibit all discussion on such questions. The same may be said of those private communications which we propose to allow. It is plainly desirable that a merchant should disclose to his partners his unfavourable opinion of the honesty of a person with whom the firm has dealings. It is desirable that a father should caution his son against marrying a woman of bad character. But if the merchant is permitted to say to his partners, or if the father is permitted to say to his son only what can be legally proved before a Court, it is evident that the permission is worth nothing '.

With reference to the public good it should be noted that what is meant here is that it is the good of the general public as distinguished from that of the individual. Where a complainant was described as a man with whom not even Turks, let alone Brahmins, could associate and the wedding of his daughter was characterised as sinful carnival worthy of perdition . . . a moral end involving a disgrace, degradation and degeneration . . . it was held that the language used was unrestrained, the object of the writer being to hold the complainant up to public execration [*Madanjit* (1910), 12

Cr. L.J. 129]. In this connexion the remarks of the authors of the Penal Code are illuminating :—

> 'A person who has been guilty of great acts of swindling at the Cape comes to Calcutta, and proposes to set up a house of agency. A person who has been forced to fly from England on account of his infamous vices repairs to India, opens a school, and exerts himself to obtain pupils. A captain of a ship induces natives to emigrate, by promising to convey them to a country where they will have large wages and little work. He takes them to a foreign colony, where they are treated like slaves, and returns to India to hold out similar temptations to others. A man introduces a common prostitute as his wife into the society of all the most respectable ladies of the presidency. A person in a high station is in the habit of encouraging ruinous play among young servants of the Company. In all these cases, and in many others which might be named, we conceive that a writer who publishes the truth renders a great service to the public, and cannot, without violation of every sound principle, be treated as a criminal.'

There are undoubtedly many cases in which the spreading of true reports, prejudicial to the character of an individual, would hurt the feelings of that individual, without producing compensating advantage in any other quarter. The proclaiming to the world that a man keeps a mistress, that he is too much addicted to wine, that he is penurious in his house-keeping, that he is slovenly in his person; the raking up of ridiculous and degrading stories about the youthful indiscretions of a man who has long lived irreproachably as a husband and a father, and who has attained some post which requires gravity and even sanctity of character, can seldom or never produce any good to the public sufficient to compensate for the pain given to the person attacked, and to those who are connected with him.

The party charged for defamation must in his defence state that :

(1) He had reasonable ground for believing the statement he made to be true.

(2) He was actuated in making the statement by an intelligent zeal for public interest and not through

any malicious motive [*Altaf Hoossein* v. *Tasud Dook Hoossein* (1867), 2 Agr. 87].

It should, however, be remembered that even though a statement is privileged, that does not justify the publication in excess of the purpose or the object which gives rise to it [*Sri Vidya Shankaran Narasinha Bharathi* v. *Guru Swamulu* (1883), 6 Mad. 381]. There have been cases where though the Court has ruled that the statement was true and for public good, yet they have held that it was not privileged because of either excessive publication or the manner in which it was published [*Janardhan D. Dikshit* (1894), 19 Bom. 703; *Gopal Rao* v. *Mt. Piaribi* (1882), 5 C.P.L.R. (Cr.) 55].

The usual defences that are set forward as excuses for defamatory statements are :—

(*a*) Justification.
(*b*) Fair Comment.
(*c*) Absolute Privilege.
(*d*) Qualified Privilege.

Justification

If the person who has published defamatory words can prove that the said words are true in substance and in fact he can plead justification by truth as his defence to a civil action for libel or slander. In such a case his motive in publishing the defamatory words is irrelevant. This is however a dangerous defence and the damages may be aggravated or increased where the defendant wrongfully sets up this defence. If the defamatory statement is false, the defendant cannot escape liability on the ground that he honestly and on reasonable grounds believed it to be true.

In criminal law, however, the defendant will have also to prove, in addition to the statement being true, that it was for the public benefit that these words should have been published [*Altaf Hossein* v. *Tasuddook Hossein* (1867), 2 Agra 87].

Fair Comment

If the plea of justification has been established the plea of fair comment does not arise [*Dakhyl* v. *Labouchere* (1908), 2 K.B. 325n, 327]. Here the person publishing the defamatory statement will, in order to succeed in his defence, have to establish that the alleged defamatory statement was

a fair and *bona fide* comment on a matter of public interest [*Merivale* v. *Carson* (1887), 20 Q.B.D. 275]. Affairs of State, administration of justice, public institutions, local authorities, books, pictures, works of art, theatres, concerts, etc. are some examples of matters of public interest. The comment must be based on facts truly stated and must be fair, i.e. honest and relevant.

Absolute Privilege

Absolute privilege is given on occasions where the interests of society require that the man should speak out his mind wholly and frankly without fear of consequence. As an example, speeches in Parliament or in Legislative Councils or the Central Assembly are absolutely privileged and no action would lie in any circumstances even though the statement may be alleged to have been made knowingly, falsely, and with express malice [*Stuart* v. *Bell* (1891), 2 Q.B. 341 at page 345; *Wright* v. *Woodgate* (1835), 2 C.M. & R. 573 at page 577].

Parliamentary proceedings, State proceedings, Military and Naval proceedings and Judicial proceedings are examples of occasions which are absolutely privileged.

Qualified Privilege

On the other hand there are less important occasions where the speaker will be protected only if there is absence of malice. If, however, it is proved that the party concerned made use of the occasion to defame the person against whom his remarks were addressed and did not act *bona fide*, he may have to pay damages [*Vaidianatha Sastriyar* v. *Somasundara Thambiran* (1913), 24 M.L.J. 8]. It will thus be seen that a qualified privilege will not afford any protection to the party concerned if malice is proved to the satisfaction of the Court. Absolute privilege is generally attached, as we have seen, to proceedings in Parliament, Legislative Council or Assemblies, judicial proceedings, military and naval proceedings and State proceedings. In cases of absolute privilege the parties are protected in all circumstances, whether there was good or bad faith [*Keshavlal* v. *Bai Girja* (1899), 1 Bom. L.R. 478 at p. 483].

Presumption of Malice

The general rule is that the law presumes or infers malice in cases where the actual language *prima facie* appears to be defamatory, but this presumption may be rebutted by the opposite party showing that the words were uttered on an occasion which was privileged. If that is shown, the party who brings the case must prove the ' actual malice ', or malice in fact, on the part of the utterer himself. In order to do this the libellous words and the circumstances attending their publication may themselves support the evidence of malice [*Motilal Raha* v. *Indranath Bannerjee* (1909), 36 Cal. 907]. The question of malice has already been dealt with in detail in Chapter V above.

When the Qualified Privilege arises

Rules of guidance in connexion with a qualified privilege are the following :—

(1) When the circumstances clearly show that the duty to make the communication was thrown on the party and charged to a third party [*Pullman* v. *Hill & Co.* (1891), 1 Q.B. 524 at page 530],
(2) that the statement was made as a defence,
(3) that the statement was given for the public good to persons in a public position,
(4) when the person who made the statement has an interest in making it to a third party and the third party also has a similar interest [*Hunt* v. *G. N. Ry.* (1891), 2 Q.B. 189].
(5) Fair and impartial reports of proceedings in Parliament, Court of Justice, public meeting or meeting of certain bodies and persons specified in S. 4 of the Law of Libel Amendment Act, 1888.

Legal, Social, or Moral Duty

Where a sense of duty, legal, social, or moral, makes it reasonably necessary for a person to make a communication of a statement for the due discharge of such duty, believing that the same was true, the statement is privileged [*Dawkins* v. *Lord Paulet* (1869), L.R. 5 Q.B. 94 at page 102 ; *Harrison* v. *Bush* (1855), 5 El. & B. 344 ; *Prem Narain* v. *Jagdamba Sahai* (1925), 47 All. 859]. The person to whom a statement is

made must in fact be interested and it is not enough for the person making it to believe that he had such interest [*Jusab Tharia* v. *Morrison* (1912), 15 Bom. L.R. 249]. The communications made as a social or moral duty may include statements as to crime or misconduct of others as well as confidential communications of a private nature. In information as to misconduct or crime of others, or statements made in connexion therewith, if the person states honestly that he knows and believes it to be true, then he would be liable to damages if in discharge of that duty he has made a mistake and it is shown that the party against whom the charge was made is not guilty of the offence [*Kine* v. *Sewell* (1838), 3 M. & W. 297 ; *Majju* v. *Lachman Prasad* (1924), 46 Alla. 671]. It has been held that in a case of defamation, the civil liability is determined by principles of English Law, but criminal liability is governed by the provisions of the Penal Code and by those provisions alone [*Mt. Champadevi* v. *Pirbhu Lal* (1925), 24 A.L.J. 329 ; 27 Cr. L.J. 253].

Good Faith and Defamation of Inanimate Persons

In one case on the question of good faith it was held that under Section 499, Exception 9, it is not sufficient that the person making an imputation believed in good faith that he was acting for the protection of the interest of himself or of any other [*Emperor* v. *Bholanath* (1929), 51 All. 313]. There cannot be defamation of a newspaper for the simple reason that a newspaper is not a person, but the defamation of a newspaper in certain cases may involve defamation of those responsible for its publication [*Maung Sein* v. *Emperor* (1926), 4 Ran. 462 ; 28 Cr. L.J. 139]. On the same principle it has been held that a corporation cannot suffer damage in mind or body though it may have a reputation for good conduct of business of the company, which reputation may be quite distinct from that of any of its officers however highly placed [*Supdt. & Remembrancer of L. A., Bengal* v. *Manmatha B. Chatterji* (1924), 51 Cal. 250]. It has also been held that a statement made to a caste with reference to members of the caste in good faith and for the protection of the interests of the caste was privileged inasmuch as it was not communicated to anybody beyond the caste [*Emperor* v. *Padman* (1912), 14 Bom. L.R. 585]. Where a person makes his statement to the effect that gifts to certain funds are given

by a particular party not out of charity but from self-advantage, it is defamatory if the words were used with a view to incite public contempt and ridicule [*Appa* v. *M. P. Maricar* (1917), 19 Cr. L.J. 129].

Repetition of Slander or Defamation

In the case of slander, which means oral defamation, if a person is merely repeating what he has heard it is nevertheless a publication by him, and though the person who originated this rumour or statement is primarily responsible for it, he (the originator) is not responsible for the repetition of the slander [*Ward* v. *Weeks* (1830), 7 Bing. 211]. This has been repeatedly confirmed by other English Courts [*Clarke* v. *Morgan* (1877), 37 L.T. 354; *Speight* v. *Gosnay* (1891), 60 L.J. Q.B. 231]. The principle here was that a person was not liable for damage caused from the repetition of a slander which he originated, unless of course the original speaker authorized the repetition to the third person or intended that the person to whom he uttered the slander or defamation should repeat it (*Speight* v. *Gosnay* quoted above). There is one other case, viz. where a person to whom the original publication was made happened to be under a moral duty to repeat the defamation or slander to the third person [*Derry* v. *Handley* (1867), 16 L.T. 263].

The Words should be Defamatory 'per se'

In a civil suit for damages on a defamation, if the words complained of are not actionable *per se* the party bringing the suit is not entitled to any general damages. Where they are, the damages may be awarded by the Court. Where they are not defamatory *per se* the damages will only be awarded if the plaintiff actually alleges them and proves them to the satisfaction of the Court [*Ratcliffe* v. *Evans* (1892), 2 Q.B. 524; *Alex.* v. *Jenkins* (1892), 1 Q.B. 797]. A defamatory statement according to English law is one which if published is calculated to expose a person to hatred, contempt or ridicule or to convey an imputation on him disparaging or injurious to him in his trade, business, profession, calling or office.

According to Halsbury, Vol. XX, page 507, para 623:

> 'In practice, the proof of general damage is attended with greater difficulty in actions of slander for words actionable *per se* than in actions of libel. It is only in

exceptional cases that a defendant is liable for the repetition of a slander originally uttered by him. Where he is not so liable, the plaintiff cannot recover damages which flow, not from the original utterance, but from a repetition for which he is not responsible.'

Libel and Slander in English Law

In English Law libel and slander stand on a different basis. Slander is oral defamation, i.e. words uttered orally, whereas libel is a defamatory statement which is expressed or conveyed in writing or in printing or in some other permanent form. The Indian Law does not make such a distinction. The Indian sections on defamation in Criminal Law are Sections 499 and 500, which have already been dealt with at the end of Chapter V.

Rules as to Imputation for Guidance of Public Speakers

The general rule to be borne in mind by a speaker at a public meeting is that no imputation which is likely to harm the reputation of a person living or any imputation on a deceased person whch is likely to harm the reputation of a living person should be made except when the imputation is true and made for the public good. Whether it is for the public good or not will be for the Court to decide. In the case of a deceased person, an imputation will be objectionable even though true if it is hurtful to the feelings of his family or other near relatives, and it should only be made in good faith, without malice, for the public good. On the same principle, an imputation concerning a company or association or collection of persons may amount to defamation in certain cases. An imputation ordinarily implies an accusation or something more than a mere expression of suspicion, though in some cases the Courts have held that even an expression of suspicion may have an effect on the minds of the hearers which would lower the character or position of the party against whom it is made and would thus be objectionable [*Thambu* (1926), 8 L.L.J. 97; 27 P.L.R. 171]. In one case where a newspaper published a notice containing an imputation that the particular person who was managing the affairs of the company was dishonest in the management and was concealing his dishonesty by equally dishonest methods, the

Court held that it was defamation [*Madhorav* v. *Narayan* (1926), 27 Cr. L.J. 1119].

The publisher of a newspaper is responsible for defamatory matter published in his paper whether he knows the contents of the paper or not [*McLeod* (1880), 3 All. 342]. Even in case of the proprietor of a newspaper in which the defamatory article appeared, the fact that he had no knowledge of the publication does not render him free of blame [*Munshi Ram* v. *Mela Ram Wafa*, 17 L. 332; A.I.R. (1936), Lah. 23]. If the editor of a newspaper proves that the libel was published in his absence and without his knowledge, he would be saved [*Ramasami* v. *Lokanada* (1886), 9 Mad. 387]. These cases are cited because it has been held that no special privilege attaches to the profession of the press as distinguished from the members of the public [*Channing Arnold* (1914), 16 Bom. L.R. 544; *H. K. Hales* v. *H. Smiles* A.I.R. (1937), Rang. 105; *Mitha Rustomji Murban* v. *Nusserwanji Nowroji Engineer*, 43 Bom. L.R. 631]. The words should not be too wide or general but the imputation must be fixed as referring to some particular person or persons whose identity must be established [*Government Advocate, Behar* v. *Gopa Bandhu Das* (1922), 1 Pat. 414; *Pratap Chandra Guha Roy* (1925), 29 Cal. W.N. 1904]. In the case of a company or association the imputation is defamatory when the combination of persons who manage it are likely to be injured [*In Re Williams* (1822), 5 B. & Ald. 595]. Libel or slander may be proved if it is calculated to injure the company's business reputation [*South Hetton Coal Co., Ltd.* v. *N. E. News Association* (1894), 1 Q.B. 133]. When there are a number of persons or a class of persons, it has been held that if a person writes generally or says that 'all lawyers are thieves' no particular lawyer or individual can sue him [*Eastwood* v. *Holmes* (1858), I.F. & F. 347]. But if a particular association of lawyers were attacked, the position would be different [*Mahim Chandra Roy* v. *A. H. Watson* (1928), 55 Cal. 1280]. Therefore, when a libel is published of a class, it is not open to a member of that class to say it was published of him unless the class is so small or so completely ascertainable that the libel was necessarily published of every member of the class of it; in which case every member of the class being individually aspersed, any one of them can sue on the libel

[*Knupfer* v. *London Express Newspapers Ltd.*, 59 T.L.R. 31; (1942), 2 A.E.R. 555—C.A.].

An ironical expression also may sometimes be construed by the Courts into an imputation against a person or his character and may be defamatory. Thus, though it may be said of a lawyer ironically that he is an 'honest' lawyer, though thereby meaning that he is not honest, it may amount to defamation. If the person who makes an imputation intends that the reputation of the party against whom it is made should suffer, it would be defamation even though no actual harm were caused [*Gobind Prasad Pandey* v. *Garth* (1900), 27 Cal. 63; *Alex. Pimento* (1920), 22 Bom. L.R. 1224; *Ram Narain* (1924), 26 Cr. L.J. 25; *Bhikhchand* (1926), 27 Cr. L.J. 868]. It may be added that mere vulgar abuse is not defamation as there is no intention to harm the reputation of the person here [*Anthony Rogers* (1887), I Weir 607]. What is meant by 'harm' here is not harm as is understood in ordinary parlance, but it has a special legal meaning, viz. an imputation on a man's character sufficient to lower him in the estimation of others, but it is not harmful if it only lowers him in his own estimation [*Taki Husain* (1884), 7 All. 205]. This is because a man's opinion of himself is not his reputation; reputation consists of what others think of him and the imputation which lowers the person according to Explanation 4 of Section 499 of the Indian Penal Code must be as to his moral or intellectual character or with respect to his caste or calling, or one which lowers his credit, or causes an imputation or belief among others that the person attacked is in a loathsome state or in a state generally considered to be disgraceful. This imputation may have been made directly or indirectly but if it is clear that the people before whom it was made could easily understand for whom the imputation was meant, it would come under defamation [*Taki Husain* (1884), 7 All. 205]. Even if a person is accused of anonymous letter-writing, it may amount to defamation.

Of course all these statements made are excused if, as we have seen, they are made for the public good and if they are true, or if they are made in connexion with the conduct of public servants or the conduct of any person touching any public question. On the same principle publications of reports of proceedings of Courts are privileged if the report is accurate, or the imputations are made in good faith by a

person for the protection of his own or others' interest or with a view to caution other people to whom it is conveyed in their own interest. In the case of newspapers it was held that they have a public duty to ventilate abuses and on a question of public interest and on public matters, they may comment; but the comment should be fair and without malice and must contain facts [*Jhabhar Mal* (1927), 26 All. L.J. 196]. There is, as a matter of fact, considerable latitude allowed as regards the conduct of a public servant in connexion with the criticisms as to his public action in a speech or in writing. But the reservation as laid down in the exceptions to Section 499 of the Indian Penal Code should be remembered, viz. that the criticisms should be restricted 'so far as his character appears in that conduct and no further' and that the imputation is expressed 'in good faith' and as an opinion.

Place for holding Public Meetings and Rights of those present

A public meeting may be held in any private place or in a public place. As far as the public place is concerned, much will depend upon how far the authorities in control of that place permit the holding of such a meeting. Of course a meeting cannot be held in a street for obvious reasons. L. President in *M'Ara* v. *Magistrates of Edinburgh* (1913), S.C., on page 1073, laid down that the primary object of any street was to afford a passage to the public and was meant for that purpose only. In other words passage is the paramount object for which streets are formed, and people cannot obstruct a street by meeting in it. Thus streets are public property in the sense that people can use them. There is no inherent right of the public to use streets for the purpose of a meeting. When meetings are called for a religious, political, or social purpose, say when a political meeting is called by a general notice, or circulars or advertisements, those present are under no legal duty to attend it and thus a defamatory statement made there is not privileged. The same rule applies to religious or social meetings. It should be here remembered that in these meetings, though falling under the designation of public meetings, the persons who attend do not do so as a matter of duty as in the case of meetings of bodies like corporations, and thus they have no right to be there if the promoters or conveners of the meeting refuse admittance to them or call upon them to withdraw. In other words they

are there on sufferance of the conveners. Even if admission fees were charged and they were asked to leave the hall, they must do so, the only remedy being a suit for return of the money they have paid; but they cannot insist on staying until and unless the money is refunded immediately. In the second class of meetings, viz. those by statutory bodies such as corporations, public companies, district boards, etc. the members of these bodies have a legal right to be present at these meetings and they cannot be excluded. The meetings are attended by them as a matter of duty, and thus the language they use in their speech is privileged so long as it is uttered *bona fide* and without malice in the discharge of their duties.

CHAPTER VIII

QUORUM OF PUBLIC MEETINGS AND STATUTORY BODIES OTHER THAN JOINT STOCK COMPANIES, AND EXPULSION OF MEMBERS

The Quorum at Public Meetings

As we have already seen, the quorum is a fixed number of members of any body or persons who must be present in order to validate any transaction that is effected at a meeting. In the Common Law as to meetings, two persons at least must be present to form a quorum [*Sharp* v. *Dawes* (1876), 2 Q.B.D., page 26]. The idea here is that in order to constitute a meeting there must be at least two persons to meet one another. Of course in the case of a statutory body, or an association or club where the regulations or the standing orders lay down a quorum, that number must be present, but if these bodies have no regulations as to a quorum, the Common Law rule applies. If, however, a body or corporation calls a meeting to perform administrative duties, a majority may act and bind the minority [*York Tramways Co.* v. *Williams* (1882), 8 Q.B.D. 685]. In *Merchants, etc. of Staple* v. *The Bank of England* (1887), 21 Q.B.D. 161, it was laid down by Wills J. that 'the Acts of a corporation are those of the major part of a corporation, corporately assembled. . . . This means that in the absence of a special custom the major part must be present at the meeting and of that major part there must be a majority in favour of the act or resolution'.

The same principle was laid down as early as 1744 in the case of *Attorney General* v. *Davy* (1745), 2 Atk. 212, where it was held that it cannot be disputed that wherever a certain number of persons are incorporated, a major part of them may do any corporate act; so if all be summoned, a major part of those that appear may do a corporate act, though nothing be mentioned in the Charter of the major part. Of course a quorum can only be counted of such persons who are competent to take part in the meeting or in the particular business which the meeting is considering. It is most important in connexion with all meetings that the quorum should be present otherwise any business done

is void or invalid [*Re Romford Canal Co.* (1883), 24 Ch.D. 85]. If the quorum was present at the beginning of the meeting, but anyone finds that it has fallen under the number required after some time, some members present can call the attention of the Chair to that fact by rising on a point of order. In such cases, the Chairman must count out and if satisfied, must either adjourn the meeting or send for further members sufficient to constitute the meeting. In a creditors' meeting the quorum is made up of creditors present at the first meeting in bankruptcy, who have lodged proofs; thus at a meeting where one creditor appeared, and he was not only present, but had lodged these proofs it was declared that he formed the quorum and the meeting was properly constituted [*Re Thomas ex parte Warner* (1911), 55 S.J. 482; *Barron* v. *Potter* (1914), 1 Ch. 895]. If emergency action has to be taken, even where no quorum is present, though this should, of course, be done very rarely and if possible always avoided, and confirmation or ratification of the decision reached at such an irregularly constituted meeting should be obtained by a resolution passed at a properly constituted meeting. In the case of a committee meeting, it is a common arrangement that one member may constitute a valid meeting which would be legal [*Re Taurine Co.* (1884), 25 Ch.D. 118]. We saw in Part I that at a class meeting of preferential shareholders, where one member present, holding all the preference shares, signed a resolution, it was considered sufficient and binding [*East* v. *Bennett Bros.* (1911), 1 Ch. 163].

The Agenda of a Public Meeting

In connexion with public meetings, as well as with statutory bodies other than joint stock companies, there is a well-established and desirable practice to prepare the Agenda on the same footing as that of joint stock company meetings, stating the business that is to be done at the meeting in the proper order. This agenda is then either circulated among those who are asked to attend the meeting or entitled to do so, or advertised in the newspapers in connexion with the notice calling the meeting. The order in which the business is to be done is generally fixed by the promoters in consultation with the Chairman unless the regulations and standing orders give some indication as to this. The business done at a meeting should adhere strictly to the order laid down in the

Agenda, unless the Chairman, with the consent of the meeting, deviates. The Agenda generally has as the last item 'General Business'. The general business here means that of a routine order, because any special or important business must be notified on the Agenda. The Agenda should not be terse or loosely made out: it should be a clear indication of the nature of the business, so that there cannot be any confusion or misunderstanding as to what business has to be done.

Motions and Resolutions in a Public Meeting

The Chairman of a public meeting may, after making his introductory statement and remarks, either himself move a proposition of which due notice has been given, and for which the meeting has been convened, or ask anyone present to do so. If there are more than one resolutions they are generally assigned to various speakers as proposers and supporters, and are thus taken in hand in proper order for discussion. As soon as the first motion is proposed and seconded, the Chairman reads it out and invites discussion from those present. The mover speaks first; the seconder may speak next, or at some future time, in which case he seconds 'reserving his remarks'. Where a number of people rise to speak at the same time or express their intention to do so, the Chairman generally decides the order in which each should speak. This is called 'catching the Speaker's or Chairman's eye'. There is an inherent right in the meeting itself to object to the order in which the Chairman selects the speakers; the meeting may, for example wish to alter the order of speakers to be heard first. In such cases anyone may rise and propose to the effect that Mr. Dinshaw be now heard; if that proposition is seconded, the Chairman must submit it to the vote, and if carried Mr. Dinshaw must be asked to speak. This power which the Common Law has given to meetings should, as far as possible, not be exercised, because the procedure and the conduct of the meeting should in ordinary and normal circumstances be left to the Chairman's discretion, with which it is not considered correct etiquette to interfere. In the Houses of Parliament of England, though this rule of Common Law applies, long tradition has established a practice to defer to the Speaker's or Chairman's ruling on this point and very rarely, if at all, a motion of the type referred to above

is proposed. To this motion, of course, anyone can propose an amendment or previous question of closure, or consider the same with the next business, or adjourn the debate, or the meeting. The method of proposing all these is the same as that considered and discussed in connexion with Company meetings in Part I of this book. At public meetings the motion has usually to be seconded though an amendment need not be seconded. Much, of course, depends upon practice and usage. In the House of Commons, for example, the motion is not required to be seconded, whereas the amendment must be. In one case it was decided by James L.J. that if the Chairman were to put the question without it having been proposed or seconded by anybody, that would be perfectly good [*Horbury Bridge Coal Co.* (1879), 11 Ch.D. 109 at page 115].

Once a motion is moved it becomes the property of the meeting and cannot be withdrawn without the unanimous consent of all present. If notices of motions are given, and a person giving notice does not want them moved or is absent, the usual practice is that they are dropped and cannot be revived without a fresh notice: In some cases, however, the regulations provide that by a written permission addressed to the Chair, someone else may move in place of the person who has given the notice, should he for some unavoidable reasons not be able to be present at the meeting. If the motion, in the opinion of the Chairman, is too lengthy, or contains a number of questions which it would not be convenient or desirable to put together, he has the discretion to divide the motion up into parts, subjecting each part to separate voting. A motion which is generally lost may be brought forward with due notice at a subsequent meeting, unless, as is usual, the regulations of the body provide for a period, which period must elapse before it can be moved again.

When amendments on a motion are passed, they must be put as substantive motions and passed, otherwise the original motion is put to the meeting and dealt with in the usual course. The rule that the amendment need not be seconded was confirmed in the case of *Horbury Bridge Coal Co.* (1879), 11 Ch.D. 109. Here the learned Judge's words were: 'Is there any law of the land that at a meeting of the shareholders a motion cannot be put unless it is seconded ? I am not aware

of any. No doubt it is the practice of the House of Commons', were confirmed by Jessel M.R. who laid down that: 'I think the objection that the amendment was not seconded cannot prevail, it being admitted that it was put and voted upon.'

