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THE

SECRETARY'S MANUAL

ON THE

LAW AND PRACTICE

OF

JOINT STOCK COMPANIES

WITH

FORMS AND PRECEDENTS

BY

HIS HONOUR JUDGE HAYDON, M.A., K.C.

AND

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PREFACE TO THE TWENTY-THIRD EDITION.

SINCE the publication of the Twenty-Second Edition of this book, judicial decisions affecting the work of Secretaries have been given in a number of cases, and their effect has been incorporated in the present Edition.

Particular attention is drawn to the decision *in re* Hector Whaling Company, which gives judicial support to the contention that the statutory notice required to be given of a General Meeting at which a Special Resolution is to be proposed is twenty-one days exclusive of the day of service of the notice and exclusive of the day on which the Meeting is to be held.

The decision in the case of Hearts of Oak Assurance Company *v.* Flowers also merits attention. In that case the Court refused to admit in evidence a loose-leaf minute book in which the leaves were held between the covers by two hand-screws only, Mr. Justice Bennett observing that the book was in such a physical condition that anybody so disposed could easily tamper with it. The use, however, of loose-leaf books by Companies is widespread, and the case last mentioned is not regarded as necessarily affecting Companies which take adequate precautions to prevent their books from being handled by unauthorised persons or in an improper manner.

The untimely death of Sir Gilbert Garnsey, K.B.E., F.C.A., has deprived this book of a distinguished Co-Editor.

Sir Nicholas Waterhouse, K.B.E., F.C.A., a partner of the late Sir Gilbert Garnsey, has taken over that portion of the work which deals with accountancy, and it is, therefore, in most competent hands.

1 HARCOURT BUILDINGS,
TEMPLE, E.C.4.
May 1936.

T. E. HAYDON,

PREFACE TO THE FIRST EDITION.

THIS work has been undertaken to meet an often expressed want of a Legal and Practical Guide for Secretaries and Members of the Secretarial Staff of Companies. The object of the Authors has been to furnish information on practical matters connected with the keeping of a Company's books and kindred subjects of a purely business nature, together with as much Company Law as a Secretary requires to know in order to perform his ordinary duties with efficiency.

There are, as is well known, numerous popular manuals in existence, but they are designed for the use of directors, solicitors, shareholders, promoters, and the public generally, and consequently deal with many things entirely outside the Secretary's province, whilst the treatment of those matters which relate to Secretaries, their duties and responsibilities, is necessarily curtailed.

The Authors have endeavoured to select from the vast and bewildering mass of Company Law that part which a Secretary must be acquainted with if he wishes to fill his office properly. By so doing it is hoped not only to present a readable and easily accessible statement of the law, but also to enable a Secretary to appreciate when he may act on his own responsibility and when he ought to invoke the assistance of the solicitor.

The Forms given are those of most usual occurrence, which have stood the test of experience, and which seemed best suited to serve as precedents.

The subject of Bookkeeping has been somewhat fully treated, because it is believed that gentlemen are sometimes appointed Secretaries of Companies who (although perhaps having pre-

viously gone through a regular commercial training) are to a great extent unacquainted with the technicalities of Public Companies' Accounts, and they would naturally look for full information on the subject. Care has been taken to avoid anything of a cumbrous nature, and the specimens of Books which are given are taken from those in actual use, and which have been found to combine all the requirements in a simple and concise manner. Some of the Forms given are copyright. They may all be obtained of the Publishers of this work.

The Authors submit the result of their labours to the indulgent criticism of those who constitute what may fitly be called the Secretarial Profession.

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October, 1891.

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Beav. - -	Beavan's Reports.
B. W. C. C. -	Butterworth's Workmen's Compensation Cases.
Ch. - -	Chancery Appeals (Law Reports).
Ch. D. - -	Chancery Division (Law Reports).
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Eq. - -	Equity (Law Reports).
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M. & W. - -	Meeson & Welby's Reports.
Q. B. - -	Queen's Bench Reports.
Q. B. D. -	Queen's Bench Division (Law Reports).
Sol. Jo. -	Solicitor's Journal Reports.
T. L. R. -	Times Law Reports.
W. N. - -	Weekly Notes.

The Law Reports are cited with the year and the Divisions following. Thus: "[1911] 2 Ch."

THE STATUTES RELATING TO JOINT STOCK COMPANIES.

THE Law regulating Joint Stock Companies in Great Britain is now contained in The Companies Act, 1929, under which the law by which companies were governed prior to the coming into force of that Act has been considerably changed. The following is a list of former Companies Acts:—

The Companies Act, 1862 (25 & 26 Vict., Ch. 89).
The Companies' Seals Act, 1864 (27 & 28 Vict., Ch. 19).
The Companies Act, 1867 (30 & 31 Vict., Ch. 131).
The Joint Stock Companies Arrangement Act, 1870 (33 & 34 Vict., Ch. 104).
The Companies Act, 1877 (40 & 41 Vict., Ch. 26).
The Companies Act, 1879 (42 & 43 Vict., Ch. 76).
The Companies Act, 1880 (43 Vict., Ch. 19).
The Companies (Colonial Registers) Act, 1883 (46 & 47 Vict., Ch. 30).
The Companies Act, 1886 (49 & 50 Vict., Ch. 23).
The Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict., Ch. 62).
The Companies (Winding-up) Act, 1890 (53 & 54 Vict., Ch. 63).
The Directors' Liability Act, 1890 (53 & 54 Vict., Ch. 64).
The Companies (Winding-up) Act, 1893 (56 & 57 Vict., (Ch. 58).
The Preferential Payments in Bankruptcy Amendment Act, 1897 (60 & 61 Vict., Ch. 19).
The Companies Act, 1898 (61 & 62 Vict., Ch. 26).
The Companies Act, 1900 (63 & 64 Vict., Ch. 48).
The Companies Act, 1907 (7 Edw. VII, Ch. 50).
The Companies Act, 1908 (8 Edw. VII. Ch. 12).

The Companies (Consolidation) Act, 1908 (8 Edw. VII, Ch. 69), consolidating (except for provisions repealed) the preceding Acts.

The Companies Act, 1913 (3 & 4 Geo. V, Ch. 25).

The Companies (Particulars as to Directors) Act, 1917 (7 & 8 Geo. V, Ch. 28).

The Companies Act, 1928 (18 & 19 Geo. V, Ch. 45), of which two sections only became operative prior to incorporation in the Act of 1929.

INCORPORATION OF COMPANIES.

COMPANIES may be incorporated by Royal Charter, by Special Act of Parliament, or under the Acts from time to time governing companies, that to which companies are now subject being The Companies Act, 1929. Wherever in this book "the Companies Act" or "the Act" is referred to, reference to that Act is intended.

Most of the companies in this country have been incorporated, under the Companies Acts from time to time in force, with limited liability—that is to say, with the liability of their members limited by the amount unpaid upon their shares. Companies formed under Special Acts of Parliament, such as railway companies, are comparatively few in number, and are governed by The Companies Clauses Consolidation Act, 1845. Companies incorporated by Royal Charter are still fewer. This work deals almost exclusively with companies limited by shares formed under the present Act or earlier Companies Acts, and wherever the expression "company" alone is used a company limited by shares and formed under those Statutes is referred to.

Companies formed under the Act are of three kinds—(1) Companies Limited by Shares; (2) Companies Limited by Guarantee—*i.e.* those in which the liability of the members is limited to the amount which each has undertaken, by the Memorandum of Association, to contribute to the assets of the company in the event of a winding up; and (3) Unlimited Companies.

A Bank of Issue registered as a limited company is not entitled to limited liability in respect of its notes (Section 360). A banking partnership or company registering with limited liability must, thirty days at least before obtaining a Certificate of Incorporation, give notice to its customers of its intention to become registered under the Act (Section 359).

Companies are either "Public" or "Private" companies. A "Private" company is one coming within the definition contained in Section 26 of the Act; all other companies are "Public" companies. "Public" companies may be conveniently divided into—(1) Those which issue a prospectus on or with reference to their formation, and (2) Those which lodge with the Registrar a statement in lieu of prospectus.

The word "Syndicate" has no precise legal signification, but is generally applied to companies formed for some temporary purpose.

By licence of the Board of Trade associations may be formed for promoting Commerce, Art, Science, Religion, Charity, or other useful objects which do not involve the acquisition of gain, and such associations have limited liability, but without the necessity of using the word "Limited."

Companies formed to work mines in Devonshire and Cornwall under the Stannaries Acts are now under the jurisdiction of the County Courts of Cornwall, but the High Court has concurrent jurisdiction in winding up (Section 163, Sub-section 4).

By law no partnership consisting of more than ten persons can be formed to carry on the business of banking, and no partnership of above twenty persons to carry on any other business having the acquisition of gain as its object, unless it is registered as a company under the Act, or is formed in pursuance of some other Act of Parliament or of Letters Patent, or is a company engaged in working mines within the Stannaries and subject to the jurisdiction of the Court exercising the Stannaries jurisdiction.

The effect of registration is that the company becomes a corporate body, having an independent legal existence quite distinct from the whole body of shareholders who compose it. This artificial personage, so to speak, exists only for carrying out the objects specified in the Memorandum of Association.

Registration is effected by lodging with the Registrar of Companies in London or Edinburgh (according to whether the registered office is to be situate in England or Scotland) a properly executed Memorandum of Association, accompanied by a Statement of the Nominal Capital of the company, and a statutory declaration that the requirements of the Companies Act have been complied with.

*No. of Company*_____ FORM No. 25.

"THE STAMP ACT, 1891, AND THE FINANCE ACT, 1933"

THE NOMINAL CAPITAL of_____, Limited, is_____Pounds, divided into_____Shares of_____each.

Signature*_____

Description_____

Dated the_____day of_____, 193 .

* This Statement should be signed by an officer of the company.

The statutory declaration must be made either by a solicitor engaged in the formation of the company or by a person named in the Articles as a director or secretary (Section 15, Sub-section 2). The following is the prescribed form:—

*No. of Company*_____ FORM No. 41.

"THE COMPANIES ACT, 1929"

DECLARATION OF COMPLIANCE

WITH THE

REQUIREMENTS OF THE COMPANIES ACT, 1929.

A 5*s.* Companies Registration Fee Stamp to be impressed here.

Made pursuant to Section 15, Sub-section 2, of The Companies Act, 1929, on behalf of a Company proposed to be Registered as

---

LIMITED.

*Presented by*_____

I,_____, of_____,

do solemnly and sincerely declare that I am [a Solicitor of the Supreme Court (*or in Scotland* an Enrolled Law Agent) engaged in the formation, *or* a person named in the Articles of Association as a Director (or Secretary)] of_____, Limited, and that all the requirements of The Companies Act, 1929, in respect of matters precedent to the registration of the said Company and incidental thereto have been complied with. And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of The Statutory Declarations Act, 1835.

Declared at_____

_____

the_____day of_____,

One thousand nine hundred

and_____

before me,

_____

*A Commissioner for Oaths.**

When the company is to be governed by its own special Articles of Association (which is almost invariably the case with companies of any magnitude) the Articles must be duly executed and accompany the Memorandum.

The documents which have been described are required to be lodged with the Registrar on incorporation of every company, whether public or private. In the case of public companies further documents are required. The consent of the persons who have agreed to become directors of such a company, made out in the form following and signed by each of such persons, or by his Agent authorised in writing, must be delivered to the Registrar:—

*No. of Company*_____ FORM No. 42.

"THE COMPANIES ACT, 1929"

CONSENT TO ACT AS DIRECTOR

OF

_____

LIMITED.

A 5*s*. Companies Registration Fee Stamp to be impressed here.

(To be signed and delivered to the Registrar of Companies pursuant to Section 140, Sub-section 1 (*a*), of The Companies Act, 1929.)

*Presented by*_____

_____

To the Registrar of Companies.

I, or We, the undersigned, hereby testify my [or our] consent to act as Director [or Directors] of _____, Limited, pursuant to Section 140, Sub-section 1 (*a*), of The Companies Act, 1929.

SIGNATURE.*	ADDRESS.	DESCRIPTION.

Dated this _____day of_____, 193 .

There must also be lodged with the Registrar a List of the Persons who have so consented to act as director as follows:—

* If a Director signs by "his Agent authorised in writing," the Authority (stamped with 10*s*. as a Power of Attorney) must be produced to the Registrar.

*No. of Company*_____ FORM No. 43.

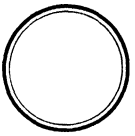
"THE COMPANIES ACT, 1929"

LIST OF THE PERSONS

WHO HAVE

CONSENTED TO BE DIRECTORS

OF



A 5*s.* Companies Registration Fee Stamp must be impressed here.

LIMITED

(To be delivered to the Registrar of Companies pursuant to Section 140, Sub-section 3, of The Companies Act, 1929.)

*Presented by*_____

List of the persons who have consented to be Directors of_____ Limited, delivered to the Registrar of Companies pursuant to Section 140, Sub-section 3, of The Companies Act, 1929, by_____of _____, the applicant(s) for registration of the Memorandum and Articles of the Company.

SURNAME.	CHRISTIAN NAME(S).	ADDRESS AND DESCRIPTION.

Signature of Applicant(s)_____

_____

Dated this_____day of_____, 193 .

If this list contains the name of any person who has not so consented, the applicant will be liable to a fine not exceeding fifty pounds. (See also "THE SECRETARY AND OTHER OFFICERS OF THE COMPANY," page 42, *post.*)

Further, there must be lodged with the Registrar in respect of any persons named as directors in the Articles or in any prospectus or statement in lieu of prospectus, unless such persons have signed the Memorandum for shares to the amount of their share qualification, an Undertaking in writing to take and pay for such shares as shown next page.

*No. of Company*_____ FORM No. 42A.

"THE COMPANIES ACT, 1929"

UNDERTAKING BY DIRECTORS

£ 5s. Companies Registration Fee Stamp must be impressed here.

TO TAKE AND PAY FOR QUALIFICATION SHARES IN

_____ LIMITED.

To be delivered to the Registrar of Companies pursuant to Section 140, Sub-section 1 (*b*) (iii), of The Companies Act, 1929.

*Presented by*_____

We, the undersigned, having consented to act as Directors of _____, Limited, do hereby severally undertake to take from the said Company and to pay for _____ Shares of _____ each, being the prescribed number of Qualification Shares for the office of Director of the Company.

Names.	Addresses.

Dated the_____day of_____, 193 .

Witness to the above signatures.

_____

There must also be lodged with the Registrar a Declaration that the provisions of Section 94 of the Act have been complied with on either Form No. 44 or Form No. 44A, according as the company has issued a prospectus or delivered to the Registrar a statement in lieu of prospectus (see page 91 *et seq., post*).

Articles must be printed (Section 9). The Act does not make it imperative to print the Memorandum of Association, but it is advisable, however, to do so, as the company is bound to send a copy of the Memorandum and (where Articles are registered) of the Articles to every member requisitioning a copy on payment of a sum not exceeding one shilling. When any alteration is made in the Memorandum every copy issued after the alteration must be in accordance therewith.

The Articles of an unlimited company, or of a company limited by guarantee not having a share capital, must state the number of members with which the company proposes to be registered, to enable the Registrar to determine the fees payable on registration; and when the number is increased beyond the registered number notice of the increase must be given within fifteen days after the increase was resolved upon (Section 7) and the appropriate fees paid as prescribed by the Tenth Schedule, Part II, of the Act.

Notice of the Situation of the Registered Office (page 29, *post*) must be lodged with the Registrar within twenty-eight days after incorporation of the company (Section 92, Sub-section 2).

The Memorandum and Articles must in the case of a public company (see page 14, *post*) be subscribed by at least seven persons [1] associated for a lawful purpose, and their signatures attested by a witness or witnesses. The Articles must be divided into paragraphs numbered consecutively, and bear the same stamp as if they were contained in a deed (Section 9). If everything is in order and the stamp duty and fees paid,[2] the Registrar will issue a Certificate of Incorporation, stating in the case of a limited company that the company is limited (Section 13). The Certificate of Incorporation is frequently framed and hung up in the office of the company.

Within fourteen days from the appointment of the first directors there must be lodged with the Registrar a Return in the prescribed form showing the particulars of the company's directors,[3] required by the Act to be contained in the Register of Directors, which are set out on pages 112 and 113.

The Certificate given by the Registrar is conclusive evidence that all the requirements of the Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the company is authorised to be registered and is duly registered under the Act (Section 15, Sub-section 1). If, however, the original Certificate be lost, or if a copy be required for any other reason, another Certificate may be obtained from the Registrar, which is receivable in evidence as if it were the original Certificate (Section 314, Sub-

1 Two persons in the case of a private company (see page 12, *post*).

2 A company cannot be compelled to repay these sums to the promoters (*in re* National Motor Mail Coach Co., [1908] 2 Ch. 515).

3 As to the meaning of the word "director" as extended by the Act see page 271, *post*.

section 3). The incorporation of a company takes effect from the date mentioned in the Certificate (Section 13, Sub-section 2) as from the first moment of that day [1]; but a heavy penalty is incurred by those responsible if a company should commence business or exercise borrowing powers before it is entitled to do so (Section 94, Sub-section 6).

A private company is entitled to commence business as soon as it is incorporated (see page 12), but a public company may not commence business until the requirements of Section 94 are complied with (see "COMMENCEMENT OF BUSINESS," page 91, *post*, and page 287, *post*).

[1] Jubilee Cotton Mills v. Lewis, [1924] A.C. 958.

PRIVATE AND PUBLIC COMPANIES.

PRIVATE COMPANIES.

A PRIVATE COMPANY is a company which by its Articles—

(*a*) Restricts the right to transfer its shares;

(*b*) Limits the number of its members to fifty, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were while in that employment and have continued after the determination of that employment to be members of the company; and

(*c*) Prohibits any invitation to the public to subscribe for any shares or debentures of the company (Section 26). Every other company is a " public " company. [In calculating the number of members, joint holders of a share or shares are to be counted as a single member (Section 26, Sub-section 2).]

Every other company is a public company.

No specific form of restriction is prescribed by the Act, but a power conferred by the Articles upon the directors to decline to register a transfer of any shares of which they do not approve, and which extends to all shares of the company, without any exception, suffices.

Where the Articles include the provisions required to constitute the company a private company set out above, but default is made in complying with any of those provisions, the company ceases to be entitled to the privileges and exemptions conferred on private companies under Section 110, Sub-section 3; Section 130, Sub-section 1; and Section 168, paragraph 4, and thereupon those provisions apply as if the company were not a private company (Section 27, Sub-section 3). The company does not apparently cease to be a private company (unless it alters its Articles—see Section 27, Sub-section 1); but is to be treated for the purposes of the exemptions and privileges set out on pages 12 and 13 as if it were not a private company.

An important distinction between "private" and "public" companies consists in the fact that a private company may be formed and continued with only two members, whereas a public company requires seven members. This minimum number, two or seven as the case may be, is essential for the following purposes:—(1) The formation of a company, as a step in which the requisite number must subscribe their names to the Memorandum of Association (Section 1); (2) For the purpose of signing the Articles of Association when it is necessary that they should be signed by the subscribers to the Memorandum of Association (Sub-sections 6 and 9); (3) To avoid a ground for winding up, which exists whenever the members are reduced in number to less than the minimum (Section 168, Sub-section 4); and (4) To avoid the possibility of the remaining shareholder or shareholders becoming personally liable for the debts of the company (Section 28). In all these cases a minimum of two members is sufficient for a private company, but it must be borne in mind that joint holders of a share or shares only count as one member for this purpose (Section 26, Sub-section 2).

A secretary is generally in the employment of the company (though occasionally not so [1]) and therefore as a rule need not be reckoned, if a shareholder, in the maximum of fifty members allowed a private company. On the other hand a director, even though managing director, as a rule, is not in the employment of the company.[2]

A private company enjoys exemption in some important respects from obligations to which a public company is subject: viz.—(1) It need not file the statement in lieu of prospectus which is obligatory when a public company does not issue a prospectus on or with reference to its formation (Section 40); (2) Appointment of directors by the Articles is not subject to lodging with the Registrar a Consent to Act or an Undertaking to Take Qualification Shares, where not signed for in Memorandum (Section 140); (3) It can commence business,

[1] See Cairney *v.* Back, [1906] 2 K. B. 746. This case turned upon the meaning of the words "clerk or servant" in The Preferential Payments in Bankruptcy Act, 1888. "Employment" has, if anything, a wider signification.

[2] *Re* Newspaper Proprietary Syndicate, [1900] 2 Ch. 349; Normandy *v.* Ind, Coope & Co. [1908] 1 Ch. 84. In *re* Beeton & Co., [1912] 2 Ch. 279, it was decided that a director, under very special Articles and circumstances, was in the employment of the company. In Lee, Behrens & Co., [1932] 2 Ch. 46, a managing director was held not to be in the employment of the company.

allot shares, and exercise borrowing powers (Section 94, Sub-section 2) as soon as it is incorporated (Section 13); (4) Subscription for shares to the amount of the "minimum subscription" is not a condition precedent to the allotment of shares (Section 39); (5) It is not required to include in the Annual Return the copy of the last audited balance sheet prescribed by Sub-section 3 of Section 110; (6) It has not to hold a Statutory Meeting or to forward or file the report required by Section 113; and (7) It is exempt from the obligations in respect of its balance sheet imposed by Section 130, which in the case of every company other than a private company, requires a copy of every balance sheet, including every document required by law to be annexed thereto, which is to be laid before a company in general meeting, together with the auditors' report, to be sent to every person entitled to receive notice of general meetings, and requires a copy of the last balance sheet of the company, including every such document, to be furnished, without charge, on demand, by any member of the company or holder of debentures; but in the case of a private company only requires a copy of the balance sheet and auditors' report to be furnished to a member on payment therefor, and to no other person (Section 130, Sub-section 2). Holders of debentures in a private company are therefore excluded altogether from the right referred to, but preference shareholders are in a stronger position and cannot be deprived of the rights conferred on "any member" by Section 130—namely, to be furnished with a copy of the balance sheet and auditors' report at a charge not exceeding sixpence for every hundred words.

It is thought in this connection that the words "preference shareholders" and "ordinary shareholders" will not be construed as limited to the holders of shares called by the specific names of "preference" and "ordinary." In many companies the shares are divided into "ordinary" and "deferred," in which case the former are really preference shares. The Courts will certainly look at the substance of the matter rather than to the name by which the shares are described.

A private company may convert itself into a public company by altering its Articles so that they no longer contain the provisions required of a private company by Section 26. Within fourteen days thereafter, there must be lodged with the Registrar a prospectus or a statement in lieu of prospectus in

the form appropriate to the case set out in the Third Schedule to the Act.[1]

A company limited by guarantee having a share capital or an unlimited company having a share capital is a private company if its Articles comply with the requirements of Section 26.

PUBLIC COMPANIES.

As has already been pointed out on page 11 any company which does not come within the definition of a "private company" is a "public company." Public companies are for the purpose of allotment, in effect, divided into two classes—(1) Those which issue a prospectus on or with reference to their formation and (2) Those which have not issued a prospectus, or, if they have done so, have not proceeded to allot any of the shares offered to the public for subscription. It is necessary to distinguish clearly between the two classes, inasmuch as those coming within the second are subject to special statutory obligations. The first question to be determined, therefore, is whether any particular company has issued a "prospectus on or with reference to its formation," as, if that be the case, it is subject to the requirements set out in pages 54 to 65, *post*. The words in inverted commas obviously limit the inquiry to documents issued at or about the inception of the company. Turning to the word "prospectus," its statutory definition must be borne in mind, which is as follows: "Any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company" (Section 380). There must, then, be an offer "to the public." There is no definition, statutory or judicial, of this last phrase (though judicial dicta exist as to what is *not* an offer to the public[2]), and, in the nature of things, it seems impossible to define it with any precision. Each case must turn on its special facts. An offer limited to the shareholders of the company making the offer is apparently not an offer to

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[1] Section 27, Sub-section 1. See as to statement in lieu of prospectus pages 16 to 18, *post*; and as to commencement of business pages 19 and 91 to 94, *post*.

[2] Shorto *v.* Colwill, [1909] 101. L. T. 598; Sherwell *v.* Combined Incandescent Syndicate, [1907] W. N. 110.

the public.[1] The circulation by directors, amongst their own friends, of a number of printed documents in the form of an ordinary prospectus, and headed "Strictly Private and Confidential," does not amount to an offer to the public.[2] Further, the invitation to subscribe for shares must be made by the company itself, *e.g.* where Company A sells its undertaking to Company B for partly paid shares in Company B, an offer to the public of such shares by the Liquidator of Company A will not be equivalent to the issue of a prospectus by Company B.[3] A reconstruction carried through in that way would therefore bring the new company under Class 2. The whole question has been much discussed in a recent case.[4] Two propositions were laid down by Lord Hailsham, L.C. First, it is not necessary to prove that the prospectus has been published to any defined number of persons. Secondly, it is enough to prove that the prospectus has been shown to any person as a member of the public and as an invitation to that person to take some of the shares referred to in the prospectus on the terms therein set out.

Having established that a company belongs to the second class of public companies, the provisions of the Act relating to that class require careful attention. By Section 40, Sub-section 1, the company may not allot any of its shares or debentures unless at least three days before the first allotment of either shares or debentures there has been lodged with the Registrar a statement in lieu of prospectus.[5] This statement must be signed by every person named therein as a director or proposed director, or by his agent authorised in writing, and must be in the form and contain the particulars set out in the Fifth Schedule to the Act. The form is set out on page 16, *post*.

1 Booth *v.* New Afrikander &c. Co., [1903] 1 Ch. at page 306; Burrows *v.* Matabele Gold Reefs, [1901] 2 Ch. at page 27.

2 Sherwell *v.* Combined Incandescent Syndicate, [1907] W. N. 110; see also Sleigh *v.* Glasgow and Transvaal Options, [1904] Court of Sess., 6 F. 420.

3 Booth *v.* New Afrikander &c. Co., [1903] 1 Ch. at page 315.

4 Nash *v.* Lynde, [1929] A. C. 158.

5 As to the effect of an allotment contrary to this provision see page 69, *post*.

*No. of Company*_____ FORM No. 55.

"THE COMPANIES ACT, 1929"

A 5*s.* Companies Registration Fee Stamp to be impressed here.

Form of Statement in Lieu of Prospectus to be delivered to Registrar by a Company which does not issue a Prospectus, or which does not go to allotment on a Prospectus issued.

STATEMENT IN LIEU OF PROSPECTUS, delivered for registration by

_____LIMITED,

pursuant to Section 40, Sub-section 1, of The Companies Act, 1929.

The Nominal Share Capital of the Company	£
Divided into	Shares of £ each. " " " " " "
Amount (if any) of above Capital which consists of redeemable Preference Shares	Shares of £ each.
The date on or before which these Shares are, or are liable, to be redeemed . .	
Names, Descriptions, and Addresses of Directors or proposed Directors . .	
If the Share Capital of the Company is divided into different classes of Shares, the right of voting at meetings of the Company conferred by, and the rights in respect of Capital and Dividends attached to, the several classes of Shares respectively	
Number and Amount of Shares and Debentures agreed to be issued as fully or partly paid up otherwise than in Cash	1. Shares of £ fully paid. 2. Shares upon which £ per Share credited as paid.
The Consideration for the intended issue of those Shares and Debentures . . .	3. Debenture £ 4. Consideration.
Names and Addresses of Vendors of Property purchased or acquired or proposed to be purchased or acquired by the Company	
Amount (in Cash, Shares, or Debentures) payable to each separate Vendor . .	

Amount (if any) paid or payable (in Cash or Shares or Debentures) for any such Property, specifying amount (if any) paid or payable for Goodwill . .	Total Purchase Price £ Cash . . £ Shares . . £ Debentures . £ Goodwill . £
Amount (if any) paid or payable as Commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any Shares or Debentures in the Company, or Rate of the Commission	Amount paid, £ : : „ payable, £ : : Rate per cent.
The number of Shares (if any) which persons have agreed for a commission to subscribe absolutely	
Estimated amount of preliminary expenses	£
Amount paid or intended to be paid to any Promoter . . . . . . Consideration for the payment . . .	Name of Promoter Amount £ : : Consideration
Dates of, and Parties to, every material Contract (other than Contracts entered into in the ordinary course of the business intended to be carried on by the Company or entered into more than two years before the delivery of this Statement) .	
Time and place at which the Contracts or copies thereof may be inspected . .	
Names and Addresses of the Auditors of the Company (if any)	
Full Particulars of the nature and extent of the interest of every Director in the Promotion of or in the Property proposed to be acquired by the Company, or, where the interest of such a Director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a Statement of all sums paid or agreed to be paid to him or to the firm in Cash or Shares, or otherwise, by any person, either to induce him to become, or to qualify him as, a Director, or otherwise, for services rendered by him or by the firm in connection with the promotion or formation of the Company	

If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement, provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year, the above requirement shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on	
(Signatures of the persons above-named as Directors or proposed Directors, or of their agents authorised in writing.)	---------- ---------- ----------

Date----------193 .

NOTE.—In this Schedule the expression "Vendor" includes a Vendor as defined in Part III of the Fourth Schedule to this Act, and the expression "financial year" has the meaning assigned to it in that Part of the said Schedule.

It will be noticed that the information to be given corresponds closely to that which must be contained in a prospectus,[1] the principal difference being that a statement as to the minimum subscription is not required, because the provisions of the Act as to minimum subscription only apply to an offer of shares to the public.

The conditions which must be fulfilled before a director may be appointed by the Articles of Association, or named as a director or proposed director in a Statement in Lieu of Prospectus, and the list to be delivered to the Registrar on application for registration of the Memorandum and Articles, are the same as in the case of a company which issues a prospectus on or with reference to its formation,[2] a statement in lieu of prospectus and the lodgment thereof being substituted for the prospectus and the publication thereof (Section 140, Sub-section 1). No person, therefore, may be named as a director or proposed director in a statement in lieu of prospectus unless these conditions have been complied with before the lodgment thereof.

[1] See pages 54 to 61, *post*.

[2] See page 9, *ante*.

The provisions of the Companies Act as to the time at which a company is entitled to commence business are dealt with later.[1] Where, however, a public company does not issue a prospectus inviting public subscription for its shares, the lodging of a statement in lieu of prospectus is a necessary preliminary to the commencement of business, and the Registrar will not certify that such a company is entitled to commence business until this additional condition has been complied with (Section 94, Sub-section 3). The other conditions are the same as in the case of public companies which do issue a prospectus inviting public subscription, with one alteration—viz. the proportion in cash which the directors must pay in respect of their shares must be equal to that which is payable on application and allotment on "shares payable in cash" (Section 94, Sub-section 2 (*b*)). This expression is necessarily substituted for "shares offered for public subscription," since no such offer can be made without the issue of a prospectus.

Section 36 of the Act provides that the terms of a contract referred to in the prospectus or the statement in lieu of prospectus cannot be varied before the statutory meeting, except subject to the approval of that meeting.

Having lodged a statement in lieu of prospectus and the appropriate declaration, a company which does not offer shares to the public may proceed to allot shares and commence business and exercise its borrowing powers (Section 94, Sub-section 3).

A statement in lieu of prospectus must be lodged with the Registrar by a public company which has issued a prospectus, but has not proceeded to allot any of the shares offered to the public for subscription, at least three days before the first allotment of any of its shares or debentures (Section 40, Sub-section 1).

A statement in lieu of prospectus is not required to be lodged by (*a*) a private company; (*b*) a company registered before the 1st January, 1901; or (*c*) by a company registered before the 1st July, 1908, which has not issued a prospectus inviting the public to subscribe for its shares (Section 94, Sub-section 7).

As to the statement in lieu of prospectus to be lodged by a private company on conversion into a public company see page 13, *ante*.

[1] See pages 91 to 94, *post*.

THE MEMORANDUM OF ASSOCIATION.

THE Memorandum of Association is the charter of the company, and defines its powers and states its objects. The Memorandum differs according to the nature of the company—*i.e.* according to whether the company is limited by shares, limited by guarantee, or unlimited.

The Memorandum of every company must state—

1. The Name of the Company, with "Limited" as the last word of such name.[1]
2. Whether the Registered Office of the Company is to be situate in England or Scotland.
3. The Objects of the Company.

The Memorandum of a company limited by shares must state—

4. That the Liability of the Members is Limited.
5. The Amount of Share Capital with which the Company proposes to be registered and the division thereof into shares of a fixed amount.

Subject to the following regulations:—

(i) That no subscriber may take less than one share.

(ii) That each subscriber to the Memorandum of Association shall write opposite to his name the number of shares he takes (Section 2).

In the case of a company limited by guarantee, instead of 5 there will be a statement in the Memorandum of the amount which each member undertakes to contribute in the event of a winding up; but 1, 2, 3, and 4 will be the same as in the case of a company limited by shares.

If a company limited by guarantee has a share capital the Memorandum must also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount. Such a company, as well as an unlimited company having a share capital, is subject to the regulations (i) and (ii) above set out. The capital is not now required to be stated in the Articles in the case of a company limited by guarantee.

The Memorandum of Association of an unlimited company

[1] Except in the case of an Association Not for Profit (see page 32, *post*).

will only contain (1) the Name of the company; (2) whether the registered office of the Company is to be situate in England or Scotland; and (3) the Objects of the company. If such a company has a Share Capital it is not required to be shown in the Memorandum but must appear in the Company's Articles (Section 7).

The signatures of the subscribers to the Memorandum must be made in the presence of and be attested by at least one witness (Section 3). The witnesses should be of full age, and it is most inadvisable that any signatory should be an infant.

Certain alterations and modifications of the Memorandum of Association are sanctioned by the Act, but with those exceptions the Memorandum is unalterable (Section 4). Thus a company limited by shares, or a company limited by guarantee and having a share capital, may, if authorised to do so by its Articles, modify its Memorandum by increasing its share capital by the issue of new shares, or by consolidating and dividing its capital into shares of larger amount, or by converting paid-up shares into stock, or by reconverting such stock into paid-up shares of any denomination, or by subdividing its shares, or any of them, into shares of smaller amount (preserving the proportion between the amount paid and unpaid on each share), or by cancelling shares which at the date of the resolution in that behalf have not been taken or agreed to be taken by any person. The above powers must be exercised by the company in general meeting (Section 50). Every copy of the Memorandum issued after an alteration must be in accordance therewith, under a penalty of one pound per copy in respect of which default is made (Section 24). Notice of the consolidation, division, conversion or reconversion, subdivision, or cancellation must be given to the Registrar within one month thereafter, specifying the shares so dealt with, default incurring liability to a penalty (Section 51).

A company may issue preference shares which are liable to be redeemed (see page 177), and where any such shares are redeemed notice thereof must be given to the Registrar (Section 51).

A company limited by shares, or a company limited by guarantee and having a share capital, may also, if authorised to do so by its Articles, by special resolution reduce its capital. The reduction must be confirmed by an Order of Court (Section 55).[1] An alteration of the Memorandum referred to above, by

[1] See page 172 *et seq.*, *post*, and notes to Clause 38 of Table A.

cancelling shares in pursuance of Section 50 is not to be deemed a reduction of share capital (Section 50, Sub-section 3).

The Memorandum may also be modified, in the manner prescribed by various sections—(*a*) by making the liability of the directors or manager or of the managing director unlimited (Section 147, Sub-section 1); (*b*) by creating a reserve liability (Section 49); (*c*) by altering the provisions of the Memorandum with respect to the objects of the company under the powers conferred by Section 5; (*d*) by modifying the conditions contained in the Memorandum so as to reorganise its capital, whether by the consolidation of shares of different classes or by the division of its shares into shares of different classes (Section 153, Sub-section 5). Change (*a*) must be authorised by the Articles and both (*a*) and (*b*) be effected by special resolution; for (*c*) a special resolution is required and in addition the sanction of the Court; and in the case of change (*d*) a resolution (which may have the effect of altering the rights attached to certain shares) must be passed by a majority in number representing three fourths in value of the members or class of members present and voting in person or by proxy at the meeting, and the sanction of the Court must be obtained. A resolution passed by a minority in number of the shareholders of a class will not suffice, even though they represent three fourths of the issued shares of the class.[1] The procedure under (*d*) may be carried through where the rights attaching to the class of shares affected are created by the Memorandum. If merely dependent upon the Articles, and there are no special provisions respecting alterations of rights, such rights can be altered by special resolution, or, subject to the provisions of Section 61, by such resolution as the Articles prescribe for that purpose.[2]

But if where the share capital is divided into different classes of shares provision is made in the Memorandum or Articles for authorising the variation of the rights attached to any class of shares subject to the consent of any specified proportion of the holders of issued shares of that class or of a resolution of a separate meeting of the holders of those shares, the holders of not less than fifteen per cent. of those shares who did not consent to or vote in favour of the variation may, within seven days after the consent was given or the resolution passed, apply to

[1] Arden Coal Co., in *re*, [1922] S. C. 500. [2] Australian Estates, in *re*, [1910] 1 Ch. 414.

the Court to have the variation cancelled, and the Court may either disallow or confirm the variation (Section 61).

Before the passing of The Companies (Memorandum of Association) Act, 1890 (now replaced by Section 5), the objects of a company could only be extended or modified by a winding up and reconstruction. By virtue of the section referred to a company may now (subject to the provisions of the section) alter the provisions of its Memorandum with respect to the company's objects. Having regard to the difficulties and expense attending the procedure in connection with such an alteration it is desirable that the powers contained in the Memorandum should be as wide as possible. At the same time it must be noticed that the Courts are not disposed to construe even the widest powers so as to enable a company to go outside the main objects for which it was formed.[1] The present practice of enumerating every possible operation as an object of the company in a string of clauses, with a declaration that each clause is independent of and not auxiliary to any of the others, has been strongly commented on by the Court of Appeal, and it may be doubted whether a Memorandum in that form is entitled to registration.[2] Where an application is made under Section 5 the Court will have to be satisfied that the new objects are definite, expressed in definite language, and fall within Sub-section 1.[3] That sub-section gives the Court power to confirm, either wholly or in part, an alteration with respect to the objects of the company, if it appears that the alteration is required to enable the company (*a*) to carry on its business more economically or more efficiently; or (*b*) to attain its main purpose by new or improved means; or (*c*) to enlarge or change the local area of its operations; or (*d*) to carry on some business or businesses which under existing circumstances may conveniently or advantageously be combined with the business of the company; or (*e*) to restrict or abandon any of the objects specified in the Memorandum; or (*f*) to sell or dispose of the whole or any part of the undertaking of the company; or (*g*) to amalgamate with any other company or body of persons. An alteration under Sub-clause (*a*) must be one which will leave the business of the company substantially what it was before, with only such changes in the mode of conducting it as will

[1] Stephens *v.* Mysore Reefs Mining Co., [1902] 1 Ch. 745.
[2] Anglo-Cuban Oil, in *re*, [1917] 1 Ch. 477.
[3] *Re* D. & H. Fraser, [1909] W. N. 73.

enable it to be carried on more economically or more efficiently.[1]

The Memorandum bears a deed stamp of ten shillings and an ad valorem fee stamp (both impressed); and the Statement of Capital (which must accompany the Memorandum) must be impressed with ad valorem capital duty (see under "STAMPS," page 326, *post*).