Of course the amendments must be proposed before the question is put to the vote, after which it is too late.

Amendments

The usual rules which we have already dealt with in connexion with Company Meetings apply also to amendments. The rule which is strictly followed in almost all cases is that the amendment should alter the original motion without making it an entirely new motion. Of late, however, amendments have been allowed which are called 'amendments in the extended sense of the term' and which virtually speaking are separate and distinct 'motions inasmuch as the original question is altogether dropped. This type of extended amendment should not be allowed as a general rule, and the idea that an amendment is meant to 'amend' a motion should be strictly borne in mind in order to bring about a satisfactory result through the question being put and adequately discussed at the meeting.

Once the amendment is moved, it cannot be withdrawn without the consent of the meeting. It is always safe to hand over the amendment in writing to the Chairman and it should be noted that the mover of the amendment has no right of reply. An amendment should never be allowed which negatives the original motion [*T. H. Vakil* v. *Bombay Presidency Radio Club* (1945), 47 Bom. L.R. 428]. It should come strictly within the scope of the notice convening the meeting; otherwise a new notice may be required. In the case of *Clinch* v. *Financial Corporation* (1868), L.R. 5 Eq. 482, the learned Judge Wood L.J. expressed himself on this point as follows:

> 'How is it possible for the Court to know how many shareholders abstain from attending the meeting, being satisfied that the arrangement as it was proposed, was advantageous to them, being quite content to exercise no voice about it?'

Thus it will be observed, that once a notice is given declaring the specific business to be done, and any particular

resolution to be moved at a meeting, any amendment of a drastic character, substantially altering the original resolution should not be permitted for the simple reason that those who are entitled to attend and vote at this meeting may have abstained from doing so, if they considered that the resolution which was to be moved was acceptable to them, and were in ignorance of the fact that a radical amendment would be carried. The party, therefore, who wishes to move an amendment of a drastic character should give prior notice to the conveners of the meeting as a precaution. If an amendment put to the vote results in a tie, and the Chairman has not the casting vote, or refuses to exercise his right, it will be taken as lost. Ordinarily a person can move only one amendment to a motion unless the regulations or standing orders of the body concerned lay down otherwise. The most convenient practice is to take one amendment at a time and dispose it off, though there are cases where a number of amendments are moved simultaneously, and the Chairman then decides the order in which they should be considered. Once a question has been agreed to on an amendment, no other amendment which relates to that part again should be allowed. An amendment on an amendment should be avoided as it may lead to confusion. If the original resolution is withdrawn with the consent of the meeting, the amendment naturally is considered to be withdrawn also.

The Gag

This is another name for a motion for closure and it is generally in the form 'that the question be now put'. As we have already seen, this closure motion should not be accepted by the Chairman if he thinks that the question has not been thoroughly discussed on both sides. To do otherwise would be encouraging the tyranny of the majority over a minority. As a rule, everyone present has a right to speak, subject, of course, to the motion for closure being accepted by the Chair.

Motions on Reports of the Committee appointed in a Public Meeting

When the report of a committee specially appointed by a public meeting comes before it for acceptance or confirmation, it may be confirmed *in toto*, or if that cannot be done,

it may be referred back to the committee itself for further consideration and amendment in terms of the resolutions for amendments passed at a meeting. It may also be referred back if new circumstances have arisen which might affect the recommendations and the views of the committee. This is done with a view to give an opportunity to the committee to reconsider and amend the report if necessary. There are cases also, where the main body has no power to amend the report of the committee, and in such cases they have to be referred back to the latter with a request to amend them as desired by the main body. Even where the power is with the main body to amend, the usual practice is to refer back, as a courtesy, the amendments to the committee. It may be added that it is quite within the powers of the main body to pass their own recommendations in the form of original resolutions of their own, and drop altogether the report of the committee with which they do not happen to agree.

CHAPTER IX

ADMISSION OF THE PRESS AND UNLAWFUL MEETINGS

The Press

When a public meeting is convened, the question naturally arises as to whether the press should be invited to be present. The answer will largely depend upon the circumstances. If the object of the public meeting is demonstration, then the press is the most efficient medium through which this demonstration could be spread all over the country, and in such circumstances the presence of the press would be most desirable. There is the other side of the case also; where a question of great public interest and importance is being dealt with by the meeting, it is desirable that the press should be present with a view to spread the information among the population of the country. The press, of course, has no right to be present at a public meeting convened for a particular purpose, and the conveners of the meeting have the option of inviting the press. If it is decided that the press should be invited, then proper notices of the meeting and Agenda, as well as the names of the prominent speakers should be submitted in advance to the editors of the respective papers, requesting them to send their reporters. At meetings of local authorities and municipal corporations it is entirely optional in this country for the authorities concerned to permit the press to be present. In England, however, after the famous case of *Tenby (Mayor of)* v. *Mason* (1908), 1 Ch. 457, in which Mason who was a burgess and rate-payer of a town, tried to establish his rights to be present at a meeting of the council of the borough both as a rate-payer and reporter of a newspaper and in the alternative as a member of the public, it was decided that the meeting of the council of a municipal corporation was not a public meeting, and therefore Mason as a member of the public had no right to attend. It was also decided that he had no right to attend as a newspaper reporter without the permission of the council itself. In consequence of this decision the British Parliament passed an Act called 'The Local Authorities Admission of Press to

Meetings Act of 1908' which provided for the admission of representatives of the press to the meetings of local authorities subject to the following provision :—

'A local authority may temporarily exclude such representatives from a meeting as often as may be desirable at any meeting when, in the opinion of a majority of the members of the local authority present at such meeting, expressed by resolution, in view of the special nature of the business then being dealt with or about to be dealt with, such exclusion is advisable in the public interest.'

By Section 2 'local authority' in this connexion means :—

(*a*) A council of a county, county borough, borough (including a metropolitan borough), urban district, rural district, or parish, and a joint committee or joint board of any two or more such councils to which any of the powers or duties of the appointing councils may have been transferred or delegated under the provisions of any Act of Parliament or Provisional Order; and a parish meeting under the provisions of the Local Government Act, 1894.

(*b*) An education committee and a joint education committee, established under Section seventeen of the Education Act of 1902, so far as respects any acts or proceedings which are not required to be submitted to the council or councils for its or their approval, but not managers of a provided school.

(*c*) The Metropolitan Water Board and a joint water board constituted under the provisions of any Act of Parliament or provisional order.

(*d*) Any other local body which may have the power to make a rate.

Representatives of the press not only include the accredited representatives of newspapers but also accredited representatives of news agencies who systematically carry on the business of selling and supplying reports and information for newspapers. This concession, however, does not extend to the meeting of the committees of local authorities, though they may admit such representatives at their pleasure.

We have already seen that the presence of these representatives of the press, and publication by them of what

happened at the meeting does not take away the privilege [*Pittard* v. *Oliver* (1891), 1 Q.B. 474]. This is, of course, subject to the condition that the speaker who has himself made defamatory statements at a meeting has not invited the press to be present [*Parsons* v. *Surgey* (1864), 4 F. & F. 247]. In other words if the press is present at the speaker's invitation, the privilege is lost as far as the speaker is concerned.

Unlawful Assemblies and Meetings

Generally speaking the Common Law permits persons to meet for a lawful purpose in any number. A meeting may be held in any private place, or in a public place, provided no unlawful obstruction is caused by the use of that place to the liberty of any other citizens equally entitled to its use. Thus meetings are to be held at most appropriate and convenient places preferably in areas that may have been defined for such purposes by local authorities, as is frequently the case [*Slee* v. *Meadows* (1911), 75 J.P. 246]. The time at which the meetings can be held is not fixed by law and they can be held at any convenient time. People who are present at the meeting must comply with the regulations laid down by those who have called it and submit to their reasonable control.

It will easily be noted from the above that streets cannot be used for the purpose of meetings, for the obvious reason that the paramount object of streets is their use as a passage by the citizens, and the holding of meetings in them would naturally amount to an obstruction of these streets [*M'Ara* v. *The Magistrates of Edinburgh* (1913), S.C. 1073]. This rule applies both to public and private highways [*Hampstead Garden Suburb Trust* v. *Denbow* (1913), J.P. 318]. In the case of highways the meeting becomes unlawful when it constitutes itself a nuisance, whereas a meeting in private highways without permission is unlawful because it becomes a trespass. Because a meeting is held on a public street, it is not necessarily unlawful, and can only be said to be so when it becomes a nuisance and an obstruction to other citizens [*Burden* v. *Rigler* (1911), 1 K.B. 337 at p. 340 per Lord Alverstone C.J.].

Public meetings can be held on open grounds unless any local regulation prohibits them as there is no Common Law right of holding a meeting on an open ground [*De Morgan* v. *The Metropolitan Board of Works* (1880), 5 Q.B.D. 155]. The

same regulations apply to a meeting in parks or public gardens, or a public square [*Bailey* v. *Williamson* (1873), L.R. 8 Q.B. 118; *Ex Parte Lewis* (1888), 21 Q.B.D. 191]. In another case, *Aldred* v. *Miller* (1924), S.C. 117, it was held that a public meeting may be held lawfully on a public street provided it causes no obstruction or inconvenience to members of the public using the street, and that there is no private ground for holding such a meeting, the right of which is in more or less public capacity.

Even though a meeting may be held at a proper place without obstruction, if the object for which it is held happens to be unlawful, in that it amounts to committing an offence or doing anything which is prohibited by law, it would amount to an unlawful meeting.

In the Indian Penal Code an unlawful assembly is defined in Section 141 as follows:—

> An assembly of five or more persons is designated an 'unlawful assembly' if the common object of the persons composing that assembly is:—
>
> First—To overawe by criminal force, or show of criminal force, the Central or any Provincial Government or Legislature or any public servant in the exercise of the lawful power of such public servant; or
>
> Second—to resist the execution of any law, or of any legal process; or
>
> Third—to commit any mischief or criminal trespass, or other offence; or
>
> Fourth—by means of criminal force, or show of criminal force, to any person to take or obtain possession of any property or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or
>
> Fifth—by means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.
>
> *Explanation*:—An assembly, which was not unlawful when it assembled, may subsequently become an unlawful assembly.
>
> **Section 142.** Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.
>
> **Section 143.** Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

In England also in *Reg.* v. *Vincent* (1839), 9 C. & P. 91, it was held that where from general appearance and all

accompanying circumstances, the meeting is calculated to excite terror, alarm or consternation, it would be criminal and unlawful. It must have been seen above that the assembly must consist of five or more persons, having the objects as mentioned in Section 141 of the Indian Penal Code as their common objects [*Koura Khan* (1868), P.R. No. 34 of 1868; *Koylash Chunder Dass* (1873), 20 W.R. (Cr.) 78]. In other words the object must be common to all who have met in this assembly, though out of these five, or more, some may be convicted and some may be acquitted: particularly where these members of the unlawful assembly have committed an offence under Sections 146 and 147, viz. that of rioting. Rioting under Section 146 is defined as: 'Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting'.

In an unlawful assembly all the five persons must be proved to have a common object before anyone is convicted [*Feroze Din* (1928), 29 Cr. L.J. 859]. In England, in order to form an unlawful assembly, three or more persons must be there for a purpose forbidden by law. They must have met with an unlawful objective and at the same time must arrange plans for future action in order to come under the Section. Of course the parties must be aware of the fact that they are members of an unlawful assembly and intentionally join or continue the meeting [*Ganapathi Sarma* (1923), M.W.N. 104]. The resistance to some law or local process means some overt act, and mere words which are not intended to be carried out or which are not carried into effect will not suffice. Whether it amounts to an overt act or not could be seen from the conduct of the assembly and the refusal of its members to disperse after being ordered to do so. This also would be the common object to resist within the meaning of the second clause of Section 141 [*Abdul Hamid* (1922), 2 Pat. 134 on page 135]. As far as the word 'law' is concerned it not only includes all legislative enactments but even notifications issued by an executive authority in exercise of powers conferred on it by statute as decided in the above case. When persons who are wrongly arrested resist the police, it has been decided that such resistance does not amount to rioting [*Ramprit Ahir* (1925), 7 P.L.T. 218]. Simply because the people assembled

knew that they would be opposed and a breach of peace committed, does not render an assembly unlawful if they had assembled for a lawful purpose [*Beatty* v. *Gillbanks* (1882), 9 Q.B.D. 308]. On the same principle if without exceeding their lawful rights of private self-defence, they repel an attack that was made upon them by persons who had no right to obstruct them, the assembly would not be unlawful if the members had met for a lawful purpose [*Mucca Muthrian* (1915), 16 Cr. L.J. 743]. Where an assembly meets for a lawful purpose and its lawful acts excite others to commit a breach of the law, it is not an unlawful assembly [*Muhammad Ibrahim* (1928), 30 Cr. L.J. 38]. This was decided on the ground that no man can foresee at the commencement the course the assembly will take, or what conclusions will ensue.

With reference to the right itself, the civil authorities would be entitled to military assistance if necessary, and if these soldiers were attacked by the mob, they would be entitled to defend themselves on the same footing as private citizens would do, even without orders from their superior officers, because officers and soldiers are under no special privilege and subject to no special responsibility as regards the principles of self-defence. But they are under obligation not to use unnecessary force, particularly in view of the fact that they are armed with deadly weapons. In this connexion it has often been reiterated in standing orders of various governments that Magistrates and police officers should abstain from summoning military assistance unless under extreme necessity.

This brings us to the consideration of Section 42 of the Criminal Procedure Code of India, 1898, where it is clearly laid down :—

> 'Every person is bound to assist a Magistrate or Police Officer reasonably demanding his aid, whether within or without the Presidency towns—
>
> (*a*) in the taking or preventing the escape of any other person whom such Magistrate or Police Officer is authorized to arrest ;
>
> (*b*) in the prevention or suppression of a breach of the peace, or in the prevention of any injury attempted to be committed to any railway, canal, telegraph or public property.'

It will be seen from the above that a citizen is bound to assist the Magistrate or Police Officer in the suppression of a breach of peace, or in the prevention of any injury attempted to be committed to any railway, canal, telegraph, or public property, and failing to render assistance when thus called upon is liable to punishment under Section 187 of the Indian Penal Code. The assistance here meant is personal assistance of the individual himself and not the supply of a contingent of men to assist. There is a further Section 144 of the Criminal Procedure Code which is frequently utilized in urgent cases where danger of rioting, or of any unlawful act is apprehended at a certain meeting which is contemplated being held. This order, which may be directed to a particular individual or to the public generally when frequenting or visiting a particular place, does not remain in force for more than two months unless in cases of danger to human life, wealth, or safety or likelihood of a riot or an affray, when it is extended by the local government by notification in the *Official Gazette*. The actual wording of the Section runs as follows :—

(1) In cases where, in the opinion of a District Magistrate, a Chief Presidency Magistrate, a Sub-divisional Magistrate, or of any other Magistrate (not being a Magistrate of the third class) specially empowered by the Provincial Government or the Chief Presidency Magistrate or the District Magistrate to act under this section, there is sufficient ground for proceeding under this section and an immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by Section 134, direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex parte*.

(3) An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

(4) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order

made under this section by himself or any Magistrate subordinate to him, or by his predecessor in office.

(5) Where such an application is received, the Magistrate shall afford the applicant an early opportunity of appearing before him either in person or by pleader and showing cause against the order; and, if the Magistrate rejects the application wholly or in part, he shall record in writing his reasons for so doing.

(6) No order under this section shall remain in force for more than two months from the making thereof; unless, in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the Provincial Government by notification in the *Official Gazette*, otherwise directs.

Dispersal of an Unlawful Meeting by force

Under the general Common Law as well as by various acts and enactments in all parts of the country, powers are given to the civil authorities and the police to disperse an unlawful assembly, if necessary by force. By Common Law also, every citizen is bound to assist in the dispersal of these assemblies when they become of a riotous character. In England under the English Law, when there is an assembly of at least twelve or more persons which becomes riotous under the Riot Act of England, the Magistrate is expected to read the Act and if the rioters do not disperse thereafter they would be guilty of felony. In this case they may either be arrested or orders may be given to fire upon them. This Riot Act of England supersedes the power of a Magistrate under the Common Law.

In India various regulations govern the control and dispersal of meetings. Under the Police Act of almost every Presidency town, and the District Police Act of every district, the police are given powers to make rules for the regulation both of traffic, and for the preservation of order in public places. Section 22 of the Bombay Police Act of 1902 empowers the police to make rules and regulations, among other things, for:

(*b*) regulating traffic of all kinds in streets and public places, and use of streets and public places by persons riding, driving, cycling, walking or leading or accompanying cattle, so as to prevent danger, obstruction or inconvenience to the public;

(*c*) regulating the conditions under which vehicles may remain standing in streets and public places, and the use of streets as halting places for vehicles or cattle.

On the same footing the Bombay District Police Act gives to the District Magistrate, who is generally the Collector and

Head of the Police, power under Section 39 to close streets or places temporarily for any cause which appears to him reasonable. Again Section 23(2) gives powers to the police under the Bombay Police Act with a view to preserve order and to prevent any breach of public peace as follows :—

Section 23(2). The Commissioner of Police may also, whenever and for such time as he shall consider necessary for the preservation of the public peace or public safety, by a notification publicly promulgated or addressed to individuals, prohibit—

(*a*) the carrying of swords, spears, bludgeons, guns, or other offensive weapons, in any public place ;

[For the above provision the following has been substituted by Section 2 of the Bombay Act III of 1942 :—

" (*a*) the carrying in any public place of—

(i) Swords, spears, bludgeons, guns, knives, sticks or lathis, or

(ii) any other weapon which is capable of being used as a weapon of offence."

This was repealed and re-enacted by Sections 2 and 3 of Bombay Act LIX of 1947.]

(*b*) the carrying, collection and preparation of stones or other missiles or instruments or means of casting or impelling missiles ;

(*c*) the exhibition of persons or of corpses or figures or effigies in any public place ;

(*d*) the public utterance of cries, singing of songs, playing of music ; and

(*e*) the delivery of harangues, the use of gestures or mimetic representations, and the preparation, exhibition or dissemination of pictures, symbols, placards or of any other object or thing, which may be of a nature to outrage morality or decency, or which, in the opinion of the Commissioner of Police, may probably inflame religious animosity or hostility between different classes, or incite the commission of an offence, to a disturbance of the public peace or to resistance to or contempt of the law or of a lawful authority.

(3) The Commissioner of Police may also by order in writing prohibit any assembly or procession whenever and for so long as he considers such prohibition to be necessary for the preservation of the public peace or public safety : provided that no such prohibition shall remain in force for more than seven days without the sanction of the Provincial Government.

(4) The Commissioner of Police may also, by public notice, temporarily reserve for any public purpose any street or public place, and prohibit persons from entering the area so reserved, save under such conditions as may be prescribed by the Commissioner of Police.

Section 23A has now been inserted in the City of Bombay Police Act, 1902, by S. 3(3) of the Bombay Act XXXIV of 1948 which gives the Commissioner of Police power to prevent, prohibit, control or regulate the incidence or continuance of music, sound or noise, so as to prevent annoyance, disturbance, discomfort or injury to the public or to any persons who dwell or occupy property in the vicinity. Similar powers are given under practically every Police Act of every city and district. Under Section 24 of the Bombay Police Act, powers are also given to the Commissioner of Police to issue orders for the prevention of riots, etc. The section runs as follows :—

(1) In order to prevent or suppress any riot or grave disturbance of the peace, the Commissioner of Police may temporarily close or take possession of any building or place, and may exclude all or any persons therefrom, or may allow access thereto to such persons only and on such terms as he shall deem expedient. All persons concerned shall be bound to conduct themselves in accordance with such orders as the Commissioner of Police may make and notify in the exercise of the authority hereby vested in him.

(2) If the lawful occupier of such building or place suffers substantial loss or injury by reason of the action of the Commissioner of Police under this section, he shall be entitled, on application made to the Commissioner within one month from the date of such action, to receive reasonable compensation for such loss or injury, unless such action was in the opinion of the Commissioner of Police rendered necessary either by the use to which such building or place was put or intended to be put or by the misconduct of persons having access thereto.

(3) In the event of any dispute in any case under subsection (2) the decision of the Chief Presidency Magistrate shall be conclusive as to the amount (if any) to be paid, and as to the person whom it is to be paid.

In the case of religious meetings and ceremonials also similar powers are given by Section 24 of the same Act. Besides this there are sections under the Bombay Police Act and similar Acts providing for the dispersal of unlawful assemblies, the use of civil force to disperse them, and the requisition of military or naval powers for that purpose if necessary. They also lay down the duties and powers of officers commanding military or naval forces required to disperse unlawful assemblies, and give immunity against prosecution for using force under lawful authority. These sections under the Bombay Police Act are as follows :—

Section 40. (1) Any Magistrate or officer in charge of a section or any Police officer not below the rank of a sub-inspector authorized in this behalf, may command any unlawful assembly or any assembly of five or more persons likely to cause a disturbance of the public peace to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

(2) If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a section or any Police officer authorized under sub-section (1) may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or soldier, or sailor in His Majesty's Army or Navy, or Royal Indian Navy, or a Volunteer enrolled under the Indian Volunteers Act, 1869, and acting as such for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form it, in order to disperse such assembly or that they may be punished according to law.

Section 41. If on any emergency the available police force is not sufficient to disperse an unlawful assembly or to quell a riot or other serious disturbance of the public peace, the Commissioner of Police, or Magistrate of the highest rank who is present, may apply to the officer of highest rank on the spot for military or naval aid for such purpose.

Section 42. (1) When the Commissioner of Police or a Magistrate determines to disperse any unlawful assembly by military or naval force, he may require any commissioned or non-commissioned officer in command of any soldiers or sailors in His Majesty's Army or Navy, or Royal Indian Navy or of any Volunteers enrolled under the Indian Volunteers Act, 1869, to disperse such assembly by military or naval force, as the case may be, and to arrest and confine such persons forming part of it as the Commissioner of Police or Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

(2) Every such officer shall obey such requisition in such manner as he thinks fit, but in so doing shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

Section 43. When the public security is manifestly endangered by any such assembly, and when neither the Commissioner of Police nor a Magistrate can be communicated with, any commissioned officer of His Majesty's Army or Navy or Royal Indian Navy, may disperse such assembly by military or naval force, as the case may be, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law; but if, while he is acting under this section, it becomes practicable for him to communicate with the Commissioner of Police or Magistrate, he shall do so, and shall thenceforward

obey the instructions of the Commissioner of Police or Magistrate as to whether he shall or shall not continue such action.

Section 44. No prosecution against any person for any act purporting to be done under Sections 40, 41, 42 or 43 of this Act, or under Section 42 of the Code of Criminal Procedure, shall be instituted in any Criminal Court, except with the sanction of the Provincial Government; and

(*a*) no Magistrate or Police officer acting thereunder in good faith,
(*b*) no officer acting under Section 43 in good faith,
(*c*) no person doing any act in good faith, in compliance with a requisition under Section 40 or 42 of this Act, or under Section 42 of the Code of Criminal Procedure, and
(*d*) no inferior officer, or soldier, or sailor, or volunteer, doing any act in obedience to any order which he was bound to obey, shall be deemed to have thereby committed an offence.

These Acts provide under their own sections the payment of compensation for injury caused by an unlawful assembly, the methods by which it can be recovered; they also guide the magistrate as to who should be exempted from liability to pay this compensation and the conditions under which the said compensation is claimable as well as the method of recovery of these compensations. The Bombay Police Act sections [as amended by Bombay Acts LIX of 1947 S. 4(7) and XXXIV of 1948 S. 3(6)] are as follows:—

Section 45. (1) The Chief Presidency Magistrate may, after such inquiry as he deems necessary, determine the amount of the compensation which, in his opinion, should be paid to any person or persons in respect of any loss or damage caused to any property, or in respect of death or grievous hurt caused to any person or persons, by anything done in the prosecution of the common object of an unlawful assembly.

(2) The Chief Presidency Magistrate may require:—
(*a*) in the city of Bombay, the Municipal Commissioner, the Collector or any other authority,
(*b*) in an area outside the City of Bombay but within the limits of a municipality, the Municipality, the Collector or any other authority, and
(*c*) in an area outside the City of Bombay and not within the limits of a municipality, the Collector or any other authority,

to recover either in whole or in part such amount and where the Municipal Commissioner of the municipality is required to recover such amount an additional sum not exceeding three per cent of such amount generally from all persons who are inhabitants of any particular area or specially from any particular section or sections, or class or classes of such persons, and in such proportions as the Chief Presidency Magistrate may direct.

(3) (i) The Chief Presidency Magistrate may require the Municipal Commissioner to recover such amount and the additional sum by an addition to the general tax which shall be imposed and levied in all or such of the municipal wards, sub-wards or sections thereof, as the Chief Presidency Magistrate may direct. Every addition to the general tax imposed under this sub-section shall be recovered by the Municipal Commissioner from each person liable therefor in the same manner as the general tax due from him. The provisions of Sections 147 and 148 of the City of Bombay Municipal Act, 1888, shall apply to any such addition as if it were part of the general tax levied under the said Act.

(ii) The Chief Presidency Magistrate may also require the Municipal Commissioner to recover such amount and the additional sum from each person liable therefor under sub-section (2) in such manner as he may direct.

(4) The Chief Presidency Magistrate may require the Municipality outside the City of Bombay to assess and recover such amount and the additional sum by a tax or by a rate which the municipality shall impose and levy from such persons, sections or classes of persons and in such proportions as the Chief Presidency Magistrate may direct. Every tax or rate so imposed and levied shall be recovered by such municipality from each person liable therefor in the same manner as a municipal tax due by him:

Provided that where a municipality makes default in imposing and levying any such tax or rate or in making any such recovery, the Provincial Government may direct the Collector to impose such tax or rate or to make such recovery.

Every tax or rate imposed and levied by the Collector shall be recoverable by the Collector as if it were an arrear of land revenue due by the person liable therefor.

(5) Every amount recoverable by the Collector or other authority under this section shall be recoverable as if it were an arrear of land revenue due by the person liable therefor.

(6) Out of the total amount recovered by the Municipal Commissioner or by the municipality under sub-section (3) or (4), whether before or after the coming into operation of the Bombay District Police and the City of Bombay Police (Amendment) Act, 1947, a sum equivalent to the amount of the compensation shall be paid to the Chief Presidency Magistrate and the balance, if any, shall be credited to the municipal fund constituted under Section 111 of the City of Bombay Municipal Act, 1888, or Section 51 of the Bombay District Municipal Act, 1901, or Section 65 of the Bombay Municipal Boroughs Act, 1925, as the case may be. Such amount shall be paid to the Chief Presidency Magistrate every three months.

(7) It shall be lawful for the Chief Presidency Magistrate, by order, to exempt any persons from liability to pay any portion of such compensation.

Explanation.—In this section the expression "inhabitants" when used with reference to any area includes persons who themselves or by their agents or servants occupy or hold land or other immoveable property within such area and landlords who themselves or by their agents or servants collect rent from holders or occupiers of land in such area, notwithstanding that they do not actually reside therein.

Section 46. (1) It shall be lawful for the Chief Presidency Magistrate to award or apportion all or any moneys recovered as compensation under sub-sections (2) to (4) of Section 45 to any person or among all or any persons whom he considers entitled to compensation in respect of the loss or damage or death or grievous hurt aforesaid.

(2) No compensation shall be awarded under this Section except upon a claim made within 45 days from the date of the loss, damage, death or grievous hurt as aforesaid, in respect of which such claim is made, and unless the Chief Presidency Magistrate is satisfied that the person claiming compensation, or where such claim is made in respect of the death of any person, that that person also has himself been free from blame in connection with the occurrences which led to the loss, damage, death or grievous hurt as aforesaid.

(3) The compensation payable to any person under Section 45 in respect of death or grievous hurt shall not in any way be capable of being assigned or charged or be liable to attachment or to pass to any person other than the person entitled to it by operation of law, nor shall any claim be set off against the same.

(4) No civil suit shall be maintainable in respect of any loss or injury for which compensation has been granted under this section.

Section 46A. The Chief Presidency Magistrate shall discharge his functions under Sections 45 and 46 subject to any general or special orders of the Provincial Government in this behalf.

The District Superintendent or assistant superintendents under the Bombay District Police Act, and the Police Acts of other districts are given powers to make rules and direct the conduct and behaviour or actions of persons constituting assemblies and processions, and moving crowds or assemblies on or along the streets and prescribe in the case of processions the route by which, and the time at which they must pass. The rules must of course be published at or near the places where they have to operate or be notified to the person affected thereby (Section 48).

Section 47 of the same Act also empowers the police to provide against disorders at public places of amusement and public meetings. The wording of Section 47 of the Bombay District Police Act is as follows :—

(1) For the purpose of preventing serious disorder or breach of the law or manifest and imminent danger to the persons assembled at any public place of amusement or at any assembly or meeting to which the public are invited or which is open to the public, the senior Police Officer of highest rank superior to that of constable, present at such place of amusement or such assembly or meeting, may, subject to such rules and orders as may have been lawfully made, give such reasonable directions as to the mode of admission of the public to, and for securing the peaceful and lawful conduct of the proceedings and the maintenance of the public safety at, such place of amusement or such assembly or meeting, as he thinks necessary; and all persons shall be bound to conform to every such reasonable direction.

(2) The Police shall have free access to every such place of amusement, assembly, or meeting for the purpose of giving effect to the provisions of sub-section (1) and to any direction made thereunder.

Note:—Any person who obstructs free access of the police to a place of amusement makes himself liable to an offence under the Indian Penal Code.

Similar sections and powers are to be found under the District Police Acts of various Indian districts.

Seditious Meetings

Sedition in public meetings is also a serious offence against the State. Sedition is defined by Section 124A of the Indian Penal Code of 1860 as under:—

Section 124A. Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, Her Majesty or the Crown Representative or the Government established by law in British India, shall be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1.—The expression 'disaffection' includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

It will be seen from the above section that sedition is a comprehensive term covering anything done by words, deeds or writing, which is calculated to disturb the tranquillity of the State and incite ignorant persons to endeavour to subvert the government and the laws of the Empire. Defamatory statements concerning the sovereign may also be punishable under these sections. It is immaterial whether any disturbance or outbreak follows the use of these seditious words. The only point which the Court will see is whether the accused intended by his speech or writing to excite rebellion or disturbance. If his words and writings resulted in the excitement of feelings of enmity to the Government, it would be an offence under the section [*Bal Gangadhar Tilak* (1897), 22 Bom. 122. See page 135]. It was further held in the case of *Philip Spratt* (1927), 5th Cr. Sessions Case No. 1, decided on 24th November 1927 (unreported) by Fawsett J. that there must be in the first instance words which are capable of a meaning that can be labelled seditious, and secondly the accused must be shown to have the intention of actually causing or exciting the feelings referred to in the section. Thus should the ingredient of the offence be intentional it can be judged primarily by the language itself. The meaning of the language, in other words, will be the deciding factor in this case. It was also held in *Bal Gangadhar Tilak's Case* (1908), 10 Bom. L.R. 848, that in this country while dealing with this language, allowance must be made for the oriental mode of the thoughts and expressions and other high flown or classical language [see also *the Amrit Bazar Patrika* (1919), 30 Cal. L.J. 289]. On the question of intention there is another case, viz. *Amba Prasad* (1897), 20 All. 55, 68, F.B. where in a full bench decision Woodrop J. stated as follows :—

> 'The intention of a speaker, writer or publisher may be inferred from the particular speech, article or letter, or it may be proved from that speech, article or letter considered in conjunction with what such speaker, writer or publisher has said, written or published on another or other occasions. Where it is ascertained that the intention of the speaker, writer or publisher was to excite feelings or disaffection to the Government established by law in British India, it is immaterial whether or not the words spoken, written or published, could have the effect

of exciting such feelings of disaffection, and it is immaterial whether the words were true or were false, and, except on the question of punishment, or in a case in which the speaker, writer or publisher is charged with having excited such feelings of disaffection, it is immaterial whether or not the words did in fact excite such feelings of disaffection.'

In *Luxman Narayan Joshi* (1899), 2 Bom. L.R. 286, Jenkin C.J., it was laid down :

'To determine whether the intention of the accused was to call into being hostile feelings, the rule that a man must be taken to intend the natural and reasonable consequences of his act must be applied ; so that if on reading through the articles the reasonable and natural and probable effect of the articles on the minds of those to whom they are addressed appears to be that feelings of hatred, contempt, or disaffection would be excited towards the Government, then it is justifiable to say that the articles are written with that intent and that they are an attempt to create the feelings against which the law seeks to provide.'

The Judicial Committee of the Privy Council also upheld the same view as in the above case expressed by Jenkins C.J. [*Besant* v. *Advocate-General of Madras* (1919), 21 Bom. L.R. 867]. The question of whether there is the intention of sedition in the expression of ideas in a newspaper article must be decided by taking it as a whole and not from isolated passages [*Manomohan Ghose* (1910), 38 Cal. 253]. Speeches, too, must be read as a whole in a fair, free and liberal spirit, and one must not pause upon an objectionable sentence here, or strong words there [*Bal Gangadhar Tilak* (1916), 19 Bom. L.R. 211 per Shah J. on page 272].

It will be noticed, therefore that fair criticism at a meeting for purposes of political discussion is not sedition, neither is any meeting for the purpose of political discussion illegal simply because seditious words were spoken at it, unless it can be shown that the circumstances in which the meeting was convened or its behaviour when assembled is such as to produce reasonable fear of a breach of peace (*History of Criminal Law of England* by Stephen, Vol. II, page 369).

Prevention of Seditious Meetings

In this connexion there is a special Imperial Act called the Prevention of Seditious Meetings Act of 1911 which extends over the whole of British India but has operation only in such provinces or parts of provinces as the Provincial Government may from time to time notify in the *Official Gazette.* Under this Act the Provincial Government is given the power by notification in the *Official Gazette*, to declare the whole or any part of the province in which this act is for the time being in operation to be a proclaimed area (Section 2). This notification under the same section shall not remain in force for more than six months, but the Provincial Government is left free to extend the time by further notifications. Here, for this purpose, a public meeting includes a meeting which is open to the public or any class or portion of the public and is a public meeting notwithstanding the fact that it is held in a private place and notwithstanding that admission into it is restricted either by tickets or otherwise (Section 3). Once the area is proclaimed, no public meeting for furtherance or discussion of any subject likely to cause distrubance or public excitement or for exhibition or distribution of any written or printed matter relating to such subject can be held within the proclaimed area, unless the written intention to hold such a meeting is given to the District Magistrate or Commissioner of Police as the case may be at least three days previously and permission has been obtained in writing from one of these officers. Where such permission is given the District Magistrate or any Magistrate of the first class may depute one or more police officers not below the rank of head constable, or other persons, to attend the meeting for the purpose of causing a report to be taken of the proceedings. This regulation, of course, does not apply to any meeting held under any statutory or other expressed legal authority or to public meetings, convened by a Sheriff or to any public meetings or class of public meetings which are exempted for that purpose by the Provincial Government by general or special order (Section 4). A public meeting in the prohibited area can similarly be forthwith stopped, if held within the proclaimed area, by order in writing, if it is likely to promote sedition or disaffection or to cause a disturbance of public tranquillity (Section 5).

Persons promoting or conducting a public meeting in a proclaimed area, contrary to these rules, are liable to be punished. Anyone delivering a speech, lecture or address in a proclaimed area without permission in writing from the Magistrate or District Commissioner of Police, on any subject likely to cause a disturbance, or public excitement to persons then present in a public place, or public resort, is liable to be arrested without warrant and to be punished with imprisonment. The offence under this Act is triable by a Presidency Magistrate or a first class or sub-divisional Magistrate.

PART III

CLUBS, SOCIETIES AND TRADE UNIONS

CHAPTER X

LAW, PRACTICE AND RULES REGARDING CLUBS, ASSOCIATIONS OR SOCIETIES AND TRADE UNIONS

Standing Orders

Meetings where the general public have no right to attend or if admitted have no right to take part in the proceedings, are governed by bye-laws or set rules. The rules and forms by which the business and procedure of deliberative or legislative bodies is governed are known as standing orders. The rules of local authorities are also termed standing orders. They cannot be altered or abrogated without due notice. Where there are no standing orders, then either the practice of the House of Commons or the usual practice of the authority itself may be followed. Standing orders prevent misunderstanding of the powers of the meeting and help the Chairman in the conduct of the business.

Law relating to Clubs

Clubs may be either proprietary clubs or members' clubs. Proprietary clubs are naturally controlled and directed by the owner or proprietor to whom the club property belongs with the result that profits or losses made by the club are exclusively his concern, more or less like a business carried on by a single proprietor, or where there is more than one proprietor, on the footing of a partnership.

Members' clubs, on the other hand, are so to say, unincorporated societies or associations unless they have been registered or incorporated under the Indian Companies Act or some other similar statute, when they would be governed by the act and statute under which they are formed. If, as is universally the case, the club is an unincorporated members' club, it is one generally formed for some particular object, or objects, such as sport, social, political, or religious, and is not an association formed for the purpose of making profits. Here, if any surplus of receipts or income over the expenditure is left over year after year, that, in law belongs to the general body of members. As these clubs are not profit-making associations, they do not fall under the designation

of partnerships and thus they are not required to be registered as companies under the Indian Companies Act of 1913 [*Thellusson* v. *Valentia* (1907), 2 Ch. 1 (C.A.) ; *Flemyng* v. *Hector* (1836), 2 M. & W. 172]. They are unincorporated non-profit clubs, that is neither a company nor a partnership, but an entity unrecognized by law [*Steele* v. *Gourley* (1886), 3 T.L.R. 119 and 772 (C.A.)]. The clubs as we have seen, are also formed for political objects but the point is whether the object is principal or secondary. Whilst speaking of some of the 'West End clubs' of London in *Hopkinson* v. *Marquis of Exeter* (1867), L.R. 5 Eq. 67, Lord Romilly M.R. said that they were 'very peculiar institutions'. They are societies of gentlemen who meet principally for social purposes, although in conjunction with this there are often certain other purposes, sometimes of a literary nature, and sometimes to promote political objects as in the Conservative or the Reform Club of London. But the principal objects for which they are designed are social; any others being only secondary.

The usual practice is for members joining a club to contribute fees both as entrance fees and subscriptions, or the latter only, from which the club expenses are met. These members in return for their membership have a right to enjoy the use of the club premises and its privileges, but cannot claim any share out of the property of the club unless and until the club is dissolved.

Dissolution of Clubs

Frequently the rules as to dissolution are incorporated in the club rules; if not, the majority of members must desire the dissolution or there must be special circumstances which make it impossible or impracticable to continue the club. In such cases the Court will interfere and order dissolution. It has been held that the High Courts have jurisdiction to dissolve or wind up unincorporated clubs [*Blake* v. *Smither* (1906), 22 T.L.R. 698]. In the division of the assets or the money realized from the assets of the club, only the paying members would get a share; the honorary members would not, unless, of course, there happened to be regulations to the contrary [*Brown* v. *Dale* (1878), 9 Ch.D. 78]. If the assets are improperly administered, the Equity Courts may be appealed to [*Richardson* v. *Hastings* (1844), 7 Beav. 301; *Re St. James' Club* (1852), 2 De. G.M. & G. 383].

Commencement of Membership and its Responsibilities

Membership could commence in the absence of specific regulations, from the date on which the notice of election is sent to the candidate (*Peek's Case*, L.R. 4 Ch. 532). If, however, there are rules and regulations on the admission of candidates, as is the case with every club, the correct practice is that as soon as a member is elected he should be furnished with a copy of these regulations and given an option to accept or refuse membership; thus he would not be considered as admitted until he had complied with these conditions [*Re New University Club* (1887), 18 Q.B.D. 727]. As every club generally has its own printed rules, the sending of copies becomes easy in modern times, but where no such rules are printed, a book containing the rules must be kept open for the inspection of members who should be made to sign these on admittance to membership as evidence of their acquaintance with the rules, and of their having agreed to them. In one case where such rules were available for inspection in a book to all members, the member concerned was taken to be acquainted with the contents of that book, and his plea of ignorance was not accepted [*Raggett* v. *Musgrave* (1827), 2 C. & P. 556 (N.P.); see also *Watkins* v. *Rymyll*, 10 Q.B.D. 178]. The principle that a member is bound by the rules of the club is based on the idea that by his acceptance thereof, he has entered into a contract to that effect with the club [*Lyttleton* v. *Blackburne* (1875), 45 L.J. Ch. 223; *Innes* v. *Wylie* (1844), 1 C. & K. 264]. Here it should be remembered that the Companies Act rule to the effect that more than twenty members carrying on a trade in partnership for profits, or more than ten doing banking business cannot constitute a legal partnership, does not apply to a club simply on the ground that it is not a partnership as there is no sharing of profits.

Once elected, a member must pay his entrance fee as well as his subscription, and on failing to do so he may be sued for payment. This, of course, only applies where he has been admitted and has accepted membership. A member can, however, resign membership subject to the rules of the club which he has accepted and once he has resigned he cannot be called a member without re-election [*Finch* v. *Oake* (1896), 1 Ch. 409]. The regulations in connexion with the

resignation of a member should be carefully read in deciding from what date the resignation of the member is complete. In regulations authorizing members to resign by sending a letter, no acceptance would be necessary. In other words unless the regulations specify clearly that the acceptance was necessary, the resignation would be completed as soon as it was presented at the club.

Proprietary Clubs

As we have already seen, the proprietary club is purely and simply the property of the person or persons to whom it belongs, and the members only have the right to enjoy the privilege of that club as long as they are members, admitted according to the rules and regulations, and as long as they continue to pay their fees. Here the proprietor is bound to carry on the club until the date of expiration of the current subscription and then if he likes he may dissolve the club by declining to receive further subscriptions. The members here are in the position of licensees of the club property, and the proprietor cannot interfere with this right because if he does so, he would be liable for damages for breach of contract.

Clubs under the Companies Act

Clubs may be incorporated under the Indian Companies Act of 1913, in which case they are generally societies registered as associations, the liability of whose members is limited by guarantee. Each member thus guarantees a nominal amount, say Rs. 10 or Rs. 100 which is payable by him towards the liability of the club in case it goes into liquidation or is dissolved and its assets are not sufficient to pay its debts or creditors. Here the extreme limit of the liability of each member is laid down by the club's own constitution incorporated under the Indian Companies Act. The proper documents, viz. the Memorandum and Articles of Association will have to be prepared and filed with the Registrar of joint stock companies. The Articles of Association would naturally contain the rules, regulations and the bye-laws of the club, which can be altered only as provided for by the Indian Companies Act of 1913. The advantage of incorporation under the Indian Companies Act is that the club now becomes a 'person' in the eyes of the law and has a perpetual succession and a common seal. Generally speaking, societies such

as the Society of Accountants, Company Secretaries, and other cognate bodies are increasingly forming incorporated societies under this arrangement. In India, however, very few clubs have taken the trouble to get themselves incorporated under this Act, for the simple reason that in the absence of such incorporation they can freely function without any inconvenience or obstruction under the common law applying to unincorporated members' clubs and are thus saved from the inconveniences attached to the various formalities which the Indian Companies Act of 1913 requires incorporated associations to observe.

The Property of the Club

As we have already seen, the property of the club in a proprietary club belongs to its owner, whereas that of a club incorporated under the Indian Companies Act belongs to the company itself, and the members have no claim on it except when the club is being liquidated under the Indian Companies Act. In actual point of fact the property belongs to all members jointly, though they have no right during the time the club is a going concern to claim distribution of the club property among themselves.

Alienation of club property, therefore, cannot be made in an unincorporated members' club without the consent of every member, unless it is being done in pursuance of the objects for which the club was established or incidental thereto. In one case, a certain club had won a cup which the majority of members at a general meeting wanted to present to a distinguished player, but the minority resisted that action. It was held that the action of the majority to alienate the property of the club in that manner was *ultra vires* [*Murray* v. *Johnston* (1896), 23 R.Ct. of Sess. 981]. Thus it is always held that when goods such as food, drinks, etc. are supplied to a member at a price, although in law that constitutes a sale, technically it amounts to a release to other members of their interest in these goods under the regulations of the club [*Graff* v. *Evans* (1882), 8 Q.B.D. 373; *Metford* v. *Edwards* (1915), 1 K.B. 172; *A. G.* v. *Swan* (1922), 1 K.B. 682]. The power of the Secretary, Manager, etc. of a club to pledge the credit of the club will be governed by the rules and regulations of the club and will therefore depend on the

extent to which such powers are expressly or impliedly conferred by such rules.

Arrears of Subscription

The property of unincorporated members' clubs is generally in the hands of trustees of the club and these would be the correct parties to sue and from whom to recover such fees; any one member may sue on behalf of the general body. Even if the rules authorize the secretary or any other officer to sue and recover the club fees and dues on behalf of the club, that cannot be done in spite of the fact that members have agreed to the rules, on the ground that the inherent power of a large number of persons to appoint an officer to sue in their name belong only to bodies incorporated by charter [*Gray* v. *Pearson* (1870), L.R. 5 C.P. 568; *Evans* v. *Hooper* (1875), 1 Q.B.D. 45; 33 L.T. 374].

With a proprietary club, or a club incorporated under the Indian Companies Act, or any other statute, this difficulty will not arise because in the former case the proprietor could sue, and in the latter case the company can sue in its own name as a legal entity. Even though the rules of unincorporated members' clubs provide for a subscription, specify duties, and further add that no member shall be qualified to vote if his subscription is in arrear, that regulation will not apply, and not only would the member be entitled to vote, but also to enjoy the privilege of membership during the last date of the month for which the subscription is due and payable. This of course applies where the subscription is payable in advance on the first of each month [*Innes* v. *Wylie* (1844), 1 Car & Kir 257].

Club Management and Members' Liabilities

The management of clubs is usually entrusted to committees and the rules and regulations lay down the extent of the powers of such committees. The rules also provide for a quorum for the committee, failing which the whole committee must meet and act [*Brown* v. *Andrew* (1849), 18 L.J. Q.B. 153; *Re Liverpool Household Stores Association Limited* (1890), 59 L.J.Ch. 616]. As we have already seen in an unincorporated members' club, the trustees are as a rule separately empowered by the rules to deal with its properties and assets, and invest the assets at their own discretion, or

according to the directions of the committee. These trustees are necessary in an unincorporated members' club, though not necessary in proprietary clubs or clubs under the Indian Companies Act of 1913. They would naturally have a claim by way of a lien on the property in their possession in connexion with the liabilities that they may have to incur on behalf of the club. The same rule would apply to the committee. In one case where the committee, directed by a general meeting of members, raised a certain amount of money and invested it in the club for the purpose of extending the club and adding fittings and furniture, and gave their own guarantee, it was held that when the loan had to be repaid out of their own pocket by those members of the committee who had guaranteed, they had a lien on the club premises and other property acquired from the sum borrowed with a view to recover their money [*Minnitt* v. *Lord Talbot* (1876), L.T. 1 Ir. 143]. In this case when the club property was sold and released, the amount realized was not sufficient to pay off this debt. It was thus further held that the committee members were entitled to be indemnified by other members of the club. The last rule, however, was upset by the Privy Council in the famous case of *Wise* v. *Perpetual Trustee Co., Ltd.* (1903), A.C. 139, where the principal laid down was that 'an ordinary club is formed by the tacit understanding, judicially recognized, that no member as such becomes liable to pay to its funds or otherwise any money beyond the subscriptions required by its rules'. On this footing it was held that the trustees of a club who have incurred liability through onerous covenants contained in a lease, are entitled to indemnity out of any property of the club to which their lien as trustees extends, but it was further held that the members were not by reason only of being *cestuis que trust* personally liable to indemnify, and there was no rule of the club imposing such liability upon them. These last words are important here, viz. that unless there is a rule of the club itself which imposes such a liability, it would not arise. Thus the principle laid down in the Irish case cited above was overruled by the Privy Council. The reason for this decision has been given by Lord Lindley in his judgment on page 149 as follows:—

> 'The question now to be decided may be regarded as not yet covered by authority, and a choice must be made between either ignoring the essential features of a club

or holding that the general rule established in *Hardoon* v. *Belilios* (1901), A.C. 118 is inapplicable to such a body of persons. Their Lordships feel no difficulty in making this choice. The trustees of a club are the last persons to demand that the fundamental conditions on which their *cestuis que trust* have become such be completely ignored.'

'Clubs are associations of a peculiar nature. They are societies, the members of which are perpetually changing. They are not partnerships; they are not associations for gain; and the feature which distinguishes them from other societies is that no member as such becomes liable to pay to the funds of the society or to any one else any money beyond the subscriptions required by the rules of the club to be paid so long as he remains a member. It is upon this fundamental condition, not usually expressed but understood by every one, that clubs are formed; and this distinguishing feature has been often judicially recognized.'

With reference to the question of contribution between trustees or committee men when they have given such guarantee as in the above case, or incurred the liability and some of the trustees have had to pay out the amount, according to the law all the trustees or committee men who agreed to incur the liability at the committee meeting, or at the general meeting, or both, are liable to contribute proportionately particularly if they did not raise any objection at the time the incurring of the liability was considered [*Mountcashell* v. *Barber* (1853), 14 C.B. 53].

Committees

Committees are appointed under the rules and regulations of each club. There is usually the standing committee which looks after the general management of the club. A special committee is often appointed to investigate certain questions and report to the standing committee or to the members in general body; the report may be accepted, rejected or amended by the body so appointing them. The special committee is generally appointed to consider any special question which requires detailed and expert investigation, and may have to hear and weigh evidence, make

investigations and report. There are of course sub-committees on the same footing as sub-committees in joint stock companies. It may be further added that the procedure of the committee as well as its powers would largely depend upon the rules and regulations of the club framed in that connexion, but in the absence of these the ordinary Common Law rules applicable to committees will apply. The question of a quorum for committees should generally be decided at the time the committee is appointed unless the rules and regulations already provide for this. Usually the Chairman of the club or association concerned, and its Vice-Chairman are *ex-officio* Chairman and Vice-Chairman of the committee but there are rules and regulations of certain clubs and associations which give the committee itself the power to appoint their own Chairman and Vice-Chairman, if any. The powers of the committee in the first instance depend on the rules and regulations of the body concerned, and failing that on the resolution commonly known as an 'Order of Reference' which appoints them.

The procedure followed in the committee debate, as in all Common Law committees which are not guided by any special rules or regulations of their own, is that the members are not restricted in speaking or to motions and they need not stand up while addressing the Chair. Committee members are entitled to discuss problems on the round-table principle, speaking as frequently as necessity should arise on the same question, and the propositions moved as well as the amendments need not be seconded at Common Law. It will thus be seen that the procedure at a committee meeting is quite distinct from that which is to be compulsorily observed even under the Common Law in a general meeting. The committee can meet at any time and place which the majority of members may decide and may adjourn from time to time unless the regulations of the club or association lay down rules to the contrary. The decisions of the committee are arrived at by voting in the usual manner, and the resolutions when passed should be recorded in the Minutes book without showing any difference of opinion. Generally the practice is that the Chairman decides as to what is the sense of the Committee without taking votes if he finds that the bulk of the opinion is in favour of or against a particular proposition, but where he finds this doubtful, or when he is asked by a member of

the committee, he calls for a division and counts the votes. In many clubs and associations contrary opinions or differing minutes on the report of a committee are not allowed either by regulations or by standing practice, though of course this rule is not binding unless regulations or practice can be proved.

Chairman of a Club and his Duties

The duties of the Chairman of a club, as far as the general and committee meetings are concerned, are more or less the same as those of joint stock companies and public meetings which we have already considered. There is one difference, however, and this lies in the social duties of a club Chairman, particularly in connexion with official dinners given by the club where guests are usually present. Here the Chairman has to be in constant consultation with the secretary of the club regarding all the details as to the programme of speeches at the dinner, the arrangement of the plan of the tables and other details. In all well-regulated clubs, the programme of speeches is printed or prepared along with the toasts and Menu cards. The arrangement of seats has to be very carefully made, not only with a view to seeing that all the guests and members are accommodated according to their importance but also according to the manner in which they should be expected to be most comfortable and at ease. The Chairman should make it his business to get himself acquainted with some details as to the position and status of the important guests at the dinner, and should endeavour to be present first so that as the guests arrive he is able to receive and greet them. The late arrival of the Chairman after all the guests have assembled, is a most undesirable practice and should never be followed by a good Chairman, who on these occasions naturally takes up the position of a host. His main responsibility is to see to the order of the speeches which follow at the end of the dinner.

The Chairman of a society or club is usually a person of some position, either in his profession or in society, or in the party if it is a political party. In social clubs the Chairman should generally be a well-to-do man of position or title with plenty of time and leisure. The Chairman, in common with other officers, is re-elected yearly. In some clubs or societies, however the Chairman is allowed to continue for a number

of years. The modern practice is to try, as far as possible, to distribute the honour in succession to as many capable men of position as are to be found in the society or club; thus giving all men of importance an opportunity to play their part and do their duty to the benefit of the institution concerned.

Contracts on behalf of the Club

In the course of management of clubs, purchases naturally have to be made, and the question arises as to who should be personally liable for such contracts and what is the position of the parties who enter into such contracts for purchases on behalf of the club. Generally speaking, the principle is that the members of a club which is unincorporated do not intend to incur any liability beyond their subscription and fees [*Wise* v. *Perpetual Trustee Co., Ltd* (1903), A.C. 139]. Rules, however, largely influence the liability of members in each case. The club itself cannot be said to enter into any contract because the unincorporated members' club is, as we have already seen, an entity not recognized by law and thus those to whom money is due for goods ordered for the club have to proceed against the persons who gave them the order [*In Re London Marine Association* (1869), L.R. 8 Eq. 176 at page 195 per James V.C.].