A copy of the Memorandum of Association, having annexed thereto the Articles of Association (if any), must be supplied to every member at his request on payment of the sum of one shilling (or such less sum as the company may prescribe) for each copy (Section 23). A company which makes default in forwarding a copy when requested to do so incurs a penalty (*ibid.*). Where any alteration is made in the Memorandum, every copy issued thereafter must be in accordance with the alteration, default rendering the company and every officer liable to a penalty (Section 24).

The Articles constitute the code of regulations for the internal management of the company, and cannot extend the objects as defined in the Memorandum, which, subject to the exceptions mentioned, cannot be altered in any way. Lord Justice Bowen, in the case of *Guinness* v. *Land Corporation of Ireland*, distinguished the functions of the Memorandum and the Articles thus[2]: "The Memorandum contains the fundamental conditions upon which alone the company is allowed to be incorporated. They are conditions introduced for the benefit of the creditors and the outside public as well as shareholders. The Articles are the internal regulations of the company."

The subscribers of the Memorandum are deemed to have agreed to become members of the company whose Memorandum they have subscribed, and upon the registration of the company must be entered as members upon the Register of Members (see "REGISTER OF MEMBERS," page 102, *post*). Their shares must be taken from the company and not from some other person, and they are absolutely bound to take the shares and pay for them. If, however, all the shares are allotted to other persons so that no shares are left in respect of which a subscriber can be registered he is relieved of his liability.[3] It would seem that if for any reason the company cannot allot the shares it may be liable in damages for not fulfilling the contract.

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[1] In *re* Cyclists' Touring Club, [1907] 1 Ch. 269; in *re* Scientific Poultry Breeders' Association, [1933] 1 Ch. 227; L. J. Ch. 423. [2] [1883] 22 Ch. D. at p. 381. [3] Mackley's Case, [1876] 1 Ch. D. 247.

THE REGULATIONS OF THE COMPANY.

THE rules and regulations by which the affairs of a company limited by shares are governed are contained either in Articles specially framed for the company or in the statutory Articles known as "Table A," or partly in Table A and partly in special Articles. It is provided by Section 20, Sub-section 1, of the Act that "the Memorandum and Articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member to observe all the provisions of the Memorandum and of the Articles, subject to the provisions of this Act." The exact nature and meaning of this covenant has been much discussed. The cases on the section which Section 20 repeats were elaborately reviewed by Astbury, J., in *Hickman* v. *Kent &c. Sheepbreeders' Association*,[1] in which the correct proposition was held to be that, while Articles of Association can neither constitute a contract between a company and an outsider, nor give any individual member special contractual rights beyond those of the members generally, they do constitute a contract between a company and its members, and between the members themselves, in respect of their ordinary rights as members.[2]

The original Table A was contained in the First Schedule to The Companies Act, 1862, and constituted the code of regulations of every company limited by shares formed under that Act and later Acts, unless expressly excluded or modified by special Articles. Under the power conferred upon the Board of Trade by Section 71 of that Act to make alterations in that Table, a Revised Table A came into force with regard to all companies registered after the 30th September, 1906, unless excluded or modified by special Articles. In the First Schedule to the Act of 1908 an amended Table A was set out, and that Table applies, unless excluded or modified, to companies registered after the 31st March, 1909, and before the 1st November, 1929. The Table A in the Act of 1929 applies to all companies registered after the last-named date (unless expressly modified

[1] [1915]1 Ch. 881

[2] See further page 63, *post*.

or excluded). Special Articles excluding or modifying Table A may be adopted at any time by special resolution (see "RESOLUTIONS," page 230, *post*).

Most companies prefer to have special Articles. The secretary should, of course, be well acquainted with the Articles governing his company.

Special Articles, printed, signed by the subscribers to the Memorandum, and properly attested (Section 9), must be lodged with the Registrar of Companies for registration (Section 12), and be impressed with a deed stamp of ten shillings and a fee stamp of five shillings. They may be altered by special resolution, subject to the provisions of the Act and the conditions contained in the Memorandum (Section 10). The power of alteration is indefinitely wide, because any provision may be inserted by way of alteration which could have been introduced in a valid original Article, provided that the alteration is made *bona fide* for the interest of the company as a whole. The fact that it may be against the interest of a particular shareholder or shareholders does not show that the alteration is not *bona fide* for the interest of the company, *e.g.* an alteration which gave a lien on fully paid up shares,[1] and one which gave the directors power to require any shareholder who carried on any business which was in direct competition with that of the company to transfer his shares at their fair value to nominees of the directors,[2] have been upheld. But it is provided that notwithstanding anything in the Memorandum or Articles, no member is bound by an alteration in the Memorandum or Articles after he became a member which requires him to take more shares or in any way increases his liability to contribute to the share capital or otherwise pay money to the company unless he agrees in writing before or after the alteration to be bound thereby (Section 22).

A copy of every resolution or agreement within the meaning

1 Allen *v.* Gold Reefs of West Africa, [1900] 1 Ch. 656.

2 Sidebottom *v.* Kershaw, Leese & Co., [1920] 1 Ch. 154. *Cf.* Brown *v.* British Abrasive Wheel Co., [1919] 1 Ch. 290, where it was found as a fact that what was done was not for the benefit of the company, but for the benefit of particular shareholders. An alteration giving power to the majority to expropriate any shareholder has been held invalid, and so also an alteration giving a power of expropriation from which particular members were exempted (Dafen Tinplate Co. *v.* Llanelly Steel Co., [1920] 2 Ch. 124). But it is for the shareholders, and not for the Court, to decide whether an alteration is for the benefit of the company, provided that the decision is one at which reasonable men could have arrived. (Shuttleworth *v.* Cox Brothers & Co., [1927] 2 K. B. 9). It should be noted that a dictum by Peterson, J., in the Dafen Tinplate Co. (at page 140) was disapproved, but without affecting his actual decision.

of Section 118 in force must be annexed to or embodied in every copy of the Articles issued after the passing of such resolution or the making of such agreement (Section 118, Sub-section 2). The question whether a company can contract itself out of its statutory right to alter its Articles depends upon the special circumstances of any particular case. The rights of a shareholder as such in respect of his shares are, except so far as they may be protected by the Memorandum of Association, liable to be altered by special resolution. The notice convening a meeting for this purpose should be prepared under legal advice.[1] Contracts with an outsider are in a different position. A company cannot, by altering its Articles, justify a breach of contract, and where a contract involves as one of its terms that an Article is not to be altered the company is not at liberty to alter the Article so as to break the contract, and will be restrained by injunction from so doing.[2]

A clause in the Articles to the effect that a particular person shall be the secretary or managing director of the company is not sufficient, in itself, to create a contract with the company (see page 63, *post*).

Persons who, as is usually the case, have applied for shares when the Memorandum and Articles are in existence, and agreed to take their shares on the footing of the Memorandum and Articles, are held bound by the conditions and provisions contained in the Memorandum and Articles.[3]

A copy of the Memorandum and Articles, or a copy of any Act which alters the Memorandum, must be forwarded to every member at his request on payment, in the case of a copy of the Memorandum and Articles, of one shilling or such less sum as the company may prescribe or, in the case of a copy of an Act, of such sum not exceeding the published price as the company may require. Default renders the company and every officer liable to a penalty of £1 for each offence (Section 23).

Where Articles have not been registered, a copy of every resolution and agreement within the meaning of the section must be forwarded in print to any member requesting the same, on payment of one shilling or such less sum as the company

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1 See Normandy *v.* Ind, Coope & Co., [1908] 1 Ch. 84.

2 Baily *v.* British Equitable Assurance Co., [1904] 1 Ch. 374 (overruled by the House of Lords, [1906] App. Ca. 35, but upon grounds which do not touch this point). British Murac Syndicate *v.* Alperton Rubber Co., [1915] 2 Ch. 186.

3 See Peel's Case, [1867] L. R., 2 Ch. App. 674.

may direct (Section 118, Sub-section 3). If more than one resolution has been passed or agreement made, the payment of one shilling entitles the applicant to copies of all resolutions and agreements passed prior to his application.

Nearly everything relating to the internal management of a company is contained in the Articles.

THE REGISTERED OFFICE.

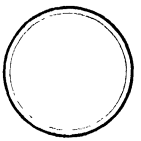
EVERY company must have a registered office as from the day on which it begins to carry on business or as from the twenty-eighth day after its incorporation, whichever is the earlier. Default in complying with this requirement renders the company and every officer in default liable to a penalty for every day during which business is so carried on (Section 92). Notice of the situation of the registered office, and of any change therein, must be given to the Registrar of Companies within twenty-eight days after incorporation of the company or of the change, as the case may be (Section 92, Sub-section 2).

The notice must bear an impressed five-shilling fee stamp. The full address of the office must be given, including the number of the house (if numbered), the street or road, the village or town, or the nearest post-town. The notice should be on foolscap paper, and in the prescribed printed form, the substance of which is as follows:—

*No. of Company*_____ FORM No. 4.

"THE COMPANIES ACT, 1929"

NOTICE OF SITUATION OF REGISTERED OFFICE



A 5*s.* Companies Registration Fee Stamp must be impressed here.

OF

_____, LIMITED

(or of any change therein).

To the REGISTRAR OF COMPANIES.

The above-named Company hereby gives you notice, in accordance with Section 92 of The Companies Act, 1929, that the Registered Office of the Company is situated at_____.

*Signature*_____

*Officer*_____

(State whether Director, Manager, or Secretary.)

Dated the_____day of_____, 193 .

*Presented by*_____

On any change in the situation of the company's registered office taking place, notice of the situation of the office must be lodged on Form 4, which must be impressed with a five-shilling fee stamp.

The inclusion of the address of the registered office in the annual return does not satisfy the requirement of the section as to filing notice of the registered office or of any change therein (Section 92, Sub-section 2).

The registered office is the place where writs, summonses, notices, orders, and other documents are served upon the company (Section 370; see page 201, *post*). If there is no registered office, service on the directors and officers, or, if there are no officers, on the subscribers to the Memorandum, will suffice.

Where a company registered in Scotland carries on business in England process may be served by leaving it at or sending it to the principal place of business in England addressed to the manager or other head officer, but a copy must be sent by post to the registered office of the company in Scotland (Section 370).

In the case of a company incorporated outside Great Britain which, after the commencement of the Act (1st November, 1929), establishes a place of business within Great Britain, there must be lodged with the Registrar the names and addresses of some one or more persons resident in Great Britain authorised to accept on behalf of the company service of process and any notices required to be served on the company, and notice of any alterations in such names or addresses (Section 344, Sub-section 1, and Section 346). This requirement also applies to companies incorporated outside Great Britain which, before 1st April, 1909, established a place of business and on 1st November, 1929, continue to have a place of business in Great Britain; by companies incorporated in Northern Ireland before 1st January, 1922, which on 1st November, 1929, have a place of business in Great Britain; and by companies incorporated in the Irish Free State which before 27th March, 1923, established and on 1st November, 1929, continue to have a place of business in Great Britain. This information must be lodged within one month from the establishment of the place of business or of the 1st November, 1929. The penalty for default is a fine not exceeding £50, and a further penalty of £5 a day while the default continues. "Certified" means certified in the

prescribed[1] manner to be a true copy or a correct translation (Section 352). A fee of five shillings, or such smaller fee as may be prescribed, is payable to the Registrar for any document required by this section to be lodged with him (Tenth Schedule, Part III).

The Act (Section 98, Sub-section 1) further enacts that the Register of Members (see under "REGISTER OF MEMBERS," page 102, *post*) shall be kept at the registered office. The Register of Charges required by Section 88 to be kept at the registered office must, together with copies of instruments creating any charge requiring registration under the Act, be open to inspection by any creditor or member without fee, and to persons other than creditors and members on payment of such fee, not exceeding one shilling for each inspection, as may be fixed by the regulations of the company (Section 89, Sub-section 1). It is obviously advisable to keep all the company's books at the registered office, whether the Act makes it imperative to do so or not. Books required by the Act or by the Articles to be kept at the registered office cannot be mortgaged or charged.

[1] "Prescribed" means as prescribed by the Board of Trade. The Companies (Forms) Order 1929 prescribed the manner in which the documents referred to are to be certified.

THE NAME OF THE COMPANY.

THE Name of the company must appear in the Memorandum of Association (Section 2), and may not, without the consent of the Board of Trade, include the word " Royal " or " Imperial " or any word which suggests (or is calculated to suggest) the patronage of the King or the Royal Family or connection with the Government, or the word " Municipal " or " Chartered " or any word which suggests (or is calculated to suggest) connection with any municipality or other local authority, or with any body or society incorporated by Royal Charter, or the word " Co-operative." The words " Chamber of Commerce " may only be used by an Association Not for Profit, and the words " Building Society " may not be used at all (Section 17).

An association formed for any of the objects specified in the section which will not distribute any dividend among its members and will apply any profits to the furtherance of the objects for which it is formed may, by licence of the Board of Trade, be incorporated as an Association Not for Profit, and the word " Limited " is not then required to form part of the name (Section 18). Such an association enjoys the privilege of limited liability. The licence may be at any time revoked by the Board of Trade, and the Registrar must then enter the word " Limited " at the end of the name of the company upon the Register. Before revoking such a licence the Board of Trade must give written notice to the company of its intention to do so, and afford the company an opportunity of being heard in opposition (Section 18, Sub-section 4). If the licence revoked is that of a company the name of which includes the words " Chamber of Commerce," the name must within six weeks from the revocation (or such longer time as the Board of Trade allow) be changed to a name which does not contain those words. Default renders the company liable to a fine of £50 (Section 19).

On a reduction of capital the Court may by the order confirming the reduction, if it thinks fit, order the words " and reduced " to be added to the name, and to form part of the name for such period as the order may specify (Section 57).

Every company must paint or affix, and keep painted or affixed, its name on the outside of every office or place in which

the business of the company is carried on, in a conspicuous position, in letters easily legible. It must also have its name engraven in legible characters on its seal, and mentioned in legible characters in all notices, advertisements, and other official publications, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts, and letters of credit of the company (Section 93, Sub-section 1).

If a company does not paint or affix, and keep painted or affixed, its name in manner directed by the Act, the company and every director, manager, secretary, and other officer in default is liable to a penalty (Sub-section 2). If a company does not have its name engraved as required on its common seal or mentioned in legible characters on notices &c. as required by Sub-section 1 referred to above, it is liable to a fine of £50 (Sub-section 3), and if any director, manager, or officer of a company, or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not properly engraven, or issues or authorises the issue of any notice, advertisement, or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque, or order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned, he is liable to a penalty, and will further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the company (Sub-section 4).

The intention of the Act is to ensure extreme strictness in regard to the use of the registered name of the company in all respects. So stringent is the law on this point that a secretary who, for instance, accepts a bill on behalf of a company in which the word " Limited " is omitted may render himself personally liable on the bill. Cases may easily be conceived in which a slight variation from the registered name might lead a person to believe that he was dealing with a different kind of company from that with which he was in fact dealing. The strictest accuracy in the use of the name is therefore

required for the protection of the public.[1] It seems, however, that well-known abbreviations such as " Co.," or " Ltd.," may lawfully be used in commercial documents, but the use of " Ltd." or " Ld." for " Limited " is not strictly a compliance with the Act, and should not be used in the Memorandum or other documents which have to be lodged with the Registrar.[2] On the other hand, any person or persons who trade under a name or title of which " Limited," or any contraction or imitation of that word, is the last word without being duly incorporated with limited liability will be liable to a penalty of five pounds for every day on which such name or title has been so used (Section 364).

In the case of every company registered after the 22nd November, 1916, and every company registered outside Great Britain which has since that date established a place of business within Great Britain, and every company licensed under The Moneylenders Act, 1927, whenever it was registered or whenever it established a place of business, the names of and certain other information as to the directors must be mentioned in legible characters in all trade catalogues, trade circulars, showcards, and business letters on or in which the name of the company appears, and which are issued or sent by the company to any person (which includes individual, firm, or corporation) in any part of His Majesty's dominions (Section 145). For the purposes of the section referred to, the expression " director " includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act. The Board of Trade may, in special circumstances, grant exemption from these obligations, subject to such conditions as it may specify (Section 1, proviso).

In the case of each individual director there must be stated in these documents his present Christian name or the initials thereof and present surname, any former Christian names or surnames, his nationality if not British, and if his nationality is not his nationality of origin, his nationality of origin, and in the case of a corporation being a director, the corporate name. " Showcards " means cards containing or exhibiting articles dealt with, or samples or representations thereof. Christian name includes any forename. When a former Christian name

[1] See Atkins v. Wardle, [1889] 58 L. J. Q. B. 377.
[2] F. Stacey & Co. v. Wallis, [1912] 106 L. J. 544.

or surname of a natural born British subject has been changed or disused before such person attained the age of eighteen years, neither the former name nor the fact of the change need be mentioned. Nor need the name or surname by which a married woman was known before marriage be mentioned (Section 145).

Section 1 of The British Nationality and Status of Aliens Act, 1914, contains an elaborate definition of the expression "natural-born British subject." It includes any person born within His Majesty's dominions and allegiance.

In the case of a peer or person usually known by a British title different from his surname the title by which he is known may be substituted for his surname, and his adoption of or succession to the title is not regarded as a change of name (Section 145, Sub-section 4).

Under The Registration of Business Names Act, 1916, every corporation having a place of business within the United Kingdom which carries on the business wholly or mainly as nominee or trustee of or for another person, or other persons, or another corporation, or acts as general agent for any foreign firm, must be registered in the manner provided by that Act, and in addition to the other particulars required to be furnished and registered under the Act is required by Section 2 to furnish and register the further particulars mentioned in the Schedule to that Act. "Foreign firm" is defined by Section 22 of that Act as meaning any firm, individual, or corporation whose principal place of business is outside His Majesty's dominions. The prescribed form (including the particulars required by the Schedule) must be signed by a director or secretary of the corporation, and must be filed with the Registrar at the Register Office in that part of the United Kingdom in which the principal place of business of the corporation is situated. The time within which the particulars must be furnished is fourteen days after the commencement of the business in respect of which registration is required.

Where a corporation is guilty of an offence under the Registration of Business Names Act every director, secretary, and officer of the corporation who is knowingly a party to the default is guilty of a like offence and liable to a like penalty (Section 19); but no proceedings can be taken for an offence under Section 18 of that Act (disclosure of names on trade

catalogues &c.), except by or with the consent of the Board of Trade.

Every company incorporated outside Great Britain which has a place of business in Great Britain must state the country in which it is incorporated in every prospectus inviting subscriptions for its shares or debentures in Great Britain; conspicuously exhibit its name and the country in which it is incorporated on every place where it carries on business in Great Britain; have its name and the country in which it is incorporated mentioned in legible characters in all billheads and letter paper, and in all notices, advertisements, and other official publications of the company; and, if the liability of the members is limited, give notice of that fact in legible characters in every prospectus, and in all billheads, letter paper, notices, advertisements, and other official publications of the company in Great Britain, and on every place where it carries on business (Section 348). In default the company, and every officer or agent of the company, is liable to a penalty (Section 351). A share transfer or share registration office is a place of business within the meaning of the Act (Section 352).

A company, with the sanction of a special resolution and with the approval of the Board of Trade, may change its name, and upon such change being made the Registrar of Companies enters the new name on the Register in the place of the former one, and issues a Certificate of Incorporation altered to meet the circumstances of the case (Section 19).

The special resolution will accordingly be lodged with the Registrar in the manner pointed out under the head of "RESOLUTIONS," page 230, *post*; and a printed copy of the resolution will also be supplied to the Board of Trade, accompanied by a letter or "memorial," addressed to the Assistant Secretary, stating shortly the reasons for the proposed change of name, and asking the consent of the Board thereto.

It is not the practice of the Board of Trade to grant its approval as a matter of course, but if no objection is raised by the Registrar of Companies the Board is not likely to refuse its sanction, unless the new name indicates a change of objects.

The objection (if any) raised by the Registrar would probably be that the proposed new name is already registered, or that it conflicts with some name already on the Register. Whether any objections exist or not should be ascertained by causing inquiries

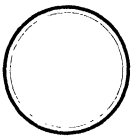
to be made at the Companies Registry before the special resolution is passed.

If everything is in order, the Board of Trade will send a letter of sanction, which upon receipt should be impressed with a five-shilling fee stamp and lodged with the Registrar of Companies. The old name must be used until the Registrar's certificate of change of name has been issued. The change of name does not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

No company can be registered under a name identical with that by which an existing company is already registered, or so nearly resembling that name as to be calculated to deceive, except in a case where the existing company is in the course of being dissolved, and testifies its consent in such manner as the Registrar requires (Section 17). Notice of the consent of the old company must be impressed with a five-shilling fee stamp and lodged with the Registrar. The following is the form prescribed:—

*No. of Company*_____ FORM No. 14.

"THE COMPANIES ACT, 1929"



A 5*s*. Companies Registration Fee Stamp must be impressed here.

CONSENT TO TAKE THE NAME OF AN EXISTING COMPANY

To the REGISTRAR OF COMPANIES.

I, (or We)_____of_____, being the Liquidator(s) of_____ Limited, a Company in the course of being dissolved, hereby, pursuant to The Companies Act, 1929, Section 17, and on behalf of the said Company, testify its consent to the registration of a new Company by the name of _____ Limited.

*Signature(s)*_____

Dated the_____day of_____, 193 .

*Presented by*_____

THE SEAL

EVERY company (Section 13) must have a Common Seal, upon which the company's registered name must be "engraven in legible characters" (Section 93, Sub-section 1 (*b*)). If a company fail to have the name so engraven on its seal it is liable to a penalty of £50, and every director, manager, officer (in which term the secretary is included) or other person using a seal not so engraven is liable to a similar penalty and further is personally liable to the holder of any bill of exchange, promissory note, cheque, or order for money or goods for the amount thereof unless paid by the company (Sub-sections 3 and 4). The Articles will probably contain provisions directing how the sealing is to be attested, and the directors will pass a resolution showing what documents are to be sealed. A common practice is to provide that documents shall be sealed only in pursuance of a resolution of the board, and that the sealing shall be attested by two directors and countersigned by the secretary: thus—

The Seal of the Company was affixed hereto this_____day of_____, 193 , in the presence of

_____ } *Directors.* (LS)
_____ }

_____*Secretary.*

or—

The Seal of_____, Limited, was this_____day of_____, 193 , impressed upon this deed in our presence, pursuant to a Resolution of a Board of Directors passed on the_____day of _____, 193 .

_____ } *Directors.* (LS)
_____ }

_____*Secretary.*

A company may, by instrument in writing under its common seal, empower any person to execute deeds abroad, and every deed signed by the person so empowered on behalf of the company, and under his seal, is as binding on the company, as if under the company's own seal (Section 31). This section, it will be observed, only enables the company to authorise the attorney to execute deeds under his own seal. Section 32 contains similar powers, but wider, and applies to "any deed or other docu-

ment." If under its Memorandum or Articles the company has not the necessary powers to avail itself of this section the power must be taken by special resolution. The section speaks of an "official" seal to be used by the attorney. The "official" seal must be a facsimile of the common seal of the company, with the exception that on the face of it there must be inscribed the name of the place, district, or territory where the seal is to be used. The person affixing such official seal must, by writing under his hand, certify on the deed or other document to which the seal is affixed the date and place of affixing the same (Section 32, Sub-section 5). The authority of such an agent continues, as between the company and any person dealing with the agent, for the period mentioned in the instrument conferring the authority, or if no period is mentioned, until notice that the authority has come to an end is given to the person so dealing.

Powers of attorney should be drafted by the company's solicitor.

Different companies have different rules as to the custody of the seal. A common provision is that it be kept in a box with two locks, the key of one lock being kept by the chairman and that of the other by the secretary, with duplicate keys to be used in case of emergency. Duplicate keys may be deposited with the company's bankers for use in case of emergency, and be obtainable on an order signed by two directors and the secretary. Frequently, also, the seal is secured by a bolt with two locks.

Particulars of all documents sealed with the company's seal should be entered in the Seal Book, a ruling for which is given on page 120, *post*.

Section 29 enacts that—

29. (1) Contracts on behalf of a company may be made as follows:—

(i) A contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under the common seal of the company;

(ii) A contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied;

(iii) A contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied.

(2) A contract made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto.

(3) A contract made according to this section may be varied or discharged in the manner in which it is authorised by this section to be made.

(4) A deed to which a company is a party shall be held to be validly executed in Scotland on behalf of the company if it is executed in accordance with the provisions of this Act or is sealed with the common seal of the company and subscribed on behalf of the company by two of the directors and the secretary of the company, and such subscription on behalf of the company shall be binding whether attested by witnesses or not.

The effect of the section is that joint stock companies may, except in the case of contracts which "if made between private persons would be by law required to be in writing, and if made according to English law to be under seal," enter into contracts without seal. Directors are generally the persons who have authority to enter into contracts necessary for carrying out the objects of the company. And where directors purport to exercise powers, which, according to the constitution of the particular company, they can have, a person dealing with the company may be entitled to assume, in the absence of notice to the contrary, that the directors are acting regularly. The same principle applies in the case of a managing director.[1] The subject has been much discussed in three cases,[2] but is hardly suited to extended treatment in this book. Much depends upon the circumstances of any particular case.

The documents which *must,* by law, express provision, or invariable usage, be under the seal of the company are the following:—

1. Deeds (powers of attorney are always given by deed).
2. Certificates of title to shares.
3. Share warrants to bearer.
4. All contracts directed by the Articles to be under the

[1] Biggerstaff *v.* Rowatts Wharf, [1896] 2 Ch. 93; Dey *v.* Pullinger Engineering Co., [1921] 1 K. B. 77.

[2] Houghton & Co. *v.* Nothard, Lowe and Wills, [1927] 1 K. B. 246; [1928] A. C. 1; Kreditbank Cassel *v.* Schenkers, [1927] 1 K. B. 826; South London Greyhound Racecourses *v.* Wake, [1931] 1 Ch. 496. See Gore-Browne on Companies, 38th Edition, Book II., Chap. III.

seal of the company. (Sometimes the Articles of a company provide that certain contracts shall be under seal which by the general law do not require to be sealed. In these cases the provisions of the Articles must be strictly followed, and the seal affixed.)

The documents specified above are the only documents which must of necessity be under the common seal. Other documents are often sealed, by reason perhaps of the greater authority attached to the use of the seal; but, having regard to the practice of the Inland Revenue of treating every document under the seal of the company as liable to a deed stamp (ten shillings) if not chargeable with ad valorem duty, it does not seem advisable to affix the seal unnecessarily.

By The Law of Property Act, 1925, Sections 74 and 205, a deed, in favour of a purchaser in good faith for valuable consideration, is deemed duly executed if the company's seal is affixed in the presence of and attested by the secretary and one of the directors, and the deed appears on the face thereof to have been so executed. In the absence of any other provision by the Articles a deed so attested is duly executed, but if the Articles make other provision the Articles should be followed. A share certificate is not a deed within this section.[1]

If a seal is affixed by a person having no authority to use it, the instrument to which the seal is put is void as an act of the company in its corporate capacity. Persons such as managers, managing directors (and secretaries, if they habitually conduct the company's business), have implied authority to use the seal for the purpose of carrying on the business of the company. Moreover, a company will not be allowed to dispute the authority of its seal if by its own negligence it has contributed to the misuse of the seal, and to the misleading of persons acting on the faith thereof.

Where the Articles provide that the seal shall not be affixed to any instrument except by the authority of a resolution of the board, such a resolution should be passed before the seal is affixed to any instrument, whether the same be required by law to be sealed or not.

An india-rubber stamp should not be used for a seal, as it does not comply with the requirement of Section 92 that the seal shall be "engraven."

[1] South London Greyhound Racecourses *v.* Wake, [1931] 1 Ch. 496, at p. 503, per Clauson, J.

THE SECRETARY AND OTHER OFFICERS.

THE principal officers of a company are the directors and the secretary. A director may also act as secretary, but usually these offices are occupied by different individuals. The directors are the managing partners or agents of or trustees for the company. This is not, perhaps, a strictly accurate description of the functions of the directors, but it is sufficient for practical purposes. Under Articles of Association as usually framed large powers are commonly vested in the directors, and as the alteration of Articles requires a special resolution it follows that a simple majority of shareholders cannot overrule the discretion of the directors in relation to the exercise of those powers.[1]

The question whether an action should be brought is, however, one upon which, in the absence of special circumstances, the majority of the shareholders may control the directors.[2]

Sometimes the Articles of Association stipulate that the first directors shall be appointed by the subscribers to the Memorandum, or a majority of them, and in such cases the following form of nomination may serve:—

_____, LIMITED.

WE, the undersigned, being [a majority of] the Subscribers to the Memorandum of Association of the above-named Company, do hereby, in pursuance of the provisions of Article of the Articles of Association of the Company, appoint the following persons to be the first Directors of the Company:—

NAMES.	ADDRESSES.

Dated this_____day of_____, 193 .

[*Here follow the Signatures of the Subscribers.*]

The law does not require a director to hold a share qualification; but under Clause 66 of Table A the holding of one share is prescribed and under most special Articles a director is required to hold a specified number of shares. Where a share qualification is so prescribed the following conditions govern the appointment of directors.

1 Automatic Self-cleansing Filter Co. *v.* Cunningham, [1906] 2 Ch. 34; Salmon *v.* Quin & Axtens, [1909] 1 Ch. 311; [1909] A. C. 442. See note to Clause 67 of Table A.

2 Marshall's Valve Gear Co. *v.* Manning Wardle & Co., [1909] 1 Ch. 267.

By virtue of the provisions of Section 140, no person is capable of being appointed a director by the Articles of a public company, or of being named as a director or proposed director in any prospectus issued by or on behalf of a public company, or as proposed director of an intended company in a prospectus issued in relation to that intended company, or in a statement in lieu of prospectus lodged with the Registrar by or on behalf of a company, unless before the registration of the Articles or the publication of the prospectus (or the lodging of the statement in lieu of prospectus) he has by himself or his agent authorised in writing—(*a*) Signed and lodged with the Registrar a consent in writing to act as such director; and (*b*) either signed the Memorandum of Association for a number of shares not less than his qualification (if any), or taken from the company and paid or agreed to pay for his qualification shares (if any), or signed and lodged with the Registrar an undertaking in writing to take from the company and pay for his qualification shares (if any), or made and delivered for registration a statutory declaration to the effect that a number of shares, not less than his qualification (if any), are registered in his name. These provisions do not apply in the case of a prospectus issued by or on behalf of a company after the expiration of one year from the date at which it became entitled to commence business, or by a company which was a private company before it became a public company, or to a company not having a share capital, or to a private company.

The form of consent to act as a director and form of undertaking in writing to take and pay for qualification shares are given on pages 6 and 8, *ante*.

A director of a company must obtain his qualification within two months of the date of his appointment, or within such shorter period as may be fixed by the Articles; otherwise he will cease to be a director, and be incapable of re-appointment until he has obtained his qualification, and if after the expiration of the said period any unqualified person acts as director of a company he will be liable on conviction to a fine not exceeding five pounds for every day between the expiration of the said period and the last day on which it is proved that he acted as a director (Section 141).

As to the liability of a director to take and pay for his qualification shares, apart from any statutory provision, refer-

ence may be usefully made to the observations of Cozens-Hardy, L.J., when delivering the judgment of the Court in *Molineaux* v. *London &c. Insurance Co.*[1] "On principle," said his Lordship, "it seems to us that a person who accepts an appointment as director, knowing that the holding of a certain number of shares is a necessary qualification, and acts as director, must be held to have contracted with the company that he will, within a reasonable time, obtain the requisite shares either by transfer from existing shareholders or directly from the company. If he has not obtained the shares within a reasonable time from the public, the company are authorised to put him on the Register in respect of the shares. What is a reasonable time must depend upon all the circumstances. As a general rule, and apart from any special provisions in the Articles, the qualification ought in the case of an established company to be obtained before acting. When a director takes an active part in the scheme for increasing the qualification, the reasonable time may well begin to run before the date of the second or confirmatory resolution, and may be held to have ended at the latest on the first occasion when he does an important act as director after that date."[2]

Articles of Association commonly require that a director should hold his qualification shares "in his own right." It is sufficient if the director is registered as owner of the requisite number, even though he is trustee of them for another, and has himself no beneficial interest. For instance, a director is often qualified for office by means of shares belonging to another company of which he is a director.[3] But he must, in order to satisfy these words, hold the shares in such a way that the company can safely deal with him as owner. Thus, where a bankrupt was elected director, and acquired his qualification shares, he was immediately disqualified when his trustee intervened and claimed the shares, and this would be equally so if the shares had been allowed by the trustee to continue in the name of the bankrupt.[4] And under Section 142 an undischarged bankrupt may not act as director or directly or indirectly take part in the management of a company except with the leave of the Court by which he was adjudged bankrupt, a person acting

[1] [1902] 2 K. B., pages 595, 596.

[2] A confirmatory meeting is no longer necessary (see Section 117).

[3] *Re* Dover Coalfield Extension, [1907] 2 Ch. 76; [1908] 1 Ch. 65. Such a director is under no liability to hand over his fees to the company which provided his qualification shares (*ibid.*).

[4] Sutton *v.* English &c. Produce Co., [1902] 2 Ch. 502.

in violation of this prohibition being liable to imprisonment and/or fine. The prohibition does not affect a bankrupt who was acting as director or taking part in the management prior to 3rd August, 1928, who has continuously so acted. Subject to the foregoing observations, so long as a man is registered as holder in his own name simply, it would be immaterial that he was a trustee of the shares, *e.g.* as liquidator of another company. But if his description as such liquidator appeared on the Register, the qualification would not be a good one, since the company would have notice by its own Register that he did not hold the shares in his own right.[1]

If the Articles merely provide that a director shall be the registered holder of a specified number of shares, without adding the words "as sole holder," registration as a joint holder will be a sufficient qualification. His name need not be the first one on the Register.[2]

Directors who take their qualification shares from a promoter, either by way of gift from, or as trustee for, the promoter, are guilty of a misfeasance, and the measure of damages is the highest value that shares in the company have reached during their holding.[3]

Under Section 151 no assignment of office by a director or manager pursuant to any provision of a company's Articles or of any agreement between a company and any person empowering a director or manager to assign his office to another may be made except with the approval of a special resolution.

It is not necessary for a private company to have any directors; but Section 139 requires every public company incorporated on or after 1st November, 1929, to have at least two directors. Provided the regulations of a company so authorise, the management of its affairs may be vested in a manager or managers, but regard must be had to Section 380, under which any person who occupies the position of director, by whatever name called, is a director, and to Section 144 under which for the purposes of entering up the Register of Directors and of making the Annual Return a person in accordance with those directions or instructions the directors of a company are accustomed to act is a director. It has been held that there is no legal objection to the appointment of a company as manager

[1] Boschoek Proprietary Co. *v.* Fuke, [1906] 1 Ch. 148.
[2] Grundy *v.* Briggs, [1910] 1 Ch. 444.
[3] In *re* London and South Western Canal, [1911] 1 Ch. 346.

of another,[1] and the Act by Section 144, Sub-section 1 (*b*), acknowledges that one company may be director or manager of another company.

A director is not responsible for damages occasioned by errors of judgment. He must act with such care as is reasonably to be expected from him, having regard to his knowledge and experience, and he is not bound to bring any special qualifications to his office.[2]

Under Section 152 no provision in the Articles of a company or in any contract with the company or otherwise for exempting a director from or indemnifying him against any liability which by any rule of law would attach to him in respect of any negligence, default, breach of duty, or breach of trust of which he may be guilty is of any effect after a period of six months from the 1st November, 1929.[3] The section does not deprive a director of any exemption or right to be indemnified in respect of any matter occurring while any such provision was in force or affect a director's right to be indemnified against liability incurred by him in any proceedings where judgment is given in his favour, or on any application under Section 372 for relief (see page 51, *infra*).

The remuneration of directors depends upon the Articles of Association. It must now be regarded as doubtful whether a provision in the Articles under which directors are to be remunerated by so much per annum, or so much in each year, or by such proportion of a fixed yearly sum as may be agreed upon between themselves, gives any right to a director to remuneration if he ceases to hold office before the financial year of the company is completed.[4] And if the Articles provide an aggregate sum by way of remuneration, to be divided amongst the directors in such proportions as the directors may determine (without any proviso that in default of determination the remuneration is to be shared equally) there must be a formal division by the Board before any director can sue the company for his fees.[5] Directors whose remuneration is provided for by

[1] *Re* Bulawayo Market &c. Co., [1907] 2 Ch. 458.

[2] Brazilian Rubber, in *re*, [1911] 1 Ch. 425.

[3] The date when The Companies Act, 1929, came into operation.

[4] In Moriarty *v.* Regent's Garage Co., [1921] 1 K. B. 423, it was held by the Divisional Court that The Apportionment Act, 1870, applied to such a provision. This decision was reversed by the C. A. on other grounds (1921, 2 K. B. 766), and it is at least doubtful whether the view of the Divisional Court in favour of apportionment would have been sustained (see especially *per* Younger L.J., at page 782).

[5] Joseph *v.* Sonora (Mexico) Co., 34 T. L. R. 220.

the Articles of a company are not entitled, in the absence of a resolution of the company or a provision in the Articles, to be paid out of the assets of the company their travelling or hotel expenses incurred in attending board meetings.[1] Nor, unless the Articles so provide, are they entitled to their fees free of income tax.[2] And if the Articles provide that the remuneration of a director shall be determined by the company in general meeting, the board of directors have no power to fix it.[3]

Under Section 128 the accounts which every company is under the section required to lay before the company in general meeting (see under Forms of Published Accounts, page 158 *et seq.*) must include a statement of the total amount of remuneration, inclusive of all emoluments, paid or payable to directors by the company or by any subsidiary company. This requirement does not apply in relation to a managing director, or in the case of a director holding salaried employment under the company, to any sums received by him otherwise than by way of directors' fees. "Emoluments" includes fees, percentages, and other payment or consideration given to a director.

Members of a company entitled to one fourth of the aggregate number of votes to which all the members are entitled may under Section 148 by a demand in writing require the directors to furnish all the members, within one month from the receipt of the demand, with a statement certified by the auditors as correct showing the aggregate amount paid to the directors in each of the three preceding years for which accounts have been made up. Any amounts received by a director who is a director of a subsidiary company or who holds office by virtue of a direct or indirect nomination of the company required to furnish the particulars demanded must be included in the aggregate amount, but the amount received by any individual need not be stated. If income tax, super tax, or sur tax has been paid by the company on a director's remuneration, his remuneration must be increased by the amount of the tax paid. A demand under Section 148 is not required to be complied with if the company resolve within one month of the demand being made that the particulars shall not be furnished.

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1 Young *v.* Naval Co-operative Society, [1905] 1 K. B. 687.
2 Boschoek Proprietary Co. *v.* Fuke, [1906] 1 Ch. 148.
3 Kerr *v.* Marine Products, [1928] 44 T. L. R. 292.

Loans to directors must under Section 128 be disclosed in the accounts laid before a company. This requirement extends to all loans made to a director during the period to which the accounts relate which have been made by the company or by any person under any guarantee given by the company, including loans which were repaid during that period and loans made before the period to which the accounts relate and outstanding at the expiration thereof.

Loans by a company in the ordinary course of a business which includes the lending of money are not required to be disclosed, nor a loan not exceeding £2,000 made to an employee certified by the directors to be in accordance with any practice of the company with respect to loans to employees.

The directors are the persons from whom the secretary will take his instructions, and to whom he will regard himself as responsible. He will not be able to protect himself from the consequences of an act which he knows to be wrong merely on the ground that he is acting under the instructions of his directors; but generally speaking a secretary is safe who confines himself to carrying out the orders of his board. Some companies appoint one of the directors managing director, and he in some cases undertakes the secretarial work; but usually the secretary is an independent official.

In order that a valid resolution may be passed, a proper quorum of directors, competent to transact and vote on the business before the board, must be present. A director who is disqualified under the Articles from voting on a particular resolution (*e.g.* where it relates to a contract in which he is personally interested) cannot be reckoned as one of the necessary quorum.[1] By Section 149 the disclosure by a director of any interest in a contract or proposed contract at a meeting of directors is made a statutory requirement. The disclosure must be made at the meeting at which the contract is first considered, or if the director was not then interested at the first meeting after he becomes interested, or if he becomes interested after the contract is made at the first meeting thereafter. A general notice that a director is a member of a firm or company and interested in contracts therewith, after the notification, is sufficient. The provisions of the section do not prejudice any rule

[1] *Re* Greymouth-Point &c. Co., [1904] 1 Ch. 32; North Eastern Insurance Co., in *re*, [1919] 1 Ch. 198; Victors *v.* Lingard, [1927] 1 Ch. 323.

of law restricting directors from having any interest in contracts with a company. A director failing to comply with the provisions of Section 149 is liable to a fine of £100.

Under Section 150 it is not lawful in connection with the transfer of the whole or any part of the undertaking of a company to make any payment to a director of the company by way of compensation for loss of office, or as a consideration for his retirement, unless particulars of the proposed payment and the amount thereof have been disclosed to the shareholders and the proposal approved by the company. Where such an illegal payment is made to a director, the amount received is deemed to have been received by him in trust for the company.

Where a payment is to be made to a director for similar considerations, but in connection with the transfer to any persons, as a result of an offer made to the general body of shareholders, of all or any of the shares of the company, it is not an unlawful payment, but it is the duty of that director to take all reasonable steps to secure that particulars with respect to the proposed payment, and the amount thereof, are included in or sent with any notice of the offer made for their shares given to any shareholders. Failure in this duty renders the director liable to a fine of £25, and also results in the payment being deemed to have been received in trust for any persons who have sold their shares as a result of the offer made. Under Sub-section 5 it is of no avail to disguise the payment by giving to such director a price for his shares in excess of the price which could at the time have been obtained by other holders of the like shares.

In addition to the directors and secretary every company has a solicitor and auditors. In matters requiring technical legal knowledge the directors and the secretary should never act without the advice of the solicitor of the company.

Prima facie, the functions of a secretary are clerical and ministerial only: that is to say, he is the agent through whom the clerical work of the company is done, and who carries out the orders given to him by the directors without exercising an independent discretion. In practice it frequently happens that a great deal is left to the discretion of the secretary; but, however that may be, the directors are the persons on whom the real responsibility rests, and the acts of a secretary done within the scope of his authority are the acts of the company or

the directors. "A secretary is a mere servant: his position is that he is to do what he is told, and no person can assume that he has any authority to make representations binding on the company; nor can anyone assume that statements made by him are necessarily to be accepted as trustworthy without further inquiry, any more than in the case of a merchant it can be assumed that one who is only a clerk has authority to make representations to induce persons to enter into contracts."[1] On like grounds it has been held that the unauthorised entry by the secretary of the name of a transferee on the Register before the transfer came before the directors (who refused to pass it) was a nullity.[2] The company and the directors may of course give the secretary authority to answer questions and make statements which without such authority would be outside the scope of the secretary's duties, and when express authority of this kind is given the statements and representations of the secretary would undoubtedly bind the company. It must be borne in mind that, although the secretary's statements may fail to bind the company, he may render himself individually liable to persons who have acted on his unauthorised representations. A secretary should act on the advice and instructions of the board, not of a single director, unless, of course, power to deal with certain matters has been given by the board to a single director. Where the same man is acting as secretary of two companies, a fact which comes to his knowledge as secretary of one company is not necessarily notice to him as secretary of the other. It is only notice if it was his duty to the first company to communicate his knowledge to the second.[3]

Sometimes a secretary is promised a commission; but, as he may be made liable to refund money received by way of commission or bribe, he should before accepting any commission ascertain, by means of proper legal advice, whether he may do so without incurring liability.

If, however, the secretary decides to act without legal advice he should for his protection obtain the signatures of the directors to a form of indemnity, stamped with a duty of sixpence, which may be impressed or adhesive. A form of indemnity is shown in Appendix A on page 438.

[1] Barnett *v.* South London Tramways Co., [1886] 18 Q. B. D. 815; see also Indo-China Steam Navigation Co., *in re*, [1917] 2 Ch. 100, cited pages 257, 258, *post*.

[2] Chida Mines *v.* Anderson, [1905] 22 T. L. R. 27.

[3] *Re* Fenwick, Stobart & Co., [1902] 1 Ch. 507.

In connection with this subject it may be stated that where in the course of the winding up of a company under the Act it appears that any person who has taken part in the formation or promotion of a company, or any past or present director, manager, liquidator, or other officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or has been guilty of any misfeasance or breach of trust in relation to the company, the Court may examine into the conduct of such promoter, director, &c., and compel him to repay or restore the money or property, together with interest, or to contribute money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust (Section 276). The procedure under this section does not apply to every case in which a company might have a right of action against one of its officers. It is limited to cases where there has been a breach of duty by an officer of the company, as such, which has caused pecuniary loss to the company, *e.g.* misapplication of the money or property of the company, or retention of money which the officer was bound to have paid or returned to the company.[1] But if, in any proceeding against a director, manager, officer, or person employed as auditor, for negligence or breach of trust it appears to the Court that such person has acted honestly and reasonably, and ought fairly to be excused, the Court may relieve him, wholly or partly, from his liability on such terms as the Court may think proper (Section 372). This section extends to a transaction wholly *ultra vires* the company.[2]

But where the negligence consists merely in overlooking or forgetting an alteration in the share qualification the Court, upon a petition under Section 372 by a director who was duly qualified under the former Articles, will relieve him from liability to the fine imposed by Section 141, Sub-section 5. As to the liability to repay to the company the remuneration which he received as a director while, *de jure,* he was not a director, the Court would require evidence as to the views of the shareholders, or if the company is insolvent, of the creditors, before granting relief in that respect.[3]

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1 Etic, *in re*, [1928] 1 Ch. 861.
2 *In re* Claridge's Patent Asphalte Co., [1921] 1 Ch. 543.
3 Barry and Staines Linoleum, *in re*, [1934] 1 Ch. 227.

The secretary should be very careful how he signs documents on behalf of the company, as he may, by not observing proper precautions, involve himself in personal liability. The Articles may contain special clauses regarding the signatures of bills and notes, which the secretary is advised to study carefully. In particular, if he is asked to sign without two directors he should ascertain that he has the necessary authority.

A bill of exchange or promissory note is "deemed to have been made, accepted, or endorsed on behalf of a company if made, accepted, or endorsed in the name of, or by or on behalf of or on account of, the company by any person acting under its authority" (Section 30). The authority need not be express. If, for instance, a managing director by the constitution of the company might have been authorised to draw a bill, a person taking the bill in due course is entitled to assume that he had such authority, for the public cannot be expected to know what goes on in the company's board room.[1]

It is very desirable that cheques, promissory notes, and bills of exchange should show on their face that they are drawn, made, accepted, or endorsed on behalf of the company[2]; otherwise an attempt may be made to hold those who sign them liable. The words "For The Company, Limited," are frequently inscribed on a hand-stamp, which is kept at the office to be used as required.

If the secretary has authority to accept bills or endorse cheques for the company by himself he is advised to do so thus:—

ACCEPTANCE OF BILLS OR ENDORSEMENT ON CHEQUE

Accepted [the_____day of_____, 193].

Payable at The_____Bank, Limited.

For_____, Limited, and by its authority.

_____

Secretary.

SIGNATURE OF CHEQUE

For and on behalf of_____, Limited,

_____

Secretary.

[1] Dey *v.* Pullinger Engineering Co., [1921] 1 K. B. 77.

[2] See The Bills of Exchange Act, 1882, Section 26; and Elliott *v.* Bax-Ironside, [1925] 2 K. B. 301.

Usually the signatures of two of the directors are required, in which case the form of acceptance could be—

ACCEPTED

For_____, Limited, and by its authority.

_____ A. B. \
Secretary. C. D. / *Directors.*

The signature of a cheque when directors are required to sign would be similar.

The same observations apply to endorsements of bills, cheques, and notes.

The Bills of Exchange Act, 1882, enacts (Section 91) that in the case of a corporation, where a bill, note, cheque, endorsement, &c., is required to be signed, it is sufficient if the document be sealed with the corporate seal. In this case the common seal of the company would be affixed, and the form of acceptance would run—

ACCEPTED.

(Date).

As witness the common seal of_____, Limited

The common seal of the Company was affixed hereto in the presence of

_____ (L.S.)
Chairman.

_____ _____ \
Secretary. _____ / *Directors.*

Bills should never be accepted unless they are directed to the company. Sometimes they are addressed to the directors by mistake. Directors accepting bills thus addressed to themselves instead of to the company would incur a personal liability.

Great care must be taken that the true title of the company appears upon the bill or note. A slight variance from the true title might make the directors and officers personally liable.[1]

The secretary is one of the officers liable under the numerous provisions of the Act for the imposition of penalties, a list of which is set out on pages 312 to 325, *infra,* but he is relieved of liability in regard to failure to convene the annual general meeting, responsibility for which rests upon the directors.

[1] Atkins *v.* Wardle, [1889] 58 L. J. Q. B. 377. Well-known abbreviations such as "Co." and "Ltd." may apparently be used (see page 34, *ante*).

THE PROSPECTUS AND MATTERS PRIOR TO ALLOTMENT.

A SECRETARY is generally named in the prospectus of a company as A. B., Secretary *pro tem.*: that is to say, until such time as he shall be definitely appointed to his office by the company. The person so named may or may not be the person finally selected as secretary; but in any case he should attend to the provisions of Section 37, Sub-section 1, which makes "every person who has authorised the issue of the prospectus" liable for the consequences of misrepresentations contained therein. It is apprehended that the secretary, if he assist the promoters in publishing a false statement, or if he sanction a statement which he knows to be false by allowing his name to appear on the prospectus, may be made liable in damages for any losses sustained by reason of the untrue statement. But, independently of knowledge on his part, it is thought that he does not render himself liable by merely consenting to act as secretary and allowing his name to appear in the prospectus. These propositions, however, cannot be advanced with absolute confidence until the question of the secretary's liability, *qua* secretary, for misstatements in the prospectus has come before the Courts for judical decision.

A person may not be appointed by the Articles of a public company, or be named in the prospectus, as a director or proposed director, except in accordance with the provisions of Section 140 (see page 43, *ante*).

The prospectus must be dated, and a copy signed by every director or proposed director and lodged with the Registrar. In the absence of proof to the contrary, the date upon the prospectus is to be taken as the date of its publication. The Registrar will not register any prospectus unless it is so dated and signed. No prospectus may be issued until so lodged for registration, and every prospectus must state on the face of it that it has been lodged. The issue of a prospectus without a copy thereof being lodged as required by this section renders the company and every person knowingly a party to such issue liable to a fine (Section 34).

By Section 35 and Part I of the Fourth Schedule, every

prospectus (except where published as a newspaper advertisement) issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state—

(1) The contents of the Memorandum of Association, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively;

(2) The number of founders' or management or deferred shares (if any), and the nature and extent of the interest of the holders in the property and profits of the company;

(3) The number of shares (if any) fixed by the Articles as the qualification of a director, and any provision in the Articles as to the remuneration of the directors;

(4) The names, descriptions, and addresses of the directors or proposed directors;

(5) Where shares are offered to the public for subscription particulars as to—

(i) The minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters:—

(*a*) The purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;

(*b*) Any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company;

(*c*) The repayment of any moneys borrowed by the company in respect of any of the foregoing matters;

(*d*) Working capital; and

(ii) The amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

(6) The amount payable on application and allotment on each share, and in the case of a second or subsequent offer of shares the amount offered for subscription on each previous allotment made within the two preceding years, the amount actually allotted, and the amount (if any) paid on the shares so allotted[1];

(7) The number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued;

(8) The names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares, or debentures to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser,[2] the amount so payable to each vendor: provided that where the vendors or any of them are a firm the members of the firm shall not be treated as separate vendors;

(9) The amount (if any) paid or payable as purchase

1 The remedy of a shareholder who has been induced to take shares by a second prospectus not containing this information, is to recover damages from the directors. An omission of this kind does not entitle him to rescind (*in re* South of England Natural Gas Co., [1911] 1 Ch. 573).

2 Generally speaking, a company is not a sub-purchaser for the purposes of this subsection unless it has to pay purchase money (including in this term debentures or shares) to some one other than its own vendor, *e.g.* to the vendor from whom the immediate vendor to the company purchased (Brooker *v.* Hansen, [1906] 2 Ch. 129).

money in cash, shares, or debentures for any such property as aforesaid, specifying the amount (if any) payable for goodwill;

(10) The amount (if any) paid within the two preceding years, or payable, as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in or debentures of the company, or the rate of any such commission: provided that it shall not be necessary to state the commission payable to sub-underwriters;

(11) The amount or estimated amount of preliminary expenses;

(12) The amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment;

(13) The dates of and parties to every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or a contract entered into more than two years before the date of issue of the prospectus, and a reasonable time and place at which any material contract [1] or a copy thereof may be inspected;

(14) The names and addresses of the auditors (if any) of the company;

(15) Full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company, or where the interest of such a director consists in being a partner in a firm the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become or to qualify him as a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company; and

(16) If the prospectus invites the public to subscribe for shares in the company and the share capital of the

[1] A contract may be material although it has been wholly carried out. A mistaken view that a contract known to exist is not material, even if based on an expert opinion, is no answer to an action founded on the non-disclosure, however honest the directors may have been (Broome *v.* Speak, [1913] 1 Ch. 586; affirmed *sub nom.* Shepheard *v.* Broome, [1904] App. Ca. 342).

company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the right in respect of capital and dividends attached to, the several classes of shares respectively;

(17) In the case of a company which has been carrying on business, or of a business which has been carried on for less than three years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

The prospectus must contain a report by the auditors as to the profits of the company in each of the three financial years immediately preceding the issue of the prospectus, and the rates of dividends (if any) paid in respect of each class of shares in each of such three years, giving particulars of the shares on which dividends have been paid and of the cases in which no dividends have been paid. If no accounts have been made up in respect of any part of the period of three years ending on a date three months before the issue of the prospectus, the fact must be stated. If any part of the proceeds of the issue is to be applied in purchase of any business a report by accountants named in the prospectus upon the profits of that business in each of the three financial years immediately preceding the issue of the prospectus must be included (Part II, Fourth Schedule).

Section 35 does not apply to the issue to existing members or debenture holders of a company of a prospectus relating to shares or debentures, whether with or without the right to renounce in favour of other persons (Sub-section 5).

Every person who has entered into a contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, is deemed to be a " vendor " where (*a*) the purchase money is not fully paid at the date of issue of the prospectus, or (*b*) is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus, or (*c*) the contract depends for its validity or fulfilment on the result of such issue. If any of the property to be acquired by the company is to be taken on lease, " vendor " includes the lessor, " purchase money " includes the consideration for the lease, and " sub-purchaser " includes a sub-lessee (Part III of Fourth Schedule). If published as a newspaper advertisement, the

prospectus need not specify the contents of the Memorandum or the signatories thereto and the number of shares subscribed for by them (Part I of Fourth Schedule). And if a prospectus is issued more than two years after the date at which the company is entitled to commence business, the requirements as to the Memorandum, the qualification, remuneration, and interest of directors, the names &c. of directors or proposed directors, and the amount or estimated amount of preliminary expenses, do not apply (Part III of Fourth Schedule).

A public company limited by shares or a public company limited by guarantee and having a share capital may not prior to the statutory meeting vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except subject to the approval of the statutory meeting (Section 36).

The word "prospectus" means "any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company" (Section 380).[1]

Any condition requiring or binding an applicant to waive the benefit of the statutory requirements as to a prospectus or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus is void (Section 35, Sub-section 2).

The practice is to issue with the prospectus forms of application for shares, which, as well as the prospectus, are settled by the promoters. A specimen of an ordinary application form, with the usual form of bankers' receipt, is given on the following page. Section 35, Sub-section 3, prohibits the issue of any form of application for shares or debentures except with a prospectus which complies with the requirements of this section, unless the application form was issued in connection with a *bona fide* invitation to a person to enter into an underwriting agreement or in relation to shares or debentures not offered to the public. An application form may not, therefore, be issued with an abridged prospectus. Contravention of Sub-section 3 involves liability to a fine of £500.

If a company allots or agrees to allot any shares or debentures with a view to their being offered for sale to the public, any document by which the offer is made to the public is to be deemed for all purposes to be a prospectus issued by the com-

1 See also pages 14 and 15, *ante*.

---------- LIMITED

FORM OF APPLICATION FOR SHARES

(To be retained by the Bankers.)

*No.*_____

*To the Directors of*_____, LIMITED.

GENTLEMEN,

Having paid to the Company's Bankers (THE_____BANK, LIMITED) the sum of £_____, being a deposit of_____per Share on application for_____Shares of £_____each in the above-named Company, I request you to allot me that number of Shares, and I hereby agree to accept the same, or any less number that you may allot to me, upon the terms of your Prospectus dated the_____day of_____, 193 , and the Memorandum and Articles of Association of the Company; and I authorise you to place my name on the Register of Members of the Company in respect of the Shares allotted to me.

Yours faithfully,

*Usual Signature*_____

*Name in full*_____

*Address in full*_____

*Profession or Business*_____

*Date*_____

This Form of Application should be sent entire to the Company's Bankers, The_____Bank, Limited

---------- LIMITED

BANKERS' RECEIPT

(To be returned to the Applicant)

*No.*_____

Received *the*_____*day of*_____, *193*____

*from*_____*the sum of*_____

*being a deposit of*_____*per Share on*_____*Shares of £*_____*each in the above-named Company.*

For THE_____BANK, LIMITED,

£ : :

Cashier.

This Receipt should be preserved, to be exchanged for the Share Certificate when ready.

pany, and all the provisions of the law relating to prospectuses are to apply thereto, and the offer for sale must also contain the further particulars prescribed. The offer for sale must be signed by the persons by whom it is made, or their agents authorised in writing, as if they were persons named in a prospectus (Section 38). Shares or debentures are deemed to be allotted, or agreed to be allotted, with a view to their being offered for sale, and to be subject to the requirements of the section, if an offer of the shares or debentures is made within six months of the allotment or agreement to allot, or if at the date when the offer is made the whole consideration to be received by the company has not been received (Section 38, Sub-section 2). Companies incorporated outside Great Britain offering shares for sale are subject to the provisions of Sections 354 to 356.

Occasionally the money payable upon application is to be sent to the company instead of the bankers. In such cases the form will be modified accordingly, and the words in heavy type on the left-hand side of the form will also be altered or omitted. But the form given is recommended, as being both usual and convenient.

Sometimes the following note is added to the application letter:—

If you desire to pay in full on allotment, sign the following:—

I desire to pay in full on allotment, receiving interest from date of payment.

It is recommended that the application forms be printed on paper distinct in colour for each class of shares—*e.g.* ordinary, preference, or founders' shares—or debentures.

A person chosen to fill the office of secretary will at times be called on to enter as a trustee into a preliminary contract for the sale of a business to a company about to be formed. The object of this is to secure the interest which is to be transferred by the contract; but of course the contract may be entered into by the company itself after incorporation. Before doing so, the secretary is advised to see that all proper precautions are taken to protect him in every contingency from personal responsibility under the agreement to which he is a nominal party. This is usually done by providing in the agreement that upon the adoption of the agreement by the company the trustee shall be discharged from all liability in respect thereof, and that if the

agreement be not adopted by the company by a certain date either party may rescind the same.

"Adoption" is used in a loose sense. A company cannot, strictly speaking, "adopt" a contract entered into before its incorporation. A new contract must be entered into between the company and the vendor direct.

A person who, at or after the time of a sale of property to him on behalf of a company about to be formed, bargains for a benefit to himself out of shares to be issued to the vendor, and who afterwards, as secretary, allows the directors to allot the shares to the vendor without mentioning this circumstance, may be made liable to pay damages as a misfeasant under Section 276. The measure of damages will be the highest value which the shares received in such a way have ever possessed. If any other shares have been taken up and paid for in cash, the damages may be the full nominal value. A secretary of a company is an "officer" of the company within that section.[1]

As an officer of the company, a secretary may also be responsible for the delinquencies of those in his employ. For instance, when a secretary employs a clerk he may be made liable under the same section for misappropriations of his clerk, even if the misappropriations take place without the knowledge of the secretary.[2] The reason is that the secretary gives authority to the clerk to act for him, and is therefore responsible for the wrong done by his agent the clerk, although the clerk is not himself an officer of the company.

The secretary should therefore be cautious as to the persons he leaves in charge of the office in his absence. A clerk left in charge of the registered office during the absence of the secretary may be treated as the clerk in charge for the purpose of receiving notices &c. which will be binding on the company.[3]

The secretary cannot consider himself legally appointed until his appointment has been made by the company itself after incorporation. The appointment is usually made by a resolution of the board of directors after the company has been registered. It may also be made, though this course is less usual, by a regular agreement formally drawn up and made between the company of the one part and the secretary of the other part. Whether appointed by resolution or under an agreement, pro-

[1] McKay's Case, [1875] 2 Ch. D. 1. [2] *Ex parte* James, [1905] 49 L. T. 530.
[3] Truman's Case, [1894] 3 Ch. 272.

vision will probably be made for the appointment of the secretary for a definite term of years at a fixed salary. Before discussing the rights of the secretary to compel the company to adhere to the bargain made with him, it should be observed that the appointment ought to be made by the company itself, as any agreement made by some person on behalf of a company about to be formed is in itself nothing more than a contract with the person signing the agreement, and will not give the secretary any rights against the company. In the latter case the secretary is advised to procure a fresh agreement with the company when formed in the exact terms of the old one, or a resolution declaring the duration of his appointment and the amount of his salary. It is clear that a resolution of the board appointing the secretary is an exercise of the power of the directors which may be ratified by the company. Therefore both in the case of a resolution of the board and of an agreement after incorporation the secretary has a claim against the company itself in the event of a wrongful dismissal.

The case of *re Dale and Plant*[1] shows the importance of proceeding in a regular manner. In that case an agreement was made before the incorporation of a company that one B should be the secretary for a period of five years at a specified salary. At the first meeting of the directors after the incorporation of the company a resolution was passed confirming the agreement with B. The Memorandum and Articles were signed by B, and one of the Articles contained a clause that B should be secretary of the company for five years, and that the directors might adopt the preliminary agreement. There was also power in the Articles for the directors to appoint a secretary. The Court held that there was no appointment binding on the company, and that in a winding up B was only entitled to remuneration for the actual work he had done.

It will be observed that the provisions in the Articles did not assist the secretary, the reason for this being that the Articles only constitute a contract between the company and its members and between the members of the company among themselves,[2] not between the company and a third person. The attempted confirmation by the directors was a nullity—first, because the agreement was made with the promoters, not the company; secondly, because a company cannot ratify any contract made

[1] 61 L. T. 206.

[2] See page 25, *ante*.

before it came into existence. B should have obtained a new agreement in the terms of the old one immediately after the incorporation of the company. He could then have claimed for the value of five years' services.

If the company itself has duly appointed the secretary, and stipulated that his engagement shall last for, say, five years, can he, in the event of a dismissal prior to the expiration of that term, compel the company to employ him for the full period of five years if he has observed the terms of the agreement and has not been guilty of any fraud or gross misconduct? In case of fraud or gross misconduct the company can dismiss him without notice or compensation, and terminate his engagement.[1] But, independently of fraud or gross misconduct, the law is that even if the secretary of a company has observed his agreement, he cannot, if the company arbitrarily dismiss him, compel it to carry out the literal terms of the agreement. The reason is to be sought in the nature of the contract. The secretary is the agent of the company, and the contract is legally one of hiring and personal service merely,[2] and in a reported case[3] Lord Esher spoke of a secretary of a company as a "mere servant, bound to do what he is told." A contract of hiring and service will not be ordered by the Court to be specifically performed on the ground that such contracts are of a personal and confidential character, and cannot be enforced by the Court with any hope of real success. Obviously it would be absurd to compel a company and a secretary on bad terms with each other to work together for any length of time. Such a state of things would benefit neither party, and might be ruinous to the company.

A secretary might possibly enforce a literal compliance with the agreement if he were a member of the company or a holder of shares and the Articles provide for his appointment, by applying for an order restraining the directors from dismissing him; but it is very doubtful whether the Court would make the order.[4] His only remedy practically will be—(*a*) If the company is a going concern to bring an action for damages; or

---

[1] Boston Deep Sea Fishing Co. *v.* Ansell, [1888] 39 Ch. D. 339.

[2] Mair *v.* Himalaya Tea Co., [1865] L. R. 1 Eq. 411.

[3] Barnett *v.* South London Tramways Co., [1886] 18 Q. B. D. 815; and see page 50, *ante*.

[4] See Harben *v.* Phillips, [1883] 23 Ch. D. 14. In Bainbridge *v.* Smith, 41 Ch. D. 462, the Court of Appeal refused to interfere in the case of a managing director. An order might, however, be granted in the case of an ordinary director (see British Murac Syndicate *v.* Alperton Rubber Co., [1915] 2 Ch. 186) appointed under a contractual right to nominate directors.

(*b*) If the company is being wound up to prove in the winding up for the value of his salary for the unexpired residue of the term of his engagement.[1]

The measure of damages and the value of the unpaid salary will depend upon the particular circumstances of each case. In many instances the agreement fixes the compensation payable for loss of office. An agreement to engage a secretary for a term of years should be in writing, because by the Statute of Frauds (Section 4) agreements not to be performed within a year must be evidenced by writing.

For a detailed discussion of the position of a secretary in special events, such as winding up or the appointment of a receiver, see page 396 *et seq.*, *post.*

[1] See Yelland's Case, [1867] L.R. 4 Eq. 350 and *ex parte* Clarke, [1869] L.R. 7 Eq. 550

ALLOTMENT

AFTER the issue of the prospectus, the next question which will occupy the secretary's attention will be that of making arrangements with the bankers of the company for dealing with the applications for shares, and to carry out the allotment. Before dealing with this matter in detail we will make a few observations on the general law.

Section 25 enacts that the subscribers to the Memorandum of Association shall be deemed to have agreed to become members of the company, and upon the registration shall be entered as members on the Register of Members, and every other person who has agreed to become a member and whose name is entered on the Register of Members shall be a member of the company.

This enactment shows that persons become members of a company (that is to say, shareholders) in the first instance either by simply subscribing the Memorandum and Articles, or by entering into a contract with the company to take shares, followed by allotment and entry on the Register. The latter is the usual way by which the general public (*i.e.* persons to whom the company is under no obligation to allot shares) become members of a company. The contract is generally effected by a letter of application, a form of which has been already given at page 60, *ante*, followed by a letter of allotment properly stamped (with a sixpenny stamp if the nominal amount is not less than five pounds, and a penny stamp if under five pounds), which is posted to the applicant. A letter of allotment of a fractional part of a share must be stamped on this basis (Revenue Act, 1909, Section 9). There is no binding contract until the allotment has been communicated to the applicant for shares,[1] but the communication is sufficient if the allotment letter is posted, even if it is never received.[2] The date of the posting of the letter of allotment therefore in most cases marks the completion of the contract, and the company is then bound to place the applicant on the Register, and the applicant is bound to take up and pay for the shares allotted.

1 Pellatt's Case, [1867] L. R. 2 Ch. 527.
2 Household Fire Insurance Co. *v.* Grant, [1879] 4 Ex. D. 216.

Cases where notice of allotment is not necessary sometimes occur —for instance, where the company is under some liability to allot shares to a particular individual. Thus, if it is part of an arrangement between a secretary and a company that the secretary shall take shares in the company, an application for shares will constitute a binding contract without further notice of allotment. No allotment letter should be sent to subscribers to the Memorandum for the shares thus subscribed for, but in the case of members of the general public, to whom the company is under no liability to allot shares, a notice of allotment is indispensable.

A specimen letter of allotment is given on page 68, *post*.

Signatories to the Memorandum of Association who are desirous of becoming the holders of a particular number of shares sometimes state that the number of shares they apply for is intended to include the number subscribed for when signing the Memorandum. In such a case the letter of allotment will of course be for the number of shares stated on the application form, less the number appearing against the applicant's name on the Memorandum.

With regard to the first allotment of shares offered to the public it is provided by Section 39, Sub-section 1, that no such allotment may be made unless the amount stated in the prospectus as the minimum amount which in the opinion of the directors must be raised by the issue to provide for the matters specified in paragraph 1 of Part I of the Fourth Schedule (see page 55, *ante*) has been subscribed, and the sum payable on application for the amount so fixed and named has been paid to and received by the company. For the purposes of the sub-section referred to a sum is to be deemed to have been paid to and received by the company if a cheque for that sum has been received in good faith by the company and the directors have no reason for suspecting that it will not be paid.

If the directors go to an allotment in contravention of this section any applicant can avoid it, so far as he is concerned, within one month after the holding of the statutory meeting or, where the company is not required to hold a statutory meeting or the allotment is made after the statutory meeting, within one month after the allotment, notwithstanding that the company is in course of being wound up (Section 41, Sub-section 1). The notice of avoidance need not specify the ground of avoidance. It

*No.*_____

_____LIMITED.

ALLOTMENT LETTER [*Stamp.*]

_____193

SIR (*or* MADAM),

Pursuant to your application for Shares in_____, LIMITED, there have been allotted to you_____Shares of £_____each.

The amount payable on Allotment in respect of the Shares allotted to you (_____per Share) is £ : :

I have to request that the sum of £_____ be paid by you accordingly, on or before the_____instant, to THE_____ BANK, LIMITED.

_____

*To*_____ *Secretary.*

This Form to be sent Entier, with the amount payable on Allotment, to The_____Bank, Limited.

*No.*_____

_____ LIMITED

BANKERS' RECEIPT FOR PAYMENT ON ALLOTMENT

(To be returned to the Allottee when signed by the Bank.)

_____193

Received *from*_____

*the sum of*_____, *payment in respect of*_____*Shares allotted to him in* _____, LIMITED.

£ : : *For* THE_____BANK, LIMITED,

_____

This Receipt must be preserved, to be exchanged for the Share Certificate when ready.

must be given within the month; but legal proceedings need not be taken within the month, though they should follow promptly if the company refuses to comply with the notice.[1] The word "prospectus," as used in this section, means the document offering shares to the public upon the basis of which the applicant has actually subscribed. Those who have subscribed privately, or upon the faith of a proper prospectus, are not entitled to the return of their money merely because some other applicant is so entitled through having subscribed on the strength of another prospectus which did not state the amount of the minimum subscription.[2] A small amount of acquiescence after knowledge would, however, bar any right of rescission.[3]

The amount so fixed and named is reckoned exclusively of any amount payable otherwise than in cash (Section 39, Sub-section 2).

The amount payable on application on each share must not be less than five per cent. of the nominal amount of the share (Sub-section 3).

If these conditions have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares must be forthwith repaid to them without interest. If any such money is not repaid within forty-eight days after the issue of the prospectus, the directors of the company may render themselves liable to repay the money, with interest at five per cent. from the expiration of the forty-eight days (Sub-section 4). If, however, the directors do proceed to allotment, notwithstanding that the above-mentioned conditions have not been complied with, their liability assumes a different form, and is governed by the provisions of Section 41, Sub-section 2.[4] That is to say, any director knowingly contravening or authorising the contravention of the provisions of Section 39 as to allotment will be liable to compensate the company and the allottee for any loss, damages, or costs which they have sustained or incurred thereby. Proceedings under this sub-section cannot be commenced more than two years after the date of the allotment (Section 41, Sub-section 2).

1 National Motor Mail Coach Co., [1908] 2 Ch. 228.
2 *Per* Parker, J., Roussell *v.* Burnham, [1909] 1 Ch. at page 131.
3 Finance and Issue *v.* Canadian Produce, [1905] 1 Ch. 37.
4 Burton *v.* Bevan, [1908] 2 Ch. 240.

A company having a share capital which does not issue a prospectus, or which having issued a prospectus has not proceeded to allot any of the shares or debentures offered to the public by that prospectus, may not allot any shares or debentures unless at least three days before the allotment of either shares or debentures there has been lodged with the Registrar a statement in lieu of prospectus in the form and containing the particulars set out in the Fifth Schedule to the Act and signed by every person named therein as a director or proposed director or his agent authorised in writing (Section 40).

An allotment of shares, payable in cash, in contravention of Section 40 is voidable under Section 41, Sub-section 1, within one month of the holding of the statutory meeting, or where the company is not required to hold a statutory meeting or the allotment is made after the holding of the statutory meeting within one month after the allotment, and under Section 41, Sub-section 2, any director knowingly a party to the contravention is liable to compensate the company and the allottee.

Any allotment by a public company which has neither issued a prospectus nor lodged a statement in lieu thereof appears to be altogether void.[1] But if a statement has been lodged and a certificate obtained that the company is entitled to commence business, inaccurate or insufficient particulars do not render the statement a nullity, or an allotment absolutely void.[2]

An applicant for shares cannot waive compliance with any of the requirements of Section 39 (Sub-section 5).

The second paragraph in the foregoing allotment letter may be modified as follows to suit circumstances:—

Where the Payment on Application covers Instalment on Application and partly on Allotment also—

The amount payable on Application (____per Share) and Allotment (____ per Share) on ____Shares is	£	:	:
The amount you have paid on Application is .	£	:	:
Balance due from you	£		

1 Blair Open Hearth Furnace Co., *in re*, [1914] 1 Ch. 390.

2 This was so held in Blair Open Hearth Furnace Co., *in re*, *ante*; and by two of the Lords Justices in Jubilee Cotton Mills, in *re*, [1923] 1 Ch. 1, and by Lord Dunedin on the appeal to the House of Lords, [1924] A. C. 958. Lord Sumner, however, expressed a contrary opinion. By Section 40 of the Act of 1929, every director knowingly authorising or permitting such an allotment is liable to a fine of £100. As to companies which file a statement in lieu of prospectus see page 15 *ante*.

Where the Payment on Application exceeds the Amount due on Application and Allotment—

The amount you have paid on Application is .	£	:	:
The amount payable on Application (____per Share) and Allotment (____per Share) on ____Shares is	£	:	:
Balance due to you	£		

for which amount a cheque is annexed.

Where the Payment on Application exactly covers the Amount due upon Application and Allotment—

The amount you have paid on Application is .	£	:	:
The amount payable on Application (____per Share) and Allotment (____ per Share) on ____Shares is	£	:	:

which is discharged by crediting you with the amount paid on Application as above.

Another form of allotment letter which is commonly used by public companies is given on page 72, *post*. It will be observed that this has printed with it a Form of Receipt for each instalment, and side by side with each receipt a note showing serial number, description of call, and amount. These notes, being divided from each other and from the receipts by perforations of the paper, can be detached one by one by the bankers and passed on to the company, the document in each case being returned to the shareholder. If this form be used the allotment stamp will also suffice for the various receipts, no matter what the amounts; but there must be no perforation of this part of the paper, the allotment letter and receipts forming one complete document.

Where allotments may be split, the Letter of Allotment should state the procedure for obtaining split letters of renunciation.

Where different forms of allotment letters are used in accordance with modifications shown on this and the previous page, the words "Form A," "Form B," &c., may be printed on the top right-hand corner, so that each form can be readily distinguished.

Where no shares are allotted in pursuance of the application a letter of regret is sent, to which is usually attached a printed

_____, LIMITED.

ISSUE of 200,000 PREFERENCE SHARES of £1 each.

*No.*_____ LETTER OF ALLOTMENT [*6d. Stamp.*]

*To*_____ _____

SIR (*or* MADAM), _____193

In response to your application for_____Preference Shares of the above-named Company, I have to inform you that the Directors have allotted you_____Shares.

The amount payable on application is	£
The amount payable on allotment is..	£
Making together	£
The amount already paid by you is	£
There is, therefore, a balance due from you of	£

Please pay this sum to the Company's Bankers, THE_____BANK, LIMITED, forthwith.

The remaining instalments will be payable as to 5*s.* per Share on the_____, 193 ; and as to 5*s.* per share on the_____, 193 .

This letter must be produced at the Bank on payment of each instalment, and the proper receipt taken.

The Share Certificates, when ready (of which due notice will be given), will be delivered in exchange for this Allotment Letter, duly signed by you, and the Bankers' Receipts for the amounts paid thereon.

_____*Secretary.*

NOTE.—This Letter should be carefully preserved.

Received Share Certificate No._____for the above-mentioned Shares.

*Date*_____

*Signature*_____

This Letter must be sent Entire to the Company's Bankers

_____, LIMITED.

Bankers' Receipt for Final Instalment payable on_____, 193 .

Received *the_____day of_____, 193 , the sum of £_____, being the Final Instalment of 5s. per Share payable on the_____, 193 .*

For THE_____BANK, LIMITED.

_____, *Cashier.*

_____LIMITED

Final Instalment payable on.... ...., 193 .

*No.*_____

£_____

*Date paid*_____, *193 .*

_____, LIMITED.

Bankers' Receipt for Instalment payable on_____, 193 .

Received *the_____day of_____, 193 , the sum of £_____, being the Instalment of 5s. per share payable on _____, 193 .*

For THE_____BANK, LIMITED.

_____, *Cashier.*

_____LIMITED.

Instalment payable on....., 193

*No.*_____

£_____

Date paid....., 193 .

_____, LIMITED.

Bankers' Receipt for amount payable on Allotment.

Received *the_____day of_____, 193 , the sum of £_____, being the amount payable on Allotment.*

For THE_____BANK, LIMITED.

_____, *Cashier.*

.....LIMITED.

Amount payable on Allotment.

No......