Those who are ordering goods for the club may be taken to be acting as agents on behalf of such members of the club as have assented to the goods being ordered. How far this agency is established can only be discovered expressly or impliedly from the rules, which will show whether that agency has been created in the capacity of trustees, committee of management, or officials of the club as far as the pledging of credit of the members is concerned. It should be shown either expressly or impliedly which members are to be made liable for purchasing goods or incurring liabilities.

However, as all the members of a club cannot possibly join to enter into contracts in view of the large membership that clubs usually possess, the officials or the committee of trustees are empowered to act. To what extent they are empowered would entirely be a question of fact and every person who deals with these agents must ascertain for his own safety the extent of their authority [*Levy* v. *Richardson* (1889), W.N. 25]. This may easily be gauged from the club rules as far as the trustee or the particular official is con-

cerned. The wording of these rules and the meaning arrived at through construction will thus largely influence the decision of the Courts as to the extent of the authority of these agents. Thus where a committee is appointed according to the rules in order to manage the club affairs and for daily payment of their club bills, it has been held that the members are not liable to contribute towards the purchases made by the committee because here they have not been given the authority to pledge the members' personal credit [*Flemyng* v. *Hector* (1836), 2 M. & W. 172 at page 183; *Hawke* v. *Cole* (1890), 62 L.T. 658; *Draper* v. *Manvers* (1892), 9 T.L.R. 73]. Of course when an official of a club is in the habit of purchasing goods for the club to the knowledge of the members, and to which the members assent subsequently by making payment, he would constitute himself a general agent with authority to pledge their credit, but if the committee or the trustees or the officer are given specific powers to make specific contracts, they become particular agents and cannot exceed this authority. This is because the committee men and secretaries, as well as other officials do not derive any authority by virtue of their position except that which is conferred on them either by the rules or the resolutions of members [*Cockerell* v. *Aucompte* (1857), 2 C.B. (N.S.) 440; *New Lands* v. *The National Employers' Accident Association*, 54 L.J. Q.B. 430]. Members of the committee who have the authority to act in a particular direction become, therefore, joint agents, though these joint agents are under ordinary law not expected to join in every contract they make. The general rules which give this authority also provide for a quorum and therefore a smaller number within the quorum can act and bind the members.

Even when goods are bought by a single member for the purposes of the club all members who concurred in and assented to that purchase year after year would be liable personally even though the member who made the purchases was personally debited in the accounts of the trader [*Delaunay* v. *Strickland* (1818), 2 Stark 416]. The other general principle is that the committee of management are expected to purchase and pay for the goods from the funds in their hands, unless the rules otherwise provide, though that may not be applicable to wages of servants [*Todd* v. *Emley* (1841), 7 M. & W. 427]. When the committee appoint

such officers as stewards, they are in the position of sub-agents to the members if the appointment is made under the regulations of the club. Thus the relationship between members on one side and their committee and officers on the other is that of principal and agents or sub-agents and the rules of law applying to agencies are also applicable here. From a tradesman's point of view it is always best if he can get the orders for the contract from members of the committee, or club members rather than from the servants and officers of the company, as the servants may be shown not to have had the authority and complications may arise. Where the agents enter into contracts beyond the scope of their authority, they would naturally be personally bound and thus the members would not be liable for such contracts. Of course when the steward or the secretary gives an order for goods on credit by the committee's directions, those members of the committee who gave such authority or acquiesced in it would be liable personally as far as the secretary is concerned [*Stansfield* v. *Ridout* (1889), 5 T.L.R. 656]. All members who are thus liable remain liable even after they resign, for such debts incurred during the period of their membership, but not for those debts which were incurred after their resignation.

There are cases, however, where committees or officers are entrusted with specific funds with which to pay cash for goods ordered. If they incur liabilities beyond that amount, they would be personally liable. When the funds are exhausted, it is the duty of the committee to whom they are entrusted to call a meeting of the members and place the position of the club before them. They ought not to pledge their own credit, otherwise they would be personally liable [*Flemyng* v. *Hector* (1836), 2 M. & W. 172]. Even in an emergency the agents of the committee cannot pledge the credit of members outside the scope of their authority or the rules of the club [*Hawtayne* v. *Bourne*, 7 M. & W. 595; *Re Cunningham* (1887), 36 Ch.D. 532]. Of course in the case of excess of authority by the agent, it is quite open to the members to ratify the contract under the ordinary rule of ratification in agency law. If they wish to withdraw or limit this authority they must give prior personal notice to the tradesmen concerned (*Gratland* v. *Freeman*, 3 Esp. 85).

Neither the trustees nor members of the committee, nor the steward nor the secretary, nor as a matter of fact any official of an unincorporated members' club, have any authority by implication simply because they are holding these official positions to pledge the credit of members by entering into contracts on their behalf. Such authority as they may have, as we have seen above, must either be conferred by rules or through a resolution specially passed [*Cockerell* v. *Aucompte* (1857), 2 C.B. (N.S.) 440; *New Lands* v. *The National Employers' Accident Association*, 54 L.J. Q.B. 430]. Even the rules purporting to give such authority must be quite clear and unambiguous in that regard. The committee of a club, therefore, should be very careful before they obtain credit or borrow on behalf of members of the club on debentures, or in any other form [*Re St. James' Club* (1852), 2 De G.M. & G. 383]. Once it is proved that the contract was made on behalf of the members and that through it they are liable, the members themselves have a right to enforce it. In such cases, however, they must do so jointly, either as plaintiffs or defendants, as the case may be [*Everett* v. *Tindall* (1804), 5 Esp. 169]. Parties who wish to sue the members jointly must join them all as defendants because otherwise if they obtain a decree they can only enforce it against those whom they had joined and cannot bring fresh proceedings against the others in case they do not get full satisfaction from the enforcement of the decree against those whom they had joined [*Kendall* v. *Hamilton* (1879), 4 A.C. 504]. The trustees as well as the managing committee may be made personally liable if the terms or clauses of the agreements are such as to throw personal liability on them [*Mountcashell* (*Earl*) v. *Barber* (1853), 14 C.B. 53]. They may be also personally liable if they act in excess of authority as decided in the above case. Generally speaking if the contract is made in the personal names of the trustees or the names of the members of the committee, and not in the name of the club, they would be personally liable to outsiders or third parties even though they may have been duly authorized by the members to pledge their credit, and the outsider with whom they have contracted may sue them personally [*Queensbury* (*Duke*) v. *Cullen* (1787), 1 Bro. Parl Cas. 396 H.L.] although, of course, they would be entitled to recover the amount so

paid from the club funds, or from the members of the club who authorized them.

Liability of Clubs in Tort

It frequently happens that by some negligence, either on the part of members of the club, their officers or servants, some injury occurs or some nuisance is caused by the members or servants, and the parties injured or aggrieved would like to sue the club for damages in tort or ask the Court to restrain the nuisance by an injunction and order of the Court. In connexion with proprietary clubs or those incorporated under a statute such as the Indian Companies Act of 1913, this is not difficult because the master is liable for the torts of his servants and in case of members of the club, the proprietor or the company itself may be sued for damages. In an unincorporated members' club, however, considerable difficulty is felt in such cases. In the case of one proprietary club established to entertain members by a boxing contest, the Court issued an injunction restraining the nuisance caused through the accumulation of a large and noisy crowd, and its noise, cheering and hooting, as well as the use of carriages and the noise thereof till a late hour in the night [*Bellamy* v. *Wells* (1890), 60 L.J. Ch. 165]. In one case of an unincorporated members' club the committee appointed an incompetent person to repair a stand for the accommodation of visitors to view a boxing contest. One of the visitors sustained injury through the stand collapsing and the Court affirmed the decision of the County Court, awarding damages against the members of the committee personally, who in the opinion of the Court of Appeal, were the persons primarily liable [*Brown* v. *Lewis* (1896), 12 T.L.R. 455]. Another case of damages for negligence is that of *Castle* v. *St. Augustine's Links Ltd.* (1922), 38 T.L.R. 615 which was, of course, an incorporated club. The committee of the Golf Links Club was made to pay damages for negligence of certain members who caused injury to an outsider through a golf ball striking him on the eye as he was passing by on the road.

Criminal Liability of Members

Any member of a club, whether it is an unincorporated members' club, a proprietary club, or incorporated club is

liable to be punished for theft or larceny of the club's property [*R.* v. *Robson* (1885), 16 Q.B.D. 139]. It has also been held that if the property of a club illegally constituted is embezzled, though such club may not have a legal existence, the members may have such existence as beneficial owners of the property and thus they can sue [*R.* v. *Tankard* (1894), 1 Q.B. 548].

Actions by or on behalf of the Club

As we have already seen, proprietary and incorporated clubs can sue or be sued in the name of the proprietor, or in the name of the club itself, but an unincorporated members' club cannot sue in its own club name, nor can any officer of the club sue or be sued on behalf of the club in spite of authority vested with him by the rules [*Grossman* v. *Granville Club* (1884), 28 S.J. 513; *Gray* v. *Pearson* (1870), L.R. 5 C.P. 568; *Evans* v. *Hooper* (1875), 1 Q.B.D. 45]. Thus if a writ or summons is served on the secretary of one of these clubs, the action is bad according to the abovementioned case. The only course left open for such clubs is to have trustees to whom the property of the club should be entrusted and who can sue as representing the members beneficially.

Expulsion of Members from Clubs, Societies, Stock Exchanges, etc.

The expulsion of members from a club or society, generally speaking, rests upon the special Rules and Regulations and Constitution of the club, society, or the body concerned. The power to expel temporarily a member from a meeting, for disorderly conduct, or obstruction, is quite distinct from and should not be mixed up with the power to expel a member from a club or society to which he belongs. If there are no rules or regulations providing for expulsion, a new rule cannot be introduced without the unanimous consent of all the members. This unanimous consent will however be difficult to secure if the committee has already decided on the expulsion of a member who is bound to oppose such a proposition. If, however, there is a rule for expulsion originally introduced in the constitution and a little variation is to be made in it, there can be no objection; but such variation must be for the best interests of the members concerned. This is on the same principle as the

alteration of the Articles of Association of a joint stock company which should only be made *bona fide* and in the interest of the company as a whole, as has been fully considered in Part I in connexion with the famous case of *Allen* v. *Gold Reefs of West Africa* (1900), 1 Ch. 656. When there exists a rule for expulsion, the secretary or the convener of the meeting should see that it is strictly complied with.

Usually the rules provide for the consideration of the question of expulsion at a committee meeting. In this case the committee meeting should be called, and care taken to see that every member is given a notice informing him of the business which is to be done at the meeting otherwise the slightest variation would vitiate the proceedings [*Young* v. *Ladies' Imperial Club* (1920), 36 T.L.R. 392; *Labouchere* v. *Wharncliffe* (1879), 13 Ch.D. 346]. Care should be taken not to give any excuse to the person accused, who is to be expelled, on the ground that a full and proper inquiry of the circumstances of the accusation was made. The inquiry should proceed along the lines of the usual judicial inquiry and the member concerned must be permitted to produce witnesses, and urge his own case, as well as cross-examine the witnesses produced against him. He should also be given the charge which is laid against him in writing prior to the holding of the inquiry and allowed sufficient time to prepare his defence and produce his evidence [*Gray* v. *Allison* (1909), 25 T.L.R. 531: *D'Arcy* v. *Adamson* (1913), 29 T.L.R. 367]. In connexion with this *James* v. *Chartered Accountants Institute* (1907), 98 L.T. 225, is important, inasmuch as it was laid down there that a notice posted to the registered address of the member proposed to be expelled was sufficient even though it did not reach him, because he had changed his address unknown to the institute or its secretary. Here this decision was arrived at in spite of the fact that the notice sent was actually returned through the dead letter office. This was on the ground that it was the duty of the member to have notified his change of address and his failure to do so was his own negligence.

Courts of law generally refuse to interfere in the decision of a club as to expulsion of members if given without any irregularity in procedure unless it is proved either that the rules were opposed to natural justice or that they were not properly followed, or that there was malice or *mala fides* in

arriving at a decision [*Dawkins* v. *Antrobus* (1879), 17 Ch.D. 615]. The right to be given a fair trial of a member who is to be expelled is a Common Law right and the expulsion must be honest [*Tantussi* v. *Molli* (1886), 2 T.L.R. 731]. If all rules are properly followed and the aggrieved member is given adequate opportunity to be heard and produce his evidence and if the Court is satisfied that that was done, then it will not interfere unless corruption or malice is proved [*Thompson* v. *British Medical Association* (1924), A.C. 764].

It has been laid down that where there is no regulation as to reservations, a member of a club or association can resign at any time he chooses without the consent of other members and at the moment he does so, he ceases to be a member [*Finch* v. *Oake* (1896), 1 Ch.D. 409]. Once he does so he has no right to withdraw his resignation [*Maitland's Case*, 4 De G.M. & G. 769; *Re R.* v. *Corporation of Wigan* (1885), 14 Q.B.D. 908]. Even the Society cannot agree to this withdrawal of resignation as the above case showed. Any member so resigned must go through the formality of re-election to resume membership. Much will, of course, depend upon the terms in which his resignation is couched, and if the language of the letter clearly indicates that he wishes to withdraw from the association, then as soon as that letter reaches the secretary, according to *Finch* v. *Oake* cited above the resignation is complete. Arising from this it is clear that a member against whom proceedings for expulsion are taken can, by resignation, stop the whole proceedings provided the rules do not contain the clause by which it is clear that the resignation before it comes into force must be accepted by the committee or members of the body concerned.

To sum up, it has been laid down that the power of expulsion must be exercised strictly in accordance with the rules (if any) of the body or association concerned, and if a single formality were to be omitted, the expulsion would be void [*Innes* v. *Wylie* (1844), 1 Car. and Kir. 257; *Young* v. *Ladies' Imperial Club* (1920), 2 K.B. 523]. If notice has been provided in the rules for a certain number of days of the meeting where the expulsion is to be considered, and if the said notice is late by a single day, the expulsion will be annulled [*Labouchere* v. *Wharncliffe* (1879), 13 Ch.D. 346]. The notice must also be given to every member entitled to attend, and must explicitly state the object for which it is

called : if this is not done, the expulsion will be void [*Young* v. *Ladies' Imperial Club* (1920), 2 K.B. 523]. Such notice must be given even to a member who has waived his right to attend [*Re Portuguese Consolidated Copper Mines* (1889), 42 Ch.D. 160].

The next point, as we have seen, is that the expulsion must be *bona fide* and exercised in the interest of the club and not for some indirect or improper object. In one case where the member concerned was given an offer to be re-admitted if he were to stay the action and pay the cost, which offer was declined and the expulsion confirmed, it was held that the expulsion was void [*Tantussi* v. *Molli* (1886), 2 T.L.R. 731]. The next point to be remembered is that the power of expulsion has to be exercised according to the principles of natural justice. This means that while exercising it, the offending member must have every reasonable opportunity of defending himself and the matter must not proceed *ex parte*, without giving him this opportunity. If this is done the decision, whether just or unjust, is immaterial [*Fisher* v. *Keane* (1878), 1 Ch.D. 353 ; *Gray* v. *Allison* (1909), 25 T.L.R. 531 ; *Richardson-Gardner* v. *Fremantle* (1870), 24 L.T. 81 ; *Ambalal Sarabhai* v. *Phiroz Antia*, 40 Bom. L.R. 1213].

It frequently happens that the rules provide for the expulsion of a member on a ' reasonable and probable cause '. Thus if the club were a purely political club formed, say, to support the conservative cause, and a member voted for the liberal party, it would be quite within the rules to expel him, although that would not be so if it were a social club only. In the case of *Hopkinson* v. *Marquis of Exeter* (1867), L.R. 5 Eq. 63, it was also decided that even though the Court of Justice might hold otherwise, the committee's decision or conclusion will not be interfered with if a *bona fide* expulsion is arrived at [*Lambert* v. *Addison* (1882), 40 L.T. 20 ; *Seaton* v. *Gould* (1889), 5 T.L.R. 309].

A member of a club or of a masonic body or of any other institution who is sought to be expelled from it, is entitled to be given no less information than an accused person must be afforded in a criminal prosecution. In *Ezra* v. *Mahendra Banerjee* (1946), 51 C.W.N. 612, where a rule of a masonic conclave empowering the expulsion of a member provided that " such members shall have been served with due notice in writing of the complaint made against him " it was held

that a notice in general terms intimating that the question why he should not be excluded for "unmasonic conduct" would be considered at a meeting of the conclave to be held on a certain date was held to be insufficient. The notice ought to have given particulars of the acts or behaviour alleged to constitute such "unmasonic conduct" as otherwise the notice was held to comply neither with the rule of the conclave nor with the ordinary principles of natural justice.

Ormand J. observed that "the phrase 'due notice in writing of the complaint made against him' must entail charges sufficiently particularised to enable the person who is charged to know what case he has to meet". In this case it was also held that knowledge which would lead to no more than surmise or speculation is wholly insufficient. Further, that the mere presence of the member at the meeting at which the resolution of expulsion was passed creates no waiver with regard to the defective notice and no acquiescence with the defective notice or with the proceedings and that the resolution in this case was held to be entirely invalid and totally inoperative.

The above rules apply to all associations and clubs and even to stock exchanges and allied societies. It is usual for all stock exchanges to give authority to their committees to decide on the question as to whether the member acted unfairly or dishonestly and to punish him in one form or other. It has been held that this authority given in the rules constitutes a contract between the exchange of the societies and the members, and is binding upon the latter. Thus the discretion of the committee will here be absolute, with which the Courts will not interfere [*Cassel* v. *Inglis* (1916), 2 Ch. 211]. Refusal of the exchange authorities to re-admit a member honestly and *bona fide* by a procedure not contrary to natural justice, has been held to be at the discretion of the committee, amounting to an ordinary act of management, and not a judicial or quasi-judicial act [*Weinberger* v. *Inglis* No. 2 (1918), 1 Ch. 517].

In *Thompson* v. *British Medical Association* (1924), A.C. 778, a member of the British Medical Association who was expelled by a proper resolution appealed to the Privy Council. The Privy Council held that "if anybody rightly convened and properly composed is burdened with the discharge of some judicial or quasi-judicial duty affecting the rights, liberties,

or properties of a subject, makes, as a result of a just and authorised form of procedure, a decision it has jurisdiction to make, that decision, if legal evidence be given in the course of the proceeding adequate to sustain it, cannot in the absence of some fundamental error be impeached or set aside, save upon the ground that this body was interested, or biassed by corruption or otherwise, or influenced by malice in deciding as it did decide".

Remedy for the expelled Member

The member who is thus expelled has a remedy open to him. This is to proceed against the committee, or the trustees of the committee with a view to get the expulsion declared void by the Court, or to ask for an injunction restraining the committee and their servants or agents from preventing him in the exercise of the rights and privileges of membership. The member, however, who brings such an action would have to establish *mala fides* himself [*Dawkins* v. *Antrobus* (1879), 17 Ch.D. 615]. It should be remembered that in the case of societies and clubs, jurisdiction is claimed by the Court of Equity in connexion with the expulsion of a member on the ground of right of property of the member, which he is supposed to have been deprived of through his unlawful expulsion. Thus if a club has no property movable or immovable, there cannot be any jurisdiction for the Courts to interfere [*Rigby* v. *Connol* (1880), 14 Ch.D. 487; *Baird* v. *Wells* (1890), 44 Ch.D. 661; *Kelly* v. *National Society of Operative Printers* (1915), 113 L.T. 1055; *Braithwaite* v. *The Amalgamated Society of Carpenters* (1921), 2 Ch. 399]. It was on this ground that an action by a member of a Freemason's Lodge against another for delivery of regalia, papers, etc. was held to be within the jurisdiction of the Court [*Lloyd* v. *Loaring* (1802), 6 Ves. 773]. Of course whether the club is registered, incorporated or unincorporated, the expelled member has the same remedy.

Procedure to be followed re : Expulsion Meetings

The first point to be considered here is that when a member has committed a criminal offence, he cannot be expelled till convicted by a Court of Law. After conviction the name may be immediately expunged from the list of members without notice to him. If, however, the member

is acquitted it is clear that nothing can be done because further investigation in such cases would be improper. As we have seen, the secretary must give proper notices expressly stating what is to be done at the meeting, viz. the discussion and the conduct of the member, with a view to arrive at a decision as to whether he should be expelled or not. In clubs, as a rule notices are taken to have been properly issued on everyday matters through posting them up on a notice board in the common room or library of the club, but on important matters such as that of expulsion, it is best for the secretary or management of the club to give notice by circulars to those members who are not in the habit of frequenting the club regularly. However as we have already seen in the Labouchere's case dealt with above, there is no Common Law rule which describes the method of giving a notice and in the absence of a rule of the club itself, the committee is within its powers to direct the manner and method by which these notices should be given.

It is necessary to ensure that the resolution for expulsion is properly proposed and seconded, and the secretary or the management should see that the necessary majority as provided for by the rules of the society or club has been obtained. For this purpose the secretary or the scrutineer should ascertain the number of persons present and after the proposition is carried, he should also see how many of those present actually took part in voting because otherwise it may happen that if the number of those who voted was generally taken into account, as in Labouchere's case, though the proposition may appear to have been carried by the necessary majority, it may not be so in fact if all the members present were considered. The next point to be noted is when further proceedings are contemplated being taken against the offending member they must commence within a reasonable time of the alleged committal of the offence.

Club Debentures

We have already noticed the position of the unincorporated members' club and the committee in connexion with the issue of debentures. It may be remembered that debentures are certificates issued by the borrower to the lender stating the amount borrowed, the conditions under which it is borrowed, the interest payable, the dates on which it is

payable and the date if any on which the principal is also returnable. With a proprietary club, the owner personally would be liable, whereas in the case of an incorporated club, its Memorandum and Articles of Association must give it the power to borrow, in which case it can borrow on debentures. When debentures are issued they may not be carrying a charge on the club's property, or they may be mortgage debentures giving a specific or floating charge on the assets and properties of the company. If an unincorporated members' club has to borrow on debentures, there are two methods of doing this: the trustees or the committee may either borrow personally, pledging their own credit, or if they are not willing to do so, they may borrow and insert in the debenture an undertaking to the effect that they will not be personally liable on these loans, but that they will be paying the interest and the principal out of the funds of the club, and not otherwise. The virtual effect of this arrangement will be that the property and the assets of the club are charged to debenture holders as security for the payment of the loan [*Parr* v. *Bradbury* (1885), 1 T.L.R. 525; *Wylie* v. *Carlyon* (1922), 1 Ch. 51].

When receipts or debentures are issued by the trustees or the committee to members of the club, or outsiders advance money to the committee or the trustees, care should be taken to ascertain whether a charge on the assets of the club as security has been given in the construction of such debentures, and it is to the lenders' own interest to have this fact specifically stated.

If debentures are issued as a charge by incorporated clubs, care should be taken by the lenders if the incorporation happens to be under the Indian Companies Act of 1913, to see that they get the said charge registered within twenty-one days so that their security may be safe, otherwise the charge will be void and the loan will remain an unsecured loan to the company or to the club.

Betting and Games in Clubs

When considering gaming and betting, which is usual in all social and other clubs, the question naturally arises as to the circumstances in which this betting and gaming would constitute an offence. Gaming or gambling for money is an offence generally speaking, when conducted in a public place

or in what is known as a 'common gaming house'. Members of a club, particularly an unincorporated members' club, who resort to it for the purpose of betting among themselves do not thereby make the club premises a betting house. According to *Halsbury*, Vol. V, page 518 (2nd edition) : 'the fact that all the persons who bet are members of the club does not prevent the premises being so kept and used if the persons betting are in fact divided into two classes, viz. those who lay odds and those who bet with them [*R.* v. *Corrie & Watson* (1904), 20 I.L.R. 365; 68 J.P. 294]. If, however, the betting on the club premises is confined to members of the club who bet with each other indiscriminately there being no person carrying on the business of a book-maker or a betting business, no offence is committed even though there is a special room or portion of the premises set apart for betting [*Oldham* v. *Ramsden* (1875), 32 L.T. 825].' However, if it is proved to the satisfaction of the Court that persons who are not members are admitted to the premises for the purposes of betting with members or if the club is not a *bona fide* club but a mere blind for the purpose of betting, that would be an offence. In the case of a proprietary club where one or more persons own the club, and others are admitted as members and pay an entrance as well as a periodical fee for being allowed to use the club (which fee goes to the pocket of the proprietor or proprietors), if the members go there to bet and gamble for money it will amount to a common gambling house under the Gaming Acts of India. In unincorporated members' clubs, where there is no proprietor and a general body of members are owners of the whole premises and property of the club, and the profits made are not allocated to any one or more members to the exclusion of others but belong to all the members as a body, and if the club in addition to other activities, permits the playing of cards and games for money, it would not fall under the designation of a common gaming house (*Imp.* v. *Antone*, Cr. Rg. 39 of 1894 Bom.).

If, however, some of the members have exclusive control of part of the premises, they are liable to be summoned for using a betting house and those who resort to it are also liable [*R.* v. *Corrie & Watson* (1904), 68 J.P. 294; *Murphy* v. *Arron* (1897), 2 Q.B. 527].

To understand this principle better it is convenient to cite Section 4 of the Bombay Prevention of Gambling Act which runs as follows :—

" Whoever—

(*a*) opens, keeps or uses any house, room or place for the purpose of a common gaming-house,

(*b*) being the owner or occupier of any such house, room or place, knowingly or wilfully permits the same to be opened, occupied, kept or used by any other person for the purpose aforesaid,

(*c*) has the care or management of, or in any manner assists in conducting the business of, any such house, room or place opened, occupied, kept or used for the purpose aforesaid,

(*d*) advances or furnishes money for the purpose of gaming with persons frequenting any such house, room or place,

shall, on conviction, be punishable with imprisonment which may extend to six months and with fine.

Provided that—

(*a*) for the first offence such imprisonment shall not be less than one month and fine shall not be less than two hundred rupees ;

(*b*) for the second offence such imprisonment shall not be less than three months and fine shall not be less than two hundred rupees ; and

(*c*) 'for the third or subsequent offence such imprisonment shall not be less than six months and fine shall not be less than two hundred rupees.'

In a recent Bombay case it was held that the premises would amount to a common gaming house where it is shown that a charge is made for the profit of the club (whether the club makes a profit or not being immaterial) and that instruments of gaming were kept there for the purpose of gaming [See *Rex* v. *Aspandiar Kaikhusru Irani & Ors.*, Cr. App. 156 of 1948 Bom. H.C. Coram Bavdekar & Dixit, J.J., delivered on 17th August 1948].

In *Rex* v. *Aspandiar Kaikhusru Irani and Ors.* mentioned above, Bavdekar, J. observes " . . . the presumption which had to be drawn when the instruments of gaming were found in the place which was raided under the Act was that the place was a common gaming house, and all persons who were

present there were present for the purpose of gaming in a common gaming house. It is true that it is after all open to any club to allow card games to be played upon the premises, and inasmuch as providing a place, providing the cards, providing chairs and tables, providing service at the time when the cards are played are going to cost the club something, the club may make a charge. What charge the club makes would never come to the Court if as a matter of fact gaming or wagering is not allowed on the premises. But it does not mean that no charge could be made for a card game if it could be said that the card game does allow wagering taking place. Similarly, if there is any other gaming taking place then again it cannot be said that the club is a common gaming house merely because a charge is made for providing facilities for the gaming. The premises would if at all be a common gaming house in case it is shown and ultimately the Court is satisfied that the charge is made for the profit of the club and the instruments of gaming were kept there for such profit."