£_____

Date paid....., 193 .

form of cheque, duly stamped. A form similar to the following may be used:—

_____, LIMITED.

_____

_____193 .

SIR,

Referring to your application for Shares in this Company, I regret to say that, owing to the large subscription for the same, the Directors have been unable to make you any allotment. I therefore beg to forward herewith a cheque on the Company's Bankers for £ : : , the amount of the deposit paid by you.

*To*_____

_____

Secretary.

_____, LIMITED

_____

_____193 . [*Twopenny Stamp.*]

TO THE_____BANK, LIMITED.

Pay to the Order of_____

the sum of_____, the amount of deposit paid on application for Shares of this Company not allotted.

£ : :

_____ } *Directors.*

_____

Signature of Payee.

_____

Secretary.

When "vendors' shares" have to be dealt with, or indeed any shares allotted in whole or in part for a consideration other than cash, the requirements of Section 42, Sub-section 1 (*b*), must be borne in mind. In such cases the company must, within one month after allotting the shares, lodge with the Registrar a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which the allotment was made, such contracts being duly stamped. Where such a contract is not reduced to writing, particulars of it in the prescribed form, and stamped with the same stamp duty as would have been payable if the contract had been in writing, must be lodged within one month after the allotment; and the Registrar may, as

a condition of filing the particulars, require the stamp duty to be adjudicated (Sub-section 2). Every director, manager, secretary, or other officer knowingly a party to any default under these provisions is liable to a heavy fine for every day during which it continues; but the Court, on being satisfied that the omission was accidental or inadvertent, may extend the time for lodging on the application of the company or any person liable for the default. Legal advice will sometimes be necessary as to what documents should be lodged. A return must also be lodged stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.[1]

The contract to take shares need not necessarily be in writing, though for obvious reasons it always should be. Applications for shares may be withdrawn by word of mouth, or by conduct, as well as by communication in writing; but if the notice of withdrawal reaches the company after the letter of allotment has been posted it will be ineffectual.[2]

If the application be made subject to a condition, it is often a question whether a completed contract has arisen. In the same way, if a condition be introduced into the letter of allotment in answer to an unconditional application, there will be no contract. The date of a withdrawal by letter is the date of the receipt of the withdrawal by the company, not the date of posting.[3] Unless dispensed with by the applicant, a notice of acceptance is absolutely necessary to make the contract binding. The notice of acceptance, as before stated, is generally a letter of allotment, and the date of posting the letter marks the completion of the contract.[4] Great care should be therefore taken to preserve an accurate record of the time of posting.

Shares should never be allotted to an infant, idiot, or lunatic; and in the case of a married woman, where there is any liability on the shares, it may be advisable to obtain satisfactory evidence that she has separate property.

The offer to take shares must be accepted either at the time fixed by the contract itself, or, if there is no date fixed, within a reasonable time, the length of which will depend on circumstances, otherwise the application will be considered as declined.

[1] See page 86, *post*, for a form of Return of Allotments.

[2] Harris's Case, [1872] L. R. 7 Ch. 587.

[3] Byrne *v.* Van Tienhoven, [1880] 5 C. P. D. 344.

[4] Household Fire Insurance Co. *v.* Grant, [1879] 4 Ex. D 216.

Of course the applicant may acquiesce in an allotment of shares after a long delay; but in most cases delay would be fatal.

Companies and private partnerships (unincorporated) may become the allottees of shares. If therefore a partnership firm applies for and receives an allotment of shares, the members of the firm should, properly speaking, be entered in the allotment list as joint holders. If a company applies for shares, inquiry should be made whether the company has power under its Memorandum, Deed of Settlement, Charter, or private Act of Parliament to hold shares. If there is such power, the company will be entered on the list in its corporate name.

Occasionally the shareholders in a company become entitled to have new shares allotted to them, and it may be convenient to allow them, if they desire to do so, to renounce their right to the allotment of the new shares. This is effected by means of a properly stamped [1] letter of renunciation. The shareholder entitled to have the new shares allotted to him is generally given the option of appointing a nominee in his stead, who signs a form of acceptance attached to the letter of renunciation, or otherwise signifies his assent to the renunciation. Letters of renunciation must not be confused with letters of withdrawal, which are merely withdrawals of the applications for shares before there is a completed contract, and which require no stamp.

An omission to observe the requirements of the Stamp Act as to stamping a letter of allotment or of renunciation renders the secretary liable to a penalty (Stamp Act, 1891, Section 79).

The following is a form of letter of renunciation applicable to the case of an allotment of new shares:—

To the Secretary of
_____, LIMITED.

SIR,

I, the undersigned A. B., being the registered holder of_____ Shares in the above-named Company, which I have sold to C. D., of_____, hereby renounce in favour of the said C. D. all right, title, and interest which I may have in respect of the Shares hereinbefore mentioned in or to the new Capital of £_____ authorised to be created by a special resolution of the above-named Company passed at a General Meeting held on the_____day of _____193 . And I the said C. D. hereby assent to such renunciation as aforesaid.

Dated the_____day of_____193 .

[1] See page 344, *post.*

Witness to the Signature of the said A.B.
*Name*_____
*Address*_____
*Occupation*_____

A. B.

STAMP.

Witness to the Signature of the said C. D.
*Name*_____
*Address*_____
*Occupation*_____

C. D.

ANOTHER FORM
(*Applicable to Cases of Reconstruction*)

To the Directors of

_____, LIMITED.

Referring to your circular letter of the_____193 , I hereby renounce in favour of_____the Shares in_____. Limited, to which I am entitled in respect of the Shares held by me in_____, Limited (in liquidation).

*Name*_____ STAMP _____

*Address*_____

*Description*_____

*Dated the*_____*day of*_____*193* .

The manner in which the process of allotment is actually carried out in practice will now be considered. In the first place, attention must be carefully directed to the provisions of the Articles regarding allotment. If the requirements of the Articles—*e.g.* as to the number of directors to make the allotment &c.—be not rigidly observed, the allotment may be invalidated. The arrangements made with the bankers as to the manner of dealing with the letters of application for shares as they come in should be made before the issue of the prospectus, if possible. The application forms in many cases will be for different classes of shares, and coloured accordingly. The bankers should, in cases where applications are likely to be numerous, be requested to keep a separate account for each class of shares. The work can be further facilitated by arranging with the bankers to enter the particulars on separate sheets

instead of in the pass book, the total amount only being then entered in the pass book. These separate sheets can in that case be prepared and dealt with immediately by as many clerks as may be necessary without waiting for the writing up of the pass book. This will greatly facilitate the subsequent steps necessary for successfully conducting the allotment. The bankers, if no request is made to them on this point, may, for their own convenience, number the applications as they come in, and enter numbers only in the pass books, without giving the names of the applicants; but they should be requested to enter the names of the applicants in the pass books and leave the numbering to the secretary. The secretary would then affix numbers to the allotment letters, which last-mentioned numbers, appearing on all subsequent forms and notices, might be entered in the pass books by the bankers against the amounts paid on account of allotment and future calls. By this means payments or deposits made on application are easily distinguished from payments made on account of allotment or further calls, and the arrangement will assist the bankers should they be required to give a certificate for Stock Exchange purposes as to what has been paid on account of applications.

The advantage of having application forms for different classes of shares printed on paper of different colours has already been pointed out, but it must not be too readily assumed that an application is necessarily made for the class of shares indicated by the colour of the application form. Experience shows that applicants for shares alter application forms in a variety of ways. It is therefore essential to examine all the application forms carefully to discover what alterations (if any) have been made, and whether the applications are actually made for the class of shares (ordinary, preference, &c.) indicated by the colour of the form.

The names and amounts having been checked by the pass book, the applications should be numbered at the top right-hand corner in the order in which they have been entered in the pass book, and then handed to the clerks for entry on the sheets prepared for list of applications and allotments, of which a specimen form is given on page 80, *post*. It is intended that this list shall, until the Register of Members has been written up, serve as the Register of Members. Care must be taken that the list satisfies the requirements of Section 95 of the Act,

which are set out under the heading of "REGISTER OF MEMBERS," page 102 *et seq., post.*

In *Ex parte Cammell* (1894, 2 Ch. 392) allotment sheets were prepared at the company's office before the Register of Members had been written up for use at a directors' meeting. They contained the names of proposed allottees, with the particulars concerning each required to be contained in the Register of Members by The Companies Act, 1862 (Section 25), except that the occupations of the proposed allottees were not stated. In these sheets one column was provided for reference to the formal Register of the company. The sheets were fastened together by a paper fastener, and they bore the title of "Allotment Book," it being intended that they should be eventually bound up together. At the directors' meeting the sheets containing the allotments which were made were signed by the chairman and secretary. The company had no formal Register until about two months later, when the entries in the allotment sheets were copied into the formal Register. The Court of Appeal considered that these sheets could not be regarded as a Register of Members, because they were not treated as such pending the completion of a formal book. But it is clear from this case that if the allotment sheets had actually been intended by the directors as a Register of Members within The Companies Act, 1862, and had been so treated by them, the mere informality of the entry in some particulars would not have made the registration invalid. Lord Justice Lindley said, in giving judgment,[1] "A book or document intended to be a Register may be admitted as a Register, although the requirements of the Act of Parliament (*i.e.* The Companies Act, 1862, Section 25) as to keeping a Register have not been regularly complied with; but I am not aware of any authority for saying that rough memoranda or sheets of paper not intended as a Register at all, but intended as materials from which a Register may be prepared, can be a Register. It is clear from the evidence that these allotment sheets were never intended to be the Register. They were allotment sheets giving certain details respecting the allottees, and containing a column referring to the Register, and were intended as materials from which the Register was to be formed as distinguished from the Register itself. We should be straining the language of the Act of Parliament and straining the

[1] *Ex parte* Cammell, [1894] 2 Ch., at page 398.

evidence if we were to hold that these sheets constituted the Register." It will be observed that the sheets in this case contained references to the formal Register, thereby clearly showing that the book subsequently compiled was to be the Register of Members.

The first names entered on the list made will be those of the subscribers to the Memorandum and Articles of Association, and immediately after them the names of persons who have applied for shares through the company's bankers.

If the allotment sheets are intended to be regarded as the Register of Members the column "Folio in Register of Members" should be altered into "Folio in New Register of Members." The date of entry as a member will be shown by affixing the date of allotment against each name immediately after the resolution allotting shares has been passed.

It is recommended that the lists be made out on loose sheets, as any number of clerks can then work at the same time, each clerk being supplied with applications, regularly numbered and in order, equal to the lines on a certain number of sheets. In the case of a small or moderate application list, where the number can be estimated within a reasonable limit, a blank may be left between the numbers identifying the different classes, the first beginning with the units, the second with 1,001, the third 2,001, and so on; but in the case of very full lists it is better to treat each one separately, and, in addition to the number, which in each instance may then commence with units, the classes should be distinguished by the letters O (Ordinary), P (Preference), D (Debentures), &c., as the case may be.

If necessary, the applications for ordinary shares may be entrusted to one clerk, those for preference shares to another, for debentures to another, and so on; but by the observance of a proper system, and with experienced assistants, there is no reason why an allotment of any magnitude could not be prepared for in a very short space of time.

It frequently happens that applications are made, by letter or on one form, for two classes of shares. In such cases the simplest thing is to number the applications as for one class only, and fill in the particulars regarding the other class on another form, making reference thereon to the application itself. One application form for different classes of shares will of course be binding; but where there is time or opportunity for doing

APPLICATIONS FOR AND

Date of Application.	No. of Application and Allotment Letter	Name.	Address.	Description.	No. of Shares Applied for.	Amount of Deposit.

ALLOTMENTS OF SHARES

Date of Allotment.	No. of Shares Allotted.	Distinctive Numbers of Shares Allotted.		Further Amount payable on Allotment.	When Paid.	Total due in respect of Shares Allotted.	Amount Returnable.	Folio in Register of Members.	Number of Certificate.	Remarks.
		From	To							

so, it may be more regular to obtain the signature of the applicant to any new forms thus written out, the original application being, if necessary, modified. In some cases an application for shares may be accompanied by an amount which is insufficient for the payment in respect of that number. In such an event an applicant would, if necessary, be at once advised that a further amount would have to be remitted, or the application reduced.

It is important that the particulars given on the applications be copied exactly and completely on the lists, all points being noted in the remarks column, even to the names of the brokers, if appearing on the forms. If any inaccuracies appear they can be rectified after reference to the applicant.

Where allottees wishing to transfer any part of their allotment to other persons (where the right to split allotment exists) have obtained Split Letters of Renunciation from the company, provision should be made as they are returned for checking the number of shares comprised in the Split Renunciation so that they shall agree with the amount of the original allotment.

The Split Letters of Renunciation sent in response to the request of allottees should bear a distinguishing stamp thereon.

Observance of these details will greatly assist the directors in apportioning the shares, as the source of an application, or the right of any applicant to priority in allotment, will then be easily seen.

Simultaneously with the application lists address books, giving the name and address of each applicant and his distinguishing number, should also be written up, so that any application can be referred to instantly, and alterations or modifications in the same noted both on the form and in the list. The authority for any important alteration should be given in writing, and such writing attached to the application itself, and preserved. When the particulars are entered in the address books, the application forms may be passed on to another clerk, who will address the envelopes, putting the number of the form on the top left-hand corner of the envelope. In order to avoid confusion, numerical order should be observed in every case. It is almost impossible to attach too much importance to keeping the work close up to time. For this reason the forms for allotment letters are generally printed beforehand, as soon as an idea can be gained of the number required. In order to prevent

any improper use being made of the form of an allotment letter with the name of the secretary printed thereon, a stamp with facsimile of the secretary's signature might be impressed on each allotment letter as checked.

Assuming that the lists are all complete, the columns should be added up and checked. For the purpose of comparison with the Cash Book, the amounts in the cash columns might be carried forward; but in order to meet the requirements of the Stock Exchange [1] precisely it is better that the columns for shares applied for and shares allotted be added up separately and summarised at the end: thus—

Folio.	Shares applied for.	Shares allotted.
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
&c.		
Total		

The act of allotting shares is entirely within the province of the directors, and therefore need not be touched upon here. It is of the utmost importance, however, for the secretary to satisfy himself that the total of shares allotted, together with those subscribed for by the signatories to the Memorandum and Articles, does not exceed the number offered for subscription, and that in no case the number allotted is in excess of the applications. If the figures are found to be correct, the applications should be marked in accordance with the list, and with ink or pencil of a colour different from that previously used. For partial allotments the actual figures may be given, the letter

[1] See Appendix C, page 447, *post*.

"F" for full allotments, "R" (letter of regret) when no allotment has been made, and "W" where a withdrawal has occurred. The forms can then be given out in batches to the clerks deputed to write out the allotment letters, the application lists being handed to another set of clerks, who will fill in the amounts payable on allotment and other particulars. This will form a double check, which will practically be a safeguard against mistakes. The signature of the secretary alone is frequently made a sufficient authority to the bankers for the payment of cheques attached to letters of regret, but should the signatures of directors be also required care must be taken to secure the attendance of certain members of the board. Where it is impossible to issue all the allotment letters &c. at one time it is well, as a rule, to adhere strictly to the numerical order, and not take, for instance, the allotments in full, or partial allotments only. The allotment letters, having been written out, should be carefully read over with the envelopes and the lists, the following particulars being observed:—

Number,
Name and address,
Number of shares allotted,
Amount payable on allotment,

or, in case of withdrawal or letter of regret, the amount returnable.

When these details are found to be in order, nothing will remain but the posting of the allotment letters, in connection with which, however, it is necessary for the clerk or clerks to keep an accurate record in writing of the distinctive numbers of the letters posted and the time and place of posting, so that such record can be produced in evidence if required.

In a small allotment the details may be recorded in the Minute Book in the following manner:—

Applications for Shares numbered_____to_____were submitted, and it was resolved that, in pursuance of applications, Shares be and are hereby allotted as follows:—

Number.	*Names of Applicants.*	*No. of Shares.*

Where, however, the list is a very long one, and it would involve considerable work to make a full entry on the minutes, the Allotment Book might be produced for reference whenever necessary, and the record made in the following form:—

Applications for Shares entered in the Application Book, and numbered from_____to_____inclusive, having been laid before the Board, it was—

Resolved—"That the number of Shares respectively entered in the column of the Application Book headed 'No. of Shares Allotted' opposite the name and address of each applicant be and are hereby allotted to each applicant in pursuance of his application, and that in cases where there is no number of shares appearing in the column of shares allotted opposite the number applied for no allotment be made, and that the deposits paid on application therefor be returned to the applicants."

A careful chairman would probably write his initials, not only at the end of the list, but at the foot of each page, for the purpose of identification.

It is assumed that the list or lists originally written out would be adopted permanently (which, strictly speaking, is the correct plan), and for convenience sake be bound up in book form. In practice, however, on account of numerous alterations, and in order to have lists of a creditable appearance, it is by no means an uncommon thing to have books of the requisite size prepared, into which, as soon as possible, the whole of the details regarding the applications and allotments are copied. It is scarcely necessary to point out that the greatest care should be exercised in the examination of the new lists with a view to accuracy.

By Section 42, whenever a company limited by shares (or a company limited by guarantee and having a share capital) makes *any allotment* of its shares, the company must within one month thereafter lodge with the Registrar—(*a*) A Return of the Allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount (if any) paid or due and payable on each share; and (*b*) In the case of shares allotted in whole or in part for a consideration other than cash, the documents and Return mentioned on page 73, *ante*.

As a rule of practice it is convenient and permissible to include in each Return all allotments made during the period of a month dating from the day on which the first allotment included in the Return is made. Thus, if the first allotment be made on August 4, all further allotments made up to and including September 3 may be included in the Return to be filed at the latter date; and if there be no further allotment of shares until September 15 then the next Return may include the allotments made on September 15 and all subsequent allotments up to and including October 14. Where all the shares issued are subscribed for by the signatories when signing the Memorandum a Return of Allotments is not required.

As to the manner of keeping the applications and other forms, either of two methods may commend itself to the attention of secretaries. The first is to provide a guard book of a suitable size, the numbering of the pages corresponding with the distinctive numbers given to the various applicants. This book may be lettered "Applications &c." and contain, in their natural order of sequence, the application form, the allotment letter, the receipt for the share certificate, and the bankers' receipts for the various payments. Where there are several thousands of the papers the use of guard books would be rather cumbersome, and the various *classes* of these papers could then be bound together (of course in numerical order) in a limp cover lettered on the outside. To do them up in paper parcels is not advisable, as they may have to be frequently referred to, and, independently of the inconvenience of constantly opening a bundle, there is the danger of the papers being misplaced, if not lost. The binding need not be in any way elaborate, and therefore could be done at the company's office.

At this stage, if not earlier, it would be well for a secretary to provide a guard book for "Printed Matter," into which could be pasted and kept for reference copies of all printed papers from the prospectus onward.

The form of Return of Allotments is shown on page 86, *post*.

*No. of Company*_____ FORM No. 45.

"THE COMPANIES ACT, 1929"

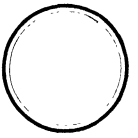
RETURN OF ALLOTMENTS

OF

_____, LIMITED,

from the[1]_____day of_____, 193 ,

to the_____day of_____, 193 .



A 5*s*. Companies Registration Fee Stamp to be impressed here.

Made pursuant to Section 42, Sub-section 1.

(To be lodged with the Registrar within one month after the allotment is made.)

[2] Number of the_____Shares allotted payable in cash _____

[2] " " _____ " " " " _____

[2] Nominal amount of the_____Shares so allotted £_____

[2] " " " _____ " " £_____

[2] Amount paid or due and payable on each such_____Share £_____

[2] " " " " " " _____ " £_____

Number of Shares allotted for a consideration other than Cash _____

Nominal Amount of the Shares so allotted . . . . £_____

Amount to be treated as paid on each such Share . . £_____

The Consideration for which such Shares have been allotted is as follows:—

_____

_____

NAMES, ADDRESSES, AND DESCRIPTIONS OF THE ALLOTTEES

Surname.	Christian Name.	Address.	Description.	Number of Shares allotted. Preference.	Ordinary.	Other Kinds.

*Signature*_____

*Officer*_____

(State whether Director, Manager, or Secretary.)

Date 193 .

NOTE.—In making a Return of Allotments under Section 42 of The Companies Act, 1929, it is to be noted that—

1. When a Return includes several Allotments made on different dates, the dates of only the first and last of such Allotments should be entered at the top of the front page, and the registration of the Return should be effected within one month of the first date.
2. When a Return relates to one Allotment only, made on one particular date, that date only should be inserted, and the spaces for the second date struck out and the word "made" substituted for the word "from" after the name of the Company.

Distinguish between Preference, Ordinary, or other descriptions of Shares.

*Presented by*_____

UNDERWRITING.

THE payment of commission on an issue of shares is governed by Section 43, under which any company may pay a commission within the limit prescribed by the section to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company. Payment of the commission must be authorised by the Articles of Association; the commission paid or agreed to be paid must not exceed ten per cent. of the price at which the shares are issued or such lower rate as may be prescribed by the Articles; and the amount or rate of the commission and the number of shares which persons have agreed for a commission to subscribe must be disclosed as required by the section. The disclosure of the rate of commission and of the number of shares subscribed for must in the case of shares offered to the public for subscription be made in the prospectus. In the case of shares not offered to the public for subscription the required disclosure must be made in the statement in lieu of prospectus or in a statement in the prescribed form (signed in like manner as a statement in lieu of prospectus and lodged with the Registrar before the payment of the commission), and where a circular or notice (not being a prospectus [1]) inviting subscriptions for shares is issued, in that circular or notice. If the Articles authorise a rate, this would not cover the payment of a lump sum in cash.[2]

With this exception and the exception of lawful brokerage, and the further exception mentioned later, no company may apply any of its shares or capital money, either directly or indirectly, in payment of any commission, discount, or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, or procuring or agreeing to procure subscription, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company, or to the contract price

1 See, *e.g.*, Sherwell *v.* Combined Incandescent Syndicate, [1907] W. N. 110.
2 Booth *v.* New Afrikander Gold Mining Co., [1903] 1 Ch. 295.

*No. of Company*_____ FORM No. 58.

"THE COMPANIES ACT, 1929"

A 5*s.* Companies Registration Fee Stamp must be impressed here.

STATEMENT

(Pursuant to Section 43, Sub-section (1) (*c*) (ii) and (*d*), of The Companies Act, 1929)

OF THE

AMOUNT OR RATE PER CENT. OF THE COMMISSION PAYABLE IN RESPECT OF SHARES AND OF THE NUMBER OF SHARES WHICH PERSONS HAVE AGREED FOR A COMMISSION TO SUBSCRIBE ABSOLUTELY

by

_____

_____

LIMITED.

Name of Company . . .	_____ _____ _____Limited.
Article of Association authorising Commission	Number_____
* Particulars of amount payable as Commission for subscribing, or agreeing to subscribe, or for procuring or agreeing to procure subscriptions, for any Shares in the Company; or	Payable £_____
* Rate of such Commission . .	Rate per cent._____
Date of Circular or Notice (if any) not being a Prospectus, inviting subscriptions for the Shares and disclosing the amount or rate of the Commission	Date_____193 .
Number of Shares which persons have agreed for a Commission to subscribe absolutely . .	Number_____

Signatures of all the Directors or of their Agents authorised in writing.

_____

_____

_____

_____

_____

_____

*Presented by*_____

_____

Dated the_____day of_____193 .

* The Commission paid or agreed to be paid must not exceed ten per cent. of the price at which the Shares are issued or the amount or rate authorised by the Articles, whichever is the less.

of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise (Section 43, Sub-section 2). The exception referred to above is the power to issue shares at a discount with the sanction of the Court under Section 47, which is dealt with under CAPITAL on page 168.

Section 43 does not prevent a company from giving subscribers for shares at par the option of taking further shares at par at a future time. The benefit to a shareholder from being able to sell his shares at a premium is not in such a case acquired by him at the expense of the company's capital.[1] It is further declared by Sub-section 4 of Section 43 that a vendor to, promoter of, or other person who receives payment in money or shares from a company, has, and always has had, power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

This section applies to private companies as well as public companies, and commission illegally paid can be recovered by the company from the recipient.[2] The form prescribed in the case of a company whose shares are not offered to the public for subscription is given on the preceding page.

The underwriting contract is often accompanied by a formal application for the shares, and such an Application Form issued to intending underwriters is not subject to the prohibition of Section 35, Sub-section 3, stated on page 59, *ante*; if the contract is not so accompanied, the number of shares subscribed for by the public will be ascertained, and then the underwriter will be called on to sign a formal application for the remainder. In many cases the underwriting agreement itself establishes a contract to take the shares at once, in which case the shares would be allotted in pursuance of that contract.[3] In the last-mentioned case legal advice should be taken before allotting the shares, as the underwriting letter may not constitute a contract to take shares.[4]

The stamp on an underwriting agreement is sixpence if under hand only, or ten shillings if under seal.

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1 Hilder *v.* Dexter, [1902] App. Ca. 474.
2 Dominion of Canada &c. *v.* Brigstocke, [1911] 2 K. B. 648.
3 See *Ex parte* Audain, [1889] 42 Ch. D. 1.
4 *Re* Consort Deep Level Gold Mines, *ex parte* Stark, [1897] 1 Ch. 575.

The following is a form of agreement with promoters:—

_____, LIMITED.

Capital £_____, divided into_____Shares of £_____each.

To A. B. and C. D., Esquires.

GENTLEMEN,

With reference to the Prospectus of the above Company, and in consideration of your agreeing to pay to me [us] a Commission of_____ per cent. in fully paid Shares of the Company, I [we] hereby undertake on your request to subscribe or find responsible subscribers, at or before the time for closing the list for subscription of Shares fixed by the said Prospectus, and on the terms stated therein, or any modification thereof, for_____Shares of £_____each of the Capital of the above Company, or such less number as you may accept this undertaking for, and to pay the instalments on the dates specified in the said Prospectus; and I [we] herewith hand you an application for the said Shares, together with_____ per Share deposit.

It is agreed that I am [*or* we are] to receive the said Share Commission upon the amount guaranteed by me [us], and accepted by you as above mentioned, within fourteen days after completion of the purchase by the said Company of the properties mentioned in the said Prospectus.

It is further agreed that this Underwriting Letter is irrevocable, provided always that_____£_____Shares are underwritten or applied for prior to the public advertisement of the said Prospectus.

In the event of my [our] failing to comply with the terms herein stated, I [we] authorise you in my [our] name as my [our] agent to apply for the said Shares and also to hand to the Company my [our] Application Form, which I [we] hereby undertake not to withdraw.

*Ordinary Signature*_____

*Name (in full)*_____

*Address*_____

*Occupation*_____

*Date*_____

We accept the above terms of agreement.

_____A. B.

_____C. D.

_____STREET, LONDON, E.C.,

_____193 .

COMMENCEMENT OF BUSINESS.

THERE are no restrictions on the commencement of business by a private company or a company which has not a share capital, and accordingly such a company may commence business as soon as incorporation has been effected.

A public company, however, having a share capital, which issues a prospectus inviting the public to subscribe for its shares, is prohibited by Section 94 from commencing to carry on business or exercising any borrowing powers unless—(A) Shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the "minimum subscription"[1]; (B) Every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares "offered for public subscription"; and (C) There has been lodged with the Registrar a statutory declaration by the secretary or one of the directors, in the prescribed form, that these conditions have been complied with. The form which must be lodged by a company which has issued a prospectus is shown on the following page.

The Registrar on the lodging of this statutory declaration certifies that the company is entitled to commence business. The certificate, which is commonly referred to as "the Trading Certificate," is conclusive evidence that the company is so entitled (Section 94, Sub-section 3).

Any contract which is made by a company before the date at which it is entitled to commence business is provisional only, and is not binding on the company until that date (Sub-section 4). If, therefore,[2] a company never becomes entitled to carry on business, it cannot be sued on a contract, whether express or implied.[3]

Nothing in the above-mentioned section prevents the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures (Sub-section 5).

---

[1] See page 55, paragraph 5, *ante*.

[2] This of course, has no application to private companies.

[3] "Otto" Electrical Manufacturing Co., [1906] 2 Ch. 390.

*No. of Company*_____ FORM No. 44.

"THE COMPANIES ACT, 1929"

DECLARATION

MADE ON BEHALF OF

A 5*s*. Companies Registration Fee Stamp must be impressed here.

_____, LIMITED, that the provisions of Section 94, Sub-section 1 (*a*) and (*b*), of The Companies Act, 1929, have been complied with.

Pursuant to Section 94, Sub-section 1 (*c*).

[To be used by a company which issued a prospectus on or with reference to its formation.]

*Presented by*_____

I,_____, of_____,
being [the Secretary *or* a Director] of_____, LIMITED,
do solemnly and sincerely declare—

THAT the amount of the Share Capital of the Company offered to the public for subscription is £_____

THAT the amount stated in the Prospectus as the Minimum Amount which, in the opinion of the Directors, must be raised by the issue of Share Capital, in order to provide for the matters specified in paragraph 5 in Part I of the Fourth Schedule to The Companies Act, 1929, is £_____

THAT Shares held subject to the payment of the whole amount thereof in cash have been allotted to the amount of £_____

THAT every Director of the Company has paid to the Company on each of the Shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on Application and Allotment on the Shares offered for public subscription.

And I make this solemn Declaration conscientiously believing the same to be true, and by virtue of the provisions of The Statutory Declarations Act, 1835.

Declared at_____
_____
the_____day of_____,
One thousand nine hundred,
and_____
_____,
before me,
_____

_____

A Commissioner for Oaths [or *Notary Public* or *Justice of the Peace*].

Where a public company having a share capital does not make an offer of shares to the public for subscription there is no obligation to comply with the requirement of the section in respect of minimum subscription, and paragraph (B) above is

varied by requiring the proportion paid on application and allotment by directors to be equal to that on the shares "payable in cash" instead of "offered for public subscription."

Such a company is required to lodge with the Registrar a Statement in Lieu of Prospectus in the form and containing the particulars prescribed by Section 40 and the Fifth Schedule (see page 16, *ante*).

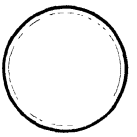
The statutory declaration by such a company is as follows:—

No. of Company..... FORM No. 44A.

"THE COMPANIES ACT, 1929"

DECLARATION

MADE ON BEHALF OF



A 5*s*. Companies Registration Fee Stamp must be impressed here.

----------, LIMITED,

that the provisions of Section 94, Sub-section 2 (*b*), of The Companies Act, 1929, have been complied with.

Pursuant to Section 94, Sub-section 2 (*c*).

[To be used by a company which has delivered to the Registrar of Companies a statement in lieu of prospectus.]

Presented by----------

I,----------, of----------,
being [the Secretary *or* a Director] of----------, LIMITED,
do solemnly and sincerely declare—

THAT every Director of the Company has paid to the Company on each of the Shares taken or contracted to be taken by him and for which he is liable to pay in cash a proportion equal to the proportion payable on Application and Allotment on the Shares payable in cash.

And I make this solemn Declaration conscientiously believing the same to be true, and by virtue of the provisions of The Statutory Declarations Act, 1835.

Declared at----------
----
the------day of----------,
One thousand nine hundred and----------
----------,
before me,

A Commissioner for Oaths [or *Notary Public* or *Justice of the Peace*].

If any company commences business or exercises borrowing powers in contravention of the section, every person responsible

is, without prejudice to any other liability, liable to a fine not exceeding £50 a day for every day during which the contravention continues (Sub-section 6). The section does not apply to (1) a private company, (2) a company registered before 1st January, 1901, (3) a company registered before 1st July, 1908, which has not issued a prospectus inviting the public to subscribe for its shares.

AUDITORS

THE following are the chief statutory provisions relating to the auditors of a company:—

Every company must at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting (Section 132, Sub-section 1).

If an appointment of auditors is not made at an annual general meeting, the Board of Trade may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services (Sub-sections 2 and 6).

There may not be appointed to the office of auditor—

A director or officer of the company;

A partner or an employee of an officer of the company (except where the company is a private company);

A body corporate (excepting that a body corporate acting under an appointment made before 3rd August, 1928, may continue to act) (Section 133).

In the application of this provision to Scotland the expression "body corporate" does not include a firm (Section 133, Sub-section 3).

No person other than a retiring auditor can be appointed auditor at an annual general meeting unless notice of intention to nominate him has been given by a shareholder not less than fourteen days before such meeting. The company must in that case send a copy of such notice to the retiring auditor, and also give notice thereof to the shareholders by advertisement, or in any other mode allowed by the Articles, not less than seven days before the annual general meeting. If, however, after notice of such intended nomination has been given, the annual general meeting is called for a date fourteen days or less after that notice has been given, such notice is, nevertheless, deemed a good one; and

the notice to be sent or given by the company may be sent or given at the same time as the notice of the annual general meeting (Section 132, Sub-section 3).

The first auditors of the company may be appointed by the directors at any time before the first annual general meeting, and if so appointed shall hold office until that meeting, unless previously removed by a resolution of the shareholders in general meeting. If the directors do not appoint the first auditors the company in general meeting may appoint them, and thereupon the power of the directors to appoint the auditors cease (Sub-section 4).

At such general meeting any other persons who have been nominated for appointment, and of whose nomination notice has been given to the members not less than seven days before the meeting, may be appointed auditors.

The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors (if any) may act (Sub-section 5).

The remuneration of the auditors must be fixed by the company in general meeting, except that the remuneration of any auditors appointed by the directors before the first annual general meeting, or to fill any casual vacancy, may be fixed by the directors (Sub-section 6).

The auditors must make a report to the shareholders on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office, and the report must state—(*a*) Whether or not they have obtained all the information and explanations they have required; (*b*) Whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company (Section 134, Sub-section 1). If the accounts laid before the meeting do not comply with the requirements of Section 128 with respect to loans to directors and directors' remuneration, the auditors must, so far as they are reasonably able, give

the required particulars (Section 128, Sub-section 4) The auditors have a right of access at all times to the books and accounts and vouchers of the company, and are entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of their duties. In the case of a banking company incorporated after 15th August, 1879, which has branch banks beyond the limits of Europe, it suffices if the auditor has access to such copies and extracts of such books and accounts as have been transmitted to the head office in Great Britain (Section 134, Sub-section 2).

It is sufficient if the auditors send their report to the secretary, leaving him or the directors to perform the duties imposed by statute as to convening a general meeting at which the report will be read.[1]

Auditors are entitled to be present at any general meeting of the company at which accounts examined or reported on by them are to be laid before the company, and to make any statement or explanation they desire to make with respect thereto (Section 134, Sub-section 3).

Auditors may not rely on any provision of the Articles or of any contract with the company or otherwise exempting them from or indemnifying them against liability for negligence, default, breach of duty, or breach of trust of which they are guilty in relation to the company (Section 152). This section does not affect any such provision in force on 1st November, 1929, until six months after that date, nor does it affect any right to indemnity in respect of matters done or omitted to be done whilst any such provision was in force, or any right to seek relief under Section 372.

The auditors' report must be attached to the balance sheet and be read before the company in general meeting, and must be open to inspection by any member (Section 129).[2]

There are many cases in which the duties of auditors have been discussed. "It is the duty of an auditor to bring to bear

1 Allen, Craig & Co., *in re*, [1934] 1 Ch. 483.

2 This means any member entitled to be and actually present at the meeting.

on the work he has to perform that skill, care, and caution which a reasonably competent, careful, and cautious auditor would use. . . . An auditor is not bound to be a detective, or as was said, to approach his work with suspicion, or with a foregone conclusion that there is something wrong. He is a watchdog, not a bloodhound. He is justified in believing tried servants of the company in whom confidence is placed by the company. He is entitled to assume that they are honest, and to rely upon their representations, provided he takes reasonable care. If there is anything calculated to excite suspicion he should probe it to the bottom; but in the absence of anything of that kind he is only bound to be reasonably cautious and careful."[1] Auditors should not accept without further inquiry an account from a servant of the company of his own receipts and payments.[2] "In my judgment it would not be right that auditors should deliberately adopt a standard of verification less than the ordinary, below the ordinary standard, because the persons with whom they are dealing are persons of specially high reputation. It would be dangerous to adopt any such lower standard on account of that circumstance."[3] For instance, it is no part of an auditor's duty to take stock, and in the absence of any ground for suspicion he would be justified in accepting the stock returns of a responsible servant of the company. But where verification of any account or statement would be the ordinary course and is practicable an auditor must not forgo it on any ground.

[1] In *re* Kingston Cotton Mill Co. No. 2 [1896] 2 Ch. at pages 288, 289, *per* Lopes, L.J.; approved in *re* City Equitable Fire Insurance Co., [1925] Ch. 407, in which the duties and liabilities of auditors are fully discussed.

[2] Kingston Cotton Mill Co. (*supra*), *per* Lindley, L.J., at page 287.

[3] *Per* Sargant, L.J., in *re* City Equitable Fire Insurance Co., *supra*.

BOOKS

The Books of a Limited Company may be divided into two classes: (*a*) the Books and Registers pertaining to Members of the Company, Share Transfers, Certificates, Allotments, &c., and (*b*) the Commercial Books of Account.

The form and maintenance of the first class, the responsibility for which must always rest with the secretary, are here discussed, while the second class, for which the responsibility may be said to rest with the accountant, is dealt with in the succeeding chapter.

Sections 88, 95, 108, 120, and 144 provide for the keeping of the following books:—

1. Register of Charges (page 100).
2. Register of Members and Index thereto (page 102), including Annual Return (page 269).
3. Minute Books of General Meetings and of Directors' Meetings (page 110).
4. Register of Directors or Managers (page 112).

Section 122 imposes obligations on companies with respect to Commercial Books of Account (page 124).

Other books, some or all of which the secretary will find it necessary or advisable to keep are—

5. Register of Transfers (page 114).
6. Transfer Receipt Book (page 116).
7. Balance Receipt Book (page 117).
8. Transfer Fees Book (page 117).
9. Register of Share Warrants (page 118).
10. Share Certificate Book (page 118).
11. Share Warrants Book (page 118).
12. Option Certificate Book (page 118).
13. Allotment Book (page 118).
14. Register of Calls (page 120).
15. Agenda Book (page 120).
16. Seal Book (page 120).
17. Dividend Book, or List (page 122).

1. REGISTER OF CHARGES.

This book is obligatory in the case of certain charges affecting property of the company. The style of it may vary in so many respects, according to circumstances, that it is impossible to suggest a form which could be adopted for universal use. Section 88 says that there shall be entered therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company, giving in each case "a short description of the property charged, the amount of the charge, and (except in the case of securities to bearer) the names of the persons entitled thereto." The mere compliance in a literal sense with this section would be altogether unsatisfactory to many companies: therefore other particulars are entered. There is not space in this work for the different examples that might be given and special requirements must be dealt with according to circumstances, but the following example of ruling will be found adequate in the majority of cases.

No.	Date of Charge.	Short Description of Property Charged	Amount of Charge created.	Name and Address of Mortgagee or Person entitled to the Charge.	Date of Discharge of Charge.

Any director, manager, or other officer who knowingly and wilfully authorises or permits the omission of an entry required to be made in the Register of Charges is liable to a fine not exceeding fifty pounds (Section 88, Sub-section 2).

The Register of Charges must be kept at the registered office and be open for inspection during at least two hours a day by any creditor or member of the company, or his solicitor or agent, without charge, or by other persons on payment of a charge not exceeding one shilling for each inspection (Section 89, Sub-section 1). The right to inspect the Register of Charges includes a right to take copies of the Register.[2] If inspection is refused, penalties may be imposed, and the Court may by order compel an immediate inspection (Sub-section 3).

In cases where debenture stock has been issued the following form of Debenture Stock Register may be used: —

REGISTER OF

*Name*_____

Dr. STOCK ACQUIRED.

Date of Allotment of Stock or Registration of Transfer.	No. of Instrument of Transfer (if so acquired)	From Whom Transferred.	Transferor's Folio in this Book.	No. of Stock Certificate.	Cash Book Folio.	Amount of Stock. £

DEBENTURE STOCK HOLDERS.

*Address and Occupation*_____

STOCK TRANSFERRED. Cr.

No. of Instrument of Transfer.	Date of Registration of Transfer.	To Whom Transferred.	Transferee's Folio in this Book.	Amount of Stock Transferred.	Balance of Stock Held. £

1 Credit Co., [1879] 11 Ch. D. 256.

2 Nelson *v.* Anglo-American Land Mortgage Agency Co., [1897] 1 Ch. 130.

Section 73, Sub-section 1, provides that every Register of Holders of Debentures (which includes Debenture Stock [1]) of a company must, except when closed during such period or periods, not exceeding in the whole thirty days in any year, as the Articles, or the Debentures, Debenture Stock Certificates, Trust Deed, or other document securing the Debentures or Debenture Stock may provide, be open for at least two hours a day to inspection by the registered holder of any such debentures and by any shareholder. A debenture holder or shareholder may require a copy of the Register, or any part thereof, to be furnished on payment of sixpence for every hundred words to be copied, and therefore the right to inspect does not include the right to make extracts.[2] Under Sub-section 3 of the same section the holder of any debenture secured by a trust deed may require a copy of the deed to be furnished on payment of a sum not exceeding one shilling if the trust deed is printed, or, if not printed, on payment of sixpence for every hundred words required to be copied. Refusal to allow inspection, or refusal or failure to forward a copy requisitioned under the sub-section, renders the company and every officer who is in default liable to fines, and the Court may order immediate inspection of the Register or direct that the copies required shall be sent (Sub-sections 4 and 5).

Every company must keep at its registered office a copy of every instrument creating any charge which requires registration (Section 87). Such copy must be open to inspection by any member or creditor of the company or other person in like manner as the Register of Charges, and the like penalties may be imposed in cases of default (Section 89, Sub-section 2). In the case of a series of uniform debentures a copy of one of the debentures is sufficient (Section 87).

2. REGISTER OF MEMBERS.

Section 95, Sub-section 1, provides that—

Every company shall keep in one or more books a Register of its Members, and enter therein the following particulars:—

(i) The names and addresses, and the occupations (if any) of the **members, and in the case of a company having a share capital a statement of the shares held by each member, distinguishing**

1 Section 380. 2 *Re* Balaghât Gold Mining Co., [1901] 2 K. B. 665.

each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member;

(ii) The date at which each person was entered in the Register as a member;

(iii) The date at which any person ceased to be a member.

By Section 96 every company having more than fifty members must, unless the Register is so kept as to constitute in itself an index, keep an index of the members which will enable the account of any member to be readily found, and within fourteen days after any alteration is made in the Register make any necessary alteration in the index. Such index may be in card-index form.

Failure to comply with the requirements of Section 95 or 96 renders the company and every officer who is in default liable to a heavy penalty.

Section 62, Sub-section 2, provides that "Each share in a company having a share capital shall be distinguished by its appropriate number."

No notice of any trust, expressed, implied, or constructive, may be entered on the Register in the case of companies registered in England (Section 101).

By Section 98, Sub-section 1, the Register of Members and its Index must be kept at the registered office, and, except when closed under Section 99, must be open to the inspection of members gratis, and to any other person upon payment of one shilling or such less sum as the company may prescribe, for at least two hours in each day. Section 99 provides that any company may, by advertisement in some newspaper circulating in the district in which the registered office of the company is situated, close the Register of Members for any time or times not exceeding in the whole thirty days in each year, and during such period no member or other person is entitled to inspect it. It is usual to close the Register before the payment of a dividend in order that the warrants may be prepared.

Any person, whether a member or not, is entitled to be supplied with a copy of the Register, or any part of it, upon payment of sixpence, or such less sum as the company may prescribe, for every hundred words or fractional part thereof (Section 98, Sub-section 2). The Act requires any copy so requisitioned to be sent within ten days from the day next after that on which the request is received by the company. The

person inspecting is not entitled to make the copy himself.[1] If such inspection is refused or if a copy of the Register is not sent within the proper period, a penalty of two pounds and a further fine of two pounds for every day during which the refusal continues are incurred, not only by the company, but by every officer who knowingly authorises or permits the default (Sub-section 3), and this notwithstanding that the object of the inspection may be hostile to the company. Further, where inspection is refused or a copy not sent as required the Court may order an immediate inspection of the Register and Index or direct that the copies required be sent (Sub-section 4). As the secretary is the officer who would be applied to in the ordinary course, it is clearly his duty to protect the company by allowing inspection upon demand or by supplying the particulars without unreasonable delay.

When shares are converted into stock the change must be shown in the Register (Section 95).

When share warrants to bearer (see page 190) are issued the name of the shareholder must be struck out, and the particulars of the shares comprised in the warrants and the date of issue of the warrants must be inserted in the Register (Section 97). A reference should also be made to the folio in the Register of Share Warrants on which particulars of the share warrants are recorded.

The Register of Members is *prima facie* (but not conclusive) evidence in legal proceedings of any matters by the Companies Act directed or authorised to be inserted therein (Section 102).

The requirements of the Companies Act are operative from the moment of incorporation of the company. Until the Register of Members is written up, therefore, the Allotment Book, or "List of Applications for and Allotment of Shares" (page 80, *ante*), must be made to serve as the Register: hence the necessity for showing on such lists all the particulars required by law.[2] This also induces many companies to provide additional columns upon the Allotment List for instalments upon shares beyond the amount due upon allotment, where such instalments are to be called up quickly, and are payable before the

1 *Re* Balaghât Gold Mining Co., [1901] 2 K. B. 665. In earlier cases, Mutter *v.* Eastern &c. Co. 38 Ch. D. 92, and Nelson *v.* Anglo-American Land Agency, [1897] 1 Ch. 130, it was held that the right of inspection included the right to make extracts.

2 See *Ex parte* Cammell, [1894] 2 Ch. 392.

Register can be conveniently written up. The Register of Members should, however, be written up as soon as possible after allotment, and the page or folio of the Register in which the particulars are entered be inserted against each name on the Allotment List. (See also under heading of "CALLS," page 203, *post*.)

The ruling for a Register of Members on the next page will be found to contain, in a simple and concise form, provision for all particulars that must be recorded.

It is to be observed that in accordance with Section 95 there must be entered in the Register the date at which each person was entered in the Register as a member and the date at which any person ceased to be a member. Ordinarily a person ceases to be a member when all the shares previously held by him are recorded in the Register as the property of some other person or persons. Consequently the date to be shown in the Register in respect of each lot of "shares acquired" or of "shares transferred" must be the date upon which the entry thereof is made in the Register.

Until shares of a company are fully paid, a ruling similar to that shown below should form part of each account in the Register of Members, so that each shareholder's account may disclose the liability on the shares standing in his name.

Amounts Payable on Application and Allotment and Calls made.						Amounts Paid.				
Date of Call.	Description of Call.	No. of Shares.	Allotment Book or Call Book.	Amount. £	s.	d.	Date.	Allotment Book or Call Book.	Amount. £	s. d.

ORDINARY / PREFERENCE SHARES OF £_____EACH, FULLY PAID.

*Name*_____

*Address*_____

_____

*Occupation*_____

Dividends to be paid to:

_____

_____

_____

_____

SHARES ACQUIRED.					SHARES TRANSFERRED.					
Date Entry Made.	No. of Allotment or Transfer.	No. of Shares.	Distinctive Numbers.		Date Entry Made.	Transfer No.	No. of Shares.	Distinctive Numbers.		Balance of Shares.
			From	To				From	To	

In the case of a company which has such a large number of shareholders that the division of the Register of Members into several volumes becomes necessary, it will be found convenient to use loose-leaf books, and to arrange the accounts in alphabetical order with a guide sheet and index for each letter. Not more than one account will be placed on each sheet, but several sheets may be used for any account, extra sheets being inserted as they are required. Each account will be numbered, and the several sheets in each large account will bear the same number. The accounts will be indexed by these numbers on the alphabetical guide sheet.

In a company where the membership is very small there is little to be gained either by making the Register a loose-leaf book or by arranging the accounts in alphabetical order, but in the case of every company having more than fifty members the Register must either be in such form as in itself to constitute an index or there must be kept an index of the names of the members, and when any alteration is made in the Register the corresponding alteration must within fourteen days be made in the index. The index may be in card-index form (Section 96).

It is important to observe that this requirement has application to all companies, whether public or private, having more than fifty members. Employee shareholders are members and must be counted in this connection.

Periodically the balance of shares on the accounts in the Register of Members should be extracted and the total thereof agreed with the total of the shares issued in order to prove the accuracy of the recording of the numbers of shares transferred and of further shares issued &c.

A company having a share capital whose objects comprise the transaction of business in any part of His Majesty's dominions outside Great Britain, the Channel Islands, or the Isle of Man, may keep in any such place where it so transacts business a Branch or "Dominion Register" of Members resident in that part. Notice of the situation of the office where the Dominion Register is kept and of any change in the situation of or discontinuance of that office must be given to the Registrar of Companies within fourteen days of the opening of the office or of the change or discontinuance, default rendering the company and every officer liable to a penalty (Section 103). Copies

of entries made in the Dominion Register must be transmitted to the registered office of the company as soon as may be after they are made, and a duplicate of the Dominion Register must be kept at the registered office. The duplicate of the Dominion Register is deemed to be part of the Company's Register of Members (Section 104).

A transfer of a share registered in a Dominion Register, other than such a Register kept in Northern Ireland, is deemed a transfer of property out of the United Kingdom, and, unless executed in any part of the United Kingdom, is exempt from British stamp duty (Section 105).

Notifications of changes of address &c., when received, should be immediately recorded, and care taken that the names and descriptions of shareholders are correct. The following are specimens:—

Joint Holders who are the Members of a Partnership Firm.

Names—A. B., C. D., E. F., trading as "S. & Co."

Address—Of the firm.

Description—Their business description.

Company or Body Corporate.

Name_____, LIMITED, or

_____CORPORATION.

Address—Registered or Chief Office.

Description—Company Limited by Shares under The Companies Act, 1929, or Company incorporated by Special Act of Parliament or Royal Charter (as the case may be).

Where a Shareholder dies, and his Executors or Administrators are not registered in their own Names.

Probate, or Letters of Administration, produced the_____day of_____, 193 .

Executors or Administrators—A. B., of_____ Esquire, and C. D., of_____, Solicitor.

Bankrupt Shareholder.

A. B., adjudicated Bankrupt by Order dated the_____ of_____, 193 . C. D., of_____ _____, Accountant, appointed Trustee the _____day of_____, 193 .

Lunatic Shareholder.

A. B., found Lunatic by Inquisition the_____day of_____, 193 . C. D., of_____ Gentleman, appointed Committee by Order of Court of Lunacy Dated the_____day of_____, 193 .

Female Shareholder Marrying.

Name—A. B. (late A. J., Spinster).

Address—No._____Street,_____, in the County of_____.

Description—Wife of C. B.

Married Woman.

Name—A. B.

Address—No._____Street,_____, in the County of_____.

Description—Wife of C. B.

N.B.—A woman who has never been married should always be described as "Spinster," and a widow as "Widow."

When shareholders direct their dividends to be paid to a particular bank or person the fact should be entered in the Register of Members: thus, for example, "Dividends to be paid to THE BANK, LIMITED." The note should be made in red ink and the date of the order or other reference given. The dividend warrants should be made payable to the bank or person directed "for the account of (the shareholder)."

When the Court has ordered a name to be removed from the Register the secretary should strike the name through with a pen, and insert, "By an Order of the Court dated &c. this name has been erased," adding his signature. It is wrong to erase the name with a penknife, so as to make it appear that the name was never there.[1]

[1] Iron Shipbuilding Co., [1865] 34 Beav. 597.

The "Annual Return," which is a part of the Register of Members, and which consequently must be open for inspection by members and others, is fully described on page 269 *et seq.* hereof. It may, however, be here stated that by Section 108, Sub-section 2, the names of members are required to be arranged in alphabetical order or there must be annexed to the Return an index sufficient to enable the name of any person in the list to be readily found.

3. MINUTE BOOKS OF GENERAL MEETINGS AND OF DIRECTORS' MEETINGS.

Every company must cause minutes of all proceedings of general meetings of the company, and of meetings of the directors or managers of the company in cases where there are directors or managers, to be duly entered in books [1] kept for that purpose; and any such minutes as aforesaid, if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, are evidence of the proceedings (Section 120). An unrecorded resolution may be proved by verbal evidence that it was in fact passed [2]; but very clear and convincing evidence would be necessary.

Hitherto it has not been unusual for the minutes of board meetings and of general meetings to be recorded in one book; but such a course is now inadvisable. Section 121 gives members the right to inspect "the books containing the minutes of proceedings of any general meeting held after the commencement of this Act," and it may be that if the minutes of board meetings are also recorded in these books, members will have the right to inspect them as well as the minutes of general meetings; but if minutes of board meetings are recorded in a separate book the question does not arise.

The books containing the minutes of general meetings must be kept at the Registered Office, and must be available for inspection by any member during at least two hours in each day, and any member is entitled to be furnished with a copy of such minutes within seven days of the request therefor

[1] In Hearts of Oak v. James Flower [1936] 1 Ch. 76, Bennett, J., refused to admit in evidence minutes recorded in a "loose-leaf" book the pages of which were secured between the covers by hand screws only.

[2] Fireproof Doors, In *re*, [1916] 2 Ch. 142.

being made, on payment of a charge not exceeding sixpence for every hundred words (Section 121, Sub-sections 1 and 2). The Act does not confer on members any right to inspect or have copies of minutes of directors' meetings.

If inspection is refused or any copy is not sent within the proper time, the company and every officer who is in default is liable to a fine not exceeding two pounds, and further to fines of two pounds for every day during which the default continues, and the Court may order an immediate inspection or direct that the copies required be sent (Sub-section 3).

The minutes, if in accordance with the Act, are evidence, until the contrary is proved, that every general meeting of the company or meeting of the directors or managers has been duly held and convened, and that all proceedings thereat have been duly had (Section 120, Sub-section 3).

Any alteration which it may be necessary to make in the minutes should be initialled by the director who signs them.

A secretary should never alter minutes on his own responsibility. In the case of *Re Cawley* (1889, 42 Ch. D. 209) the secretary altered some minutes of a board meeting after they had been signed. Lord Esher said, "The secretary, either in consequence of some supposed power vested in him, or of some idea of his own, some time afterwards inserted in the minutes of the meeting certain dates as the dates of calls. In my opinion that was the most dangerous thing that could well be done. Minutes of board meetings are kept in order that the shareholders of the company may know exactly what their directors have been doing,[1] and any shareholder looking at these minutes as they now stand would suppose the dates were agreed upon at the meeting and were then filled in, whereas in truth no dates were agreed on by the directors at all. The dates formed no part of the resolution, and yet here is the entry made as if they formed part of the resolution then passed. I trust I shall never again see or hear of the secretary of a company, whether under superior directions or otherwise, altering minutes of meetings, either by striking out anything or adding anything."

[1] This does not mean that shareholders have a general right to inspect the minutes of proceedings at Board Meetings. A right of inspection would arise only in special circumstances, *e.g.*, in the course of an action between the company and a shareholder, and would then be limited to such entries as were material to the action.

4. REGISTER OF DIRECTORS OR MANAGERS.

By Section 144 every company is required to keep at its Registered Office a Register of Directors or Managers containing in the case of each individual his present Christian name and surname, any former Christian name or surname, residential address, nationality, and nationality of origin where the nationality stated is not his original nationality, and business occupation, and if he has no business occupation but holds any other directorships, particulars of that directorship or some one of them. In the case of a corporation the corporate name and the registered or principal office must be recorded. A copy of the Register must be lodged with the Registrar within fourteen days of the appointment of the first directors, and a notification of any change among the directors or in any of the particulars must also be lodged within fourteen days of the happening thereof.

The Register must, during business hours, be open for at least two hours a day to the inspection of any member without charge, and of any other person on payment of a charge not exceeding one shilling. Default in complying with these requirements renders the company and every director or officer knowingly and wilfully authorising or permitting the default liable to a penalty not exceeding five pounds for every day during which the default continues, and where the default is in regard to allowing inspection the Court may order an immediate inspection.

For the purposes of Section 144 a person in accordance with whose directions or instructions directors of a company are accustomed to act is to be deemed a director and officer of the company (Sub-section 6).

A form of Particulars of Directors or Managers is given on the following page, and the Register itself would be similarly ruled.

Under Section 344 every company incorporated outside Great Britain which establishes a place of business within Great Britain must, within one month from the establishment of the place of business, lodge with the Registrar of Companies (amongst other documents) a list of the directors of the company containing all the particulars which are required to be recorded

*No. of Company*_____

FORM No. 9.

"THE COMPANIES ACT, 1929"

PARTICULARS OF DIRECTORS[1] OR MANAGERS OF

_____LIMITED,

AND OF ANY CHANGES THEREIN,

Pursuant to Section 144 *of The Companies Act*, 1929.

A 5*s*. Companies Registration Fee Stamp must be impressed here.

*Presented by*_____

_____

[2] The present Christian Name or Names and Surname.	Any former Christian Name or Names or Surname.	Nationality.	Nationality of Origin (if other than the present Nationality).	Usual Residential Address.	[3] Other Business Occupation or Directorships, if any. If none, state so.	[4] Changes.

*Signature*_____
*Officer*_____
(State whether Director, Manager or Secretary.)

*Date*_____, 193 .

1 "Director" includes any person who occupies the position of a director by whatever name called, and any person in accordance with whose directions or instructions the directors of a company are accustomed to act (see page 271).

2 In the case of a Corporation its corporate name and registered or principal office should be shown.

3 In the case of an individual who has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships must be entered.

4 A complete List of the Directors (see definition) or Managers shown as existing in the last Particulars delivered should always be given. A note of the Changes since the last List should be made in this column—*e.g.* by placing against a new director's name the words "In place of _____" and by writing against any former director's name the word "Dead," "Resigned," or as the case may be.

by a company incorporated in Great Britain in its Register of Directors.

Those particulars are required to be lodged with the Registrar of Companies within one month from 1st November, 1929—(1) by every such company which had established a place of business in Great Britain before 1st April, 1909, and on 1st November, 1929, continued to have such a place of business; (2) by companies incorporated in Northern Ireland before 1st January, 1922, which at 1st November, 1929, had a place of business in Great Britain; and (3) by companies incorporated in the Irish Free State which before 27th March, 1923, established a place of business and at 1st November, 1929, continued to have a place of business in Great Britain.

5. REGISTER OF TRANSFERS.

The ruling on the opposite page for the Register of Transfers of Shares will need but little explanation.

The column provided against both the names of the transferor and the transferee, in which to enter respectively the page or folio of the Register of Members to which the particulars are transferred, will facilitate easy reference.

Where companies have different classes of shares &c. the secretary should ask the directors to resolve that each class be transferred separately. This is the usual custom, but it should be made compulsory, as instances have occurred in which two classes of shares have been transferred by one deed of transfer, and such a course is likely to prove, at the least, very inconvenient.

In companies where very many transfers are expected a separate Register is sometimes kept for each class, the column headed " Class " being omitted. The same remark as to the class column would, of course, apply to companies the capital of which consists of shares of only one denomination and value.

The ruling shown opposite may be used, *mutatis mutandis*, for a Register of Transfers of Debentures; and that on page 116 for Transfers of Debenture Stock.

REGISTER OF TRANSFERS

Date.	No. of Transfer.	TRANSFEROR'S			Number of Shares Transferred.	Distinctive Numbers of Shares Transferred.	
		Folio in Register of Members.	Name.	Certificate No.		From	To

OF SHARES.

TRANSFEREE'S			Folio in Register of Members.	Certificate No.	Consideration. £
Name.	Address.	Description.			

REGISTER OF TRANSFERS OF DEBENTURE STOCK.

Date	Number of Transfer.	Folio in Reg. of Debenture Stock Holders.	TRANSFEROR'S Name.	TRANSFEROR'S Address.	TRANSFEROR'S Occupation (if any).	TRANSFEREE'S Name.	TRANSFEREE'S Address.	TRANSFEREE'S Occupation (if any).	Folio in Reg. of Debenture Stock Holders.	Amount of Stock Transferred	Remarks.

In connection with the Register of Transfers the reader is particularly referred to the heading of "TRANSFER AND TRANSMISSION OF SHARES" (page 248, *post*).

6. TRANSFER RECEIPT BOOK.

The appended form of receipt for transfers gives all necessary particulars. The forms should be numbered consecutively. The labour of writing the particulars twice (on the receipt and on the counterfoil) will be avoided if a duplicate sheet is provided with each receipt form, and pencil and carbon paper are used.

*No.*_____ _____193____

Received from_____Transfer Deed
(certified)

for_____ Preference / Ordinary Shares

from_____to_____together with

Certificate for_____ Preference / Ordinary Shares and

_____Registration Fee per Deed.

_____*Secretary.*

The new Certificate will be ready for delivery in exchange for this receipt on the_____193 , or on request will be sent by post at your risk.

In the case of shares not fully paid the words " per share paid up " should be inserted after the first number and description of the shares.

7. BALANCE RECEIPT BOOK.

See form of Balance Ticket (page 265, *post*) and remarks under the head of " TRANSFER AND TRANSMISSION OF SHARES " (page 248 *et seq., post*).

8. TRANSFERS FEES BOOK.

This will be found useful when the fees paid on registration of transfers, probate of wills, inspection of Register, &c., are not incorporated daily with the ordinary accounts of a company, but handed over at stated periods by the Registrar or Transfer Clerk. A ruling somewhat as follows will serve:—

TRANSFERS CASH BOOK.

Date.	Received from	No. of Transfer or Particulars.	Amount.	

9. REGISTER OF SHARE WARRANTS.[1]

The ruling set out on the opposite page will be found suitable for this Register.

Holders of share warrants to bearer are entitled, subject to the regulations contained in the Articles of Association, to surrender their warrants, obtaining share certificates in exchange, and to have their names entered on the Register of Members. The ruling given will serve to record all necessary particulars relating to both the issue and the surrender of the warrants.

10. SHARE CERTIFICATE BOOK.

(See "CERTIFICATES OF TITLE," page 180, *post.*)

It is the general practice to print on the counterfoil of the Certificate Book, in small type, the heads of particulars given on the certificate, and when a certificate is prepared, names, dates, numbers, &c., are filled in as on the certificate itself.

11. SHARE WARRANTS BOOK.

Share Warrants should be bound in book form with counterfoils in the same manner as Share Certificates.

12. OPTION CERTIFICATE BOOK.

A form of Option Certificate is given on page 189, *post*. These Certificates should be printed with receipt slips and counterfoils attached. They may be bound up in the same way as Share Certificates, and should bear an impressed twopenny stamp.

13. ALLOTMENT BOOK.

This has been sufficiently described under the heading "ALLOTMENT" (page 66 *et seq.*, *ante*).

[1] See also under heading "SHARE WARRANTS," page 190, *post*.

REGISTER OF

Application.		To whom Issued.	Registered Shares Exchanged.				Share Warrants Issued.		
No.	Date.		Folio in Register of Members.	Number of Shares.	Distinctive Nos. of Shares.		Warrant Number.	Shares.	Date of Issue.
					From	To			

SHARE WARRANTS.

By whom Surrendered.	Share Warrants Surrendered.		Date of Surrender.	Folio in Register of Members.	Remarks.
	Warrant Number.	Shares.			

14. REGISTER OF CALLS.

When calls upon shares are being made after the allotments have been entered in the Register of Members it will be found advisable to enter the details of the call, the amount payable thereon by each member, and the dates payment is received in a Register of Calls. The maintenance of this Register will make it possible at any time to ascertain quickly the calls in arrear. In the cases of private companies and of public companies having a small number of members it will, however, not be necessary, as the information as to calls in arrear can readily be obtained on examination of the Register of Members.

A ruling for the Register of Calls is shown on the opposite page.

15. AGENDA BOOK.

The Agenda Book, in which are set forth the matters to be brought before the meetings of directors and members, may be of any convenient size or style. The date of meeting &c. should be written across the top of the page or folio and the agenda on the left side only, leaving spaces between the items to enable the chairman's remarks and the resolutions passed to be inserted on the right-hand side.

16. SEAL BOOK.

As every company has a Seal, and great importance is attached to the use of it, a Seal Book is especially advisable (see "THE SEAL," page 38, *ante*). A ruling similar to the following will serve:—

Document Sealed.	Date of Resolution or Order to Seal.	Date of Sealing.	Initials of Directors and Officials Signing.	How Disposed of.

REGISTER

Distinctive Numbers of Shares.	Aggregate Number.	Name of Shareholder.	Folio in Register of Members.	Date when Call made.	Date when Posted.

OF CALLS.

Amount of Call per Share.	Total Amount of Call.	When Due.	When Paid.	Amount Paid.	Remarks.

17. DIVIDEND ACCOUNT BOOK OR LIST.

Before a dividend is paid it is necessary to prepare a list of the members and the number of shares held by each, and to calculate the amounts of dividend due to the various members, the income tax deductible therefrom, and the amounts to be entered in the warrants (see pages 242 and 243).

In the case of companies having a small number of members the list &c. may be made in a bound book, but in the case of companies which have a large number of members it will be found convenient to prepare the list on loose sheets, so that more than one clerk may be employed on the work of preparation and the writing of the dividend warrants. As soon, however, as the warrants have been prepared the loose sheets should be bound together in the order in which the members' names appear in the Register of Members.

It will facilitate the writing of the warrants if in inserting the names on the dividend list the Christian names are placed before the surnames.

The number of each member's page in the Register of Members should be placed on his warrant in order to simplify the checking of the paid warrants, when received from the Bank, with the dividend list.

A convenient ruling for the Dividend Account Book or List is shown opposite.

DIVIDEND ACCOUNT BOOK.

*Dividend upon*_____ *Shares for year ending*_____193_____*at* _____*per Share.*

Name of Member.	Address.	Aggregate Number of Shares.	Folio in Share Ledger.	No. of Cheque.	Amount of Dividend.	Income Tax.	Net Amount paid.	Date when paid.	Remarks.

COMMERCIAL BOOKS OF ACCOUNT.

THE secretary of a company is responsible for the proper keeping of the books which have been mentioned in the preceding chapter: viz., Register of Members, Minute Books of General Meetings and of Directors' Meetings, Register of Directors or Managers, Register of Charges, and other books and registers in which are recorded share holdings, share transfers, share certificates, allotment of shares, documents, use of seal, agenda, &c.

In addition to these records there are the Commercial Books of Account, and it is to be noted that by Section 122 of the Act, every company must keep books of account with respect to—

(*a*) All sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
(*b*) All sales and purchases of goods by the company;
(*c*) The assets and liabilities of the company;

and any director who fails to take all reasonable steps to ensure that these books are kept, or has by his own wilful act been the cause of any default by the company in that respect, is liable for each offence to imprisonment for a term not exceeding six months or to a fine not exceeding £200.

The books of account must be kept at the registered office or at such other place as the directors think fit, and they must at all times be open to inspection by the directors (Section 122, Sub-section 2).

Section 274, which deals with penalties to which directors and officers are liable in a case where, in a winding up, it is shown that proper books of account were not kept, is also important, as it affords an indication of what would be regarded as the minimum of information to be recorded in proper books of account. It is there stated that proper books of account shall be deemed not to have been kept in the case of any company if there have not been kept during the two years immediately preceding the winding up such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the

company, including books containing entries from day to day in sufficient detail of all cash received and cash paid and, where the business has involved dealings in goods, statements of the annual stocktakings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

It is the function of an accountant to devise the methods by which the operations involving the transfer of money or money's worth to and from the company are to be recorded, and frequently to supervise their application by the book-keeping staff. It may therefore appear to some secretaries to be somewhat unnecessary to include a section on Commercial Books of Account in a work dealing with the duties of a secretary.

In the case of most companies of any magnitude the secretary is not personally responsible for the keeping of these books; but he has a general responsibility to the directors, and through them to the shareholders, in regard to all matters affecting the company, and the secretary who desires to be efficient cannot afford to be entirely ignorant of the methods by which figures are prepared for submission to the directors, on the basis of which decisions may be taken which may have a vital effect on the prosperity of the company.

Accountancy may, perhaps, be defined broadly as the *science* of recording concisely those operations of a business which involve the transfer of money or money's worth in a form capable of providing summarised statements giving the maximum amount of information in the minimum amount of space, and the *art* of interpreting rightly the figures so obtained.

The secretary may be more directly concerned with the art than the science of accountancy, but he cannot hope to attain great proficiency in the art without some knowledge of the principles underlying the science.

It is not possible to deal fully with these principles in this work, and there are many excellent books dealing with accountancy from various points of view which are available for any secretary who wishes to make a special study of the subject. It is hoped, however, that some notes of a general nature will prove helpful and form a sound basis for further study.

ALLOCATION OF SECRETARIAL AND ACCOUNTING DUTIES.

The duties devolving respectively upon the secretarial and the accountancy departments must vary according to the peculiar circumstances of each company, but where the business is large enough to justify the appointment of a secretary and an accountant the work should be allocated in the following manner:—

Secretary.

Maintenance of the Registers of Members, Directors or Managers, Transfers and Charges.

Taking minutes of Board and General Meetings, and recording attendance at Board Meetings.

Signing of all cheques and bills.

Correspondence with shareholders and others upon all matters concerning the company.

Consideration and preparation of agreements, leases, and similar documents in consultation with the solicitor and appropriate officials.

Custody of all important documents and fulfilment of all duties falling upon the secretary and described earlier in this volume.

The supervision of the receipt and payment of cash and the control of the cashier and the banking accounts.

Control of staff general to the whole business and not directly attached to any department.

Accountant.

Keeping of all the Commercial Books of Account.

The checking of purchase invoices to ensure that the purchases have been duly authorised and that full value has been received; the certification of the invoices for payment.

The checking of sales invoices to ensure that all sales have been duly charged.

Correspondence in connection with the accounts.

Preparation of profit and loss account and balance sheet and of statistical data for the information and use of the other administrative and technical departments.

Keeping of cost accounts (if any).

The internal audit of the detail work in his own department and in the cashier's section of the secretarial department.

BOOK-KEEPING.

There are two systems of book-keeping, which are known as " Single Entry " and " Double Entry."

Single Entry.

Single Entry describes a system of book-keeping which records each transaction only as it affects the customers, suppliers, &c., of the business. The books usually kept under this system include a Personal Ledger (containing the accounts of debtors), Cash Book, and Sales Day Book, and the entries made therein are only a partial record of the business transactions of the company.

The only means of ascertaining the profit earned or the loss sustained by a business keeping books by Single Entry is to prepare at a particular date a Statement of Affairs showing the assets and liabilities, and to compare the amount of the Capital of the business (representing the excess of the assets over the liabilities) with the Capital similarly ascertained at a previous date. Any increase of Capital—allowances being made for additions to or withdrawals from the business during the period—is the profit made, and any decrease is the loss incurred.

This Statement of Affairs is prepared by listing the amounts due by debtors as shown in the Personal Ledger; by preparing an inventory and valuation of the stock-in-trade and a valuation of any other assets—*e.g.* leasehold property, plant and machinery, tools, horses, carts, furniture, investments, &c.—and by obtaining from the suppliers' invoices, statements, &c., the particulars of the debts owing by the business.

The great disadvantages of the Single Entry system are that no detailed information can be obtained showing how a profit or loss has arisen, no continuous record of the progress of the business is maintained, and there is a serious danger of an error in the estimate of the profit or loss, as omissions and errors are very easily made in preparing the Statement of Assets and Liabilities. Little reliance can, indeed, be placed

upon the amount of profit or loss disclosed by Single Entry book-keeping, which is a system that is rarely employed except in keeping private personal accounts and the accounts of very small businesses.

Double Entry.

Double Entry book-keeping is the system adopted by all businesses of any magnitude. The use of the term "Double Entry" arises from the fact that each business transaction has a double effect. Thus a purchase of goods on credit creates a liability to pay the supplier, and at the same time provides as an asset a stock of commodities. The payment of cash in settlement of an invoice eliminates the liability and decreases the asset "cash"; the sale of goods creates an asset in the amount due by the customer and at the same time reduces the asset "stock of commodities"; the payment of cash by way of salary to an employee reduces profit and diminishes the asset "cash"; the receipt of a transfer fee increases profit and increases the asset "cash."

Double Entry book-keeping, therefore, is the system of recording each individual transaction in the two accounts which are affected by it. Accounts of persons to whom cash is paid, goods sold, or services rendered are *debited* with the amount or agreed value thereof, while accounts of persons from whom cash is received or goods purchased or by whom services are rendered are *credited* with the amount or agreed value thereof. In each case the corresponding account (cash, sales, purchases, &c.) is credited or debited.

The book-keeping entries called for by the transactions mentioned above would be as follows:—

(*a*) *Purchase of Goods.*—Credit supplier, debit stock of commodities.

(*b*) *Payment of Cash to Supplier.*—Debit supplier, credit cash.

(*c*) *Sale of Goods.*—Debit customer, credit stock of commodities.

(*d*) *Payment of Salary to Employee.*—Debit employee, credit cash.

(*e*) *Receipt of Transfer Fee.*—Credit shareholder, debit cash.

It will be observed that in each of these transactions one of the two entries affects a person and the other affects an asset or a liability of the business, and it is worthy of note that the distinction between Single and Double Entry book-keeping is that under the former, generally speaking, only the first entry (that affecting the person) may be said to be made, while the latter requires both.

Actually cash is paid only for goods purchased or services received, while it is received only for goods sold or services rendered, and if all goods and services were paid for when received, sold, or rendered, there would be no need for the keeping of the personal accounts of suppliers or customers, and the book-keeping entries would be reduced accordingly. Thus in the purchase of goods for spot cash the transactions (*a*) and (*b*) above would be recorded as follows:—

Debit " stock of commodities," credit " cash "; while the sale of goods would call for the reverse of these entries.

In practice the payment of salaries is recorded, not by first debiting a " salaries account " and crediting each individual employee and thereafter debiting the employee and crediting cash, but merely by debiting " salaries account " and crediting " cash," as no purpose would be served by maintaining a separate personal account for each employee. In a similar manner the receipt of a transfer fee is recorded directly by debiting " cash " and crediting " transfer fees account."

Under a system of Double Entry book-keeping the transactions of a business are recorded in Ledger Accounts, which are designed to classify the transactions according to their natures. These accounts are in two groups, known as " Personal "—*i.e.* accounts with customers, suppliers, and others—and " Nominal " (or " Impersonal ")—*i.e.* accounts of assets, liabilities, expenses, stock, purchases, sales, and so on.

A complete list of the balances of these Personal and Impersonal Accounts in a Double Entry system is called the " Trial Balance," and as every entry on the debit side of an account has had a corresponding entry on the credit side of another account the total debit balances will agree with the total credit balances if the entries have been accurately made and the balances accurately extracted. From the figures in the Trial Balance the Profit and Loss Account and Balance Sheet of a business are prepared.

It will be noticed that every transaction of a business is recorded in the Ledger in the two accounts which are affected; in theory, therefore, the Ledger is the only book required under the Double Entry system. In practice, however, various subsidiary books are used, according to the requirements of the business concerned; many of these are regarded as standardised for particular classes of business and are in general use. It may be helpful to impress on the lay mind the fact that all Subsidiary Books of Account are off-shoots from the Ledger, and that their purpose is to classify and summarise transactions of a similar nature before making entries in the Ledger.

For example, the transactions involving the payment or receipt of money are recorded in a Cash Book; the totals of this book may be posted periodically to the Cash Account in the Ledger, but, generally speaking, this is not done, and the Cash Book is used as the Ledger Account for Cash and the balance of this book must be included on the Trial Balance together with the balances of all other accounts.

Another example of a Subsidiary Book is the Journal. It has been found more convenient to record the particulars of transactions first of all in a Journal and from this book to make the postings to the Ledger Accounts affected. This procedure has the additional advantage of making it easier to detect any omissions to complete the Double Entry, as a scrutiny of the Journal will reveal any unposted items, whereas if entries are made direct into the Ledger only a complete check of all the entries in all the accounts would ensure that in no case had a single entry been made without a corresponding entry in another account.

All Subsidiary Books of Account in use in any business are designed to serve the same purposes as these two books; that is to say, that either they represent individual Ledger Accounts which are kept in separate books for the sake of convenience, like the Cash Book, or they provide an extension of the Journal by summarising transactions of a similar nature prior to making entries in the Ledger Accounts.

DESCRIPTION OF COMMERCIAL BOOKS.

It is not possible in the compass of this work to describe in detail a set of books that will suit every business, but the examples which follow will illustrate the essential features.

The books of any business will be found to include the following in one form or another:—

Ledger, which may be in one book or divided into the following sections, which themselves may be further subdivided—
- (*a*) General (or Private) Ledger.
- (*b*) Sales (or Debtors) Ledger.
- (*c*) Purchase (or Creditors) Ledger.

Cash Book (and Petty Cash Book).
Journal.
Subsidiary Books.
- *Sales Day Book.*
- *Purchase Day Book* (*Invoice Book*).
- *Bills Receivable Book.*
- *Bills Payable Book.*
- *Wages Book.*

Any of these books may be subdivided as convenience requires, and may be described by other names, but the above are their usual titles.

THE LEDGER.

The Ledger is the all-important book, as every transaction must be recorded in one or other of its sections in its two-fold character—*i.e.* on the debit side and credit side of the particular accounts affected.

The ruling of the Ledger generally consists of columns for the date, particulars, folio, and two cash columns on each page; but in some circumstances it may be desirable to provide for a greater number of columns in certain of the Ledger Accounts, so that a further analysis of these particular accounts may be readily obtained under convenient headings.

The Voyage Account in the books of a shipping company may, for example, consist of a number of debit and credit columns, headed so as to classify automatically under convenient headings as posting proceeds the revenue and expenditure of each voyage without the necessity of making subsequent and special extractions and analyses.

A few typical accounts usually to be found in a General (or Private) Ledger of a manufacturing company may be given.