This Act, however, does not apply to any game of mere skill wherever played (Section 13). A game is not a game of mere skill if the elements of chance most strongly predominate (*Emperor* v. *Somabhai*, 40 Bom. L.R. 1082). If, however, the element of chance is negligible, it may be ignored (*Emperor* v. *Kallappa Gurappa*, 41 Bom. L.R. 970; *Muhammed Hassan* v. *Emperor*, 38 Cr. L.J. 668; *In Re Musa*, 18 Cr. L.J. 7). Games such as Billiards, Whist, etc. are expressly excluded from the operation of the Bengal Gaming Act II of 1867. In case of Horse racing the element of chance predominates. Horse racing in Bombay is however governed by the Bombay Race Course Licensing Act (Bombay Act II of 1912) which legalizes horse racing on a licensed race-course.

Under the Bengal Public Gambling Act of 1913, a common gaming house is defined by Section 1 as under:—

> 'A "common gaming-house" means any house, tent, or walled enclosure, or space, or vehicle, or any place whatsoever, in which any instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, room, tent, enclosure, space, vehicle or place, whether by way of charge for the use of such house, room, tent, enclosure, space, vehicle, place or instruments or otherwise howsoever.'

The Madras City Police Act defines a common gaming house in more or less the same terms as the Bengal Act.

From these definitions it will be seen that the owner or occupier running a gaming house on a more or less proprietary principle, and benefiting from it is punished as a keeper of the gaming house and those who are found gaming there are naturally punished for the offence of gaming.

The Bombay Act goes further and in Section 6 lays down to the effect that it is lawful for the Commissioner of Police in the city of Bombay, and elsewhere for any Magistrate of the first class or any District Superintendent of Police or for any Assistant Superintendent of Police empowered by the Provincial Government in this behalf upon any complaint made beforehand on oath that there are good grounds to suspect that the particular house, room or place is used as a common gaming house and upon satisfying himself after inquiries may issue a special warrant to a Sub-Inspector or a superior Officer of Police to enter the said house by night or day and to use force for such entry if necessary. The warrant also empowers him to arrest persons who may be there whether they are gambling or not and to seize all instruments of gaming and all money and securities for money and articles of value reasonably suspected to have been used or intended to be used for the purpose of gaming which are found there. He is also empowered to search all parts of the house if he has reason to believe that these instruments of gaming are sold there. He has also power to search persons of those who are present.

Section 7 of the same Act lays down to the effect that when any instruments of gaming are found in any house, room or place, entered under a warrant issued under the provision of Section 6 the presumption will be until the contrary is made to appear against all the accused that the place was used as a common gaming house and that the persons present there had assembled for the purpose of gaming in spite of the fact that no gaming was actually seen by the Magistrate or the Police Officer or any person acting under their authority.

To put it briefly, when a warrant as stated above under Section 6 is issued by the Commissioner of Police or a First Class Magistrate and the place is raided, with the result that instruments of gaming such as cards, dice, etc. are found, the

presumption is that the owner of the place is a keeper of a common gaming house and the persons assembled there were present for the purpose of gambling. It is thus for the owner, or the persons so found to rebut this presumption by evidence and if they fail to do so they would be found guilty of gambling and the owner or occupier of the place guilty of keeping a common gaming house. Owing to a persistent tendency to gambling in the City of Bombay which defied for many years the authorities who tried to put it down, this rather severe legislation was brought in and is still in force.

Various decisions have been given in connexion with what are instruments of gaming. Besides dice, cards, roulette boards, various items such as species of paper money, clocks, etc. have been held to be instruments of gaming if they could be utilized for the purpose of betting or gambling. To give only a short list, *Anksutta* books, betting slips, books of bookmakers and *Sattawals*, cards, coins, counters, cowris, dice, fighting-cocks, gaming boards, gaming cloths, little horses, even pen and pencils, telegrams, etc. have been so held. Section 3 of the Bombay Prevention of Gambling Act lays down that :—

> " In this act the expression ' *instruments of gaming* ' includes any article used or intended to be used as a subject or means of gaming, any document used or intended to be used as a register or record or evidence of any gaming, the proceeds of any gaming, and any winnings or prizes in money or otherwise distributed or intended to be distributed in respect of any gaming."

This is a very comprehensive definition which leaves no avenue of escape for gambling dens, but considerable care has to be exercised by those in authority who make use of these powers lest innocent parties should be victimised by dishonest informants, followed by hasty action on the part of Police Officers by securing convictions of so-called gamblers in a gaming house.

Of course gaming under the same section includes wagering or betting ; the only exception is betting on a horse race on the day of the race, and that too in the licensed enclosure of the race-course between any individual in person on the one hand and the licensee on the other hand in such manner and by such contrivances as may be permitted.

It will thus be seen that the clubs have to exercise a great deal of caution in connexion with any gaming and betting allowed on the premises lest they fall under the law applying to gaming houses.

Lotteries through Club

With reference to lotteries which are frequently taken out by clubs, Section 294A of the Indian Penal Code is of great importance. The section runs as follows :—

> 'Whoever keeps any office or place for the purpose of drawing any lottery not being a State lottery or a lottery authorized by the Provincial Government shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.
>
> And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery shall be punished with a fine which may extend to one thousand rupees.'

It will thus be seen that the offence consists of keeping an office or place for the purpose of drawing a lottery not being a State lottery without permission or license from the Government [*Vaziralli* v. *Emp.* (1928), 30 Bom. L.R. 1426]. These lotteries, even in an unincorporated members' club, could not be issued without the permission of the government. Of course any transaction requiring skill for winning prizes is not considered a lottery. The essential factor of a lottery is that the prizes are drawn as a matter of chance. It is not essential that a prize should be actually distributed. Even where the scheme is such that if chance so decrees no prize is to be distributed to the adventurers and the stakes are in such an event to be appropriated by the organiser of the lottery, the scheme would none the less amount to a lottery [*Universal Mutual Aid & Poor Houses Association Ltd.* v. *Thoppa Naidu* (1932), 56 Mad. 26]. The word "drawing" is used in this section in its physical sense and does not mean conducting as legislature did not intend to give it any such comprehensive and unusual meaning [*Public Prosecutor* v. *Kalkura* (1942), Mad. 802]. Publication will be estab-

lished by the very fact that proposal forms have been printed in the press [*In Re Lilomal Manumal* (1940), 42 Cr. L.J. 613; (1941), A.I.R. (S) 91]. Even if the lotteries are issued for the purpose of charity they are illegal and punishable. There may be cases in which the government may not prosecute but the risk and the danger is there.

SOCIETIES UNDER THE SOCIETIES REGISTRATION ACT OF 1860

The Societies Registration Act of 1860 was passed to enable the registration of and for improving the legal condition of Societies established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, the diffusion of political education or for charitable purposes.

Memorandum of Association

Societies requiring to be registered have to prepare a Memorandum of Association and file it with the Registrar of Joint Stock Companies. Any seven or more persons associated for any literary, scientific, charitable purpose, etc. can form themselves into a society under this Act by subscribing their names to a Memorandum of Association and filing the same with the Registrar of Joint Stock Companies. The Memorandum has to state :—

(*a*) The name of the Society.

(*b*) The objects for which it is formed.

(*c*) The names, addresses and occupations of the Governors, Council, Directors, Committee or other governing body to whom, by the rules of the society, the management of its affairs is entrusted. The rules of the society are to be filed with the Memorandum of Association signed by not less than three of the members of the governing body and the Registrar will issue thereupon a certificate of registration on payment of the registration fee.

Societies which can be registered under the Act

The Act specifically lays down the types of societies, which can be registered under it, viz. 'Charitable' societies, the military orphan funds or societies established at the several presidencies of India, societies established for the

promotion of science, literature, or the fine arts, for instruction, the diffusion of useful knowledge, the diffusion of political education, the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public, or public museums and galleries of painting and other works of art, collections of natural history, mechanical and philosophical inventions, instruments or designs.'

Alteration of the Objects

The Act provides for the purpose or objects for which the society is formed to be altered with a view to extend or abridge them within the scope laid down by the Act. It also provides for the amalgamation of such societies wholly or partially with any other society. To effect this, the governing body has to submit the proposition to the members of the society in writing or a printed report, and convene a special meeting for its consideration according to the regulations of the society. Care should be taken to see that such report is delivered or sent by post to every member ten days previous to this special meeting and the members present at such meeting must agree to this alteration by three-fifths of the votes delivered in person or by proxy and confirmed by an equal number at a second special meeting, convened at an interval of one month after the former meeting (Section 12).

Suits by and Property of the Society

The society can sue or be sued in the name of the President, Chairman or Principal Secretary or Trustees as shall be determined by its rules and regulations. If the rules are silent on the point any such person as is appointed by the Governing Body may sue or be sued. The property of the society is vested in the trustees if so appointed, if not the Governing Body shall be taken in all proceedings, civil and criminal, as the proprietors of the property of the society for the time being (Section 5). The judgment obtained against the society is to be in force against the property of the society and not against the body of the personal officer sued for the society or against such person's property (Section 8).

Dissolution of the Society

A society may be dissolved voluntarily if not less than three-fifths of the members determine that it shall be dis-

solved. On such dissolution all necessary steps for the disposal and settlement of the property of the society must be taken according to the rules of the society, if any, and failing that as the governing body shall find expedient. If there is any difference or dispute among the members of the society in this connexion the matter shall have to be referred to the principal court of original civil jurisdiction of the district in which the chief building of the society is situated. If any Government happens to be a member or contributes to or is otherwise interested in the society, the consent of the Government of the Province of registration has to be obtained before the society is dissolved (Section 13).

On dissolution, after paying all debts and liabilities of the society, the property which remains shall not be paid out or distributed among the society's members, but must be given to some other society to be determined by the votes of not less than three-fifths of the members present personally or by proxy at the time of dissolution, or in default by the Court. This, of course, does not apply to a society founded or established by shareholders in the nature of a joint stock company.

TRADE UNIONS AND REGULATIONS APPLYING TO THEM

A Trade Union is defined by the Indian Trade Union Act of 1926 as any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers, or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions.

Registration

Any seven or more members of a Trade Union may subscribe their names to the rules of the Trade Union, and otherwise complying with the provisions of the above Act, apply for registration under the Act to the Registrar of Trade Unions appointed by the appropriate government for the province (Sections 3 and 4). The application has to be accompanied by the following details :—

(*a*) The names, occupations and addresses of the members making the application.

(*b*) The name of the Trade Union and the address of its head office.

(*c*) The titles, names, ages, addresses and occupations, of the Trade Union (Section 5).

The registration shall not be given unless the executive is constituted acccording to the provisions of this Act and the rules of the Union provide for the following matters :—

(*a*) The name of the Trade Union.

(*b*) The whole of the objects for which the Trade Union has been established.

(*c*) The whole of the purposes for which the general funds of the Trade Union shall be applicable, all of which purposes shall be purposes to which such funds are lawfully applicable under this Act.

(*d*) The maintenance of a list of the members of the Trade Union and adequate facilities for the inspection thereof by the officers and members of the Trade Union.

(*e*) The admission of ordinary members who shall be persons actually engaged or employed in an industry with which the Trade Union is connected, and also the admission of the number of honorary or temporary members as officers required under Section 22 to form the executive of the Trade Union.

(*f*) The conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on the members.

(*g*) The manner in which the rules shall be amended, varied or rescinded.

(*h*) The manner in which the members of the executive and the other officers of the Trade Union shall be appointed and removed.

(*i*) The safe custody of the funds of the Trade Union, an annual audit, in such manner as may be prescribed, of the accounts thereof, and adequate facilities for the inspection of the account books by the officers and members of the Trade Union.

(*j*) The manner in which the Trade Union may be dissolved.

Precautions must be taken here to see that the name under which the Trade Union seeks to be registered is not

similar to that of any existing union (Section 7). On registration the Registrar issues a certificate of registration in the prescribed form which is conclusive evidence of the fact that the said Trade Union has been duly registered.

The Registrar, of course, has the right to withdraw or cancel this certificate either on the application of a Trade Union or where he is satisfied that the certificate has been obtained by fraud or mistake, or that the said Trade Union has ceased to exist, or after receiving notice from the Registrar wilfully contravened any provisions of this Act. The same would be the case if the Union had allowed any rule to continue in force which is inconsistent with any such provision of the Act, or has rescinded the rule providing for any matter or provision which is required by Section 6. The party aggrieved, through the withdrawal or cancellation of a certificate has the right to appeal within a prescribed period to the High Court where the head office of the Trade Union is situated within the limits of a Presidency-town or, where the head office is situated in any other area, to such Court, not inferior to the Court of an additional or assistant Judge of a principal Civil Court of original jurisdiction as the appropriate Government may appoint in this behalf for that area [Section 11(1)]. The Societies Registration Act, 1860, the Co-operative Societies Act, 1912, the Provident Insurance Societies Act, 1912, the Indian Life Assurance Companies Act, 1912, and the Indian Companies Act, 1913, shall not apply to any registered Trade Union.

The Funds of a Trade Union

The general funds of a registered Trade Union cannot be spent on objects other than the following :—

(*a*) The payment of salaries, allowances and expenses to its officers or payment of expenses for its administration including audit of accounts.

(*b*) Costs of prosecuting or defending a legal action to which the Union or any of its members is a party, when such prosecution or defence is undertaken for the purpose of securing or protecting any rights of the Union or any rights arising out of the relation of any member with his employer or with a person whom the member employs.

(c) The conduct of trade disputes on behalf of the Trade Union or any member thereof.

(d) the compensation of members for loss arising out of trade disputes.

(e) Allowances to members or their dependants on account of death, old age, sickness, accidents or unemployment of such members.

(f) The issue of, or the undertaking of liability under policies of assurance on the lives of members, or under policies insuring members against sickness, accident or unemployment.

(g) The provision of educational, social or religious benefits for members (including the payment of the expenses of funeral or religious ceremonies for deceased members) or for the dependants of members.

(h) The upkeep of a periodical published mainly for the purpose of discussing questions affecting employers or workmen as such.

(i) The payment, in furtherance of any of the objects on which the general funds of the Trade Union may be spent, of contributions to any cause intended to benefit workmen in general, provided that the expenditure in respect of such contributions in any financial year shall not at any time during that year be in excess of one-fourth of the combined total of the gross income which has upto that time accrued to the general funds of the Trade Union during that year and of the balance at the credit of those funds at the commencement of that year.

(j) Any other object notified by the appropriate Government in the *Official Gazette* (subject to any conditions contained in the notification) (See Section 15).

Constitution of a separate Fund for Political purposes

The Trade Union is permitted by the Act to constitute a separate fund from contributions separately levied for such funds and out of this fund the payments may be made for the promotion of civic and political interests of its members in furtherance of the following objects :—

(a) The payment of any expenses incurred, either directly or indirectly, by a candidate or prospective candidate

for election as a member of any legislative body constituted under the Government of India Act or of any local authority, before, during, or after the election in connexion with his candidature or election, or

(*b*) the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate, or

(*c*) the maintenance of any person who is a member of any legislative body constituted under the Government of India Act or of any local authority, or

(*d*) the registration of electors or the selection of a candidate for any legislative body constituted under the Government of India Act or for any local authority, or

(*e*) the holding of political meetings of any kind, or the distribution of political literature or political documents of any kind.

The above is subject to the condition that no member of the Union shall be compelled to contribute to the above fund for political purposes and that the Union shall not have the right to exclude such member from the benefit of the Union or to inflict any disability by reason of that for such non-payment. Neither shall the Union have a right to make such contribution for political purposes a condition precedent for admission to its membership (Section 16).

Books of Trade Union

The books of accounts of a registered Trade Union and its list of members shall be open to inspection by any officer or member of the Trade Union at such times as may be provided for in the rules.

Dissolution

When a Trade Union is dissolved the notice of the dissolution signed by seven members and the Secretary must within fourteen days of such dissolution be sent to the Registrar. The Registrar has to see that the said dissolution has been effected in accordance with the rules of the Union. If the rules do not provide for the distribution of funds on dissolution, the Registrar is given power by the Act to divide the funds amongst the members of the Union in such manner as may be prescribed.

APPENDIXES

APPENDIX A

NOTICES

(I) OF DIRECTORS' MEETINGS

Ordinary Board Meeting

The X Y Z Co. Ltd.,
Bombay.

Date.....

This is to inform you that a meeting of the Board of Directors of this company will be held at the registered office of the company on ..... (*day and date*) at ..... (*time*) when your presence is requested.

Yours faithfully,
(*Sig.*) ....., Secretary.

AGENDA

(1) Verification of minutes.
(2) Report of Manager, etc.

(*For Specimen agendas see Chapter III.*)

Of Special Board Meeting

The X Y Z Co. Ltd.,
Bombay.

Date.....

Dear Sir,

This is to inform you that a special board meeting of the directors of the above company will be held at ..... (*place*) on .... (*day and date*) ..... (*time*), at the instance of Mr. ....., one of the directors of this company, to consider the following business:

(*Set out business.*)

Yours faithfully,
(*Sig.*) ....., Secretary.

(II) OF SHAREHOLDERS' MEETINGS

Statutory Meeting

(*see Chapter IV*)

Annual (or Ordinary) General Meeting

The X Y Z Co. Ltd.,
Bombay.

Date: 2nd September 1949.

Notice is hereby given that the Fourth Annual General Meeting of the above company will be held at the registered office of the

company on Monday the 26th day of September 1949 at 5 p.m. (S.T.) when, the Directors' Annual Report and Auditor's Report will be placed before the meeting for consideration and the following ordinary business will be transacted :—

(1) Adoption of Profit and Loss Account and Balance Sheet and Directors' Annual Report.
(2) Declaration of Dividend.
(3) Election of Directors. Messrs. A, B & C who retire by rotation are eligible and offer themselves for re-election.
(4) Election of Auditor and fixing of his remuneration. Mr. R. A. who is the present auditor is eligible and will be proposed for re-election.
(5) Any other business that may be transacted at an ordinary general meeting.

The Register of members will be closed from the ..... day of ..... to the ..... day of ..... inclusive, and no transfers will be registered during that time.

By Order of the Board,
(*Sig.*) ....., Secretary.

Extraordinary Meeting

The X Y Z Co. Ltd.,
Bombay.

Date : 5th August 1949.

Notice is hereby given that an Extraordinary General Meeting of the above company will be held at the registered office of the company on the 23rd day of August 1949 at 6 p.m. (S.T.) for the purpose of considering and passing if approved the following resolution as an extraordinary resolution :—

(*Set out the proposed resolution.*)

By Order of the Board,
(*Sig.*) ....., Secretary.

Note :—Similar notice is required for passing Special Resolution, except that at least 21 days' notice instead of 14 days' notice is necessary.

Ordinary and Extraordinary Meeting on the same day

The X Y Z Co. Ltd.,
Bombay.

Date : 2nd September 1949.

Notice is hereby given that the Fourth Annual General Meeting of the above company will be held at the registered office of the company on Monday the 26th day of September 1949 at 5 p.m. (S.T.) for the transaction of the ordinary business (*Ordinary business may be set out as in above form of notice of Annual or Ordinary General Meeting*).

AND notice is hereby further given that immediately on conclusion of the above meeting, an Extraordinary General Meeting of the above company will be held at the same place when the following resolution will be submitted to the meeting as an extraordinary resolution :—

(*Set out the proposed resolution.*)

By Order of the Board,
(*Sig.*) ....., Secretary.

Requisition by Shareholder for General Meeting

To the Directors of the X Y Z Co. Ltd.,
Bombay.

Date.....

Dear Sirs,

We the undersigned being members of the abovenamed company and holding more than one-tenth of the issued capital of the company upon which all calls and other sums now due have been paid do hereby in pursuance of the provisions in this behalf contained in Section 78 of the Indian Companies Act, 1913, require you forthwith to proceed to convene an Extraordinary General Meeting of the company for the purpose of considering, and if thought fit, passing the following resolution :—

(*Set out the resolution.*)

(*Signatures of Requisitionists*)

General Meeting convened on Requisition

The X Y Z Co. Ltd.,
Bombay.

Date.....

Notice is hereby given that in pursuance of a requisition lodged at the company's registered office on ..... day, the ..... day of ..... by Messrs. ..... (*set out the names of requisitionists*), an Extraordinary General Meeting of this company will be held at the registered office of the company on ..... day, the ..... day of ....., at ..... (*time*) to consider the following business :—

(*Set out the matters.*)

The Board of Directors desire to make the following observations on the subject-matter of the requisition :—

(*Set out briefly the Board's views.*)

By Order of the Board,
(*Sig.*) ....., Secretary.

Adjourned General Meeting

The X Y Z Co. Ltd.,
Bombay.

Date.....

Notice is hereby given that the Extraordinary General Meeting of the above company convened for ..... day of ..... has been adjourned to ..... day of ..... at ..... (*time*) and will be held at ..... (*place*).

By Order of the Board,
(*Sig.*) ....., Secretary.

Class Meeting

The X Y Z Co. Ltd.,
Bombay.

Date.....

Notice is hereby given that a separate general meeting of the holders of the ..... (*mention class, e.g. preference*) shares in the capital of the above company will be held at ..... (*place*) on ..... (*day and date*) at ..... (*time*) to consider, and if thought fit, to pass the following resolution :—

(*Set out the proposed resolution.*)

By Order of the Board,
(*Sig.*) ....., Secretary.

Of Meeting to pass Resolution for Winding-up

The X Y Z Co. Ltd.,
Bombay.

Date.....

Notice is hereby given that an Extraordinary General Meeting of the above company will be held at ..... (*place*) on ..... (*day and date*) at ..... (*time*) to consider, and if thought fit, to pass the following resolution (*add "as an extraordinary resolution" or "as a special resolution" as the case may be*) :—

(*Set out the resolution.*)

Should the above resolution be passed, a further resolution for the appointment of liquidators and for fixing their remuneration will be proposed at the same meeting.

By Order of the Board,
(*Sig.*) ....., Secretary.

(III) MISCELLANEOUS

Of Intention to propose Candidate for Election as Director

Date.....

The Secretary,
X Y Z Co. Ltd.
Bombay.

Dear Sir,

Notice is hereby given that we the undersigned shareholders of X Y Z Co. Ltd. intend to propose and second respectively Mr. ..... for election as a director of X Y Z Co. Ltd. at the general meeting convened for ..... day of .....

Yours faithfully,

(Signature of proposer and seconder.)

To Disqualified Director

The X Y Z Co. Ltd.,
Bombay.

Date.....

(Name and Address of Director)

Dear Sir,

I am directed by my board of directors to inform you that you have become disqualified on 13th day of June 1948 under Article 20 of the Articles of Association of this company by reason of having ceased upon that day to hold the necessary share qualification and that your office as director of this company was vacated on the said date.

Yours faithfully,

(*Sig.*) ....., Secretary.

Of Poll

The X Y Z Co. Ltd.,
Bombay.

Date.....

Notice is hereby given that a poll will be held upon the following resolution at ..... (*place*) on ..... (*day and date*) between the hours of ..... and ..... :—

(Set out resolution.)

By Order of the Board,

(*Sig.*) ....., Secretary.

(IV) OF CLUB MEETINGS

General Meeting

The ..... Club,
Bombay.

Date .....

Dear Sir,

I am instructed by the committee of this Club to inform you that the Annual General Meeting of the above club will be held at ..... (*place*) on ..... (*day and date*) at ..... (*time*) when the following business will be transacted :—

(*Set out the agenda.*)

(*Sig.*) ....., Secretary.

Special Meeting (to consider Expulsion of Member)

The ..... Club,
Bombay.

Date .....

Notice is hereby given that a special meeting of the members of the above club will be held at ..... (*place*) on ..... (*day and date*) at ..... (*time*) to consider the conduct of Mr. X, a member of this club, and to pass, if thought fit, the following resolution :—

RESOLVED :—That Mr. ..... be and is hereby expelled from the ..... Club in pursuance of Rule No. .....

(*Sig.*) ....., Secretary.

Inviting Member to withdraw

The ..... Club,
Bombay.

Date .....

Mr. .....,
Bombay.

Dear Sir,

I am directed by the committee of the club to inform you that in their opinion and in the interests of this club you should withdraw from the club before the ..... day of .....

In case you do not withdraw from this club before the aforesaid date the matter of your expulsion will be submitted to a special general meeting of the members to be held at ..... (*place*) on ..... (*day and date*) at ..... (*time*) when you will be permitted to offer an explanation of your conduct after which a resolution for your expulsion will be proposed.

The matters alleged against you with regard to your conduct are as follows :—

(*Set out the alleged misconduct precisely.*)

I am, Sir,
Your obedient servant,
(*Sig.*) ....., Secretary.

Of Expulsion

The ..... Club,
Bombay.

Date .....

Mr. .....,
Bombay.

Dear Sir,

I am directed by the committee of the above club to inform you that the following resolution was passed at a special general meeting of this club held at ..... (*place*) on ..... (*day and date*) at ..... (*time*) :—

(*Set out resolution.*)

Therefore, in accordance with Rule ..... of the Rules and Regulations of this Club you have ceased to be member of this club and have forfeited all right to and claim upon the club, its property and funds.

I am, Sir,
Your obedient servant,
(*Sig.*) ....., Secretary.

Of Imposition of Fine

The ..... Club,
Bombay.

Date .....

Mr. .....,
Bombay.

Dear Sir,

This is to inform you that you have incurred on the ..... day of ..... a fine of Rs. ..... under the provisions of bye-law No..... for remaining on the club premises for ..... hours after closing time, that is, till ..... a.m. on the aforesaid date and request you to pay the fine forthwith.

I may remind you that if this fine is not paid within ..... days of the date of this notice you will cease to be a member of this club under Rule .....

I am, Sir,
Your obedient servant,
(*Sig.*) ....., Secretary.

APPENDIX B

RESOLUTIONS

(I) AT MEETINGS OF COMPANY DIRECTORS

(See Chapter III)

(II) AT SHAREHOLDERS' MEETINGS

Changing Name of the Company

RESOLVED :—That the name of this company be changed from *(original name)* to *(new name)* and that application be made in writing to the Central Government for its approval of this change in name.

Extending Object of the Company

RESOLVED :—That the objects of the company be extended so as to include power to *(set out the power sought to be introduced)* and that the Memorandum of Association of this company be accordingly altered by adding the following words at the end of clause 3(10) :—

(Set out the additional powers.)

Altering Memorandum of Association

RESOLVED :—That the Memorandum of Association of this company be altered by cancellation of clause 4 thereof and the substitution instead of the following clause :—

(Set out the required new clause.)

Altering Articles of Association

RESOLVED :—That the Articles of Association of this company be altered in the manner following :—

(1) By omitting articles ..... *(Set out the numbers of the articles to be omitted)*.

(2) By substituting the following articles in the place of article 27 :—

(Set out the new article.)

(3) By adding the following article after article 26 to be numbered article 26A.

(4) By substituting the word "six" for the word "eight" in article 30.

(5) By adding the following words after the words "....." in article 31 :—

(Set out the extra words.)

Adopting New Articles in place of Table A

RESOLVED :—That the regulations contained in Table A in the First Schedule to the Indian Companies Act, 1913, shall no longer apply to this company and that the draft of the newly prepared Articles of

Association, a copy whereof has been initialled by Mr. X for identification be adopted in lieu thereof and that the secretary be directed to register with the Registrar of Companies the said new Articles of Association as the Articles of Association of this company.

Modification of Table A

RESOLVED :—That the regulations contained in Table A in the First Schedule to the Indian Companies Act, 1913, so far as they apply to this company be modified as follows :—

(*Set out the alterations.*)

And that the secretary be directed to forthwith register this change with the Registrar of Companies.

Increasing Capital of the Company

RESOLVED :—That the capital of this company be increased from Rs. 3,00,000 to Rs. 5,00,000 by the creation of 2,000 new shares of Rs. 100 each and that the secretary be directed to forthwith register this increase in capital with the Registrar of Companies.

(*The following may be added where appropriate* :—" and that the said new shares shall be called preference shares and that the holders thereof shall be entitled to be paid out of the profits of the company as a first charge a cumulative preferential dividend at the rate of 5 per cent per annum on the capital for the time being paid up on such shares.")

Preference Shareholders sanctioning issue of Pre-Preference Shares

RESOLVED :—That the holders of preference shares in the capital of this company do hereby sanction the issue by the company of 2,000 5 per cent cumulative preference shares of Rs. 100 each ranking before the preference shares with regard to dividend but ranking *pari passu* with the preference shares with regard to repayment of capital and distribution of surplus assets in case of winding-up.

Reducing Capital

RESOLVED :—That the capital of this company be reduced from Rs. 5,00,000 (divided into 2,000 Preference shares of Rs. 100 each and 3,000 Ordinary shares of Rs. 100 each) to Rs. 4,00,000 by cancelling 1,000 Ordinary shares of Rs. 100 each which have not been taken or agreed to be taken by any person.

Converting Shares into Stock

RESOLVED :—That the Rs. 1,00,000 Ordinary shares of Rs. 100 each now fully paid up, be and are hereby converted into Ordinary Stock for Rs. 1,00,000, which shall be transferable on the usual transfer form in any sum of Rs. 100 or a multiple thereof.

Dividing Shares into Shares of Smaller Denomination

RESOLVED :—That each of the existing Rs. 100 ordinary shares be divided into four Rs. 25 shares upon each of which the sum of Rs. 5 shall be credited as paid up.

Consolidating Shares

RESOLVED :—That the ordinary shares in the capital of this company be so consolidated that every ten of the existing ordinary shares shall constitute one Rs. 100 share upon which the sum of Rs. 50 shall be credited as paid up, and that the existing share certificates of these shares shall be called in by the directors and new certificates issued, subject to the provisions of article 25 of this company.

Creating Reserve Capital

RESOLVED :—That the capital of this company to the extent of Rs. 50 in respect of the issued shares of this company shall not be capable of being called up except in the event of and for the purposes of this company being wound up.

Sanctioning Dividend

RESOLVED :—That the dividends of Rs. 5 per share on the preference shares and Rs. 7 per share on the ordinary shares as recommended by the Board of Directors be and is hereby sanctioned and that directors be and are hereby authorised to pay their dividends accordingly.

Capitalising Undivided Profits

RESOLVED :—That the sum of Rs. ..... being part of the undivided profits credited to the Reserve Fund of this company be applied in paying a capital bonus of Rs. ..... free of income-tax among the persons who were holders of the ordinary shares of this company on the 5th day of September 1948.

Appointing First Directors

RESOLVED :—That Mr. ....., Mr. ....., and Miss ..... be and are hereby appointed the first directors of this company.

Filling Casual Vacancy

RESOLVED :—That Mr. ..... be and is hereby appointed a director of this company in the place of Mr. ..... who has retired (*or died*) until the next annual general meeting of this company.

Removing a Director

RESOLVED :—That Mr. ..... be and is hereby removed from office as director of this company.

Approving of Director holding Additional Office

RESOLVED :—That Mr. ..... be and is hereby authorised to accept and hold the office of ..... to the company notwithstanding

the fact that he is a director of this company and that his office as director shall not be vacated by reason of his accepting the said additional office.

Appointing Auditors

RESOLVED :—That Messrs. A, B, C & Co., be and are hereby appointed auditors of this company for the ensuing year on a remuneration of Rs. 800.

Removing Auditor

RESOLVED :—That Messrs. A, B, C & Co., be and are hereby removed from the office of auditors of this company and that Messrs. X Y Z & Co. be and are hereby appointed as auditors of this company for the ensuing year on a remuneration of Rs. 800.

" Confirming " Previous Minutes

RESOLVED :—That the minutes of the meeting held on the 5th day of September 1948 be and are hereby verified as correct and that the chairman do sign them as a true record of the proceedings at such meeting.

Adopting Director's Report and the Balance Sheet

RESOLVED :—That the Directors' Report and the Balance Sheet prepared as on 31st December 1948 be and is hereby adopted.

Appointing Committee of Investigation

RESOLVED :—That Mr. ....., Mr. ..... and Mr. ..... being members of this company be and are hereby appointed a committee to investigate into the promotion of this company and all matters incidental thereto and that their expenses including costs of consulting counsels, solicitors, accountants and other professionals be, paid out of this company's assets.

Converting Private into Public Company

RESOLVED :—That this company be and is hereby converted into a public company and that the directors be and are hereby authorised and directed to take all necessary and proper steps to effect such conversion.

Amalgamating with another Company

RESOLVED :—That this company be amalgamated with ..... Co. Ltd. by transferring the undertaking and assets of this company to the ..... Co. Ltd., in accordance with the terms contained in the agreement prepared and expressed to be made between this company and the said ..... Co. Ltd., and that the directors of this company be and are hereby authorised to execute and carry into effect the said agreement.

Appointing Liquidator and fixing his Remuneration

RESOLVED :—That Mr. ..... of etc. be and is hereby appointed liquidator for the purpose of winding-up this company and that his

remuneration, in addition to his costs, charges and expenses, shall be Rs. .....

Ordinary Resolution for Winding-up

RESOLVED :—That the period fixed for the duration of the company by article 20 of the Articles of Association of this company having expired the company be wound up voluntarily.

[*S* 203(1), *Indian Companies Act*, 1913.]

Extraordinary Resolution for Winding-up

RESOLVED :—That this meeting is satisfied that this company cannot by reason of its liabilities continue its business and that it is advisable to wind up and that accordingly this company be wound up voluntarily.

[*S.* 203(3), *Indian Companies Act*, 1913.]

Special Resolution for Winding-up

RESOLVED :—That this company be wound up voluntarily and that Mr. ..... be and is hereby appointed liquidator for the purposes of such winding-up.

[*S.* 203(2), *Indian Companies Act*, 1913.]

(III) AT CLUB MEETINGS

Formation of Members' Club

RESOLVED :—That a club be formed for the purpose of ..... (*set out the purposes*) and that all those present who hand in their names to the chairman before leaving the room shall be the founder members of this club.

RESOLVED :—That the membership of the club shall not exceed .....

RESOLVED :—That Mr. ..... be and is hereby appointed secretary *pro. tem.* of the club.

RESOLVED :—That the name of the club shall be .....

RESOLVED :—That Mr. ....., Mr. ..... and Mr. ..... be and are hereby appointed a provisional committee to frame draft rules for the said club and to submit the said draft at an adjournment of this meeting.

RESOLVED :—That this meeting do and is hereby adjourned to ..... (*day and date*) at ..... (*time*).

Expulsion of Member

Mr. ..... having been required by letter dated ..... by the committee of this club to withdraw from this club before ..... day of ..... and having made default in such withdrawal and having been permitted to give an explanation at this meeting but not having tendered satisfactory explanation.

IT IS RESOLVED :—That Mr. ..... be and is hereby expelled from the ..... Club.

APPENDIX C

MINUTES

(I) DIRECTORS' MEETINGS

First Meeting

The First Meeting of the Board of Directors of X Y Z Co. Ltd. was held at 51, Esplanade Road, Fort, Bombay on Monday, the fifth day of September 1949 at 5 p.m. (S.T.).

There were present :—

A. Adams.
B. Brown.
C. Cooper.
D. Daruwalla.
} *Directors.*

In attendance :—

S. Smith, Solicitor.

1. Certificate of Incorporation. Mr. S. Smith reported that the company had been duly incorporated and produced the certificate of incorporation and a print of the Memorandum and Articles of Association of the company as registered.

2. Directors take their seats Messrs. A. Adams, B. Brown, C. Cooper and D. Daruwalla named as directors in the Articles of Association of the company accepted office and took their seats. Mr. A. Adams was appointed chairman of the Board of Directors.

3. Appointment of Solicitor. It was resolved that Mr. S. Smith be appointed solicitor to the company and be paid the ordinary professional charges for his services to the company.

4. Appointment of Secretary. It was resolved that Mr. R. Rahimtoola, 25, Nepean Sea Road, Bombay, be appointed Secretary of the company at a salary of Rs. 500 per month and that Mr. B. Brown, a director of this company be and is hereby authorised to sign on behalf of the company an agreement with Mr. Rahimtoola for his engagement as the Secretary of the company in terms of the draft produced at this meeting by the solicitor and approved by the board.

5. Seal. It was resolved that the seal of the company produced by the chairman, an impression of which is affixed on to these minutes, be and is hereby adopted as the common seal of the company.

6. Registered Office. It was resolved that the registered office of the company be at 51, Esplanade Road, Fort, Bombay, and that the Secretary be directed to register that address with the Registrar of Companies as the registered office of the company.

7. Appointment of Auditors. It was resolved that Mr. H. Hiram of Hiram & Co. be appointed the Auditor of the company until the first annual general meeting of the company and that his remuneration should be Rs. 800 per annum.

8. Appointment of Bankers. It was resolved that the National Bank of India, Bombay Branch, be appointed bankers of the company and that the Secretary be directed to request the said bank to open a Current Account in the name of the company and to honour cheques drawn on that account by any two of the directors and that the Secretary be further directed to furnish the said bank with specimens of the signatures of the directors.

9. Draft Prospectus adopted. Mr. S. Smith, solicitor to the company, produced the draft prospectus which was carefully considered by the directors and it was resolved that the said draft be adopted, that the said prospectus be signed by all the directors and that the Secretary be instructed to file one copy of the said prospectus duly signed with the Registrar of Companies.

Subsequent Meetings

(*See Chapter III*)

(II) SHAREHOLDERS' MEETINGS

Statutory Meeting

(*See Chapter IV*)

General Meeting

The Fifth Annual (*or Extraordinary as the case may be*) General Meeting of the X Y Z Co. Ltd., was held at the registered office of the company on ..... (*day and date*) at ..... (*time*) when there were present :—

Mr. A. B. in the Chair.
Mr. C. D.
Mr. E. F.
Mr. G. H. — Directors.
Mr. I. J., Secretary.
Mr. K. L., Solicitor.

50 shareholders (*attendance book is usually kept at the door, in which the shareholders are requested to write their names on entering*).

61. Notice Read. The Notice convening the meeting was read by the Secretary.

62. Minutes confirmed. The minutes of the previous meeting were read and confirmed.

63. Directors' Apology. Letters of apology from Messrs. M. N., P. Q. and R. S. for non-attendance at the meeting were announced by the Secretary.

64. Consideration of Report. The annual report and accounts having been circulated were taken as read. The chairman moved and Mr. X Y seconded that the report and accounts be adopted. Several shareholders asked for explanations as to various items in the report which were given by the chairman. The resolution was then put to the meeting and was unanimously carried.

65. Dividend. The chairman proposed that a dividend of 5 per cent be paid on preference shares and 10 per cent be paid on ordinary shares. Mr. X Y seconded the proposition. The chairman then put the resolution to the meeting and the resolution was carried unanimously.

66. Election of Directors. The Secretary announced that Messrs. C. D. and E. F. who had retired by rotation pursuant to Article 30 were eligible and offered themselves for re-election and that no other nominations had been received. Mr. V. M., shareholder, proposed and Mr. P. M., shareholder, seconded that Messrs. C. D. and E. F. who retired by rotation be re-elected directors of the company. This resolution was then put to the meeting and was carried unanimously.

67. Appointment of Auditors. Mr. P. R. proposed and Mr. C. F. seconded that Messrs. Black & Co. be re-appointed auditors for the ensuing year at a remuneration of Rs. 800 per annum. This resolution was carried unanimously.

68. Vote of Thanks The meeting then terminated with a vote of thanks to the chair proposed by Mr. X and seconded by Mr. Y.

(III) CLUB MEETINGS

THE X Y Z SPORTS CLUB, BOMBAY

Minutes of the Annual General Meeting of the Club, held on Monday, the 12th September 1949, at 5-30 p.m. (S.T.).

Present:—Messrs. A. B. (in the chair), C. D., E. F., etc. and Mr. G. H. (Secretary).

1. The Secretary read the notice convening the meeting and the report of the Auditors. With the consent of the meeting the Chairman then signed the minutes of the last Annual General Meeting held on 10th September 1948.

2. The next item on the Agenda was the re-constitution of the General Committee and the Chairman stated that, as usual, five members were retiring by rotation and all, with the exception of Mr. A. B., who was shortly leaving India, were eligible and willing to stand for re-election. The General Committee recommended that Mr. C. D. be elected in place of Mr. A. B. No other nominations having been received, no ballot was necessary and therefore the following were declared duly elected :—

Life Members' Representative :—

Mr K. L.

Founder Members' Representatives :—

Mr. M. N.
Mr. P. Q.

Ordinary Members' Representatives :—

Mr. R. S.
Mr. S. R.
Mr. C. D.
Mr. E. F.

3. The Chairman said that a copy of the accounts for the past year had been sent to each member and before proposing that they be approved there were a few matters to which he should refer.

First of all they had to record with great regret the death of Mr. A. C. in October last year. He had been a member of the Club for many years and since June 1945 had been a very active member of the Committee of the Club.

With regard to the General Committee, the Chairman said that since the last Annual Meeting there had been two resignations, namely, the Hon'ble Mr. Justice B. D. owing to pressure of other duties, and Mr. D. F., who had left India. In their places Mr. R. S. and Mr. S. R. had been invited to join the Committee.

The Chairman stated that in 1948, 101 ordinary members had been elected and there were still about 500 on the waiting-list.

Referring to the accounts, the Chairman pointed out that the profit in the past year amounted to Rs. 10,565 compared with 15,605 in the previous year. This was principally due to the additional number of "dry days" in 1948, as a result of which the gross income under the head "spirits" was down by Rs. 6,000.

The Chairman then said that if members had any questions to ask regarding the accounts he would do his best to answer them. There being no questions, he proposed that the accounts for the year 1948 be duly approved. This was seconded by Mr. F. H., and carried unanimously.

There being no other business the meeting terminated with a vote of thanks to the Chair, proposed by Mr. T. N. and seconded by Mr. F. T.

APPENDIX D

PRECEDENTS OF CLUB RULES SELECTED FROM PRACTICE RULES, REGULATIONS AND BYE-LAWS OF SOCIAL CLUBS

Name and Constitution

1. This institution shall be called THE SOCIAL CLUB. It shall consist of a limited number of Members, the limit to be fixed hereafter by the Committee. It shall be conducted on the lines of a first class club, and no person shall be ineligible for Membership on account of race, politics or creed.

Members

2. Every Member shall be bound to conform to the present rules and regulations of the Club, and to such other Rules, Regulations and Bye-laws as may hereafter from time to time be passed by the Committee either in addition to, or varying or amending the present Rules, Regulations and Bye-laws under Rule 44, and all such Rules, Regulations and Bye-laws shall be held binding until the same or any of them are or shall be vetoed at any subsequent General Meeting.

3. The Governor, the Naval Commander-in-Chief, the Military Commander-in-Chief, the Chief Justice of Bombay, the Members of Council and Ministers, Judges of the High Court and the Ruling Princes of India, may be invited to become Members without ballot, but subject to the same rules as other Members of the Club.

4. The election of Members of the Club shall be by ballot of a Balloting Sub-Committee appointed by the Committee.

5. The Balloting Sub-Committee for the election of a Member shall consist of eight Members. Every candidate for admission to the Club must be proposed by one Member and seconded by another, to both of whom he must be personally known ; and a letter of proposal, signed by either proposer or seconder, must be sent to the Honorary Secretaries, stating the candidate's name, rank, profession or occupation (if any) and place of residence, which information shall also be posted in a conspicuous place in the Club House, and notice of the same shall be sent to each Member of the Balloting Sub-Committee five days before the commencement of the ballot. In case a candidate shall have been previously proposed for election and balloted for and shall not have been elected, such fact shall be stated in the said notice. A candidate may not be proposed or seconded by any Member of the Balloting Sub-Committee.

6. When a candidate is put up for election, the ballot-box shall remain open for eight days. To render an election valid at least five Members of the Balloting Sub-Committee must have voted. Two black balls will exclude.

7. When an election shall be void in consequence of the requisite number of members of the Balloting Sub-Committee not having voted under Rule 6, the ballot shall continue open until the requisite number shall have balloted, but only for a further period not exceeding ten days when if a sufficient number of votes shall not then have been recorded, the candidate's name shall be withdrawn, and he shall not be put up again till after the lapse of three months.

8. The ballot-boxes shall be opened and the votes counted by at least two Members of the Balloting Sub-Committee who shall, at the time and in each other's presence, record the result of the ballot on the paper on which the names of the voters are recorded.

9. If on examination of the ballot-box, any discrepancy is found between the number of votes recorded and the number of balls found in the ballot-box, and if upon taking the view most unfavourable to the candidate of such discrepancy he would nevertheless be elected under the rules, he shall be deemed to be duty elected, and such discrepancy shall not invalidate the ballot.

10. If the candidate is not elected, the fact shall be recorded upon the ballot-paper, and the Honorary Secretaries shall inform his proposer of his non-election. Particulars of the voting are confidential and shall not be disclosed by those who open the ballot-box. Neither the candidate nor his proposer or the seconder shall be entitled to obtain from the Committee any explanation or statement of the grounds on which the rejection of the proposal for membership is based.

11. A candidate not elected or whose name has been withdrawn, except as under Rule 7, shall not be again proposed for admission to the Club until after the expiration of six months from the date of his first ballot.

12. Any person who has been a candidate for election but who has not been elected (except under Rule 7) shall not be admissible to the Club premises as a guest.

Candidates May Use The Club

13. A candidate may, at the request of the Member who proposed him, be permitted by the Secretaries to make use of the Club from the date on which the ballot commenced, his proposer being liable for any debts he may incur, should he not become a Member of the Club.

14. When a candidate has been duly elected the Honorary Secretaries shall notify the same to him in writing and shall at the same time furnish him with a copy of the Rules and Regulations and shall request him to pay his entrance fee and subscription for the current quarter and he shall not be entitled to the benefit and privileges of the Club till he has paid such sums.

15. Every Member shall upon payment of his entrance fee and subscription become entitled to the benefits and privileges of the Club and such payment shall be considered as his distinct acknowledgment of his acquiescence in the Rules and Regulations of the Club in force at the time.

16. No Member shall be absolved from the operation of the Rules, Regulations and Bye-laws on the plea of not having received a copy thereof.

17. The Committee may declare void the election of any Member who shall omit to pay his fees within one month of election.

Resignation, Suspension and Expulsion of Members : Termination of Membership

18. If any Member shall be dismissed from the King's or Government service, or shall apply for, or take the benefit of any Insolvency Act, he shall, *ipso facto*, cease to be a Member of the Club, but in the latter event shall be eligible for re-election by ballot, and, if re-elected within the period of three years, shall be exempted from payment of any entrance fee on re-election.

19. Any Member wishing to resign his Membership shall give notice thereof in writing to the Honorary Secretaries and shall pay subscriptions and sums of money due by him to the Club at the time of his resignation.

20. Any Member resigning in the midst of a quarter shall not be entitled to any refund of the subscription paid by him.

21. The Committee shall have the power to suspend any Member who in their opinion by a clear majority of three-fourths of the Members present is guilty of misbehaviour.

22. Any infringement of the Rules, Regulations and Bye-laws shall be taken immediate cognizance of by the Committee.

23. Any Member who persists in any infraction of the rules or regulations or whose conduct in or out of the Club in the opinion of the Committee, be unbefitting a gentleman or in any way injurious to the prestige or interest of the Club may be requested to resign and if any Member so requested shall not resign within a month, the Committee shall call a General Meeting for the purpose of investigating the circumstances of the case. The opinion of the General Meeting shall be obtained by ballot then and there taken ; if a majority of two-thirds of those present and voting (of whom there shall be at least thirty) vote for the expulsion of such Member, he shall cease to be a Member of the Club and notification thereof shall be sent to him by the Honorary Secretaries. Pending the decision of such General Meeting the Committee shall have the power to prohibit such Member from making use of the Club.

Non-Payment of Bills

24. If any Member shall, on his bill for subscription, supplies or other charges being presented to him for payment, neglect or refuse to pay such bill within thirty days of presentation, he shall be liable to have his name put up in a conspicuous part of the Club House—if a resident Member for seven days and if a non-resident Member for such time as the Committee may think sufficient to enable him to reply to a registered letter, addressed to his last known place of residence or

business, containing an intimation of his name having been so put up, at the expiration of which period, if the account remains still unpaid, the Committee is authorized to erase his name from the list of Members and to notify him that he has ceased to belong to the Club.

Members to Ascertain Indebtedness to the Club

25. It shall be incumbent on Members and Honorary Secretaries to ascertain whether they are in debt to the Club for subscription or supplies, or otherwise, and not to leave Bombay in debt to the Club. If they fail to pay any bill after the same has in the opinion of the Committee been duly demanded of them, or if by reason of their having left Bombay, such demand cannot be made, they shall be proceeded against under Rule 24, and if Honorary Members, their proposer shall be liable for the amount.

26. Any person who shall have ceased to be a Member under Rule 24, shall not be re-admitted as a Member unless he pays the arrears due in addition to re-admission fee.

Fees and Subscription

27. The entrance fee payable by Members on joining the Club shall be Rs. 300.

28. The subscription payable by Members resident in Bombay shall be Rs. 6 per mensem, or part of a month payable quarterly in advance; such subscription shall be paid on or before the last day of the first month of each quarter. Members may pay the subscription for the whole year or half-year in advance if they choose to do so.

29. The subscription payable by non-resident Members shall be Rs. 12 per annum payable in advance on 1st January; but such Members when visiting Bombay shall pay an extra subscription of Re. 1 for every day they use or enter the Club but not more than Rs. 5 extra in each month.

Definition of Non-resident Members

30. The term 'Non-resident Members' shall include (a) up-country Members not ordinarily resident within 20 miles of Bombay; and (b) such Members ordinarily resident within these limits as may cease to reside therein for three months or more and give notice of their desire to be treated as 'Non-resident Members'.

Life Members

31. Subject to the approval of the Committee, Members may become Life Members of the Club on payment of Rs. 2,000 less the entrance fee paid by them and this shall cover the future monthly subscription for life.

Temporary Members

32. Gentlemen who have reason to anticipate having to leave Bombay on short notice within three years, may be elected Temporary Members in the manner provided in Rules 4—11, for a period of six

months on payment of an Entrance Fee of Rs. 50 and such temporary membership may be extended for five further periods of six months on the same terms. Temporary Members may become permanent Members at any time without further election on payment of the balance of the full Entrance Fee ; and on completing six payments of Rs. 50, they shall *ipso facto* become Members without further election.

33. Temporary Members shall pay the monthly subscription as provided for by the Rules, and shall have the same privileges as Members but shall not be entitled to a vote or to a seat on the Committees.

Election of Honorary Members

34. Any gentleman not permanently resident in Bombay, or within 100 miles, may, on being duly proposed and seconded by Members of the Club, be elected by not less than three Members of the Committee as Honorary Members of the Club for three months, and shall be entitled to all the privileges of the Club, but shall not vote at meetings or be elected on Committees.

35. The Committee may at their discretion re-elect a person who has ceased to be an Honorary Member as an Honorary Member.

36. The subscription of Members shall cease during the period of their absence from India only provided they have given due notice to the Honorary Secretaries of their desire to be treated as absent Members on or before their departure from India. But the full monthly subscription must be paid for the month in which a member leaves India.

Subscription of Honorary Members

37. Honorary Members shall be exempted from payment of a monthly subscription for the first two days, after which they shall pay the usual subscription of Rs. 6.

Entrance Fee of Honorary Members

38. If an Honorary Member uses the Club for a period exceeding 15 days from date of election, he shall pay an entrance fee of Rs. 10 except in case of Honorary Members elected under Rules 39 and 40.

Visitors of Distinction

39. The Committee are empowered to invite visitors of distinction passing through Bombay to become Honorary Members of the Club during their stay here. The civility is to be extended free of entrance fee or subscription, and can be repeated to the same person more than once.

Managing Committee

40. The affairs of the Club shall be managed by a Committee of twenty-four Members consisting of the President, two Joint Honorary Secretaries, one Honorary Treasurer, and twenty other Members.

41. Of the twenty other Members, four by seniority shall annually be ineligible for re-election for one year.

42. In these Rules where the Committee is referred to, it shall be understood to mean the Managing Committee.

43. The President and Members of the Committee shall be elected by a majority of votes to be ascertained by ballot annually at the Annual General Meeting of the Members of the Club; each Member voting shall place his list in the ballot-box; the ballot-box shall be open for eight days previous to the Meeting; the Chairman of the Meeting shall appoint two members to scrutinize the list and declare the persons elected to serve on the Committee. The two Honorary Secretaries, the Honorary Treasurer and the balloting and House Sub-Committees shall be annually elected by the Committee at their first Meeting.

Office of President

44. The President shall not be eligible to hold office for more than two years in succession.

45. The Committee shall have power by a majority of votes in case of any vacancy occurring among their Members (including the office-bearers) to fill up the same within a month from the date of such vacancy. A Member of the Committee (excepting the President) leaving India with the intention of being absent for more than three months will be considered to have resigned his seat on the Committee unless granted leave of absence by the Committee. The following shall be deemed to be office-bearers: the President, the Honorary Secretaries and Honorary Treasurer.

46. At any ordinary meeting of the Committee, five members of the Committee shall form a quorum.

47. The President of the Club shall be the Chairman of the Committee. In the absence of the President, the Committee shall elect their own Chairman. In all cases of an equality of votes the Chairman shall have a casting vote.

48. The Committee shall meet not less than once every calendar month for the transaction of business. Not less than three clear days' notice shall be given of every meeting of the Committee.