LIABILITY ACCOUNTS.

Ordinary Share Capital Account.
Preference Share Capital Account.
Debenture Account.
Loan Accounts.
Purchase Ledger Control Account (or Sundry Creditors).
Bills Payable Account.
Depreciation Reserve Account.
Insurance Reserve Account.
General Reserve Account.
Profit and Loss Account.

ASSET ACCOUNTS.

Goodwill.
Patents Account.
Patterns, Jigs, and Drawings.
Freehold Land and Buildings.
Leasehold Land and Buildings.
Fixed Plant and Machinery.
Loose Tools and Plant and Equipment, &c.
Stock of Commodities (Raw Materials and Finished Products).
Investment Account.
Sales Ledger Control Account (or Sundry Debtors).
Bills Receivable Account.

TRADING AND PROFIT AND LOSS ACCOUNT ITEMS.

Purchases (probably divided according to classes of goods).
Wages.
Carriage Inwards.
Repairs and Maintenance — Buildings, Plant, and Machinery.
Power, Light, and Heating.
Rent and Rates.
Management Salaries.
Office Salaries.
Office Expenses.
Printing and Stationery.
National Insurance.
Sales Salaries, and Commission.

Travelling Expenses.
Carriage Outwards.
Advertising.
Discount.
Sales (probably divided according to departments, classes of products, or areas).
Debenture Interest.
Bank Interest and Charges.
Interest Receivable.
Depreciation.
Directors' Fees.
Preference Dividend.
Ordinary Dividend.

The cash balance does not usually appear in an account in the Ledger, but, as already mentioned, the Cash Book is really the Cash Ledger Account, which is bound and kept separately for convenience only, and the balance of the Cash Book is therefore a Ledger balance.

CASH BOOK.

The ruling of the Cash Book is of importance. It should at least provide columns as follows: On the Receipts side, for date, account to be credited, narrative, Ledger folio, discount allowed, amount received, and the daily total of receipts (*i.e.* payments into bank); and on the Payments side, for date, account to be debited, narrative, voucher number, Ledger folio, discount received, and amount paid.

It should be the invariable rule to pay into the Bank daily the exact amount of money received and to make all payments (other than petty cash payments) by cheque. The Cash Account (or Cash Book) then becomes the Bank Account, and the balance thereon at any time can be agreed with the balance in the Bank. Each month the Cash Book should be ruled off, the additions filled in, and the closing balance carried down to the following month. At the same time the balance should be agreed with the Bank Pass Book by the preparation of a reconciliation statement opening with the balance shown by the Cash Book, and setting out any adjustments necessary thereon; for example, certain cheques issued may not yet have been presented at the Bank, while amounts paid into the

Bank may not have been credited in the Pass Book owing to collection delay.

Where Ledger Control Accounts (see later) are kept it will be necessary to provide a column on the appropriate side of the Cash Book for each of the Ledgers to which receipts and payments will be posted, and as each item is entered in the Cash Book the amount should be placed in the appropriate Ledger column.

As each day's receipts are banked the amount will be entered in the " Daily Total " (*i.e.* Bank) column, the total of which will, where separate Ledger columns are in use, agree with the sum of the total of these Ledger columns at any date.

The discount columns which are provided in the ruling do not strictly form part of the Cash Book or Cash Account. They are placed in this book for convenience only, in order to obviate the extra work that would be entailed by passing the discount entries through the Journal and to facilitate the posting to the Personal Accounts in the Ledger, as the discount must be debited or credited, as the case may be, to the same account as the net amount of cash paid or received. The discount columns take the place of Journal entries, and the amounts shown therein are not used in the balancing of the Cash Book. Each month the totals of the discount columns are posted to the Discount Account in the Ledger; that on the receipts side to the debit, and that on the payments side to the credit of that account, thus forming the converse to the discount entries in the Sales and Purchase Ledger Accounts.

Where Ledger Control Accounts are kept the discount totals are also entered in the Sales and Purchase Ledger Control Accounts on the same sides as the details thereof have been entered in the Personal Accounts in the Sales and Purchase Ledgers. The monthly totals of the columns are posted from the Cash Book to the various Control Accounts kept.

In order that the Cash Book may be considered a proper book of account in the terms of Section 274 of the Act, all entries therein which are not posted to the Personal Ledger Account of a supplier or customer should contain in the narrative column sufficient detail to explain the transaction or the vouchers explaining them should be kept on file for at least two years. For other purposes it is generally desirable to retain these vouchers for a much longer period.

PETTY CASH BOOK.

This book should be ruled with a "Total Expenditure" column, and have other columns provided in which to record the analysis of the expenditure (*e.g.* "travelling expenses," "postages," "telegrams," &c.). A "Receipts" column must also be provided in which to record the amounts of the cheques received from the cashier to finance the petty cash payments. At the end of each month the totals of the various expenditure analysis columns will be posted to the appropriate accounts in the General Ledger.

It is always advisable to keep the petty cash on the Imprest system, under which the petty cashier is at first provided with a round sum (known as a "Float") sufficient to meet the expenditure for (say) a week. At the end of each week the petty cashier is given a cheque for the amount expended by him during the week, as shown by his Petty Cash Book, and the float is thereby reinstated.

The first payment (*i.e.* the float) and the subsequent payments for the weekly petty cash expenditure will be entered in the Cash Book, but will be referenced only to the folio of the Petty Cash Book on which they appear as "receipts."

The Imprest system is appropriate and desirable for the control of all payments made by travellers, stewards, or other officials of a company entrusted with the payment of cash, as well as for the petty cash payments in the office, as by this means a summary of the expenditure from petty cash is brought before the secretary and the directors, and attention is drawn to any larger or unusual payments.

JOURNAL.

Originally the Journal was used for the primary record of all transactions—sales, purchases, returns, receipts, payments, allowances, transfers, and other adjustments. Gradually the functions of the Journal have become more and more restricted by the institution of separate primary records of cash, purchases, sales, and returns transactions. Even after the segregation of these transactions in separate books the Journal continued for a time to be used as the medium for posting the periodical total of each class of transaction to its appropriate

Ledger Account. Nowadays the posting of these periodical totals is done direct from the subsidiary books, and consequently the Journal is used only for the purpose of making transfers from one Ledger Account to another in the same or a different Ledger which cannot be conveniently made through any of the subsidiary books.

Where Ledger Control Accounts are kept it is necessary that the Journal ruling should provide a debit and a credit column for each Ledger.

The following are examples of Journal entries made on the formation of a company taking over a going concern and other entries which will be of particular interest to a company secretary.

The purchase of the business will be recorded as follows:—

Goodwill (if any)	*Dr.*	£	:	:			
Freehold Land and Buildings	*Dr.*		:	:			
Plant and Machinery ..	*Dr.*		:	:			
Loose Tools	*Dr.*		:	:			
Stock of Materials	*Dr.*		:	:			
„ Finished Goods ..	*Dr.*		:	:			
Work in Progress	*Dr.*		:	:			
To Vendor					£	:	:
Being consideration to be paid by the company for the above.							

In the event of assets of other classes than those specified above being acquired in the purchase of the business they will be included in the above entry, either in place of or in addition to those specified.

If certain liabilities of the business are taken over a further entry will be made in the Journal on the following lines:—

Vendor	*Dr.*	£	:	:			
To Trade Creditors ..					£	:	:
To Income Tax Liability, &c.						:	:
Being the amount of the liabilities of taken over on the purchase of the business.							

If the purchase price payable to the Vendor is to be satisfied in part by the issue of fully paid preference and ordinary shares and debentures, a Journal entry will be made when the shares are actually allotted and the debentures issued, as follows:—

Vendor	*Dr.*	£	:	:		
To Debentures					£	: :
To Preference Share Capital						: :
To Ordinary Share Capital						: :
Being part purchase consideration.						

When shares are issued for cash, unless the whole amount is payable on application, an Application Account will be opened for each class of share in the Private or General Ledger, and the amounts received on application will be entered in the Cash Book and posted to the credit of that account. Any amounts refunded to applicants for shares (by reason of withdrawal,[1] over-subscription, or any other cause) will similarly be entered in the Cash Book and debited to the Application Account. In the case of any over-subscription for shares the above entries will leave at the credit of Application Account a certain amount of the money payable on allotment, and a Journal entry will be necessary to transfer that amount to the appropriate Allotment Account as follows:—

Application Account for Preference (or Ordinary) Shares	*Dr.*	£	:	:		
To Allotment Account for Preference (or Ordinary) Shares					£	: :
Being amount of allotment money retained from application moneys.						

After this Journal entry has been posted to the Ledger Accounts there will remain at the credit of Application Account the amount payable on application in respect of the shares that have been allotted, and a further Journal entry,

[1] As to withdrawals of applications for shares see page 74.

transferring this amount to the appropriate Share Capital Account, will be made as follows:—

Application Account for Preference (or Ordinary) Shares	*Dr.*	£	:	:		
To Preference (or Ordinary) Share Capital Account					£	: :
Being amount payable on application in respect of shares allotted , 193 .						

When allotment has been made the amount payable on allotment will be debited to the Allotment Account and credited to the Share Capital Account by a Journal entry thus:—

Allotment Account for Preference (or Ordinary) Shares	*Dr.*	£	:	:		
To Preference (or Ordinary) Share Capital Account					£	: :
Being amount payable on allotment of shares on , 193 .						

In similar manner, when each call is made a Ledger Account will be opened for it, and the Call Account will be debited by means of a Journal entry and the Share Capital Account credited with the total amount payable on the call. Money received from shareholders in payment of the calls will be credited to the appropriate Call Accounts through the Cash Book, and the balance on a Call Account at any time will represent the amount outstanding (or in arrear, if the date of the call is past) due by shareholders.

When shares are issued at a premium an account will be opened for the premium, called "Premium on Preference (or 'Ordinary') Shares Account," and the amount received from shareholders in payment of the premium will be credited

to this account. The amount of the premium if, say, it is included in the final call, will be journalised as follows:—

Final Call Account for Preference (or Ordinary) Shares	*Dr.*	£	:	:		
To Preference (or Ordinary) Share Capital A/c					£	: :
To Premium on Preference (or Ordinary) Shares Account ..						: :
Being allocation of amount payable on Final Call in respect of shares allotted on , 193 .						

Where, under the provisions of Section 47, shares are issued at a discount, it will be necessary to open an account called "Discount on Preference (or 'Ordinary') Shares Account," and when allotment has been made, the amount of the discount will be journalised as follows:—

Discount on Preference (or Ordinary) Shares Account	*Dr.*	£	:	:		
To Preference (or Ordinary) Share Capital A/c					£	: :
Being amount of discount in respect of shares allotted on , 193 .						

In the event of calls on shares remaining unpaid and the directors exercising the powers conferred upon them by the Articles of Association to forfeit these shares, it will be necessary to make Journal entries transferring to a Forfeited Shares Account the amounts that have been paid up on the forfeited shares. These entries will be:—

Preference (or Ordinary) Share Capital Account ..	*Dr.*	£	:	:		
To Forfeited Shares A/c ..					£	: :
Being the nominal value of shares forfeited this day.						

Forfeited Shares Account ..	*Dr.*	£	:	:		
To Final Call A/c for shares ..					£	: :
To Third Call A/c for shares, &c. ..						: :
Being the amount of calls in arrear on shares forfeited this day.						

The balance on the Forfeited Shares Account will then be the difference between the nominal value of the shares forfeited and the calls in arrear in respect thereof—that is, the amount paid up on the shares.

When debentures are issued at a discount the liability of the company is for the full value, and it is accordingly necessary to have this liability shown in the books. The amount received from subscribers will fall short, by the amount of the discount, of the full value of the debentures issued, and a Journal entry is necessary to make the adjustment, as follows:—

Discount on Debentures A/c	*Dr.*	£	:	:		
To Debentures Account ..					£	: :
Being amount of discount at % on £ Debentures issued on , 193 .						

As and when the discount is written off against profits (possibly by instalments over a number of years not exceeding the term of the debentures), further Journal entries in the following form will become necessary: viz.—

Profit and Loss Account ..	*Dr.*	£	:	:		
To Discount on Debentures A/c					£	: :
Being proportion of discount written off.						

Most companies do not distribute in dividends the whole of the profits they make, but utilise a portion of these profits for capital purposes in the expansion of the business. Consequently the surplus of profits accumulates either as an increasing

balance on the Profit and Loss Account or in one or more Reserve Funds to which portions of the profits may have been transferred.

When it is thought necessary to make the share capital more closely reflect the actual capital employed in the business, this can be effected by what is called "capitalising" a considerable portion of the surplus or of the free reserves and issuing bonus shares to the shareholders in a definite ratio to their existing holdings.

If the profits capitalised are represented by (say) the "General Reserve Fund," the Journal entry required to record the conversion will be:—

General Reserve Fund ..	*Dr.*	£ : :	
To Preference (or Ordinary) Share Capital Account ..			£ : :
Being Bonus Shares allotted on , 193 .			

If the profits proposed to be capitalised are carried in the Profit and Loss Account that account will be substituted for "General Reserve Fund" in the above entry.

SUBSIDIARY BOOKS.

A variety of subsidiary books are kept with the object of gathering together and summarising in convenient form the company's various transactions preparatory to their entry in the Ledger. It is usual to provide columns in subsidiary books with the following objects:—

(1) To minimise the clerical work in keeping the Ledger.
(2) To facilitate the balancing of the books in sections.
(3) To establish a control of separate departments by the responsible heads.

Sales Day Book.

Every company carrying on business must sell goods or render services to outsiders, and a separate book is therefore kept to record these transactions. This book is usually called the Sales Day Book, but the corresponding book in businesses

not making sales may be the "Contract Book," "Fees Book," "Commission Book," "Insurance Premium Book," "Rents Receivable Book," and so on.

Entries in the Sales Day Book should show the names of the persons to whom sales have been made or services rendered, the values of the sales or services, the date upon which they have been made or rendered, and the folio in the Ledger of the accounts of the persons charged for the goods or services. A record of that description will make possible the ascertainment of the total value of the sales or services for any period, but it will be appreciated that in a business which is composed of several departments or is selling several classes of goods or rendering various types of services it becomes necessary to obtain information about the sales by each department or of each class of goods, or the value of each type of services rendered. This further information can only be ascertained by segregating the different sales &c. in different Sales Day Books or in different columns of the same book. It may even be found convenient to record the sales of a department in one book, with columns for analysing the amounts into the different classes of goods sold by that department. Accordingly the form of Sales Day Book in common use to-day will be found to contain the following columns: Date; Customer's Name; Sales Ledger Folio; Total of Invoice, as well as further columns (each headed by the name of a class of goods or service) in which the analysis of the Invoice Total among the various classes of goods or services is recorded.

Each amount shown in the "Total of Invoice" column is posted to the debit of the appropriate customer's account, but the totals only of the analysis columns (which together should equal the total of the "Total" column) are posted periodically to the credit of the various sales accounts in the General Ledger.

A business effecting sales usually has goods returned, and these "returns" should be entered in a separate Returns Section of the Sales Day Book, or in a Sales Return Book having the same ruling as the Sales Day Book, the postings being, however, made to the reverse side of the respective Ledger Accounts (*i.e.* to the credit of the customers' accounts and to the debit of the various sales accounts).

As Section 274 of the Act requires the sales records to show

sufficient details to enable the goods sold to be identified, and unless a description of the goods is included in the Sales Day Book or of the returns in the Sales Returns Book, it will be necessary to keep the sales invoices and credit notes on file for a period of at least two years.

The retention of these invoices and credit notes for a much longer period may be considered advisable on other grounds.

Purchase Day Book.

This book may be recognised under such names as " Invoice Book," " Materials Purchased Book," " Cost Book," " Expenditure Book," and so on. It is written up from invoices, demand notes, or other documents representing the claims upon the company.

Just as it may be advisable to segregate the different classes of goods sold by a business, so it may be found advisable to analyse the materials, stores, and goods purchased by a business and the services rendered to it. The ruling of the Purchase Day Book will therefore follow closely the lines of the Sales Day Book, and will provide for the following columns: Date; Supplier's Name; Invoice No.; Purchase Ledger Folio; Total of Invoice; followed by further columns for the analysis of the Invoice Total into the various classes of materials &c. purchased.

Each item in the " Total of Invoice " column is posted to the credit of the appropriate supplier's account in the Purchase Ledger, while periodically the totals of the analysis columns are posted to the debit of the various Purchase or Stock Accounts in the General Ledger.

It is to be noted that a column should be provided for the " Invoice Number." This Invoice Number should be marked on the invoice, which should be filed in numerical order, and therefore in the order of the entries in the Purchase Day Book.

Returns of goods to suppliers may be entered in a separate section of the Purchase Day Book or in a separate Purchase Returns Book in a manner similar to the returns from customers described above.

In order to make the Purchase Day Book and Purchase Returns Book proper books of account as defined in Section 274 the purchase invoices and credit notes should be kept on file

for at least two years, unless the goods purchased and returned are fully described in these books.

There are other grounds which make advisable the retention of the invoices and credit notes for a much longer period.

Bills Receivable Book.

Some companies find it necessary to draw bills upon their customers for sums due to the company which, subject to the due payment of the bills at maturity, will settle the indebtedness of such customers. It is customary to record these bills in a "Bills Receivable Book," from which the amount of each bill may be posted to the credit of the customer's account, and the monthly total of all bills received to the debit of Bills Receivable Account in the General Ledger. The monthly total will also be entered on the credit side of the Sales Ledger Control Account, if this control is kept.

The Bills Receivable Book should be ruled to provide the following columns: No.; Date Received; From Whom Received; Drawer; Acceptor; Where Payable; Date of Bill; Term; Due Date; Ledger Folio; Amount; How Dealt With. As the cash is received for the bills on maturity, or by discounting, it will be entered in the Cash Book and posted to the credit of the Bills Receivable Account, and a note made in the appropriate column in the Bills Receivable Book that the bill was duly met or that it was discounted. If the bill is not met at maturity or if it is renewed particulars will be entered in the appropriate column of the Bills Receivable Book stating how the matured bill has been disposed of, and a Journal entry will be made to effect the adjustment (if any) of the Ledger Accounts required by the failure to meet the bill.

Bills Payable Book.

It is not unusual for companies in the course of their business to accept bills drawn upon them by creditors, such bills being described as Bills Payable. A special book, known as "Bills Payable Book," is necessary for the record of these bills, and should be ruled to provide columns for the following information: No.; On Whose Account; Drawer; To Whom Payable; Payable at; Date of Bill; Term; Due Date; Ledger Folio; Amount; and Remarks.

The postings from this book will be made in a manner exactly the reverse of that described for the entries in the Bills Receivable Book (*i.e.* the Supplier's and Purchase Ledger Control Accounts will be debited and Bills Payable Account credited).

Wages Book.

This book will be ruled to suit the convenience of the business, but must contain a column for gross wages, one column for each of the deductions from gross wages (*e.g.* National Health Insurance, Unemployment Insurance, Hospital, &c.), and a column for the net wages payable. The total only of the net wages paid on a particular date will, however, be entered in the Cash Book, and Journal entries will be made debiting " Wages " and crediting the accounts for each of the deductions.

Forms of Books.

There is considerable diversity of opinion as to whether it is better to use ordinary bound books or loose-leaf books for the various books of account which have been referred to. It may, however, be accepted that, where the books are to be written up by hand, bound books may be conveniently used for those books of account in which the entries are to be recorded in chronological order (*i.e.* where, beginning with page 1, each page in the book is filled up before the next page is started). The books to which this applies are Cash Book, Petty Cash Book, Purchase Day Book, Sales Day Book, Journal, Bills Receivable Book, and Bills Payable Book.

In the cases of all the Ledgers (where it is a rare occurrence for two consecutive postings to be made on the same page or even on adjacent pages) economy in staff and efficiency in the maintenance of the Ledgers will probably best be obtained by the use of loose-leaf books. By this method the Ledger accounts can be maintained always in the same order, and no Ledger need contain the accounts of any year other than the current one.

If any of the books are to be written up with the aid of a typewriting machine it will almost invariably be necessary for these books to be in loose-leaf form.

TRIAL BALANCE.

In order that the arithmetical accuracy of the book-keeping may be checked at frequent intervals it is advisable to prepare a trial balance at the end of each month, after the postings of the month's transactions have been completed. Whether this precaution is taken every month or not it is an essential preliminary to the preparation of a Balance Sheet and Profit and Loss Account.

If each Ledger has been made self-balancing by the maintenance in the Private or General Ledger of a Control Account for it, the main Trial Balance will consist of a list of the Balances on the Private or General Ledger, with the balance at the Bank as shown by the Cash Book also included. If the Ledger has been kept with arithmetical accuracy the total of the debit balances will agree with the total of the credit balances; if they do not agree, the postings to the Ledger, the additions and subtractions in the Ledger accounts and the additions of the items in the Cash Book, Petty Cash Book, Journal, and subsidiary books, the totals of which have been posted to the Ledger, will have to be checked until the error is found and eliminated.

The balances on each of the other Ledgers also will be listed, and the net totals thereof agreed with the balances on the relative Control Accounts in the Private or General Ledger.

PROFIT AND LOSS ACCOUNT.

The Profit and Loss Account collects into one account all the balances relating to the Income and Expenditure on Revenue Account of the Company. According to the requirements of the business this account may be prepared in sections in order to show the profit earned or the loss incurred at various stages. These sections are usually given names to indicate the meaning of the results they show (*e.g.* Manufacturing Account, Trading Account, Profit and Loss Account, Appropriation Account), and the balance shown by each section is carried forward to the succeeding section until the final section shows the balance of profit or loss remaining in the business at the date of the account.

At the end of each financial period for which accounts are to be prepared, after the Trial Balance has been taken out

and the other Ledgers agreed with the balances on the Control Accounts, the various income and expenditure accounts have to be scrutinised in order that the amounts accrued due to and by the company and the amounts of expenses paid, but applicable to future periods, may be ascertained for the purpose of adjusting the respective accounts. The adjustments in respect of these items are most readily made by transferring to the Profit and Loss Account the exact amounts applicable to the period covered by the accounts, and carrying down on the appropriate accounts in the Private or General Ledger the balances which represent the amounts due to or by the company not previously entered in the books.

Depreciation has to be calculated on the wasting assets and the necessary provision made by debiting Profit and Loss Account (or a Manufacturing or Trading Account) and crediting (according to the decision of the directors) either the individual asset accounts or a Depreciation Reserve Account.

Next, the accounts of the company's debtors require to be scrutinised, in order to ascertain the amount it is necessary to reserve for bad and doubtful debts and for discounts to be allowed, so that entries may be made debiting Profit and Loss Account and crediting the Bad Debts Reserve and Discount Reserve Account.

Meantime, inventories of loose tools, raw materials, work in progress, and finished products will have been prepared and the values ascertained. These values will be entered on the credit sides of the appropriate purchases or stock accounts in the period for which the accounts are being prepared, and also on the debit sides of the same accounts in the new period.

Lastly, the balances remaining on the purchases, sales, expenses, and other revenue accounts will be transferred to the Profit and Loss Account (or appropriate Manufacturing or Trading Account). If Manufacturing and Trading Accounts are being prepared as well as a Profit and Loss Account the Manufacturing Account will be closed by the transfer of the balance to the Trading Account. The Trading Account will be closed in a similar manner by the transfer of its balance to the Profit and Loss Account, which in turn will be closed by carrying its balance down to the new period or by transferring it to Appropriation Account. (See also page 159.)

Purchase Ledger Control Account.

April	30	To Cash paid for month, per Cash Book		March	31	By Balance b/d	
		„ Discount received, per Cash Book		April	30	„ Purchases for month, per Purchase Day Book	
		„ Returns to suppliers, per Purchase Day Book (or Purchase Returns Book)				„ Journal transfers for month, per Journal credit column	
		„ Bills payable, per Bills Payable Book					
		„ Journal transfers, per Journal debit column					
		„ Balance c/d					

Sales Ledger Control Account.

March	31	To Balance b/d		April	30	By Cash received for month, per Cash Book	
April	30	„ Sales for month, per Sales Day Book				„ Discount allowed, per Cash Book	
		„ Journal transfers, per Journal debit column				„ Returns from Customers, per Sales Day Book (or Sales Returns Book)	
						„ Bills receivable, per Bills Receivable Book	
						„ Journal transfers, per Journal credit column	
						„ Balance c/d	

It will be appreciated that where there are two or more Purchase or Sales Ledgers a column will have to be provided for each of them in the Cash Book and in each of the subsidiary books in order that the monthly totals of the items posted to each ledger may be ascertained.

Purchase Ledger Control Account.

April	30	To Cash paid for month, per Cash Book		March	31	By Balance b/d	
		„ Discount received, per Cash Book		April	30	„ Purchases for month, per Purchase Day Book	
		„ Returns to suppliers, per Purchase Day Book (or Purchase Returns Book)				„ Journal transfers for month, per Journal credit column	
		„ Bills payable, per Bills Payable Book					
		„ Journal transfers, per Journal debit column					
		„ Balance c/d					

Sales Ledger Control Account.

March	31	To Balance b/d			April	30	By Cash received for month, per Cash Book	
April	30	„ Sales for month, per Sales Day Book					„ Discount allowed, per Cash Book	
		„ Journal transfers, per Journal debit column					„ Returns from Customers, per Sales Day Book (or Sales Returns Book)	
							„ Bills receivable, per Bills Receivable Book	
							„ Journal transfers, per Journal credit column	
							„ Balance c/d	

It will be appreciated that where there are two or more Purchase or Sales Ledgers a column will have to be provided for each of them in the Cash Book and in each of the subsidiary books in order that the monthly totals of the items posted to each ledger may be ascertained.

General Ledger may be split into (*a*) Private Ledger and (*b*) General Ledger.

The more numerous the Ledgers become the more difficult it is to localise an arithmetical error, if the Ledgers are balanced as a whole, and for this reason it is advisable to arrange for the Ledgers to be balanced in sections. This sectional balancing is made possible by the maintenance in the General Ledger of a Control Account for each other separate section of the Ledger that is kept in one book. To each Control Account there are posted monthly the totals of all the items that have been posted to the appropriate Ledger, and consequently the total of the balances on any Ledger will, if the postings and additions have been made with arithmetical accuracy, agree with the balance on the relative Control Account. The sources from which the monthly totals are posted will be seen from the skeleton Control Accounts shown on previous page.

Depreciation.

The method of providing for or writing off depreciation must vary according to the nature of the assets, and it is only possible to explain in this book the more usual methods adopted by companies.

The opinion is sometimes expressed that there is no necessity to provide for the depreciation of wasting assets before ascertaining the profits available for distribution, and some decisions of the Courts have given support to this view in particular cases. Nevertheless, when the operation of earning profit entails the deterioration of buildings, plant, machinery, &c., it is prudent and proper to recognise the fact, and to make provision for it out of the profits earned.

Depreciation or diminution in the value of an asset may arise from any or all of the following causes:—

(1) Wear and tear occasioned by use.
(2) Deterioration from chemical or other action.
(3) Obsolescence due to new inventions or systems providing more efficient methods.
(4) Lapse of time.

It is impracticable to ascertain accurately the actual depreciation that takes place in any asset during each year of

its existence, and accordingly a basis more or less arbitrary has to be adopted in order to provide during its active life for the diminution in value that takes place. Thus it becomes necessary, when an asset is acquired, to estimate its value at the end of its useful life, and by deducting that scrap value from its cost the amount to be provided for depreciation during its estimated life is ascertained.

The two most usual methods of calculating the amount to be provided for depreciation are based (*a*) on original cost and (*b*) on diminishing book value—

(*a*) *On original cost.*—Under this method the estimated amount of depreciation is divided by the number of years it is estimated the asset will give useful service, and the original cost of the asset is reduced by the resulting amount every year.

(*b*) *On diminishing book value.*—Under this method a percentage is ascertained which, when applied to the estimated remaining value of the asset at the end of each year (*i.e.* the original cost in the first year and in succeeding years the original cost less depreciation already written off) will, by the end of the asset's estimated useful life, have reduced the book value to the estimated scrap value.

It is to be noted that whereas 10 per cent. applied annually to the original cost of an asset will reduce its value to nil at the end of the tenth year no percentage below 100 per cent. applied annually to the diminishing book value will theoretically ever eliminate the total cost of an asset. Moreover, it will require the annual application of a percentage in excess of 30 per cent. to reduce the diminishing book value to a negligible amount in ten years. Similarly, whatever percentage is considered sufficient when applied to the original cost of an asset, the rate to be applied to the diminishing book value will require to be about three times as great.

The arguments in favour of the two methods of depreciation may be summarised as follows:—

The original cost method gives an even charge for *depreciation* throughout the anticipated life of the asset.

The diminishing book value method gives a reasonably even charge for the *service* of the asset throughout its anticipated life, for the depreciation charge is heavy in the early years of life when the cost of repairs and renewals is small, and becomes lighter as years go on and as repairs and renewals become heavier.

The arguments against each method may be said to be that it does not accomplish what the other method does, with the additional argument against the diminishing book value method that in the case of an asset with a life of less than ten years the depreciation charges in the first few years are unduly heavy. This last argument can, however, be met by applying the original cost method to, say, one half of the asset and the diminishing book value method to the other half, thus retaining the benefit in total of a decreasing depreciation charge year by year without the heavy incidence in the first years.

The adoption of a depreciation method must be left to the good sense of the official charged with the application of it, but it is well that the secretary should be warned against a blind adoption of the rates allowed by the Inland Revenue for wear and tear, which, as a rule, are inadequate. Likewise, the setting aside for depreciation of lump sums, dependent upon nothing but the amount of profit which a company has earned, is to be deprecated.

Whichever method be adopted depreciation rates should be fixed, where possible, for each item of plant and machinery, each building, &c.

A register is sometimes maintained containing an account for each item showing its whole history, its original cost, and the depreciation provided for it each year. Only in this way is it possible to determine, when an asset is scrapped, what further provision is necessary in order to remove any remaining book value from the plant and machinery or other asset account in the General Ledger. These asset accounts in the General Ledger may be likened to the Purchase Ledger and Sales Ledger Control Accounts, while the detailed accounts for the various items in the register correspond to the suppliers' and customers' accounts in the Purchase and Sales Ledgers.

Depreciation rates should be reviewed from time to time, as many estimates of life fail to materialise, and the rates should be adjusted as soon as they are found to be inaccurate.

Depreciation of Leasehold Properties and Patents.

It is usual to write off the cost of these assets by equal annual instalments over the unexpired term, but it is to be noted that in connection with leasehold properties it may be necessary to increase the annual charge somewhat in order to set aside profits to meet a charge for dilapidations at the end of the lease.

Depreciation of Loose Tools and Patterns.

As these assets have relatively short lives—in some cases less than one year—it is impracticable to treat them in the same manner as plant and machine, and provide for the writing off of depreciation year by year. It is better to charge all expenditure during the year to "Loose Tools" and "Patterns" Accounts, and at the end of the year to make a valuation of the loose tools and patterns on hand and transfer the difference between the balances on the accounts and the respective valuations direct to the Manufacturing, Trading, or Profit and Loss Account.

Reserves and Reserve Funds.

It is perhaps unfortunate that the terminology of accounting is not standardised. The terms "reserve" and "reserve fund" are often used as if they were synonymous, and "reserve" frequently covers a provision for a known liability (*e.g.* reserve for taxation), a provision for an anticipated loss (*e.g.* reserve for bad debts), and a free reserve (*e.g.* reserve account).

It is suggested that some confusion of thought would be avoided if the term "provision" were used in all cases involving a liability or anticipated loss, and the term "reserve" always indicated an amount which was not required for any specific purpose at that date, while "reserve fund" was confined to a reserve which was invested outside of the business.

Secret reserves arise when for any reason the liabilities are overstated or the value of the assets is understated.

Sinking Funds.

A sinking fund is created by the setting aside at regular intervals of definite amounts in order to provide for a liability

or liabilities which it is known will have to be met at a definite future date.

It is usual for the periodical amounts to be set aside out of revenue by debiting Profit and Loss Account and crediting a Sinking Fund Account. The amount of the periodical provisions should be invested or otherwise definitely set aside so that the actual cash is available to meet the liability when it matures.

Sinking funds are commonly created for the purpose of redeeming debentures or debenture stock at a specific date. When the debentures are to be redeemed the sinking fund investments will be realised and the cash thus made available will be utilised in repaying the debentures. If the redemption is made at the par value the book-keeping entries will be as follows:—

On realisation of sinking fund investment.

Cash will be debited and investments credited.

On redemption of debentures.

Debenture Account will be debited and Cash credited with the amount paid in redemption of the debentures.

Where the debentures are redeemed at a premium the Sinking Fund Account and the corresponding sinking fund investments will, at the date of redemption, be equal to the par value of the debentures, plus the premium payable. In addition to the above the following book-keeping entry will have to be made: viz., Sinking Fund Account debited and Debenture Account credited with the amount of the premium.

When a Sinking Fund Account has been built up out of profits, then, after the redemption of the debentures, there will remain at the credit of the Sinking Fund Account an amount equal to the par value of the debentures redeemed, and this amount will represent undistributed profits, and may be dealt with at the discretion of the directors as a free reserve, for it is no longer earmarked for any special purpose.

It may be said that the object in making provision in the Profit and Loss Account for the periodical sinking fund amounts is to ensure that to that extent cash will be available for sinking fund purposes, and not for payment of dividends.

Branch Accounts (Home).

If the branch office is situated in the same country as the head office the whole of the accounting for the operations of the branch during a year (or half-year) may be done at the branch or it may be done at head office. In the former case head office will keep in its General or Private Ledger a current account for the branch, which, for accounting purposes during the year, will be treated in the same way as any other debtor or creditor account, being debited with cash and goods supplied and services rendered to the branch, and credited with cash and goods received from and services rendered by it. At the end of the year, when the branch has prepared its Profit and Loss Account and Balance Sheet, entries will be passed through the head office books debiting the various expenses accounts and crediting the branch current account with each of the amounts shown on the debit side of the branch Profit and Loss Account, and debiting the branch current account and crediting the various revenue accounts (sales &c.) with each of the amounts shown on the credit side of the branch Profit and Loss Account. In this way the branch accounts are incorporated with those of the head office.

If the accounting for the branch operations is done at head office it will be found advisable for control purposes to segregate the records of the branch transactions in the General or Private Ledger from the head office transactions. This can be done by maintaining separate expenses and revenue accounts for the branch or by the provision of a separate column in each of the expenses and revenue accounts for the recording of the branch transactions. In this case the branch must send the head office detailed advices of all its transactions to enable them to be properly dealt with in the head office books.

Branch Accounts (Foreign).

In the case of foreign branches the accounting will almost invariably require to be done at the branch, but it will probably be found convenient to have the branch send monthly to head office (in addition to the annual or semi-annual accounts) statements of its expenses and revenue in order that the head office may have information regarding the branch's operations.

In connection with the accounting with foreign branches

and the incorporation of branch accounts with head office accounts a proper method of dealing with exchange is of great importance.

When annual accounts to be submitted to shareholders are being prepared it is necessary to incorporate the branch accounts with the head office accounts, and for this purpose the amounts which will be shown in the branch accounts in foreign currency must be converted into sterling. Generally speaking, all profit and loss items should be converted at the average rate ruling during the period covered, liabilities and all floating assets at the rate current on the date on which the accounts are closed, while all fixed assets should be converted at the rates current on the days on which payments were made for their acquisition.

When the conversion of the branch Balance Sheet is complete the difference between the sterling amount shown as due to the head office and the amount shown in the head office books as due by the branch will be the profit or loss on exchange. The adjustment necessary to bring the head office books into accord with the branch books will be effected by an entry debiting or crediting the branch current account with the profit or loss on exchange, as the case may be.

It may be mentioned here that it is not often that the Head Office Account balance shown in the Branch Office books agrees with the Branch Office balance shown in the Head Office books at any particular date. This is due to the fact that there are usually items in transit which have been entered in one set of books before the date in question, but of which the advice did not reach the other party until after that date. Special care must be taken to see that all such items are dealt with and carried to the correct accounts, so that the current accounts between the head office and the branch are brought into agreement before any attempt is made to incorporate the branch accounts with the head office accounts.

Departmental and Cost Accounts.

Department accounts for the purpose of showing the result of the operations of each department of a business are kept in a manner similar to that described for branch accounts. They will, however, necessitate in a greater degree the alloca-

tion over the departments of expenss which are common to them all (*e.g.* administrative salaries, depreciation of buildings, &c., travellers' salaries, telephones, telegrams and postages, electric light, &c.). This allocation can only effectively be done if each item of expense which is common to two or more departments is considered separately and an equitable division made.

Cost accounts are in effect a further analysis of departmental accounts, and while they do not as a rule form part of the book-keeping system of a business, the results obtained by cost accounting should be capable of reconciliation with the results shown by the Manufacturing, Trading, and Profit and Loss Accounts. Their main objects are to provide control over expenditure, and to furnish information which is essential to accurate estimating for the purpose of tendering for contracts.

The subject is too wide to be dealt with effectively in this work, and the secretary in search of information should consult the text-books which deal specially with it. Briefly, however, cost accounting may be said to be a system of (*a*) recording the wages earned and the material consumed in such a way that the values thereof may be charged to the items of production or to the jobs upon which they have been earned or consumed, and (*b*) collating the remaining expenses and allocating them over the production of the period in which they are incurred.

Considerable advantage in the way of an adequate control over the material and stores in a manufacturing establishment can be obtained by the maintenance of efficient stock records, in which an account is kept for each class of material or stores, showing the actual receipts into stock from suppliers or from the factory, the issues thereof to the producing departments and to customers, and the consequent balance in stock. A record of this description, showing not only the quantities but also the values of the receipts and issues, supported by a continuous check between the quantities shown to be on hand by the record and the actual physical stock, will eliminate most of the trouble of annual stocktaking, will simplify the preparation of interim Profit and Loss Accounts, and will provide a control that will, if properly used, prevent the locking up of capital in unnecessarily large or unremunerative stocks.

Capital and Revenue.

In order that the books of the company may at all times show the true state of its affairs, great care must be exercised when recording the transactions to distinguish between those of a capital and those of a revenue nature. For example, expenditure on repairs is a revenue charge, and must not be treated as an addition to the asset concerned. Conversely, expenditure upon the acquisition of a new asset or upon the extension of an existing asset (such as a building) is an addition to the asset, and should not be charged to revenue.

This subject of capital and revenue could be greatly extended, but there is not room in a book of this character to do more than refer to its importance. In all doubtful cases the secretary should be guided by expert advice.

Dividends Out of Capital.

As explained in another chapter, " dividends " must not be paid out of capital, except in the circumstances specified by Section 54.

Profit Before Incorporation.

When a company is to be formed to acquire as a going concern an existing business it frequently happens that the business is taken over as from a past date, and there is thus an interval of time between the date from which the business is acquired and the date of incorporation of the company.

Unless profit earned by the business during this period is expressed by the contract to be the property of the vendor, the purchase price is usually deemed to include an amount equivalent thereto in respect of such profit, which should be regarded by the purchasing company as capital and not available for the payment of dividend.