49. All business transacted at the meeting of the Committee shall be recorded in a Minute Book kept for the purpose.

50. Any member of the Committee who though present in Bombay absents himself from five consecutive meetings of the Committee without proper cause or reason shall be deemed to have vacated his seat.

51. Any member of the Committee including office-bearers wishing to resign shall send his resignation at least a week before the date he intends to resign.

52. The Committee shall have the power to close the Club for any special purpose and for any definite period if and when they find it advisable.

53. The Committee shall have the power—(a) to appoint Sub-Committees from among the Members of the Committee or from other Members of the Club, and to fill vacancies on such Sub-Committees,

(b) to make such Regulations and Bye-laws not inconsistent with these rules, as they may from time to time think necessary for the internal economy of the Club, and for the regulation of the Club House and of the general management of the Club; (c) to alter any existing Rule, Regulation or Bye-law provided that if such alteration affect the constitution of the Club or the election of the Committee or the election, suspension or expulsion of Members or the raising or reducing of existing subscriptions and entrance fee, the same shall not have effect without the previous sanction of the general body of Members at an Annual General or Special General Meeting assembled.

Club Dinners

54. Entertainment by the Club of a Member or Members or Visitor, or Visitors of distinction.

55. Dinners or such functions of this nature shall take place only with the consent and approval of the Managing Committee, to be determined at a Committee Meeting.

56. Any matter not specifically provided for under these rules shall be disposed of by the Committee.

57. The Committee shall be the sole authority as to the interpretation of the Rules, Regulations and Bye-Laws of the Club.

General and Special Meetings

58. An Annual General Meeting of the Members of the Club shall be held ordinarily in the month of March in each year on the day to be fixed by the Committee.

59. At such meetings the business transacted shall be as follows:— (a) To receive and adopt the Committee's report of the working of the Club for the previous year; (b) to pass the accounts as prepared by the Honorary Secretaries and the Honorary Treasurer and certified as correct by an auditor to be appointed by the Committee; (c) to elect a new Committee for the year; and (d) to transact any other business that may be brought before the Meeting by any Member entitled to be present at the Meeting provided seven days' previous notice of the same is given to the Honorary Secretaries in writing.

60. The Committee shall cause the Annual General Meeting to be advertised at least fourteen days before the day of the Meeting and any proposition to be laid before the Meeting or any adjourned Meeting shall be posted on the notice board ten days before the day of such Meeting.

61. The Committee may at any time on their own authority and shall on the written requisition of at least twenty Members call within ten days of such requisition a Special General Meeting of the Members giving seven days' notice thereof by advertisement and by notification posted on the notice board specifying shortly the particular object or objects for which it is called. At such Meetings no proposition or propositions shall be considered except that or those relating to the particular object or objects for which the meeting is called.

62. A quorum for a General or Special Meeting shall be of fifteen Members who are entitled to attend and vote provided always that when a Meeting has been adjourned for want of a quorum, no quorum shall be necessary at the adjourned Meeting or Meetings.

63. At all General or Special Meetings the President shall preside. In the absence of the President any Member who has a right to vote may be elected to preside at the General or Special Meeting.

64. All questions in debate before any General or Special General Meeting regularly convened shall be decided by a majority of Members present. In case of equality of votes the President or other Members presiding shall have a casting vote. All other proceedings shall be regulated by the President or other Member presiding.

65. The Honorary Secretaries shall keep a record of the proceedings of every General or Special General Meeting which shall be read and confirmed at the next General or Special Meeting. At such Meeting no proposal or amendment shall be deemed to be carried unless passed by a majority of the Members present and voting. In case of equality of votes the President or other member presiding shall have a casting vote or second vote.

Voting

66. (*a*) All Members shall be entitled to vote except Temporary and Honorary Members.

(*b*) No Member who is indebted to the Club in respect of any dues payable by him shall after being called upon to pay and omitting to pay within a month be entitled to attend or vote at any Meeting.

67. No vote by proxy shall be allowed.

Secretaries and Treasurer

68. The Honorary Secretaries shall be the *ex officio* Secretaries of all Committees or Sub-Committees.

69. The Honorary Secretaries shall have the power to appoint or dismiss the servants of the Club subject to the General control of the Committee.

70. The Accounts of the Club shall be kept by the Honorary Treasurer who shall collect all the moneys payable to the Club and may make the necessary disbursements as authorized by the Committee.

Accounts and Auditing

71. The Honorary Treasurer shall prepare a statement showing the Income and Expenditure together with the Profit and Loss in the working of the Club of every quarter ending 31st March, 30th June, 30th September and 31st December in each year and submit the same to the Committee at their Meetings to be held in the months of April, July, October and January following. Such statement shall be furnished by the Honorary Secretaries to each Member of the Committee, with the notice convening the Meeting of the Committee statements of the actual liabilities of the preceding quarter and of the outstanding debt (if any)

due by Members to the Club at the end of the previous quarter shall be laid on the table at each quarterly meeting of the Committee.

72. The Honorary Treasurer shall likewise prepare a statement of accounts for the whole year which shall be submitted to the Committee at least fifteen days before the Annual General Meeting next ensuing; the Committee shall thereupon appoint an Auditor to audit the accounts. A copy of such audited statement of accounts shall be posted on the notice board along with the notice convening the Annual General Meeting.

73. Any surplus left in the hands of the Honorary Treasurer after making all disbursements shall be deposited at such bank as the Committee may select or may be invested in good securities and such securities shall stand in the name of the Honorary Treasurer who shall when called upon to do so submit a memorandum of such deposits and securities to the Committee for their information and approval.

GENERAL BYE-LAWS

1. The Club House shall ordinarily be open to the Members from 7 a.m. to 1 a.m. A Member may however remain in the Club premises after 1 a.m. but in no case later than 2 a.m. on payment of a charge of Rs. 3. Visitors remaining in the Club after 1 a.m. shall likewise be charged Rs. 3 each which shall be recovered from the Members by whom they are introduced.

Members Entertaining Friends

2. Every Member shall have the privilege of entertaining friends at breakfast, luncheon, tea and dinner, subject to such Rules and Bye-Laws as may be made from time to time by the Committee and so far as the accommodation of the Club will admit. Such Members shall in every case pay the expense of such entertainment, and shall be responsible for his guests' observance of the Rules of the Club.

Visitors' Book

3. A notice card shall be shown to Members when necessary, requesting them to enter in the visitors' book the names and addresses of guests introduced by them to the Club.

4. No resident of Bombay shall be admitted as a visitor to the Club except as provided in Bye-Law 2. The term 'resident' to be understood to mean a person who has resided in Bombay fourteen days or more.

5. No person who is not a Member or an Honorary Member shall be allowed either directly or indirectly to entertain or to join in entertaining guests at the Club, except for tea.

6. Members intending to entertain guests at the Club must give twenty-four hours' notice thereof to the Manager for breakfast or dinner but the Manager may accept shorter notice at his discretion.

7. A member who has ordered any meal and countermands the same shall pay the expenses incurred by the Club.

Singing, etc. Prohibited

8. Except with the permission of the Committee previously obtained no music, singing, cheering or speeches shall be allowed in the Club.

Coffee-Room Charges

9. The ordinary Coffee-room charges shall be as set forth in the table signed by the Honorary Secretaries and obtainable from the Manager.

Complaint against Servants

10. Any Member having cause to complain of any servant or of any matter in the Club should enter his complaint in the book kept for that purpose.

Suggestion Book

11. A book shall be kept with the Manager, in which Members may write suggestions.

Removal of Books and Papers

12. No Member shall take away from the Club House any books or papers whatever, under a penalty of a fine by the Committee not exceeding Rs. 10.

Breakages

13. All breakages of plates, glassware, etc., or injury to any of the Club property to be paid for at a cost sufficient to replace them by the person breaking or injuring the same.

Supplies Prohibited to Indebted Member

14. The manager is prohibited from furnishing supplies to any Member whose name is posted, or who remains in debt to the Club for Rs. 100 one month after demand.

Card Games

15. No game of hazard, such as Loo, Baccarat, Euchre, Nap, and Brag, etc., shall be played in the Club.

Payment for Cards

16. Members shall pay for all cards they require.

Admission of Ladies to the Club House

17. Ladies belonging to the families of Members are permitted to use such parts of the Club premises (with the exception of the Billiard Room), and at such hours, as the Committee may from time to time determine. Ladies visiting Bombay and Lady Nurses resident in Bombay, when introduced and accompanied by a member, may, with the sanction of the Committee be permitted to avail themselves of the above privileges.

Children not Admitted

18. Children below the age of 15 are not permitted to enter the Club House and premises.

Dogs

19. No Member is, in any circumstances, to bring a dog or any other animal into the Club House.

Gratuities to Servants

20. No member or Visitor shall give any money, present, fee or gratuity to any of the servants of the establishment, nor shall the latter receive the same from them or from any tradesman on any pretence whatever upon pain of immediate dismissal.

Billiard Room Bye-Laws

1. When the table is in use, any Member who is present in the Club and who is not playing, may secure it for a game by writing his name on a slate provided for the purpose.

2. When the table becomes disengaged, it is to be offered by the Marker, according to priority of entry, to the Members whose names are entered on the slate.

3. No Member may give away or exchange his claim to a table. If he is not in the Club, or does not himself play when the table is available for his game, his name shall be erased from the slate. Markers are not expected to look for members beyond the Billiard Room.

4. In the absence of the Member whose name is first on the slate, it may be claimed by the Member whose name stands second on the list, and so on in rotation ; or, failing that, then by the players in possession of the table, should they wish to play another game, they having a prior right to a Member who, though present, has not put his name on the slate.

5. The names of the players in possession of the table may not remain or be entered on the slate until their game is finished.

6. Ordinarily and between the hours of 5 p.m. and 8 p.m. the table shall not be engaged for a game of over 100 points. The number of points of the game must be stated on the marking board on commencing the game.

7. Whenever a table is wanted by five or more players for any pool game, it may be taken for that purpose as soon as it is disengaged, and the foregoing rule shall not be applicable.

8. No Pool game can be considered private to the exclusion of any Member who may wish to join, but the players may limit their number to eight.

9. The table cannot be engaged by time. A game of 50 up shall not last more than 25 minutes, and 100 up not more than 40 minutes if there are Members requiring the table.

10. Practising or knocking the balls about is permissible to Members at any time whenever the table is disengaged and is not required for an ordinary game.

11. Any Member playing with a Marker must pay whether he wins or loses his game. A Member is not supposed to play a game with

a Marker, should any other Member of the Club present wish to play, but he is entitled to finish any game he has already begun with a Marker, even though other Members may require the table.

12. In no case shall any player start a game of Billiards owing points or a game of Pyramids owing balls.

13. Any Member cutting a Billiard Table Cloth shall be charged such sum as the Committee may consider fair.

14. A Member is liable for damage done to the Cloth or other property in the Billiard Room by his guest.

15. Between the hours from 5 p.m. to 8 p.m. the table shall be reserved for Members only.

		Without Electric Light.		With Electric Light.	
		Re.	as.	Re.	as.
Billiards	50 up.....	0	3	0	6
,,	100 ,, ...	0	6	0	12
,, (4 handed)	63 ,, ...	0	4	0	8
,, ,,	126 ,, ...	0	8	1	0
200 up, *vide* Rule 5		1	0	2	0
Every additional 100		0	12	1	8
Pyramids per game		0	4	0	8
	Pool Games.				
Black Pool & Race Game.	Per player per half hour.....	0	2	0	3
	If less than 4 players per half hour.....	0	8	0	12
Following Pool Snookers any other Pool game.	Per player	0	2	0	3
	If less than 4 players per game.	0	8	0	12
Practising as per Rule 8 :— For every quarter or part of a quarter of an hour.....		0	2	0	4

CARD ROOM BYE-LAWS

1. The affairs of the Club in connexion with Bridge shall be managed by a sub-committee consisting of the Honorary Treasurer of the Club and two Bridge players approved by the General Committee.

2. The Club is not responsible for the collection of Bridge debts, but only for keeping the Bridge Book written up from day to day, for furnishing the Bridge Committee with a collection sheet on the 1st of

each month and for issuing reminders at the request of the Bridge Committee.

3. Any Member who has failed to pay his Bridge debt for any month by the 12th of the next month, or if he is not resident in Bombay, within ten days after the bill has been sent by post to his address, shall be liable to have his name posted up on the Notice Board in the Card Room and to be prohibited by the Bridge Sub-Committee from playing any card game in the Club until he has settled his account.

4. The Card Table charge shall be four annas per head per day.

APPENDIX E

PRECEDENT OF RULES OF SPORTS AND SOCIAL CLUB COMBINED

THE———SPORTS CLUB

Club Rules

1. The Club shall be called THE—SPORTS CLUB. Its objects are to provide for its Members grounds and buildings convenient, desirable or necessary for Games and Sports generally, whether indoor or outdoor, and all things commonly or conveniently used therewith and also a Social Club for the use of its Members with Club buildings in Bombay having suitable social and, if possible, residential accommodation; and also Branch Houses, Dormy Houses or Country Houses and similar grounds elsewhere.

Constitution

2. THE—SPORTS CLUB shall consist of:—(a) Life Members; (b) Founder Members; (c) Ordinary Members; (d) Gymkhana Members; (e) Temporary Members; (f) Honorary Members; and (g) Supernumerary Members. Any gentleman of twenty-one years of age who is received in general society, shall be eligible for admission to membership of the Club.

3. There may be a Patron or Vice-Patrons of the Club who need not be Members of the Club.

Management and Control

4. (i) The Club shall be governed by, and the entire financial control of the Club shall be vested in General Committee composed of the following persons who each must be a Life Member, a Founder Member or an Ordinary Member of the Club:—

(*a*) The President
(*b*) The Trustees of the Club
(*c*) Four Members nominated by the President
(*d*) Three Members to represent the interests of Life Members
(*e*) Twelve Members to represent the interests of Founder Members
(*f*) Twelve Members to represent the interests of Ordinary Members.

(ii) The First Members of the General Committee shall be:—
(According to list entered into the first set of Rules issued).

They shall enter upon office forthwith on and from the date of the foundation of the club.

(iii) The President of the Club shall be elected annually by a vote of the Members for the time being in India of the General Committee, such vote being given and recorded at a Special Meeting

of the General Committee in a manner to be prescribed by the General Committee for the occasion.

(iv) There shall be not less than three Trustees of the Club and each of the first Trustees and any Trustee hereafter elected shall remain in office until his death or until he resigns or ceases to be a Member of the Club or is removed. Future Trustees shall be elected and any Trustee may (when necessary) be removed by a vote given and recorded at a General Meeting of the Members of the Club ; such vote to be taken by ballot or as the General Committee shall direct unless the vote recorded at the Meeting is unanimous. No Member shall be elected a Trustee without his consent being previously obtained. The property of the Club of whatever description shall be vested in and shall, when necessary be transferred to the Trustees for the time being, who shall in any legal proceedings be deemed sufficiently to represent the Club and its Members. The Trustees for the time being shall under the direction of the General Committee act in legal proceedings, effect insurances, invest money, execute mortgages and all deeds to be entered into on behalf of the Club, sign any debentures the issue and form of which may be directed by the General Committee, and generally transact all business of a like nature in such manner as the General Committee may from time to time determine. Every direction of the General Committee to the Trustees shall be signified by a copy of the resolution of the General Committee signed by the Chairman of the day and one other Member of the General Committee and when so signified shall be obligatory upon and a justification to the Trustees as to any thing to be done by virtue of such resolution ; and the Trustees shall be indemnified out of the Club's property against all liabilities, risk and expense incurred by them as such Trustees.

(v) Each of the four Members nominated by the President shall hold office on the General Committee for so long as the President for the time being shall determine or until resignation ; but any or all of them may at any time be removed from office by the President, who may nominate another Member to fill up any vacancy occasioned in their number.

(vi) The first Members, named in Sub-rule (ii) of the General Committee as representing the Life Members, the Founder Members and the Ordinary Members, shall hold office until the Annual General Meeting in the year 19... ; at such Meetings one-third of the Members representing each of those classes of Members shall retire from office, the actual Members who are to retire, unless agreed upon amongst themselves to be determined by lot. Similarly at every subsequent Annual General Meeting one-third of the Mmbers on the General Committee representing each of such classes of Members shall retire, the actual Members to retire to be determined from amongst those who have been longest in office by agreement or (if necessary) by lot, the intention being that the ordinary term of service of each of such Members of the General Committee shall be three years. At the same Annual General Meeting the Life Members shall elect one Member (of any of the qualified classes) to represent their interests on the

General Committee in order to fill up the vacancy caused by their retiring representative Member; and the Founder Members and the Ordinary Members shall respectively elect four Members (of any of the qualified classes) to represent the interests of their respective classes on the General Committee in order to fill up the vacancies caused by their retiring representative Members. Retiring Members shall be eligible for re-election; but no Member of the Club other than a retiring Member of the General Committee shall, unless he is recommended by the General Committee for election, be eligible for election as a Member of the General Committee unless his nomination in writing as a candidate for such election signed by at least three Members of the class he is being proposed to represent has been received by the Secretary not less than two weeks before the Meeting together with an intimation signed by the candidate that he is willing to serve.

(vii) No Member of the General Committee shall receive any profit, salary, or emolument from the funds of the Club or any remuneration in respect of services rendered to the Club under penalty of expulsion from the Club.

(viii) Any casual vacancy on the General Committee may be filled up by co-optation at a meeting of the General Committee but the Member so co-opted shall hold office only for the unexpired portion of the term of the Member whom he replaces.

(ix) The General Committee shall meet whenever summoned by the President or by the Secretary under his directions or on a requisition signed by four members of the General Committee. The quorum of the General Committee shall be five. Any Life Member or Founder Member who is serving on the General Committee and who is unable to be present at a particular meeting of the Committee shall be entitled to vote by proxy or to vote in writing signed by him and received by the Secretary before such meeting is held on any matter or business before such meeting.

(x) The General Committee shall have full and general power from time to time to alter, add to, cancel, or vary the Rules, Regulations and Bye-laws of the Club as they may think necessary and they shall be accepted by Members of the Club as the final authority as to the interpretation of the Rules, Regulations and Bye-laws of the Club and for settling all disputes relating to the affairs of the Club and the conduct of Members in relation thereto. They shall make and carry out such immediate or necessary arrangements as they may think proper to purchase, lease, hire or acquire for the Club property of any form or description, and in particular land of any tenure, which they may consider desirable for the Club; and to erect, adapt, equip, and furnish buildings thereon for the purposes of the Club; and to raise such amount of money as they may deem necessary for the Club's purposes in such manner, at such rate of interest and upon such form of security or incumbrance on the Club's property and with and under such conditions as they may deem fit. They shall have special power from time to time to alter the amount of Entrance Fees and the rates of subscrip-

tions for new members of the Club, and in their discretion to raise the limit number, for the time being existing, of any or all of the classes of the Members of the Club and to modify accordingly any rule applicable to such limit. But they shall not without the sanction of a resolution passed by the vote given and recorded at a General Meeting of the Members of the Club, raise the subscriptions of existing Members of the Club (other than Gymkhana or Temporary Members), or from and after the.....19....cause or allow any new disposition of the Club property as security for any new or additional loan, charge or incumbrances or acquire any additional landed property for or dispose of any immovable property of the Club.

(xi) At their first meeting after entering upon office or reconstitution in any year and annually the General Committee shall elect eight Members of their Committee to be Members (in addition to the *ex officio* Members) of the Executive Committee of the Club. The President shall be *ex officio* a Member and the Chairman of the Executive Committee and in the event of his absence from any meeting of such Committee a Chairman shall then be appointed from amongst those present. The Trustees shall be *ex officio* Members of the Executive Committee. The quorum of the Executive Committee shall be three and the Chairman at every meeting of that Committee shall have a second or casting vote. Any casual vacancy caused in the numbers of the Executive Committee shall be filled up by co-optation at a meeting of the Committee.

(xii) The Executive Committee shall, subject to confirmation by the General Committee, have control of the finances of the Club within the limits of the Budget, and shall prepare for submission to the General Committee the Annual Budget and the Statement of account. Subject to the General control of the General Committee, the Executive Committee shall have the general management of the property of the Club, except as regards such matters as are specially vested in the general Committee, and shall also have the enforcement of the Rules, Regulations and Bye-laws of the Club and shall have power from time to time to make, vary and rescind such Bye-laws not inconsistent with the Rules and Regulations of the Club, as they may consider necessary for the internal management and well-being of the Club and for the regulation of Sports and Games and for the domestic affairs and arrangements of the Club; they shall subject to similar control have power to engage and appoint the Club servants and officers (except the Secretary) and such establishment as they may consider necessary for the Club, and to dismiss, reduce or alter the same from time to time; they shall determine the scale of charges to be paid for supplies and for Sports and Games and the like; they shall make provision for and carry out the improvement, conservation, upkeep, repair and renewal (as the case may be) of the lands, buildings and property of the Club for the time being; and they shall have also such powers as may from time to time be delegated to them by the General Committee or may be vested in them by the Rules, Regulations or Bye-laws of the Club for the time being.

(xiii) The General Committee may appoint a Finance Committee composed of any Members of the Club who shall check the accounts of the Club and advise the Committee in all matters of expenditure.

(xiv) The General Committee may appoint Sub-Committees for any purposes and may delegate to them such powers as they may think fit to prescribe in the terms of reference. Such Sub-Committee may comprise persons who are not Members of the General Committee or of the Club. Additional Members may be appointed or casual vacancies may be filled up on such Sub-Committee by the General Committee. The Executive shall have the like powers as regards the formation of Sub-Committees for the purposes of the interior economy of the Club and in the interests and for the regulation of the Sports and Games.

(xv) The Funds of the Club shall be deposited in a Bank to be appointed by the General Committee. All cheques drawn on behalf of the Club shall be signed by one Member of the Executive Committee and countersigned by the Secretary.

(xvi) Life Members, Founder Members and Ordinary Members only shall be entitled to be present at and to vote at the meetings of the Members of the Club. Every Life Member and Founder Member shall as a special personal privilege be entitled to appear and vote by proxy at all such meetings or to vote in writing signed by him and received by the Secretary before the meeting is held on any election, proposal, question, resolution or business before any such meetings if he is unable to be present thereat; but such privilege shall only be exercised in accordance with the Rules of the Club or such special regulations or conditions as shall from time to time be prescribed by the General Committee. The Annual General Meeting of the Club shall be held in the month of January or February or March in each year.

(xvii) The beneficial interest in the property of the Club, subject to the liabilities thereof and thereon and to its being vested in the Trustees of the Club, shall belong to the Members (Life, Founder, Ordinary and Supernumerary other than Gymkhana) of the Club for the time being, but no Member shall by reason of his Membership have any transmissible or assignable share by operation of law or otherwise in any of such property; and in the event of any Member by death, resignation or any way ceasing to be such, all his interest in such property shall survive, accrue and belong to the other Members, as aforesaid of the Club.

(xviii) This Rule as to the Management and Control of the Club shall not be rescinded, altered or added to except with the sanction of a three-fourths majority of Members voting at an Extraordinary General Meeting of the Members of the Club, specially convened on the recommendation of the General Committee, of which at least four weeks' notice has been given and at which Meeting not less than sixty Members are present in person and not less than two-thirds of the number of Life Members and Founder Members of the Club for the time being are present in person or by proxy. At such meeting the President shall be the Chairman or in his absence a Member of the

General Committee shall be appointed the Chairman by those present, and the Chairman shall decide all points raised as to procedure or otherwise and shall have a second or casting vote.

Limit of Membership and Election of Members

5. (i) Subscribers of not less than Rs. 10,000 to the Club Funds, whether on security of debentures or otherwise, and such persons as the General Committee may consider to have rendered exceptional service to the Club may be elected Life Members of the Club by the General Committee and they shall be exempt from the payment of Entrance Fee and Annual Subscriptions. The number of Life Members shall not at any time exceed sixty.

(ii) The first 120 Members elected by the General Committee at or after the foundation of the Club, who not being Life Members, have subscribed at least Rs. 500 to the Club Funds, whether on security of debentures or otherwise, shall be the Founder Members and they shall be exempt from any Entrance Fee. The said limit in the number of Founder Members shall not be exceeded, except as provided in Rule 12 as regards Supernumerary Members but in the event of a vacancy occurring in the limit number of Founder Members, and under Rule 12 the General Committee shall have power to elect a Founder Member, any then Ordinary Member of the Club in whom it appears to them that a debenture interest in the Club to the extent of Rs. 1,500 and upwards has vested by transfer or by devise or by transmission.

(iii) The Ordinary and Gymkhana Members of the Club (other than ladies) shall be limited to 920 in all subject to the provision of Rule 12 as regards Supernumerary Members.

(iv) The list for gentlemen Gymkhana Members is closed. There shall be no limit to the number of lady Gymkhana Members.

Ordinary Members and Gymkhana Members

6. The election of Ordinary Members and Gymkhana Members shall be by ballot and vested in the Executive Committee. There shall be no election unless at least four members of the Executive Committee vote and one black ball in four or two in any number shall exclude. Candidates for such membership must be proposed by a duly qualified Member of the Club and seconded by another duly qualified Member neither of whom is a Member of the Executive Committee. Both the proposer and seconder shall, at the time of proposing a candidate, state in writing to the Executive Committee by a letter or other communication to the Secretary, that the candidate is personally well known to them and that they believe he will prove an acceptable Member, at the same time giving the fullest information available concerning the candidate. Should a written communication from both the proposer and seconder not be obtainable, the Executive Committee may, if they think fit, accept as sufficient such a communication from one of them. Any neglect in these particulars will render an election voidable at the discretion of the Executive Committee. Upon the written request of a candidate or of his proposer or seconder his election may be postponed for a period not longer than six months. The candidate's name, rank,

residence and profession, if any, shall be inserted at the time of his being proposed in the appropriate Candidates' Book. Any Member, qualified to propose for an election, who through personal knowledge of a candidate is desirous of recommending him at the ballot, may do so under signature in such Candidates' Book. Ladies may be elected Gymkhana Members of the Club but must be proposed and seconded for election by the Members of the General Committee to whom they must be personally known.

Rejected Candidates

7. The name of any Candidate who has been rejected or withdrawn from election shall not again be entered in the Candidates' Book until six months have elapsed from the date of such rejection. Any candidate who has been rejected shall not be admissible into the Club premises as a guest.

Temporary Members

8. The Executive Committee may elect Members of any other Club of good standing but not being residents of Bombay and any Visitors to Bombay as Temporary Members of the Club, but no person shall be elected as a Temporary Member for more than sixty days in all in any one year.

Honorary Members

9. The Executive Committee shall have power to elect as Honorary Members (without entrance fee or subscription), for such period as may then be determined on, Ruling Princes and Chiefs, and distinguished Foreigners and Visitors from parts of India other than the Bombay Presidency and such persons of distinction or taking part in sports managed by the Club as they may select.

Restricted Privileges of Certain Members

10. Every Gymkhana Member, Temporary Member and Honorary Member shall be entitled to all the advantages and privileges of Membership of the Club except those of introducing Visitors and entertaining guests who are not members of the Club and of being present or voting at Meetings of the Club, and of serving on the General or Executive Committees and of proposing or seconding candidates for election as Members of the Club. In other respects they shall be subject to all the Rules, Bye-laws, Regulations and Restrictions applicable to the Members of the Club.

Entrance Fees and Subscriptions

11. Founder Members shall pay the same Annual Subscription in advance as an Ordinary Member.

Until further notice the Entrance Fees and Subscriptions shall be :—

For Ordinary Members, Entrance Fee Rs. 500 payable on election or at Member's option in the following instalments Rs. 300 on

election and Rs. 100 during each of the next two years during any portion of which he is a Resident Member.

Existing Gymkhana Members who are elected as Ordinary Members before.....19.....shall be elected as such upon payment of an Entrance Fee of Rs. 300 only.

The Annual Subscription for Ordinary Members is Rs. 120 payable in advance.

For Gymkhana Members, Entrance Fee Rs. 50 and Monthly Subscription Rs. 10 per month payable in advance.

For Temporary Members, no Entrance Fee but a Subscription of Rs. 10 payable in advance, for each period of seven days or any fraction thereof during which the privilege of Temporary Membership is granted.

The Annual Subscription of Founder Members and Ordinary Members are due and payable on.....in every year, whatever may have been the date of election. In the case of new members, those elected before.....in any year, shall be liable for the full annual subscription for that year and those elected after.....shall be liable for one half of the Annual Subscription for that year.

Founder and Ordinary Members who are absent from the Bombay Presidency for six months or over consecutively shall be entitled to a credit against their subscription for the following year at the rate of Rs. 7/8 per month for each complete month of absence. (*Note.* For the purposes of this rule, Sind shall be considered to be outside the Bombay Presidency).

Supernumerary Members

12. Any Founder Member, Ordinary Member or Gymkhana Member leaving India may on written application to and with the consent of the General Committee, become a Supernumerary Member from.....following his application and shall pay thereafter in advance on.....an Annual Subscription for each year while absent from India of Rs.....only, provided he is absent from .....to.....of such year. Immediately on a Supernumerary Member returning to India the balance of his full Annual Subscription or his Monthly Subscription (for the then current year or month as the case may be) becomes due and must be paid within one week of his return; provided that a Supernumerary Member returning after .....in any year shall be required to pay one-half only of the current year's Subscription in addition to the Rs.....already paid. Any Member, at any time after becoming a Supernumerary Member as aforesaid, may commute all liability for the payment of the future Subscription due as aforesaid from him as a Supernumerary Member up to the date of his next return to India by payment of a lump sum of Rs....., but he shall not on his return to India be entitled to the benefit of the proviso in the sentence lastly herein set out.

Any vacancy in the limits of Membership caused by a Founder Member or Ordinary Member becoming Supernumerary may be filled up at once by the General Committee by election of a Founder Member,

or by the Executive Committee by the election of a candidate as an Ordinary Member notwithstanding that on the return of the Supernumerary Member to India and his again resuming full membership the limits of Membership for the time being under Rule 5 may be exceeded; but unless the actual number of such Members of the Club in India is below the said limits no new Founder Member or Ordinary Member, as the case may be, shall be elected.

GENERAL RULES

Notice of Election

13. On admission of each new member the Secretary shall notify his election to him and shall request him to pay the Entrance Fee, if any, and Subscription payable by him and shall furnish him with a copy of the Rules and Regulations; but no such Member shall be absolved from the effect of these Rules or any Rules, Bye-laws or Regulations of the Club on an allegation of not having received a copy of them.

Such new Member shall pay his Entrance Fee, if any, and Subscription due in advance for the current year or month, as the case may be, within fourteen days from the date of the Secretary's notification of his election.

Use of Club

14. No member shall participate in any of the advantages or privileges of the Club until he shall have paid his Subscription and Entrance Fee if any.

Submission to Rules

15. As the payment of the Entrance Fee and Subscription will entitle a Member to enjoy the benefits and privileges of the Club, so it is to be considered as implying such Members' acquiescence in and submission to the Rules of the Club, to the restrictions which they enjoy, and to the penalties which they enact, and to such further or amended Rules, Bye-laws and Regulations as may from time to time be made by the General Committee or by the Executive Committee or by the Club.

New Member not taking up his Election

16. If any new Member does not pay his Entrance Fee, if any, and Subscription due in advance within the space of fourteen days from the date of the Secretary's notification of his election to the Club if he be in India, or of three months if out of India, the Secretary shall report accordingly to the General Committee, who may cause the name of the Member in default to be erased from the list of Members; but if such Member can account for the delay to the satisfaction of the General Committee his name may be restored by them.

17. The names of all Members who shall fail to pay on demand their Subscription in advance when the same shall become payable shall be laid before the Executive Committee at their next meeting, and to any Member so failing a circular letter addressed to his last known

place of residence or business address shall be sent by the Secretary, requiring him forthwith to pay the same and intimating to him that if his Subscription be not paid immediately or within such time as the Executive Committee shall appoint, his name will be liable to be struck out of the list of Members, and if such Subscription shall not be paid on or before the date mentioned the General Committee may strike out his name accordingly. The General Committee may reinstate a Member on satisfactory grounds being shown for the failure of due payment.

Notice of Withdrawal

18. The Club year commences on..... Any Member intending to withdraw from the Club shall signify his intention to do so, in writing to the Secretary on or before the previous..... otherwise he shall remain liable for the Annual Subscription, if any, for the ensuing year, but his Monthly Subscription, if any, shall cease to be payable as from the month in which he shall intimate his intention to withdraw.

Late Members

19. Except as in the Rules mentioned, no Member having ceased to belong to the Club, either by resignation or otherwise, shall be entitled to have any part of his Subscription or Entrance Fee returned to him.

Guests and Visitors

20. Except at such times as the Executive Committee may determine, each Member (except as provided by Rule 10) may introduce friends as Visitors to the Club either personally or by letter to the Secretary. No person shall be eligible for admission as a Visitor to the Club premises who is not received in general society ; any Member giving admission to any person not so eligible shall be liable to have his name removed by the General Committee from the list of Members. The Executive Committee may make Bye-laws for the restrictions of Guests and Visitors from time to time as they may think fit.

In no circumstances shall any Visitor be permitted to order or pay for any supplies.

Election may be cancelled

21. The General Committee may cancel the election of any Member within twelve months of the date of his election or on the day he pays his first Subscription, and such Ex-Member shall not have the right to make any appeal whatsoever, nor to demand the reason for such cancelling ; but his Entrance Fee, if any, paid, and Annual or Monthly Subscription paid for the current year, if any, shall be returned to him. This Rule shall not apply to Life Members or Founder Members.

Expulsion

22. The General Committee may remove from the list of Members the name of any member, of whatever description or class,

whose presence in the Club they may consider to be detrimental to its interests and to determine his or her Membership of the Club without assigning any reason for their so doing and on giving or posting to him or her by registered post a letter containing a notification to this effect or after following the procedure laid down in Rule 36, such Member shall forthwith cease to be a Member of the Club. Such Member shall not have any claim against the Club, the General Committee or the Members but any Subscription already paid by such Member for the current year shall be returned. No appeal shall lie from the determination of the General Committee but they may nevertheless, reconsider their determination upon being desired so to do by a requisition in writing signed by not less than ten Founder, Life or Ordinary Members.

23. Any Member who shall be dismissed from any public service or who shall apply for or take the benefit of any Insolvent Act or become Bankrupt or Insolvent shall *ipso facto* cease to be a Member of the Club, but with the approval of the General Committee shall be eligible for re-election as in the case of an original candidate but without payment of any Entrance Fee.

Appointment of Secretary

24. The Secretary or Secretaries shall be appointed by the General Committee, and if not Members of the Club may be elected Honorary Members for the Term during which he or they shall hold the appointment.

Gratuities

25. No Member or Visitor shall give any money, fee or gratuity to any servant of the Club, nor shall the latter receive the same on any pretence whatever, upon pain of immediate dismissal.

Servants

26. No Member shall take into his service any servant of the Club or attempt to induce any servant of the Club to leave his employment or be accessory to his removal to the service of a stranger.

Complaints

27. The conduct of a servant shall in no instance be made a matter of personal reprimand by any Member, but all complaints respecting the servants or domestic arrangements about the Club shall be made by letter, signed by the Member complaining and addressed to the Executive Committee, who at their next meeting, shall inquire into the circumstances of the case, and act accordingly.

Papers, Books, and Damage to Property

28. No Member shall injure, mutilate or destroy or take away from the Club, upon any pretence whatsoever, any newspaper, pamphlet, book or other article or any furniture or thing, the property of the Club, and any Member injuring, breaking or otherwise damaging or removing the property of the Club shall at the discretion of the Execu-

tive Committee, be called upon to make good such damage or loss and to pay such further amount by way of fine as they may fix or as may be provided by the Bye-laws. A Member shall similarly be liable for any breakages, loss or damage caused by his guests or by Visitors introduced by him.

Restriction on Admission

29. No Member shall be admitted as such without an interval of at least forty-eight hours after nomination.

Liquors, etc.

30. No intoxicating liquor, tobacco or other excisable article shall be sold on the Club premises to any one except duly elected Members of the Club.

Dogs

31. No Member or Visitor shall on any account bring a dog upon the Club premises.

Non-payment of Bills

32. The name of any Member who shall neglect, fail or refuse to pay any bill after the same has, in the opinion of the Executive Committee, been duly demanded of him or who has left Bombay without paying his bill may be posted in a conspicuous place of the Club for seven days or for such number of days as in the opinion of the Executive Committee will suffice to enable the Secretary to receive a reply to a registered letter addressed to him containing an intimation of his name having been posted, at the expiration of which period, if the bill remains still unpaid, the name of such Member may be struck out of the list of Members by the Executive Committee and such Member shall therefore cease to be a Member of the Club. But the General Committee may reinstate such Member on satisfactory grounds being shown for the non-payment.

Duty to Ascertain Indebtedness

33. It shall be the duty of every Member to ascertain whether he is in debt to the Club for subscriptions or supplies or otherwise and not to leave Bombay while in debt to the Club. The non-presentation of bills to a Member will not relieve him from the penalty for non-payment.

Prohibition of Supplies

34. The Executive Committee may prohibit the Club servants from furnishing supplies to any Member who shall be indebted to the Club in any sum the payment of which has been demanded from such Member but not made.

'Club'; 'Club Premises'

35. For the purposes of these Rules the words 'Club' or 'Club premises' shall include all temporary premises, tents, etc., intended for the use of Members.

Members' Addresses

36. Each Member shall communicate an address in Bombay to which notices may be sent to him, or that of his Banker or Agent in Bombay from time to time to the Secretary, and all notices sent to such address shall be considered as duly delivered. Any Member not having communicated such an address shall be deemed to have received in due course any notice addressed to him which shall have been posted up or displayed in a conspicuous position in the Club and which shall remain there for at least seventy-two hours and such notice shall be deemed to have been received by such Member at the expiration of forty-eight hours from the time when it shall first have been so posted or displayed.

APPENDIX F

PRECEDENT OF RULES OF A GOLF CLUB INCORPORATED UNDER THE INDIAN COMPANIES ACT OF 1913

Memorandum Of Association Of The—Golf Club, Limited

1. The name of the Company (hereinafter called the Club) is THE—GOLF CLUB, LIMITED.

2. The registered office of the Club shall be situated in the Province of Bombay.

3. The objects for which the Club is established are :—

(*a*) To provide a Golf Course in or near the City of Bombay and or elsewhere in the Presidency of Bombay, and to lay out and prepare any such Course for playing the game of Golf and other purposes of the Club, and to provide pavilions, lavatories, refreshment rooms and other conveniences in connexion therewith, and with a view thereto in particular to take on lease or otherwise acquire vacant land at such rent, for such period and upon such terms and conditions as may seem expedient.

(*b*) To afford to the Members of the Club all the usual privileges, advantages, conveniences and accommodation of a Club.

(*c*) To promote all forms of athletic sports and pastimes.

(*d*) To buy, repair, make, supply, sell and deal in all kinds of apparatus and appliances used in connexion with sports, and all kinds of provisions and refreshments required for use by the Members of the Club or other persons for the time being entitled to use the Club buildings or premises of the Club.

(*e*) To promote and hold either alone or jointly with any other association, club or person, sports meetings, competitions, and matches and to give, or contribute towards prizes, medals and awards, and to promote, give or support dinners, balls, concerts, and other entertainments.

(*f*) To establish, promote, or assist in establishing or promoting, and to subscribe to or become a member of, any other association or club whose objects are similar, or in part similar, to the objects of the Club, or the establishment or promotion of which may be beneficial to the Club, provided that no subscription be paid to any such other association or club out of the funds of the Club, except *bona fide* in furtherance of the objects of the Club.

(*g*) To purchase, take on lease, or hire or otherwise acquire any movable or immovable property, or any rights or privileges necessary or convenient for the purposes of the Club.

(*h*) To construct or alter or keep in repair any buildings required for the Club, and to pull down or demolish any buildings not so required.

(*i*) To hire and employ secretaries, clerks, managers, servants and workmen, and pay them and other persons in return for services rendered to the Club, salaries, wages, gratuities and pensions.

(*j*) To invest the money of the club not immediately required, in such securities as may from time to time be determined, including any debentures, bonds or other securities issued by the Club.

(*k*) To borrow or to raise money which may be required for the purposes of the Club upon bonds, debentures, bills of exchange, promissory notes, or other obligations, or securities of the Club, or by mortgage or charge of the Club's property.

(*l*) To sell, improve, manage, develop, lease, mortgage, dispose of or otherwise deal with, all or any part of the property of the Club, whether movable or immovable, with power especially to sell and distribute wines, spirits, tobacco and other stores, among Members, for consumption inside the permanent or any temporary premises of the Club.

(*m*) Generally, to do all such other things as are incidental or conducive to the attainment of the above objects or any of them.

4. The liability of the Members of the Club is limited.

5. Every Member of the Club undertakes or guarantees to contribute to the assets of the Club, in the event of the same being wound up during the time that he is a Member, or within one year afterwards, for payment of the debts and liabilities of the Club contracted before the time at which he ceases to be a Member, and of the costs, charges, and expenses of winding-up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding one rupee.

6. If upon the winding-up or dissolution of the Club, there remains after the satisfaction of all debts and liabilities any property whatsoever, the same shall be paid to, or distributed among the Members of the Club in equal shares.

We, the several persons, whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this Memorandum of Association.

Name, Addresses and Descriptions of Subscribers

Dated this day of 19....

Witness to the above signatures.....

ARTICLES OF ASSOCIATION OF THE—GOLF CLUB, LIMITED

Interpretation

1. These Articles shall be construed with reference to the provisions of the Indian Companies Act of 1913 (hereinafter called the Act), and terms used in these Articles shall have the same respective meanings as they have when used in the Act.

Membership

2. The Company (hereinafter called the Club), for the purpose of registration, is declared to consist of 350 Members, of which there shall be three classes, namely (1) 150 A Members, (2) 100 B Members and (3) 100 Lady Members. The Committee of the Club (to be appointed as hereinafter provided) may, when it thinks fit, register an increase of Members.

3. The Club shall be managed and controlled by the Committee appointed (subject however as hereinafter provided) by the A Members only. No other Member (save as hereinafter provided) shall have any vote or voice in the management and control.

4. Every amateur golfer of either sex, of not less than twenty-one years of age, shall be qualified to be elected a Member of the Club.

5. The 150 A Members including the seven signatories to the Memorandum of Association and these Articles (being the Promoters of the Club), having each already paid an entrance fee of Rs....., shall sign and lodge with the Honorary Secretary a writing in the following form :—

To

The Committee of the—Golf Club, Limited,

Gentlemen,

I hereby agree to become an A Member of The—Golf Club, Limited, and to be bound by the Memorandum and Articles of Association and Bye-laws for the time being of the said Club.

Dated the day of 19.....

Full Name :—

Address :—

(Signature).

Designation :—

6. Every candidate for membership as a B or Lady Member shall be proposed by one and seconded by another A Member, to both of whom the candidate shall be personally known. The application for membership of every such candidate shall be made in writing, signed by the candidate and by his or her proposer and seconder, and shall be in the following form :—

To

The Committee of the—Golf Club, Limited,

Gentlemen,

I desire to become a B/Lady Member of The—Golf Club, Limited, and I hereby agree, if elected, to become a member of the said Club and to be bound by the Memorandum and Articles of Association and Bye-laws of the said Club for the time being.

Full name :—

(Signature).

Address :—

Designation

The above-named candidate is personally known to us, and we believe him/her to be a suitable person to be elected a member of The—Golf Club, Limited.

.....Proposer

.....Seconder

Dated the day of 19.....

Entrance Fees and Subscriptions

7. The entrance fees and subscriptions payable by Members of the Club shall be as follows :—

	Entrance Fee	Annual Subscription
B Members	Rs. 30	Rs. 10
Lady Members	Nil	Rs. 25

The annual subscription shall be paid in advance on the.....in every year.

The A Members shall not be liable to pay any annual subscriptions.

Both A and B Members shall in addition pay a monthly subscription of Rs.....in advance on the first day of every month while resident in or within twenty-five miles of the Island of Bombay.

A Member shall be deemed to be 'resident' within the meaning of this Article and be liable to pay his monthly subscription for any month during which he may have used the Club premises on any occasion during that month, or, if he shall have been in or within twenty-five miles of the Island of Bombay for any ten days during that month.

Election of Members

8. Every candidate for election shall be balloted for by the Committee. The Committee is empowered in its absolute discretion to elect any candidate or candidates on the waiting list for membership. No ballot shall be valid unless at least nine Members of the Committee vote. The candidate is elected only when there are more than four times as many white balls as black balls.

9. When a candidate has been elected the Honorary Secretary shall notify such candidate and request payment of the entrance fee (if any payable), the annual subscription, and the first monthly subscription (if any payable). If the same be not paid within fourteen days from such intimation, the Committee may at its discretion declare the candidate's election void. No Member shall be entitled to enjoy the privileges of the Club until such payment shall have been made.

Notification of Addresses

10. Each Member of the Club shall communicate his or her address and any change of address to the Honorary Secretary.

Expulsion

11. If any Member shall refuse or neglect to comply with any provision of the Memorandum and Articles of Association or any Bye-laws made thereunder, or shall be guilty of conduct such as the Committee considers likely to endanger the harmony or affect the character or stability of the Club, such Member shall be liable to expulsion on the vote of two-thirds of the A Members (and/or of appointed B Members appointed in accordance with the provision hereinafter contained) present at an Extraordinary General Meeting summoned for the purpose of investigating and deciding the case. The Committee shall have power to suspend a Member from the privileges of Membership pending the decision of such Extraordinary General Meetings.

Vacancy in Number of A Members

12. If and whenever any A Member should die, retire or be expelled the vacancy may be filled by the election of one additional B Member, but so that the total number of A and B Members together shall not exceed 250.

13. If and whenever the number of A Members is reduced below one hundred, the B Members shall be entitled to appoint from amongst their number, by a resolution passed in that behalf at a meeting of the B Members to be called by the Committee on a requisition in writing by any ten or more B Members, such B Member or B Members as will make with the existing A Members a total not exceeding 100 A and B Members. Any B Member so appointed shall thereupon and thereafter have the rights and powers conferred upon and belonging to A Members under these Articles with the exception only that B Members so appointed (in these Articles referred to as 'appointed B Members') shall continue to be liable for and to pay annual subscriptions.

General Meetings

14. The first General Meeting shall be held at such time, not being less than one month nor more than six months after the incorporation of the Club, and at such place as the Committee may determine.

15. Other General Meetings shall be held once at least in every year at such time, not being more than fifteen months after the holding of the last preceding General Meeting, and at such place as may be determined by the Committee. Such General Meetings shall be

called Ordinary General Meetings, and all other General Meetings shall be called Extraordinary General Meetings.

16. The Committee may, whenever it thinks fit, and shall, on a requisition made in writing by at least thirty A Members and/or appointed B Members, call an Extraordinary General Meeting.

17. Any requisition so made shall state the object of the Meeting proposed to be called, and must be signed by the requisitionists and deposited at the registered office of the Club.

18. On receipt of any such requisition, the Committee shall forthwith proceed to call a General Meeting; if it does not proceed to call a Meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists may themselves call a Meeting.

Proceedings at General Meetings

19. Fourteen days' notice at the least specifying the place, day and hour of the Meeting, and, in case of special business, the general nature of such business, shall be given to A Members and/or appointed B Members.

20. All business shall be deemed special that is transacted at an Extraordinary General Meeting, and likewise all that is transacted at an Ordinary General Meeting, with the exception of the consideration of the accounts, balance-sheets and the ordinary report of the Committee and the Auditors, the election of the Committee and the fixing of remuneration (if any) of the Auditors.

21. Ten A Members and/or appointed B Members personally present shall be a quorum for a General Meeting, and no business shall be transacted at any General Meeting unless the requisite quorum be present at the commencement of the business.

22. If within half an hour from the time appointed for the Meeting, a quorum of Members is not present, the Meeting, if called on the requisition of Members, shall be dissolved; but in any other case it shall stand adjourned to the same day in the following week at the same time and place; and if at such adjourned Meeting a quorum of Members is not present, any three A Members and/or appointed B Members who are personally present shall be a quorum and may transact the business for which the Meeting was called.

23. The President, and failing him the Captain, shall preside as Chairman at every General Meeting of the Club. If there be no President or Captain, or if at any Meeting he is not present at the time of holding the same, the A Members and/or appointed B Members present shall choose some one of their number to be Chairman of that Meeting.

24. The Chairman may, with the consent of the Meeting, adjourn the Meeting from time to time and from place to place, but no business shall be transacted at any adjourned Meeting other than the business left unfinished at the Meeting from which the adjournment took place.

25. At any General Meeting, unless a poll is demanded by at least three A Members and/or appointed B Members personally present, every resolution shall be decided by a show of hands, and in the case of an equality of votes, the Chairman shall, both on a show of hands and on a poll, have a casting vote in addition to the vote to which he may be entitled as an A Member or an appointed B Member, and a declaration by the Chairman that a resolution has been carried, or carried by a particular majority, or lost, or not carried by a particular majority, and an entry to that effect in the book of proceedings of the Club, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

26. If a poll is demanded in the manner aforesaid, the same shall be taken in such manner as the Chairman directs, and the result of the poll shall be deemed to be the resolution of the Meeting at which the poll was demanded.

Votes of Members

27. Upon a show of hands, and upon a poll, every A Member and appointed B Member present in person shall have one vote.

28. Votes shall be given only personally and no voting by proxy shall be allowed.

Committee

29. The Committee of the Club shall consist of a President, a Captain, an Honorary Secretary and an Honorary Treasurer, all of whom shall be A Members and/or appointed B Members of the Club, and eight other A Members and/or appointed B Members of the Club elected as herein provided.

30. The following shall form the first Committee :—

A. B., Esq.,	President
C. D., Esq.,	Captain
E. F., Esq.,	Honorary Secretary
G. H., Esq.,	Honorary Treasurer
X., Y., Z.,	Members

31. The above shall hold office until the first General Meeting of the Club, when such Committee shall be confirmed or a New Committee shall be elected, the retiring Members being eligible for re-election. Thereafter at every annual General Meeting of the Club, a new Committee shall be elected. The retiring Members of the Committee shall be eligible for re-election at the same or any other General Meeting of the Club.

32. In the event of a casual vacancy occurring in the Committee, the Committee may nominate an A Member or an appointed B Member to fill the vacancy.

33. Any Member of the Committee, absent from Bombay for more than two months, or absent (except on account of illness) from three consecutive Committee Meetings, shall be deemed to have vacated his appointment.

34. The Committee shall meet not less than once every three calendar months for the transaction of business.

35. Five Members of the Committee, of whom either the Honorary Secretary or the Honorary Treasurer shall be one, shall form a quorum.

36. All business transacted at a Meeting of the Committee shall be recorded in a Minute Book.

37. The President, and failing him the Captain, shall be Chairman of all Meetings of the Committee at which he is present. In the absence of the President or the Captain, the Committee shall elect one of their number to be Chairman of the Meeting. In case of an equality of votes, the Chairman shall have a second or casting vote.

Powers of the Committee

38. The management and control of the Club shall be vested in the Committee, who shall be the governing body of the Club, and who may exercise all such powers and do all such acts and things as the Club is by Statute, or by its Memorandum of Association, or by these Articles or otherwise, authorized to exercise and do, and are not by these Articles or by Statute directed or required to be exercised or done by the Club in General Meeting, but subject nevertheless as to such acts or things as are not regulated by Statute or by these Articles, to such regulations and directions as may from time to time be determined upon or given in General Meeting; provided that no such regulation or direction shall invalidate any prior act of the Committee which would have been valid if the regulation or direction had not been made or given.

39. In furtherance of and without prejudice to the general powers conferred by or implied in the last preceding Article, it is hereby expressly declared that the Committee shall be entrusted with and may exercise and perform the following powers and duties:—

(a) To take on lease or otherwise acquire vacant land in the City of Bombay at such rent, for such period and upon such terms and conditions as may seem expedient.

(b) To appoint and dismiss servants of the Club, and to fix their wages or remuneration.

(c) To provide a Common Seal for the purposes of the Club, and to affix it to any deeds or other documents required to be under its Common Seal, provided that all such deeds or other documents shall be signed by two Members of the Committee and countersigned by either the Honorary Secretary or the Honorary Treasurer.

(d) From time to time to make, alter and repeal all such Bye-laws, not inconsistent with the Memorandum of Association or these Articles, as the Committee may deem necessary or expedient or convenient for the proper conduct, management and control of the Club, for the comfort, convenience and accommodation of Members, their guests and visitors, both as regards the Green and the Club House, and generally for all such matters as are commonly the subject-matter of Club Rules, such Bye-laws to

be posted in the Club House for the information and guidance of the Members, who shall be bound thereby.

(*e*) To accept a reduced annual subscription for the current year from any Member who may be elected after ..... in that year.

(*f*) To appoint a Sub-Committee consisting of some of its own Members, together with or without other A Members and/or appointed B Members of the Club.

Notices

40. A notice sent to the address of a Member as entered in the Book of the Club shall be deemed to have been duly delivered and received.

41. Any notice required to be given to the Members or any of them shall be sufficiently given if given by advertisement once in two local newspapers. A Member resident out of India shall not on that account be entitled to any additional notice.

Accounts

42. The financial year of the Club shall end on the ..... day of ..... or such other date as the Committee may fix in each year, to which date the accounts of the Club shall be balanced.

Audit

43. The accounts of the Club shall as soon as practicable after the end of the financial year be audited by one or more Auditor or Auditors who shall be appointed at each Annual General Meeting.

General

44. Members are prohibited from bringing dogs or other animals inside the Club House or on the Course on any pretext whatsoever.

45. Complaints or suggestions shall be made in writing in a book kept for the purpose. No Member shall strike, abuse or punish any servant of the Club. Any Member having cause to complain of any servant may enter his complaint in the book, or otherwise bring the matter to the notice of the Honorary Secretary.

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