When an already existing company acquires a business the profits earned prior to the date of the execution of the purchase agreement should be similarly dealt with.

Forms of Published Accounts.

For certain classes of undertakings there are statutory forms in which the balance sheets and revenue accounts are to be prepared. These undertakings include—

Railway Companies.
Gas Companies.
Electric Light Companies.
Insurance Companies.

Particulars of these accounts and information as to the filing of official copies should be sought in the various Acts of Parliament governing their operations and accounts.

As regards other companies Section 123 makes it obligatory for the directors to lay before the company in general meeting not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year a Profit and Loss Account. There must also be laid before the company in general meeting a Balance Sheet as at the date to which Profit and Loss Account is made up, and certain specified particulars must be included therein or in a statement annexed or attached thereto. Hitherto the presentation of a Profit and Loss Account and the particulars to be shown in the Balance Sheet have been regarded as domestic matters to be dealt with in the Articles of Association of each company; but the section referred to overrides the provisions of all existing Articles of Association on these matters, and as the changes are of great importance the relevant sections should be carefully studied.

Sub-section 1 of the section requires the Profit and Loss Account (or the Income and Expenditure Account in the case of a company not trading for profit) and the Balance Sheet to be made up to a date not more than nine months previous to the date of the meeting. In the case of a company carrying on business or having interests abroad, twelve months is allowed for the production of the accounts instead of nine months.

No particular form of Profit and Loss Account is prescribed, but the account must show the total amount paid or payable to the directors as remuneration for their services during the period covered by the account, inclusive of all fees, percentages, or other emoluments paid to or receivable by them by or from the company or any subsidiary company (Section 128, Sub-section 1 (*c*)).

The above requirement does not apply in relation to a managing director of the company, and in the case of any other director who holds any salaried employment in the

company it is not necessary to include in the said total amount any sums except those payable by way of directors' fees (Sub-section 3).

The expression "emoluments" includes fees, percentages, and other payments made or consideration given directly or indirectly to a director as such, and the money value of any allowances or perquisites belonging to his office (Sub-section 5).

Section 123, Sub-section 2, provides that there shall be attached to every Balance Sheet laid before the company in general meeting a report by the directors with respect to the state of the company's affairs, and the amounts (if any) which they recommend should be paid by way of dividend or carried to any reserve accounts.

A Balance Sheet must contain the information specified in Section 124 and include a summary of the authorised and issued share capital of the company and such particulars of the liabilities and assets as are necessary to disclose their general nature and to distinguish between the amounts of the fixed assets and of the floating assets respectively, and to show how the values of the fixed assets have been arrived at.

The following items must be stated under separate headings in the Balance Sheet, so far as they have not been written off:—

(*a*) Preliminary expenses (Section 124, Sub-section 2 (*a*)).

(*b*) Expenses in connection with any issue of share capital or debentures (Section 124, Sub-section 2 (*b*)).

(*c*) The amount of the goodwill, and of any patents and trademarks, if such can be ascertained from the books or from any contract for the sale or purchase of property to be acquired by the company, or from any documents in the possession of the company relating to stamp duty payable in respect of any such contract, or the conveyance of any such property (Section 124, Sub-section 2 (*c*)).

and it is provided that—

(*d*) The total amount paid by way of commission in respect of any shares or debentures, or allowed by way of discount in respect of any debentures, or so much thereof as has not been written off, must be stated in every Balance Sheet (Section 44, Sub-section 1).

(*e*) Particulars of the discount allowed on the issue of shares, or of so much of that discount as has not been written off, must be contained in every Balance Sheet (Section 47, Sub-section 3).

(*f*) The aggregate amount of any outstanding loans made to trustees for the purchase of shares to be held on behalf of any employees, or to employees other than directors to enable them to purchase fully paid shares of the company, must be shown as a separate item in every Balance Sheet (Section 45, Sub-section 2).

(*g*) The part of the issued capital which consists of redeemable preference shares, and the date on or before which those shares are, or are to be liable, to be redeemed must be specified in a statement which must be included in every Balance Sheet of a company which has issued redeemable preference shares (Section 46, Sub-section 2).

(*h*) The share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate must be shown in the accounts (*i.e.* Balance Sheet) (Section 54, Sub-section 1 (*g*)).

(*j*) The particulars of debentures which have been redeemed but which the company has power to reissue must be included in every Balance Sheet (Section 75, Sub-section 3).

(*k*) The aggregate amount of shares in and sums owing by subsidiary companies, distinguishing between shares and indebtedness, must be set out in the Balance Sheet separately from all other assets, and the aggregate amount due to subsidiary companies must be set out in the Balance Sheet separately from all other liabilities (Section 125).

(*l*) Particulars showing the amount of any loans to any director or officer of the company made during the period to which the accounts relate by the company or by any other person under a guarantee from or on a security provided by the company, including any such loans which were repaid during the period, must

be contained in the accounts (*i.e.* Balance Sheet) (Section 128, Sub-section 1 (*a*)).

(*m*) Particulars showing the amount of any loans made in the manner described in (*l*) above to any director or officer at any time before the period covered by the accounts and outstanding at the expiration thereof, must be contained in the accounts (*i.e.* Balance Sheet) (Section 128, Sub-section 1 (*b*)).

It is to be noted, however, that it is not necessary for the accounts to contain particulars showing the amount of any loans to directors which have been made in the ordinary course of business by a company the ordinary business of which includes the lending of money (Section 128, Sub-section 2 (*a*)).

Similarly it is not necessary for the accounts to contain particulars showing the amount of loans to employees made in the ordinary course of business by a company the business of which includes the lending of money, nor is it necessary to include in the particulars of loans any loan made to any employee if the loan does not exceed £2,000 and is certified by the directors to have been made in accordance with any practice adopted or about to be adopted by the company with respect to loans to its employees (Section 128, Sub-sections 2 (*a*) and (*b*)).

If any liability is secured otherwise than by operation of law on any assets of the company the Balance Sheet must include a statement that it is so secured, but it is not necessary to specify the assets upon which such liability is secured (Section 124, Sub-section 3).

Section 127 defines a subsidiary company as one in which the company to which it is a subsidiary holds shares and in regard to which one of the following conditions obtains:—

(*a*) The shares held by the holding company represent more than fifty per cent. of the issued share capital;

(*b*) The shareholding entitles the holding company to more than fifty per cent. of the voting power;

(*c*) The holding company has power (otherwise than under provisions of a debenture trust deed or by virtue of shares issued to it for the purpose in pursuance of those provisions) directly or indirectly to appoint the majority of the directors.

It is conceivable that a company may be subsidiary to more than one company. It should be noticed that a company is none the less a subsidiary because it is not a company within the meaning of the Act. Foreign companies may therefore be subsidiaries.

Where a company which includes in its ordinary business the lending of money holds shares in another company as security only, no account shall be taken of the shares so held for the purpose of determining whether or not the latter company is a subsidiary company (Section 127, Sub-section 2).

Where a company holds either directly or through a nominee shares in a subsidiary company or in subsidiary companies there must be annexed to the Balance Sheet of the holding company a statement signed by the persons by whom the Balance Sheet is signed, stating how the profits and losses of the subsidiary company, or where there are two or more subsidiary companies the aggregate profits and losses of those companies have, so far as they concern the holding company, been dealt with in, or for the purpose of, the accounts of the holding company (Section 126, Sub-section 1). If the report of the auditors upon the Balance Sheet of any subsidiary company is qualified, particulars of the manner in which the report is qualified must be set out in the statement referred to above (Section 126, Sub-section 2).

For the purposes of Section 126 the profits and losses of a subsidiary company mean the profits or losses shown in any accounts of the subsidiary company made up to a date within the period to which the accounts of the holding company relate, or, if there are no such accounts of the subsidiary company available at the time when the accounts of the holding company are made up, the profits or losses shown in the last previous accounts of the subsidiary company which became available during that period (Sub-section 3).

If for any reason the directors are unable to obtain the information necessary for the preparation of the above statement, they must so report in writing, and their report must be annexed to the Balance Sheet in lieu of the statement (Sub-section 4).

Section 110 requires the annual return of every company (other than a private company or an assurance company which has complied with the provisions of Sub-section 4 of

Section 7 of The Assurance Companies Act, 1909) to include a written copy, certified by a director or the manager or secretary of the company to be a true copy, of the last Balance Sheet which has been audited by the company's auditors, including every document required by law to be annexed thereto, together with a copy of the report of the auditors thereon certified as aforesaid.

It is to be noted that it is not necessary to lodge with the Registrar of Companies a copy of the Profit and Loss Account (or Income and Expenditure Account).

The Balance Sheet to be submitted to the shareholders of a private company will be in a form similar to the Balance Sheet of a public company; but it is not necessary to lodge a copy with the Registrar of Companies, or to send a copy to members of such companies, who are only entitled to receive a copy on making requisition and payment therefor under Section 130, Sub-section 2.

RECONSTRUCTIONS AND AMALGAMATIONS AND TAXATION.

These are subjects which are of considerable interest to company secretaries, but it is impossible to deal with them adequately in this work. Reference should be made to Gore-Browne's Handbook on the Formation, Management, and Winding Up of Joint Stock Companies (Haydon and Borrie).

INSPECTION OF BOOKS.

All the books of a company may be inspected at any time by the directors and auditors of the company, but the only statutory rights of inspection conferred upon other persons and the times and terms of the inspection are contained in the table shown opposite.

Permission to inspect the books of account can be granted by the directors, provided the Articles confer upon the directors the power to do so.

	Register of Charges.[1]	Register of Members and Index.	Minutes of General Meetings.	Register of Directors.	Register of Debenture Holders.
To be open for inspection	At least two hours per day.	At least two hours per day, except when closed under Section 99.	At least two hours per day.	At least two hours per day.	At least two hours per day, except when closed under Section 73.
Persons entitled to inspect	Any person.	Any person.	Members.	Any person.	Shareholders and registered holders of debentures.
Payment for each inspection	Creditors and members free; others as prescribed by company, but not exceeding 1*s.*	Members free; others as prescribed by company, but not exceeding 1*s.*	Free	Members free; others as prescribed by company, but not exceeding 1*s.*	Free.
Right to make extracts	Yes	No.	No.	Yes.[2]	No.
Company bound to supply copies	No	Yes.	Yes (to members).	No.	Yes.
Payment for copies	—	6*d.* per 100 words or part thereof, or such less sum as company may prescribe.	Not exceeding 6*d.* per 100 words.	—	6*d.* per 100 words.

[1] The copy of any instrument creating a charge requiring registration under the Act which must be kept at the Company's office is also open to inspection by any creditor or member, but no such right is conferred on other persons.

[2] The right to make extracts from the Register of Directors is assumed on the ground that there exists no obligation on the part of a Company to supply a copy thereof, on the analogy of the position with regard to the Register of Charges and the Register of Members. In the case of the Register of Charges, of which a copy is not required by the Act to be supplied, it was held in Nelson *v.* Anglo-American Land Co., [1897] 1 Ch. 130, that extracts from the Register could be made; but in the case of the Register of Members, of which a copy must be supplied by the Company on payment therefor, it was held in *re* Balaghat Gold Mining Co., [1907] 2 K.B. 665, that extracts could not be made.

EXAMINATION OF BOOKS BY INSPECTORS ETC.

On an examination of the company's affairs by inspectors appointed by the Board of Trade under Section 135, or by special resolution of the company under Section 137, it will be the duty of the secretary to produce for the examination of the inspectors all books and documents in his custody or power, and the inspectors may examine him upon oath in relation to the company's business. If the secretary refuse to produce any book or document, or to answer any question relating to the affairs of the company which an inspector appointed by the Board of Trade may require or put to him, he may, after inquiry by the Court, be punished as if he had been guilty of a contempt of Court (Section 135), and if he refuse to produce books or documents to or to answer questions of an inspector appointed by the company, he may be proceeded against in the same manner as if the inspector had been appointed by the Board of Trade (Section 137). The application to the Board of Trade for the appointment of an inspector may be made in the case of a banking company having a share capital by persons holding one third of the issued shares; in the case of any other company having a share capital by members holding one tenth of the shares issued; and in the case of a company not having a capital by one fifth of the persons on the Register of Members (Section 135, Sub-section 1).

Section 136 deals with the machinery of prosecution where from any report made by an inspector it appears that any person is guilty of an offence for which he is criminally liable. The section requires all officers and agents of the company, past and present, to give assistance in connection with the prosecution. Bankers and solicitors and persons employed by auditors are " agents " for the purposes of the section.

Sections 271 to 277 make provision in regard to the punishment of offences by officers of companies antecedent to or in the course of winding up. If a secretary of a company being wound up " destroys, mutilates, alters, or falsifies any books, papers, or securities, or makes or is privy to the making of any

false or fraudulent entry in any register, book of account, or document belonging to the company, with intent to defraud or deceive," he is liable on conviction to imprisonment (Section 272). He is similarly liable on conviction to imprisonment if within twelve months next before a winding up or at any time thereafter he conceals, destroys, mutilates, or falsifies any book or paper affecting or relating to the affairs or property of the company or is privy thereto (Section 271, Subsection 1 (*i*)).

At any time after the appointment of a provisional liquidator or the making of a winding-up order, any officer or person known or suspected to have in his possession property of the company or supposed to be indebted to the company or deemed capable of giving information concerning the promotion, formation, trade, dealings, affairs, or property of the company, may be summoned before the Court for examination and be required to produce books and other documents in his custody or power (Section 214).

CAPITAL

UNLIKE the capital of a partnership firm, which is constantly fluctuating, the capital of a company is fixed and is only alterable in accordance with the powers conferred by the Statute and the Company's Articles.

By the "Capital" of a company is generally understood the Nominal Capital—that is, the total amount authorised to be issued by the Memorandum of Association. Frequently only a smaller amount is issued, perhaps a still smaller amount subscribed for, and only a portion of that may be called up, so that in practice it is necessary to employ other distinguishing terms, such as "Issued Capital," "Subscribed Capital," "Called-up Capital," "Paid-up Capital." These terms are in themselves sufficiently explanatory. The term "Working Capital" is also used to indicate the amount of subscribed capital available for carrying on the business of a company after the purchase money has been paid, and in the case of a company which issues a prospectus the amount specified as the minimum subscription therein must provide for "Working Capital" as one of the matters prescribed by Part I of Schedule IV of the Act.

A company has no power to provide, by a registered contract or otherwise, for the issue of shares at a discount, so as to render the holders thereof not liable to pay the nominal amount of the shares in full [1]; but under a properly registered contract a company may buy property for shares.[2] A company may now, however, issue at a discount shares of a class already issued, provided the issue is authorised by a resolution of the company in general meeting which specifies the maximum rate of discount at which the shares may be issued, and the issue is sanctioned by the Court. A year must have elapsed since the company was entitled to commence business, and the shares must be issued within one month after the issue is sanctioned by the Court or such extended time as the Court allows. Every prospectus relating to the issue of the shares and every balance

1 See Ooregum Gold Mining Co. of India *v.* Roper, [1892] App. Ca. 125; *re* Weymouth and Channel Islands Steam Packet Co., [1891] 1 Ch. 66; Welton *v.* Saffery, [1897] App. Ca. 299. See also "UNDERWRITING," page 87, *ante*.

2 *Re* E. J. Wragg, [1897] 1 Ch. 796.

sheet issued after the shares are issued must contain particulars of the discount allowed or of so much as has not been written off (Section 47). The issue of debentures at a discount is not subject to any such restrictions, but a scheme under which debentures so issued give to the holders an immediate right to exchange the debentures at their full nominal value for shares is invalid, as it is capable of being used as a means of improperly issuing shares at a discount.[1] Possibly a right thus to exchange debentures at some future date may be conferred.[2]

A company may not by means of a loan, guarantee, or the provision of security or otherwise, directly or indirectly provide financial assistance for or in connection with the purchase by any person of shares of the company (Section 45). The prohibition does not extend to loans made in the ordinary course of its business by a company the business of which is lending money. Nor does it affect the provision of money under a scheme for the purchase by trustees of fully paid shares to be held by or for the benefit of employees, or loans to employees with a view to the purchase by them of fully paid shares to be held by themselves; but the aggregate amount of such loans must in either case be disclosed in every balance sheet.

INCREASE OF CAPITAL.

The nominal share capital of a company limited by shares or of a company limited by guarantee and having a share capital may be increased by resolution of the company in general meeting, which resolution may be special, extraordinary, or ordinary, as may be directed by the Articles, which must be strictly followed. Where by the Articles the power is made exerciseable by "the company in general meeting" an ordinary resolution will alone be necessary, and an ordinary resolution is prescribed by Clause 34 of Table A. In no circumstances can an increase of capital be effected, as formerly, by a resolution of the directors (Section 50, Sub-section 2).

A company having authority by its Articles to increase its capital by the creation of new shares may, however, delegate to the directors the power to issue such capital, since "creation"

[1] Moseley *v.* Koffyfontein Mines, [1904] 2 Ch. 108.
[2] *Ibid.*, *per* Cozens-Hardy, L. J., at page 120.

and " issue " are different acts.[1] The statutory provisions as to increase of capital are contained in Section 50 (see page 21, *ante*).

Where the power to issue shares is vested in the directors, it is a fiduciary power primarily given to them for the purpose of raising capital when required for the purposes of the company. Hence the directors would not be entitled to issue shares merely for the purpose of maintaining their control.[2]

Notice of any increase of capital beyond the registered capital must be given to the Registrar of Companies within fifteen days from the date of the passing of the special, extraordinary, or ordinary resolution by which the increase is authorised, together with a printed copy of the resolution, and if default is made the company and every officer of the company who is in default is liable to a penalty (Section 52). The form of notice to be lodged with the Registrar must bear an impressed five-shilling registration fee stamp, and also an ad valorem fee stamp calculated on the amount of the increase (see page 330, *post*). Besides the above fee stamps required by the Companies Act (see Schedule X), The Stamp Act, 1891, Section 112, as amended by The Finance Act, 1899, Section 7, The Finance Act, 1920, Section 39, and The Finance Act, 1933, Section 41, requires a Statement of Increase to be lodged with the Registrar, charged with an *ad valorem* stamp duty of ten shillings for every hundred pounds or fraction of one hundred pounds of the amount of increase. This Statement must be duly stamped with the duty charged within fifteen days after the passing of the resolution by which the capital is increased: otherwise the duty, with interest thereon at the rate of five per centum per annum from the passing of the resolution, becomes a debt due to His Majesty recoverable from the company (Revenue Act, 1903). It must be noticed that " increase of registered capital " means an increase of nominal or authorised capital.[3]

The course will be to pass a resolution that the capital be increased in the manner decided—*e.g.* by the creation of so many new shares—and that the directors be authorised to allot. The appropriate Forms of Notice and Statement of Increase of Capital are shown on pages 171 and 172.

[1] Moseley *v.* Koffyfontein Mines, [1910] 2 Ch. 382; [1911] 1 Ch. 73; [1911] A. C. 409.

[2] Piercy *v.* S. Mills & Co., [1920] 1 Ch. 77, but a director may acquire shares from existing members by purchase and so increase his voting power (North-west Transportation Co. *v.* Beatty, [1887] 12 App. Ca. 589).

[3] Attorney-General *v.* Tube Investments, [1930] W. N. 59.

*No. of Company*_____ FORM No. 10.

"THE COMPANIES ACT, 1929"

COMPANY HAVING A SHARE CAPITAL

Ad Valorem Companies Fee Stamp (including 5s. Registration Fee Stamp) must be impressed here.

NOTICE OF INCREASE IN THE NOMINAL CAPITAL OF _____, LIMITED

To the Registrar of Companies.

The above-named Company hereby gives you notice, pursuant to Section 52 of The Companies Act, 1929, that by_____[1] Resolution of the Company dated the_____day of_____193, the Nominal Capital of the Company has been increased by the addition thereto of the sum of_____Pounds, beyond the Registered Capital of £_____.

The additional Capital is divided as follows:—

Number of Shares.	Class of Shares.	Nominal Amount of each Share.

The conditions (*e.g.* voting rights, dividends, &c.) subject to which the new shares have been or are to be issued are as follows:—

_____

_____

(*If any of the new Shares are Preference Shares state whether they are redeemable or not.*)

_____
Signature.

_____
Description.[2]

Dated the_____day of_____193.

*Presented by*_____

[1] Insert "an ordinary," "an extraordinary," or "a special" as the case may be. A printed copy of the resolution also must be registered.

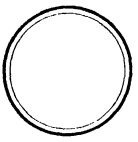
[2] State whether director or manager or secretary of the company.

*No. of Company*_____ FORM No. 26.

"THE STAMP ACT, 1891; THE REVENUE ACT, 1903; AND THE FINANCE ACT, 1933"

COMPANY HAVING A SHARE CAPITAL

STATEMENT OF INCREASE OF THE NOMINAL CAPITAL OF



Inland Revenue Duty Stamp to be impressed here.

_____, LIMITED

Made pursuant to Section 112 *of The Stamp Act*, 1891; *Section* 5 *of The Revenue Act*, 1903; *Section* 41 *of The Finance Act*, 1933.)

*Presented by*_____

THE NOMINAL CAPITAL of_____, LIMITED, has by a Resolution of the Company dated the_____day of_____, 193 , been increased by the addition thereto of the sum of £_____, divided into_____Shares of_____each, beyond the Registered Capital of £_____.

_____
Secretary.

_____
Description.

Dated the_____day of_____193 .

This Statement should be signed by an Officer of the Company.

REDUCTION OF CAPITAL.

A company limited by shares, or a company limited by guarantee and having a share capital, may, by special resolution, reduce the capital specified in its Memorandum, if authorised to do so by its regulations as originally framed or as altered by special resolution (Section 55). The resolution authorising the reduction requires confirmation by the Court, which may be petitioned for an Order confirming the reduction as soon as the resolution is passed (Section 56). On making the Order the Court may if for any special reason it thinks proper so to do order that the words "and Reduced" be added to the company's name for such period as the Court directs, and may further order that the company publish the reason for the reduction and such other information as it thinks expedient with a view to giving proper information to the public, and also the causes which led to the reduction (Section 57). The

addition of those words is required in order to give warning to the public of the financial position of the company.[1] Where the reduction involves either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital, creditors are entitled to object to the reduction; and the creditors have a right to object to the reduction in any other case if the Court so directs. But the Court may, if it thinks proper so to do, having regard to any special circumstances of the case, direct that the consent of any class or classes of creditors shall not be required (Section 56, Sub-section 3). Where the creditors are entitled to object the list of creditors is settled by the Court. Where there is no reduction of liability or repayment of capital, inquiry for creditors is not required to be made, unless the Court requires such inquiry to be made. Under the provisions for reduction of capital, not only may the liability in respect of the amount unpaid upon shares be extinguished or diminished, but there is also power to cancel lost capital or capital unrepresented by available assets, or to pay off capital in excess of the wants of the company (Section 55). Where a reduction takes the form of a return of capital in excess of the wants of the company, the Court must be satisfied (1) that the Company does not require the capital proposed to be returned, and (2) that in the case of any creditor entitled under Section 56 to object, he has either consented to the reduction, or that his claim has been discharged or has determined, or has been secured, or that special circumstances for an order under Sub-section 3 exist. Evidence that the company is solvent is not sufficient to satisfy the Court upon the first point, nor does it constitute a "special circumstance," justifying an order under Sub-section 3 that Sub-section 2 should not apply as regards creditors generally. Such fact is not a "special circumstance" because it would be an ordinary feature of any case of reduction taking the form above mentioned.[2]

On production to him of the Order of the Court confirming the reduction, and delivery of a copy of the Order and of the Minute approved by the Court showing the particulars of the

[1] *Re* Pinkney & Sons' Steamship Co., [1892] 3 Ch. 125. The fact that the company is carrying on business abroad will not necessarily induce the Court to dispense with the use of these words, Lindner & Co., in *re*, [1911] W.N. 66. See also Section 57, Sub-section 2.

[2] Practice Note, [1930] W.N. 78.

alterations of the capital, the Registrar will register the Order and Minute, and his certificate of registration of the Order and Minute is conclusive evidence that the requirements of the Act have been complied with.[1] On this registration taking place the resolution for the reduction of capital, as confirmed by the Order, takes effect. Notice of the registration must be published in such manner as the Court may direct (Section 58). The Minute on registration is deemed to be substituted for the corresponding part of the Memorandum. Such substitution is to be deemed an alteration of the Memorandum and must be embodied in every copy of the Memorandum issued thereafter (Section 58, Sub-sections (5) and (6) and Section 24).

Section 58 requires the Minute to show (*inter alia*) the amount of " each " share, and the amount (if any) at the date of the registration deemed to be paid up on " each " share. Where the reduction affects shares which have been paid up to different extents, the shares may be grouped in the Minute in accordance with the effect produced upon them by the reduction, *e.g.*—

Number of shares.	Amount deemed to be paid up on each share. s.	d.
300	1	0
200	2	0
100	4	0

But the denoting numbers of the shares in each group must be given.[2] As these denoting numbers will not necessarily be consecutive the Minute may, where the company is a large one, be rather elaborate, but the Court will not require all the details to be set out in the advertisement of the registration.

Notice by advertisement is given of the presentation of the petition for reduction, of the list of creditors, of the hearing of the petition, and of the registration of the Order and the Minute.[3]

The enumeration of the particular instances of reduction mentioned above does not limit the jurisdiction of the Court to them alone. For instance, proof that capital has been lost or is unrepresented by available assets, or that the capital is in excess

[1] See *re* Walker and Smith, [1903] W. N. 82, in which the certificate was held conclusive although there was no power under the Articles to reduce capital.

[2] Oceana Development Company, *in re*, [1912] 56 S. J. 537.

[3] See Order LIII B of the Rules of the Supreme Court, dated 31st July, 1929.

of the wants of the company, is not in theory necessary to found the jurisdiction of the Court, though the Court may deem it wise and prudent to require evidence of the fact. The jurisdiction arises whenever the company seeking reduction has duly passed a resolution to that effect. And if the interest of creditors is not involved, it will be for the prescribed majority of the shareholders to decide whether there shall be a reduction of capital, and, if so, how it shall be carried into effect, subject of course to confirmation by the Court.[1] "Capital," in this connection, does not mean nominal capital to the exclusion of paid-up capital, or the latter to the exclusion of the former. Nominal capital (A) must always be represented by (B) paid-up capital; (C) uncalled capital; and (D) the amount of unissued shares, or by some one or more of them. If the reduction only affects (A) and (D) no application to the Court is necessary, and the unissued shares may be cancelled by a resolution of the company in general meeting. A cancellation of shares which have not been taken or agreed to be taken by any person is not deemed to be a reduction of share capital (Section 50, Sub-section 3). If the reduction affects (A) and (C), or if it involves any return of (B) to the shareholders, a special resolution is necessary (Section 55) and the creditors must be provided for or their consent obtained unless the Court thinks fit to direct otherwise. If (B) is reduced, not by return to the shareholders, or because capital has been lost or is not represented by available assets, but in pursuance of a surrender of shares, a number of fresh shares at least equal to those surrendered must be taken up and paid for before the Court will give its sanction.[2] Inasmuch as a scheme for reduction may raise questions of considerable difficulty, legal advice should be sought in its preparation.

Capital may be reduced by cancelling stock. In such a case the holding of each stockholder could be reduced by so much per cent., being the proportion which the sum to be written off bears to the amount of the issued stock.[3]

[1] British and American Trustee Corporation *v.* Couper, [1894] App. Ca. 399; Poole *v.* National Bank of China, [1907] App. Ca. 229; Caldwell *v.* Caldwell & Co., [1916] W. N. 70. The wide power which the Court has in confirming a scheme is well shown by Thomas De La Rue & Co., in *re*, [1911] 2 Ch. 361, where a dissentient shareholder was compelled to receive 4½% debentures for 5% cumulative shares.

[2] *Re* Anglo-French Exploration Co., [1902] 1 Ch. 845.

[3] House Property and Investment Company, in *re*, [1912] 56 S. J. 505.

If there be a reserve fund which has been kept separate from the other assets of the company, it is not taken into account for the purpose of determining whether capital has been lost. But if the reserve fund is mixed with the general assets of the company, and allowed to rest in account only, the general rule is to attribute to the reserve fund the same proportion of any loss of capital as the amount of the reserve fund bears to that of the nominal capital.[1]

A voluntary surrender of shares, whether partly or fully paid up, is, unless the circumstances are such as to justify the company in forfeiting the shares, an invalid reduction of capital. Fully paid shares can hardly be forfeited, and therefore cannot be validly surrendered (even as a gift to the company) unless, as in the last-mentioned case, an equivalent amount of new shares is taken up and paid for.[2]

Provisions as to increase of capital will be found in the special Articles or in Clauses 34 to 36 of Table A of 1929 (page 412, *post*). The relevant clauses of Table A of 1908 are Clauses 41 to 43.

Notices to creditors are served upon them by posting copies of the notice addressed to the last known addresses or places of abode of the creditors, with the proper postage stamps affixed thereto, as prepaid letters. A record will be made of the place where the notices are posted: thus—

"Post Office Receiving House No._____in_____Street, _____, in the County of_____, between the hours of_____and_____o'clock in the_____noon of the_____day of_____, 193 " (*or to the same effect*).

On a reduction of capital the secretary should obtain the return of the certificates of title and endorse them with statement of the reduction, as follows:—

"By an Order of the Court dated the_____day of_____, 193 , the Special Resolution reducing the Capital of the Company to £_____in Shares of_____each was confirmed."

Every step connected with the reduction of capital should be carried out under the supervision of the solicitor.

1 *Re* Hoare & Co., [1904] 2 Ch. 208.

2 Bellerby v. Rowland & Marwood's Steamship Co., [1902] 2 Ch. 14. This is a very difficult branch of the law.

REDEMPTION OF PREFERENCE SHARES ISSUED AS REDEEMABLE SHARES.

Section 46 empowers a company limited by shares, if so authorised by its Articles, to issue preference shares which may be redeemed. The shares must be issued on the footing that they are liable to be redeemed, and they may not be redeemed unless they are fully paid. The shares may only be redeemed out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue made for the purposes of the redemption.

Where the shares are redeemed otherwise than out of the proceeds of a fresh issue there must out of profits which would have been otherwise available for dividend be transferred to a reserve fund called the " Capital Redemption Reserve Fund " a sum equal to the amount applied in redeeming the shares.

If shares are redeemed out of the proceeds of a fresh issue, any premium payable on redemption must have been provided for out of profits before the shares are redeemed.

On a redemption of shares the company may issue shares up to the amount of the shares so redeemed, and provided the old shares are redeemed within one month of the issue of the new shares, the new shares are not, for the purposes of payment of capital duty, to be regarded as new capital. When new shares are issued in accordance with this provision the Capital Redemption Reserve Fund may be applied, up to the amount of the new shares issued, in paying up unissued shares of the company to be issued to members as fully paid shares. Except in regard to the issue of such bonus shares the provisions of the Act relating to reduction of capital apply as if the Capital Redemption Reserve Fund were paid-up share capital.

Subject to the provisions of the section, redeemable preference shares may be redeemed on such terms and in such manner as the Articles of the company provide.

Every balance sheet of a company which has issued redeemable preference shares must contain a statement of what part of the capital consists of such shares and the date on or before which they are, or are to be liable, to be redeemed. Failure to comply with this requirement renders the company and every officer liable to a penalty of £100.

CONVERSION OF SHARES INTO STOCK AND RECONVERSION OF STOCK INTO SHARES.

The fully paid shares of a company limited by shares or of a company limited by guarantee and having a share capital may, if the Articles, as originally framed or as altered by special resolution, so authorise, be converted into stock (Section 50). The issue of stock direct—*i.e.* without going through the intermediate process of issuing and converting the shares—is an irregularity which may be cured by lapse of time. The issue of partly paid stock would be a nullity.[1] The power to convert shares into stock must be exercised by the company in general meeting, but an ordinary resolution suffices unless the Articles prescribe an extraordinary or a special resolution. If the Articles do not contain power to convert shares into stock, they must be altered by special resolution so as to confer that power.

The Articles will state what the rights of stockholders are; but as a general rule stockholders have the same rights as to transfers, voting, dividends, and the like as holders of fully paid shares of an equal amount in the capital of the company. The main distinction between stock and shares is that, whereas shareholders cannot transfer a part only of the amount represented by a share, a stockholder may transfer stock of any nominal value, subject to the Articles of the company.

In order to show the exact position of members in the case of conversion of shares into stock, and as a check upon the working, it will be advisable to draw up a schedule somewhat as follows:—

Name and Address of Member.	Shares Held				Exchanged for Stock.		
		Distinctive Nos.	Amount.	Folio in Reg'str.	Class of Stock.	Amount.	Folio in Reg'str

Notice of the conversion of shares into stock, specifying the shares converted, must be lodged with the Register of Com

[1] Home and Foreign Investment, in *re*, [1912] 1 Ch. 72.

panies within one month of the resolution, and thereafter all the provisions applicable to shares only cease as to the capital converted into stock, and the Register of Members and the Annual Return must show the amount of stock held by each member instead of the amount of shares and the particulars thereof (Sections 51, 95, and 108).

The notice to the Registrar must be impressed with a five-shilling fee stamp.

A company limited by shares or a company limited by guarantee and having a share capital, which has in pursuance of the Act converted any portion of its shares into stock, may so far modify the conditions in its Memorandum of Association (if authorised to do so by its Articles as originally framed or as altered by special resolution) as to reconvert such stock into paid-up shares of any denomination (Section 50). Notice of reconversion must be given in like manner as in the case of conversion (Section 51).

Specimen rulings for Register of Transfers of Debenture Stock and Register of Debenture Stock Holders respectively are given on pages 116 and 101, *ante*, and it will be seen that the ruling given for the Register of Members (see page 106, *ante*), can easily be adapted for a Stock Register—viz. by omitting the columns for distinctive numbers of shares, substituting " Amount of Stock " for " Number of Shares," and having one column for " Balance of Stock " in lieu of the last two columns for " Balance of Shares " and " Amount Paid." The remarks as to the Register of Members apply for the most part to the Stock Register. The ruling for the Register of Transfers of Shares can also be easily altered to serve for the Register of Transfers of Stock.

The list of members of a company whose shares have been altered in amount or converted into stock must be in the form shown on previous page (see also " ANNUAL RETURN," page 269, *post*).

Under Section 50 a company limited by shares or a company limited by guarantee and having a share capital may, if authorised by its Articles, also alter the conditions of its Memorandum by dividing its shares into shares of smaller amounts or consolidating its shares and dividing into shares of larger amount, or by cancelling shares not taken or agreed to be taken by any person (see page 21, *ante*).

CERTIFICATES OF TITLE.

SECTION 68 of the Act enacts that a certificate under the common seal of the company specifying any shares or stock held by any member of a company shall be *prima facie* evidence of the title of the member to the shares or stock. A certificate is in effect a declaration by the company to all the world that the person to whom the certificate is issued is a shareholder, and entitled to the shares specified in the certificate. By reason of this declaration the company is " estopped " (*i.e.* prevented) from denying the validity of a certificate which has been obtained by fraud or mistake in the case of a *bona fide* purchaser for value, who has accepted a transfer on the production of the certificate. Lord Esher has stated the effect of a certificate as follows:—" I think the purchaser of shares who has obtained a certificate can say to the company, ' I could not tell whether I had a right to be registered without reference to you. I sent you certain documents given to me by my transferor, and asked you to look at them and at the Register, and then to say whether I was entitled to be registered; and by giving the certificate you represented that I was so entitled, and in a position to sell.' "[1] In one of the cases cited in the note, the company, acting on a forged transfer, issued a certificate to a transferee, who subsequently transferred the shares to a purchaser. The purchaser, relying on the certificate, purchased and took a transfer of the shares. The purchaser discovered the forgery, and was held to be entitled to recover damages from the company. On the other hand, a transferee who obtains a certificate by himself presenting a forged transfer, although innocently, is treated as impliedly undertaking to indemnify the company against the consequences of acting on the transfer.[2] A transferee of shares stated in the certificate to be, but not in fact, fully paid up cannot be made liable for calls, provided he has acted in good faith. There are some deductions to be made from the generality of the proposition

[1] See Bahia and San Francisco Railway Co., [1868] L. R. 3 Q. B. 584; Tomkinson *v.* Balkis Consolidated Co., [1891] 2 Q. B. 614, 39 W. R. at page 694; Bloomenthal *v.* Ford, [1897] App. Ca. 156; and Dixon *v.* Kennaway & Co., [1900] 1 Ch. 833; *in re* Coasters, [1911] 1 Ch. 86.

[2] Sheffield Corporation *v.* Barclay, [1905] App. Ca. 392.

that a certificate is an absolute affirmation of title on the part of the company. Thus the rule does not apply where a trustee for the company claims shares which have been issued to him as a trustee for the company, nor, in the absence of special circumstances, would a certificate forged by a secretary for his own purposes bind the company.[1] But in the majority of cases the rule holds good.

Transfers are usually directed by the Articles to be accompanied by the certificate. The duty of checking and examining certificates belongs to the secretary.[2] But, whether the Articles direct the certificate to be produced or not, it is the universal practice to have the certificate produced on a transfer, whether all or a part only of the shares specified in the certificate are to be transferred. When a part only of the shares are transferred, the instrument of transfer is frequently "certified" for the convenience of the transferor and transferee. The subject of certification will be treated under the head of "CERTIFICATION OF TRANSFERS" (page 266, *post*); but it is very important here to distinguish between the effect of a certificate of title and certification. The certificate, as has just been stated, amounts to a warranty on the part of the company of the shareholder's title; but certification has a far more restricted operation. In cases of certification the certificate and transfer are left at the company's office, and the secretary notes the transfer with the words "Certificate lodged." The effect of this is merely to represent that the transferor has produced to the company a certificate, apparently regular, showing that either he or some other person is the registered owner, and in the latter case that he (the transferor) has produced one or more documents purporting to transfer the shares from such person to himself. This does not involve a representation by the company that the transferor has any title to the shares, so that a purchaser who pays the purchase money on the faith of the certification cannot claim damages from the company, even though the transfer was erroneously certified. If, however, a transfer of shares purporting to be fully paid is certified, the shares being in fact only partly paid, the

---

1 Ruben *v.* Great Fingall Consolidated Co., [1904] 2 K. B. 712; affirmed by H. L., [1906] App. Ca. 439.

2 Dixon *v.* Kennaway & Co., [1900] 1 Ch. 833.

transferee cannot be put on the list of contributories in the event of a winding up.[1]

A certificate of title that a person holds shares or stock in a company requires no stamp. But a "scrip" (*i.e.* provisional) certificate or other document entitling any person *to become* the proprietor of any share of any company requires a twopenny impressed stamp.[2] The Articles will provide what sums (if any) are to be paid by members on the issue of a certificate, but it is not usual to charge anything for the first certificate (see Clause 4 of Table A of 1929).

The form of share certificate given on the next page can be so arranged that when dealings in shares are numerous an additional line can be introduced for the distinctive numbers of shares, or, if preferred, the numbers of shares may be given in a tabulated statement at the side of the certificate, the wording of the certificate being slightly altered so as to state that the shares are "numbered as at side hereof."

Public companies frequently adopt a more elaborate form of certificate, and when it is intended to apply for a quotation on the London Stock Exchange further particulars must be shown on the certificate—*e.g.* the number and classes of shares into which the capital of the company is divided, the distinctive numbers of the shares, the rights (if any) attaching to preference shares, and the due date for payment of dividend. In such a case the secretary should obtain the approval of the Share and Loan Department to a draft certificate.

Whether the shares are fully or partly paid would be stated on the face of the certificate, and if only partly paid there may be a form of certificate for the endorsement of future payments somewhat to the following effect:—

This is to Certify that the further sum of £_____has been paid on the shares represented by this certificate.

*For*_____, LIMITED,

_____

Secretary.

_____, 193 .

[1] Bishop *v.* Balkis Consolidated Co., [1890] 25 Q. B. D. 520; *re* Concessions Trust, [1896] 2 Ch. 757; George Whitechurch *v.* Cavanagh, [1902] App. Ca. 117.

[2] Even if only for a fractional part of a share (Revenue Act, 1909, Section 9).

No._____

_____

LIMITED.

_____SHARES.

*No. of Certificate*_____

For _____ *Shares*

*Numbered*_____*to*_____

*Issued to*_____

_____

_____

_____

*Amount paid per Share*_____

*Dated*_____193 .

Folio in Register of Members

_____

No._____

_____, LIMITED

Incorporated under The Companies Act, 1929.

Capital £_____, divided into_____Shares of £1 each.

This is to Certify *that*_____

of_____

*is the Registered Proprietor of*_____

*Shares of One Pound each, numbered*_____*to*_____

*inclusive, in*_____, LIMITED,

*subject to the Memorandum and Articles of Association of the Company, and that up to this date there has been paid in respect of each of such Shares the sum of*_____.

Given *under the Common Seal of the Company this*_____*day of*_____, 193 .

_____ *Secretary.*

_____ *Directors.*

_____

No Transfer of any of the above-mentioned Shares can be registered without the production of this Certificate.[1]

[1] As to the effect of this note at the foot of the Certificate see page 188, *post*.

The secretary should make it an invariable rule not to part with any share certificate until the particulars given upon the certificate have been entered in the Register of Members; and it will also be well for him to take the precaution of having the certificates checked with the Register of Members before they are placed in the proper receptacle for distribution as asked for.

Under Section 67, Sub-section 1, every company must within two months after the allotment of any of its shares or within two months after a transfer (not being a transfer which the company is entitled to refuse to transfer, as to which see "TRANSFER AND TRANSMISSION OF SHARES") is lodged with the company complete and have ready for delivery the certificate, unless the conditions of issue of the share otherwise provide. Default in this respect renders the company, and every director, manager, secretary, or other officer of the company who is knowingly a party thereto, liable to a penalty of five pounds for every day during which the default continues (Sub-section 2).

When certificates are ready for delivery a letter should be sent to the shareholders advising them of the fact; and for the purpose of sending certificates through the post it may be found a great saving of labour to have a letter with form of receipt attached, together with an envelope with the company's address printed on it. Subjoined are forms of these letters:—

_____, LIMITED

_____, 193 .

SIR,

I am directed to inform you that Certificate[s] for Shares in this Company will be ready on and after the_____and will be delivered between the hours of eleven and three in exchange for Allotment Letters and Bankers' Receipts. If you are unable to attend personally, and desire your Certificate to be delivered to some other person on your behalf, please send a written order to that effect, or you may authorise me to send the Certificate to you by post at your risk.

Yours faithfully,

_____

Secretary.

*To*_____

[ANOTHER FORM]

_____, LIMITED

_____, 193

SIR,

Enclosed I beg to hand you the following Certificate[s]:—

Certificate No.	In Favour of	Number of Shares.

Please acknowledge the receipt of same.

Yours faithfully,

_____

Secretary.

*To*_____

Received from

_____, LIMITED

CERTIFICATE[S] AS UNDER:—

Certificate No.	In Favour of	Number of Shares.

Signature_____

Date_____, 193 .

A new certificate should never, in any circumstances, be issued by the company unless the old certificate, if in existence, is cancelled. If the old certificate be lost, destroyed, or mislaid, the company should have an indemnity against possible risk arising from there being two certificates in existence. The following are forms of Letters of Indemnity, which may be

altered to meet any particular case (stamp sixpence, impressed or adhesive):—

To the Directors of

_____, LIMITED

GENTLEMEN,

The original Certificate of_____Shares in the above Company issued to me on the_____day of_____, having been mislaid [lost *or* destroyed, *as the case may be*], I request you to issue to me a new Certificate for the said Shares, and in consideration of your consenting to issue a new Certificate for the same number of Shares, I hereby undertake and agree with you and the Directors for the time being of the said Company to deliver up the said original Certificate to the said Company if it shall at any time hereafter be recovered, and in the meantime to indemnify and save harmless the said Company, and the Directors and Shareholders thereof, from all losses, charges, damages, and expenses which the said Company or the Directors or Shareholders thereof shall or may sustain or be put to by reason of your issuing such new Certificate.

*Name*_____

*Address*_____

*Occupation*_____

*Date*_____

[ANOTHER FORM]

*TO*_____, LIMITED, AND THE DIRECTORS THEREOF

WHEREAS I have lost the Certificate of the_____Shares registered in my name in the books of the above-named Company, and numbered _____to_____, and, having made careful search, am unable to find the same [*or*, WHEREAS the Certificate of the_____Shares registered in my name in the books of the above-named Company, and numbered_____to _____, has been accidentally destroyed by fire (*or otherwise as the case may be*)], I request you to issue to me a new Certificate for the said Shares; and I hereby undertake and agree that if any claim shall be made on the above-named Company, or its Directors, in respect of the Certificate first above-mentioned, or by reason of the same being hereafter found to be in existence, I will indemnify and save harmless the said Company and its Directors from and against all loss or damage and all costs and expenses arising out of such claim or incurred in relation thereto.

*Name*_____

*Address*_____

*Occupation*_____

*Date*_____

Sometimes it is desirable to have a surety in addition to the person giving the indemnity, and a clause to the following effect may then be inserted at the end of either of the foregoing letters:—

The said new Certificate having been issued at the request of me _____[*or* at the joint request of us_____], I [*or* we] hereby guarantee the due performance of the above-mentioned undertaking and agreement by the said_____.

All parties will sign with their full names, addresses, and descriptions. If the guarantee is contained in a separate letter, the following form may be used (which must also be stamped with a sixpenny stamp, impressed or adhesive):—

To the Directors of

_____, LIMITED

GENTLEMEN,

In consideration of your having at my [*or* our] request issued to _____a new Certificate for_____Shares in the above Company, numbered_____to_____, upon his written undertaking to indemnify the said Company, and the Directors and Shareholders thereof, against all losses, charges, damages, and expenses which may be sustained or incurred in consequence of your having issued such new Certificates as aforesaid, I [*or* we] hereby guarantee the due performance of the said undertaking by the said_____, and agree to indemnify the said Company, and the Directors and Shareholders thereof, against any losses, charges, damages, and expenses sustained or incurred in the event of the said_____ failing or becoming unable for any reason whatever to carry out the said undertaking.

*Name*_____

*Address*_____

*Occupation*_____

*Date*_____

In addition to the letter of indemnity or guarantee, if additional security is thought desirable, a statutory declaration (stamp two shillings and sixpence, impressed) in the following form may be taken:—

STATUTORY DECLARATION AS TO LOST CERTIFICATE

I, A. B., of (*residence and description*), do solemnly and sincerely declare as follows: that is to say—

1. My name is on the Register of Members of_____, Limited, as the holder of_____fully paid [*or as the case may be*] Shares, numbered_____to_____inclusive, the Certificates for which were duly issued to and received by me on the_____day of_____, 193 .

2. The said Certificates have been lost [*or as the case may be*].

3. I have made a careful and diligent search for, but have been unable to find, the said Certificates or any of them.

4. I have not sold, mortgaged, charged, dealt with, or disposed of the said Certificates, or any of them, in any way.

5. In the event of the said Company issuing to me a fresh Certificate or Certificates in respect of the said Shares, I agree to fully indemnify the said Company against all losses they may sustain in consequence of the issue of such fresh Certificate or Certificates as aforesaid.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of The Statutory Declarations Act, 1835.

Declared at_____
_____
the_____day of_____,
One thousand nine hundred
and_____,
before me
_____
A Commissioner for Oaths.

_____

The secretary should be very careful not to recognise dealings in the shares comprised in the certificate if the certificate has not been previously lodged at the office.

The better opinion, however, seems to be that should the directors hastily, and without due inquiry, register a transfer without the production of the certificate, neither the company nor the directors (so long as they acted in good faith) would be liable in damages should it turn out that the certificate was in the hands of a pledgee. The note at the foot of a certificate that "No transfer of any of the above-mentioned shares can be registered without the production of this certificate" (see page 183, *ante*) does not amount to a contract by the company not to register without production of the certificate, but is addressed as a warning to the registered owner of the shares, bidding him take care of his certificate, because he cannot compel the company to register a transfer without its production.[1] It should be mentioned that on an appeal in the case first cited the Court of Appeal declined to express any opinion on this point.

Sometimes companies give to their shareholders or others an option to subscribe for shares at some future date, and issue in respect of such shares a "Certificate of Option Rights over Shares." A twopenny stamp must be impressed on the Certificate before execution. The form on the following page will be found suitable.

[1] Rainford *v.* James Keith &c. Co., [1905] 1 Ch. 296; [1905] 2 Ch. 147; Guy *v.* Waterlow Brothers, [1909] 25 T. L. R. 515.

LIMITED.

---SHARES.

No. of Certificate---

For --- *Shares*

Issued to---

Dated---193 .

Folio in Register of Members

CERTIFICATE OF OPTION RIGHTS OVER SHARES

Certificate No.--- No. of Shares---

--- LIMITED.

Incorporated under The Companies Act, 1929.

Capital £---, divided into---Shares of £---each.

This is to Certify *that*---

of---

is entitled to an Option to subscribe at par at any time prior to the ---*day of*---*193* , *for*---*Shares in*---, LIMITED, *subject to the Memorandum and Articles of Association of the said Company and the Conditions endorsed hereon.*

Given *under the Common Seal of the Company this*---*day of*---193 .

Secretary.

Directors.

NOTE.—The Company will not transfer any option without the production of a Certificate relating to such option; which Certificate must be surrendered before any deed of transfer, whether for the whole or any portion thereof, can be registered or a new Certificate issued in exchange.

SHARE WARRANTS.

A COMPANY limited by shares, if authorised so to do by its Articles, may, with respect to any fully paid-up shares, issue share warrants to bearer. Each share warrant entitles the bearer to the shares specified in it, and the shares may be transferred by the delivery of the warrant (Section 70).

Except where a distinction between stock and shares is expressed or implied the word "share" includes "stock" (Section 380, Sub-section 1).

Power to issue share warrants would be quite inconsistent with the status of a company as a private company (see page 11, *ante*).

Share warrants are instruments very similar in style to share certificates, and, like share certificates, are frequently bound up in book form. The coupons (which require no stamp) and vouchers for the renewal of the coupons are attached to the share warrants. As share warrants to bearer pass by delivery without further formalities, it is very desirable, in order to guard against forgery, to have them printed on specially prepared paper, and from a plate which cannot easily be imitated. They are often printed in two or three languages—*e.g.* English, French, and German—and distinctive colours are used in order to show at a glance the number of shares each warrant represents.

Share warrants to bearer are, by mercantile usage, negotiable.[1] So that even although they have previously been stolen a subsequent innocent holder for value gets a good title.

As to the payment of coupons see under the head of "DIVIDENDS," page 234, *post*.

The following is a form of coupon:—

_____, LIMITED

*Dividend Coupon No.*_____

On_____Shares included in the Share Warrant numbered as below. Payable at the Company's office at a time to be fixed by advertisement.

_____

Secretary.

*No.*_____

[1] Webb, Eade & Co. *v.* Alexandria Water Co., [1905] 93 L. T. 339.

LIMITED.

SHARE WARRANT

*For*_____*Shares*

*Numbered*_____*to*_____

inclusive.

*No. of Certificate*_____

Issued to_____

_____

*Of*_____

_____

_____

Dated_____193 .

Folio in Register of Members

_____ LIMITED

Incorporated under The Companies Act, 1929.

*No.*_____ SHARE WARRANT. £_____

This is to Certify *that the Bearer of this Warrant is the Proprietor of*_____*fully paid-up Shares of*_____*Pounds each, numbered*_____*to*_____*inclusive, in*_____, LIMITED, *subject to the Articles of Association of the Company* [*and the Conditions endorsed hereon*].

Given *under the Common Seal of the said Company this*_____*day of*_____193 .

_____ } *Directors.*

_____ _____ }

Secretary.

The voucher will provide that at the expiration of the period covered by the coupons the bearer will be entitled to a new sheet of coupons and a new voucher.

The form of share warrant on the preceding page contemplates the endorsement of the conditions on the back of the warrant. If the conditions are not endorsed the form should be modified by substituting for the words " and the Conditions endorsed hereon " the words " and to the Conditions made by the Directors of the said Company the---------- day of----------, 193 , and entered in the Minute Book of the said Company."

On the issue of a share warrant the company is required by Section 97, Sub-section 1, to strike out of its Register of Members the name of the member then entered therein as holding the shares as if he had ceased to be a member, and enter in the Register the following particulars:—

1. The fact that the warrant has been issued.
2. A statement of the shares included in the warrant, distinguishing each share by its number.
3. The date of the issue of the warrant.

The bearer of a share warrant is entitled, subject to the Articles of the company, on surrendering the warrant for cancellation, to have his name entered as a member in the Register of Members (Section 97, Sub-section 2).

After the issue of a share warrant the Annual Return must contain the following particulars: The total amount of shares for which share warrants are outstanding at the date of the Return; the total amount of share warrants issued and surrendered respectively since the date of the last Annual Return; and the number of shares comprised in each warrant (Section 108, Sub-section 3 (*k*), (*l*), and (*m*)).

The stamp duty on share warrants is three times the *ad valorem* duty on a transfer, the duty being calculated according to the nominal value of the shares or stock (Stamp Act, 1891, Schedule).

The shares specified in a warrant are not a qualification for a director or manager when a share qualification is requisite (Section 141, Sub-section 2).

Subject to the provisions of the Act, the holders of share warrants may, if the Articles so provide, be deemed to be members of the company, with the same rights as shareholders (Section 97, Sub-section 5). Where such is the case the holder of a share warrant is generally required to deposit his warrant at the company's office before being entitled to attend and vote at general meetings or to exercise any other right conferred on shareholders.

A certificate of deposit (which requires no stamp) is often given to the person depositing the share warrants entitling him to vote or otherwise act as a member in the same way as if he were on the Register of Members in respect of the shares specified in the certificate. On the delivery up of the certificate the share warrants will be returned. The following form of certificate may be used:—

_____, LIMITED

*No.*_____

THIS is to certify that A. B. [*full name and description*] has [*if so* in accordance with the Articles of Association of the Company] deposited with the Company the under-mentioned Share Warrants to Bearer in respect of which he is entitled to attend and vote at the General Meeting of the Company to be held on the_____day of_____, 193 .

Dated this_____day of_____, 193 .

_____

Secretary.

SHARE WARRANTS DEPOSITED.

[The particulars of the share warrants deposited will be here set out.]

Where a holder of a share warrant is, pursuant to provisions of the Articles, deemed to be a member, such person may requisition or join in requisitioning a meeting under Section 114.

When an application for share warrants is made, the applicant may be supplied with a form of application. The stamp duty should be paid by the applicant, and, in addition, a fee is generally charged by the company for each warrant issued. If the Articles of Association do not provide for the last-mentioned fee, it should be fixed by a resolution of the board of directors.

The Stamp Act, 1891, Section 107, provides that if a share warrant is issued without being duly stamped, the company issuing the same, and also every person who at the time when it is issued is the managing director, secretary, or other principal officer of the company, shall incur a fine of fifty pounds. It must be remembered that the duty may be commuted under the provisions of the Stamp Act (see under the heading "STAMPS," page 326, *post*). The authorities at Somerset House require the forms of share warrants to be impressed with the proper stamp duty before the particulars are filled in, and before they are signed and sealed.

The application for share warrants may, if thought desirable, be authenticated by a statutory declaration (stamp two shillings and sixpence, impressed), or evidence of the identity of the person making it, as well as of his right or title to the share or shares specified therein.

The statutory declaration would be to the following effect:—

I, A. B., of_____, do solemnly and sincerely declare as follows: that is to say—

1. I am the registered proprietor of_____fully paid Shares in _____, Limited, numbered_____to_____ inclusive, and I am desirous that Share Warrants to Bearer may be issued to me in exchange for the said Shares.

2. I am the person who signed the letter of application dated the_____day of_____, 193 , hereto annexed.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of The Statutory Declarations Act, 1835.

Declared at_____
_____
the_____day of_____,
One thousand nine hundred and _____,
before me,
_____
A Commissioner for Oaths.

_____

The following is a form of application for warrants of ten or one hundred shares each:—

FORM OF APPLICATION FOR SHARE WARRANTS TO BEARER

Application No._____

*To the Directors of*_____, LIMITED

GENTLEMEN,

I hand you herewith Certificate for_____Shares numbered_____standing in my name, in exchange for which I request that you will issue Share Warrants to Bearer for_____Shares, as specified at foot, *and a Certificate in my name for the balance.*[1]

I also enclose cheque for £ : : the amount of Stamp Duty and Company's Fee: viz.—

WARRANTS REQUIRED.	Government Stamp Duty.		Fee.		Total Charge.
	Per Warrant.	Amount.	Per Warrant.	Amount.	
__for 10 Shares each= _____Shares					
__for 100 Shares each= _____Shares					
Total Warrants_____Total Shares___	£				

Yours faithfully,

*Usual Signature*_____

*Name in full*_____

*Address*_____

*Description*_____

*Date*_____

The certificates representing the shares for which warrants are required should be deposited with the application. If this cannot be done, an indemnity (stamped sixpence, impressed or adhesive), supplemented if thought necessary by a statutory declaration (stamped two shillings and sixpence, impressed), should be taken. The forms given on pages 186 to 188, *ante,* may be used, with the necessary modifications.

When the holder of a share warrant desires to surrender the warrant to the company for cancellation, and to have his name re-entered on the Register of Members, his request should be in writing, and may take the form shown on the following page (a fee of two shillings and sixpence is generally chargeable).

[1] The words in italics should be struck out if all the Shares are to be represented by Share Warrant to Bearer.

FORM OF APPLICATION TO HAVE SHARE WARRANTS TO BEARER CANCELLED AND SHARE CERTIFICATES ISSUED IN EXCHANGE

Application No._____

*To the Directors of*_____, LIMITED

GENTLEMEN,

I hand you herewith the following Share Warrants to Bearer:—

_____for 10 Shares each = _____ Shares, numbered_____

_____for 100 Shares each = _____ Shares, numbered_____

Total_____Warrants. Total_____Shares.

which I request you to cancel, and for which please hand me a Certificate to the effect that I am registered in the Company's books as the proprietor of the Shares.

I also hand you_____for registration fee.

Yours faithfully,

*Usual Signature*_____

*Name in full*_____

*Address*_____

*Description*_____

*Date*_____

When share warrants, or the coupons attached thereto, are worn out, lost, destroyed, or defaced, an indemnity, accompanied, if necessary, by a statutory declaration explaining the circumstances, should be required before new warrants or coupons are issued. The forms given on pages 186 to 188, *ante*, may be used, with the necessary modifications.

A more stringent form of indemnity is required in the case of share warrants than in the case of ordinary certificates of title, because share warrants, being documents payable to bearer, give an absolute title to the holder thereof. Directors should not easily be induced to issue new warrants in place of those lost. The indemnity should be settled by a lawyer, so as to be adapted to the circumstances of the particular case.

A fee of two shillings and sixpence is usually required upon the issue of a new share warrant or coupon.

It will be observed from what has been said that share warrants are attended with some amount of inconvenience, but, although somewhat exceptional with English companies, the practice of issuing share warrants facilitates dealings in the shares on foreign markets, where shares to bearer are more in favour.

NOTICES

FIRST with respect to notices which are *given by* the company.

Any document or proceeding requiring authentication by the company may be signed by any director, secretary, or other authorised officer of the company, and need not be under the common seal of the company (Section 33).

The special Articles, or Table A when applicable, prescribe how notices are to be given by a company (see Table A, 1929, Clauses 103 to 107). Numerous examples of notices authenticated by the secretary are given in this work, such as notices of allotment, of calls, of meetings, &c. A record of notices sent out should be kept in the postal book.

Certain notices must be given to, documents lodged with, and proceedings reported to the Registrar of Companies. Annexed is a list of such notices and documents:—

1. Notice of situation of registered office and of any change therein (Section 92, Sub-section 2).
2. In the case of a company incorporated outside Great Britain, but having a place of business therein, a certified copy of the charter &c., a list of the directors with the particulars respecting directors which are required under the Act to be contained in a company's Register of Directors, and the names and addresses of the person or persons authorised to accept service, and notice of any alteration occurring in any of those particulars (Section 344, Sub-section 1, and Section 346), also copy of balance sheet every year (Section 347). On ceasing to have a place of business in Great Britain notice thereof (Section 350).
3. Declaration of compliance with the requirements of the Act (Section 15, Sub-section 2).
4. Notice of consent to act as director (Section 140, Sub-section 1).
5. List of persons who have consented to be directors (Section 140, Sub-section 3).
6. Copy of the particulars of directors or managers required to appear in the Register of Directors and of any change in those particulars (Section 144, Sub-section 2).

7. Declaration of compliance with Section 94, Sub-section 1 or Sub-section 2.
8. Return of allotments (Section 42, Sub-section 1).
9. Contract, or where no contract in writing the prescribed particulars, as to shares not paid for in cash (Section 42, Sub-sections 1 and 2).
10. Copy of report prior to statutory meeting (Section 113, Sub-section 5).
11. Annual Return (Section 108), with which a private company must send a certificate, signed by a director or the secretary, that the company has not issued shares to the public since the date of the last return (or, in the case of a first return, since the date of incorporation), and if the list of members exceeds fifty, a certificate that such excess consists wholly of persons not to be counted in the fifty (Section 111). Unless the names are arranged in alphabetical order in the return an index must be annexed to the return.
12. Annual Return by company not having share capital (Sections 109 and 110).
13. Particulars of a mortgage or charge, issue of debentures, and of commission, allowance, or discount in respect thereof (Sections 79 and 80).
14. Memorandum of satisfaction of mortgage or charge (Section 84).[1]
15. Special and extraordinary resolutions, printed copies of which must be lodged with the Registrar within fifteen days after the date when they were passed (Section 118, Sub-section 1).
16. Ordinary resolutions to increase capital or to wind up voluntarily (Section 52 and Section 118).
17. Resolutions agreed to by all the members of a company, which if not so agreed to would not have been effective unless passed as special or extraordinary resolutions, and resolutions or agreements agreed to by all the members of some class of shareholders, which, if not so agreed to, would not have been effective unless passed by a particular majority or in a particular manner,

[1] There is no obligation on a company to lodge a memorandum of satisfaction, but it is obviously in the interest of a company to put on the company's file at the Companies Registry evidence of the satisfaction of a secured debt.

and resolutions or agreements which effectively bind all the members of a class though not agreed to by all those members, printed copies of which must be lodged with the Registrar within fifteen days after the passing or making thereof (Section 118, Sub-section 4 (*c*) and (*d*)).

18. Prospectus (or Offer for Sale) and statement in lieu of prospectus (Section 34, Sub-section 2; Section 40, Sub-section 1).
19. Notice of increase of nominal share capital (Section 52, Sub-section 1).
20. Statement of amount of and any increase of nominal capital (Stamp Act, 1891, Section 112).
21. Notice of consolidation and division of capital into shares of larger amount, of conversion into stock or of reconversion into shares, of subdivision of shares, of redemption of redeemable preference shares, or cancellation of shares (Section 51).
22. Order of Court confirming reduction of capital and copy of the Order and Minute confirmed by the Court (Section 58, Sub-section 1).
23. Copy of Order of Court disallowing or confirming variation or abrogation of class rights, within fifteen days after the making of the Order (Section 61).
24. Consent of Board of Trade to change of name (Section 19, Sub-section 4).
25. Office copy of Order of Court confirming alteration of Memorandum under Section 5, with printed copy of Memorandum as altered, within fifteen days from date of Order (Section 5, Sub-section 6).
26. Office copy of Order sanctioning compromise or arrangement under Section 153 or reconstruction under Section 154.
27. Copy of Order rectifying Register (Section 100, Sub-section 4).
28. Notice of increase of members by company not having capital divided into shares (Section 7, Sub-section 3).
29. Declaration of solvency (Section 230).
30. Notice of appointment of a receiver or manager, within seven days from date of order of appointment, or, if appointed under powers contained in any instrument

within seven days of appointment thereunder (Section 86, Sub-section 1).

31. Where a receiver or manager is appointed under powers in any instrument, he must deliver to the Registrar an abstract of receipts and payments in respect of the first and every subsequent period of six months and, on ceasing to act, of the aggregate receipts and payments (Section 310, Sub-section 1), and on ceasing to act he must lodge notice to that effect (Section 86, Sub-section 2).
32. Copy of Winding-up Order (Section 176).
33. Notice of appointment by Court of liquidator (other than Official Receiver) (Section 186).
34. Liquidator in voluntary winding up must lodge notice of his appointment in prescribed form within twenty-one days after such appointment (Section 250, Sub-section 1).
35. Final Order for Dissolution (Section 221, Sub-section 2).
36. Copy of Account laid before Meeting and Return of Meeting approving accounts of liquidator at conclusion of voluntary winding up, within one week after the meeting (Section 236, Sub-section 3 [Members' Winding Up], and Section 245, Sub-section 3 [Creditors' Winding Up]).
37. Return where no quorum present at meeting called at conclusion of winding up (Section 236, Sub-section 3 [Members' Winding Up]; Section 245, Sub-section 3 [Creditors' Winding Up]).
38. Liquidator's Statement of Account (Section 284).
39. Order nullifying dissolution, within seven days after the making of the Order (Section 294, Sub-section 2).
40. Office copy of Order restoring name to Register (Section 295, Sub-section 6).

The stamp duties on the above notices are given under the heading "SUMMARY OF DUTIES ON VARIOUS DOCUMENTS," page 342, *post*.

Documents tendered for registration must be authenticated by the written signature of an authorised officer of the company. They should be according to the approved forms, and must each bear an impressed registration fee stamp of

five shillings. In the case of an increase of capital, an *ad valorem* stamp must, in addition, be impressed upon the prescribed form for giving notice of such increase. A notice of an increase of members by a company not having a capital divided into shares must also bear a stamp of five shillings for every fifty members of such increase.

If a company, having made default in complying with any provision of the Act which requires it to file with, deliver, or send to the Registrar of Companies any return, account, or other document, or to give notice of any matter, fails to make good the default within fourteen days after service of a notice requiring it to do so, application may be made by a member or creditor or the Registrar to the Court, which may order compliance and further order the company or any officer responsible to pay the costs of the application (Section 315).

With respect to notices *given to* or *served on* the company, Section 370 provides that a document may be served on a company by leaving it at or sending it by post to the registered office of the company. Process may be served on a company registered in Scotland and having a place of business in England by leaving it at or sending it by post to the principal place of business in England. A copy of process so served must be sent by post to the registered office in Scotland.

If a notice is received that certificates for shares have been deposited by way of mortgage, such a notice should not be disregarded, but a letter should be written to the person sending the notice. The following is a specimen which may be modified to suit the circumstances of the particular case:—

_____Limited.
Address_____

_____193 .

SIR,—I am in receipt of your favour of the_____instant, informing me that Mr._____has deposited with you Certificates of_____ fully paid £_____Shares in the above-named Company, Nos._____to _____, both inclusive. I think it right to inform you that Mr._____ is indebted to the Company in the sum of £_____in respect of Calls in arrear [*or as the case may be*], and that [*if so*] under a Clause of the Articles of Association the Company has a first and paramount lien upon all Shares held by him.

Yours faithfully,

_____
Secretary.

*To*_____

A secretary may also receive notice from a person claiming a charge upon shares over which the company claims no lien requesting dividends on the shares to be paid to him. A reply should in such case be sent by the secretary, declining to recognise any person other than the registered owner as having any right to dividends, and suggesting that the claimant should obtain a direction from the registered owner to pay the dividends to him.

All notices of this kind must be brought before the board as soon as possible, and a proper record should be kept of them. When requested to register a transfer in respect of any shares as to which notices have been given, the directors will have to consider carefully the effect of the notices, and probably to take the advice of the solicitor (see further "TRANSFER AND TRANSMISSION OF SHARES," page 248, *post et seq.*).

As to notices &c. in the case of a company incorporated outside Great Britain having a place of business in the United Kingdom see page 197, *ante*.

CALLS.

SOMETIMES the prospectus provides for the payment of instalments upon shares at specified dates. In such a case the letter requiring the payment of the instalment will begin, "I beg to remind you that, in accordance with the terms of the prospectus, the sum of," &c., and will then proceed in the same manner as the call letter, a specimen of which is given on the following page.

Before proceeding to make a call it is necessary to see that the names of all members are entered upon the Register.

The manner in which the calls are to be made and paid is determined by the special Articles or Table A (see Table A, 1929, Clauses 11 to 16). The whole of the unpaid capital of a company is always liable to be called up, unless a special resolution has been passed (Section 49) declaring that the unpaid capital or any portion of it shall not be called up except in the event and for the purposes of a winding up. Calls are payable in cash unless a contract enabling the payment to be made in goods or in services has been filed under Section 42.

Calls are made by a resolution of the board of directors that (for example) "a call be and is hereby made of----------per share upon all the shares of the company, and that the shareholders be requested to pay the same to the company's bankers on or before the----------day of----------, 193 ." The resolution must state, not only the amount of the call, but also the time at which it is to be paid.[1] After the resolution has been duly passed and a careful minute thereof made, the secretary will prepare and send out the necessary notices of call. Notice of the call must be given to the shareholder (otherwise he cannot be sued for nonpayment), and must be served in the manner directed by the special Articles or by Table A (see Table A, 1929, Clauses 103 to 107). Notice is generally directed to be served by the company on the member either personally or by sending it by post in a prepaid envelope or wrapper addressed to him. The form of notice given on the following page may be used.

1 *Re* Cawley & Co., [1889] 42 Ch. D. 209. See also notes to Clause 11 of Table A, page 407, *post*.

_____, LIMITED

_____, 193 .

SIR,—I beg to give you notice that the Directors of_____. Limited, have this day resolved that a Call of_____per Share be made on the Shares of this Company. You are registered as the holder of_____Shares, and the amount due thereon is £ : : which sum please pay to The_____Bank, Limited, _____ Street,[1] on or before the_____day of_____, 193 .

By Order of the Board,

*To*_____ _____

Secretary.

Your Share Certificate and the Bankers' Receipt for the amount of the Call should be forwarded to the Company for Certificate of Payment to be endorsed upon the former.



FORM OF RECEIPT

_____193 .

Received *of*_____

*the sum of*_____

*being the amount of the*_____*Call of*_____*per Share on*_____ *Shares in*_____, Limited.

For THE_____BANK, LIMITED,

£ : : _____

If a call is not paid, the directors will probably instruct the secretary to write a letter to the defaulting member stating that interest will be claimed on the shares if the call is not paid by a certain date. If this letter elicits no response, a further letter may be sent stating that the shares will be forfeited. The last-named letter may be accompanied by a copy of the Articles giving the directors power to forfeit shares, and, for additional security, it should be forwarded by registered post. The following are specimens of these letters:—

[1] See notes to Clause 11 of Table A, page 407, *post.*

_____, LIMITED

_____193 .

SIR,—I am instructed to remind you that the_____Call on your Shares, amounting to £ : : was due on the _____193 , and to request you to forward a remittance to the Company's Bankers, The_____Bank, Limited, _____ Street,[1] by the_____ instant; otherwise interest at the rate of_____per centum per annum will be charged from the due date. Until this notice is complied with no transfers of the said Shares will be accepted by the Company, and the Shares will likewise be liable to forfeiture.

By Order of the Board,

_____

*To*_____ *Secretary.*

_____, LIMITED

_____193 .

SIR,—I am directed by the Board again to remind you that the------ Call, amounting to_____, due on the_____193 , on_____ Shares registered in your name, is not yet paid.

The Board hereby require you, in terms of the Articles of Association, to pay this Call, together with interest at the rate of_____per cent. per annum, on or before_____the_____instant, to The_____Bank, Limited,_____Street.[1]

In the event of nonpayment at or before the time named, the Shares in respect of which such Call was made will be liable to be forfeited, and I hereby give you notice that all Shares the Calls on which are not paid by the date named will be forfeited accordingly, and you will remain liable to pay any sum or sums unpaid in respect of the said Calls notwithstanding forfeiture.

By Order of the Board,

_____

Secretary.

Amount of Call, £ : .
Interest to date, £ . :
£ : :

*To*_____

If the call remain unpaid after the date for payment given in the last letter, the directors will, if their Articles give a power of forfeiture (see Table A, 1929, Clauses 23 to 29), probably pass a resolution forfeiting the shares, and instruct the secretary to send a notice of such resolution.

Calls made by directors not duly appointed, or made when

[1] See notes to Clause 11 of Table A, page 407, *post.*

the number of directors has fallen below the minimum prescribed by the Articles, or by such a number as does not constitute a quorum, are invalid. When the Articles contain a clause that directors may act notwithstanding any vacancy in their body,[1] and there has been a board of the minimum number, but by a casual vacancy it has fallen below the minimum, a quorum of the continuing directors may act, but not less than a quorum.

Where a shareholder is bringing an action against a company for the rescission of his contract to take shares, the company must not, during the pendency of such action, forfeit the shares for nonpayment of calls.[2]

The estate of a deceased member is liable to calls until the executors or administrators have personally accepted or made a valid transfer or disposition of the shares, or the shares have been forfeited by the company.

Forfeiture is the usual course adopted when default is made in the payment of calls upon shares which are valuable; but payment may also be enforced by an action for the amount of the call. The secretary must be careful to make an accurate minute of the resolution making the call, to be used in evidence if the company brings an action against the defaulting member.

The following is a form of statutory declaration (stamp two shillings and sixpence, impressed) that a forfeiture or sale has been properly carried out:—

I, A. B., of_____, Secretary of_____, Limited, do solemnly and sincerely declare as follows: that is to say—

1. I am the Secretary of_____, Limited.
2. C. D., of_____, was at the date of the Resolution next hereinafter stated the registered holder of_____Shares in the said Company, upon which £_____per Share had been paid.
3. On the_____day of_____, 193 , the Directors of the said Company passed a Resolution that a Call of_____per Share should be made on the Shares of the said Company, notice of which Resolution was forwarded to the said C. D. by a letter dated the_____day of_____, 193 , requesting him to pay the sum of £_____, being the amount due from him in respect of the said Call, to The_____Bank, Limited,_____ Street.
4. The said C. D. did not pay the said Call, or any part thereof, and I accordingly wrote to him on the_____day of_____, 193 , reminding him that if the said sum of £_____was not

[1] See note to Clause 83 of Table A, *post*. [2] Jones *v.* Pacaya Rubber, [1911] 1 K. B. 455.

paid by the_____day of_____, 193 , the said Shares would be sold or be liable to forfeiture.

5. No response having been received to the said letter of the_____ day of_____, 193 , the Directors of the said Company, on the_____day of_____, 193 , duly passed a Resolution in accordance with Clause_____of the Articles of Association of the said Company that the said Shares should be sold or forfeited as from the date of the said Resolution, notice of which Resolution was sent by me to the said C. D. by letter dated the _____day of_____, 193 .

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of The Statutory Declarations Act, 1835.

Declared at_____
_____
the_____day of_____,
One thousand nine hundred and _____,
before me,
_____
A Commissioner for Oaths.

_____
_____

GENERAL MEETINGS.

THE STATUTORY MEETING.

EVERY Company limited by shares and every company limited by guarantee and having a share capital, other than a company of either class which is a private company, must, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which is called "the statutory meeting" (Section 113, Sub-section 1).

The directors of every such company must, at least seven days before the day on which the statutory meeting is held, forward to every member of the company a report certified by not less than two directors, or, where there are less than two directors,[1] by the sole director and manager, stating—

(*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,[2] up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;

(*d*) The names, addresses, and descriptions of the directors, auditors (if any), managers (if any), and secretary of the company; and

[1] By Section 139 every company, other than a Private Company registered after 1st November, 1929, is required to have at least two directors.

[2] The Act of 1908 limited this requirement to receipts and payments "on Capital Account."

(*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 (Sub-sections 2 and 3).

The report should be in the form shown on pages 210 to 212, *post*, and must, 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 (if any) of the company (Section 113, Sub-section 4). Attention is directed to the note on the form in italics.

The directors must cause a copy of the report, properly certified, to be lodged with the Registrar forthwith after the sending thereof to the members of the company, and 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 (Sub-sections 5 and 6).

The members of the company present at the meeting are at liberty to discuss any matter relating to the formation of the company, or arising out of the report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the Articles of Association may be passed (Sub-section 7).

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 has the same powers as an original meeting [1] (Sub-section 8).

If default is made in complying with the provisions of Section 113, every director knowingly and wilfully authorising or permitting the default is liable to a fine not exceeding fifty pounds. If the statutory report is not lodged with the Registrar or the statutory meeting not held, at the expiration of fourteen days after the last day on which the meeting ought to have been held, any shareholder may petition the Court for

[1] As to the date of a resolution passed at an adjourned meeting see page 231.

*No. of Company*_____ FORM No. 46.

"THE COMPANIES ACT, 1929."

REPORT

(Pursuant to Section 113 of The Companies Act, 1929)

OF

A 5s. Companies Registration Fee Stamp must be impressed here.

_____, LIMITED.

To be certified by not less than two Directors,[1] or by the sole Director and Manager where there is only one, and forwarded at least seven days before the Statutory Meeting to every Member of the Company, and to be lodged with the Registrar of Companies for registration forthwith after it is so forwarded (Section 113 of The Companies Act, 1929).

NOTE.—This Form has been provided for the purpose of indicating the nature of the information that is required; but as the Report to be lodged with the Registrar must be a copy of that sent to the Shareholders, all that is contained in that Report must appear in this.

*Presented by*_____

(A) The Total Number of Shares allotted is_____ of which_____are allotted [2]_____ in consideration of_____ and upon each of the remaining Shares the sum of_____has been paid in Cash.

(B) The Total Amount of Cash received by the Company in respect of the Shares allotted wholly for Cash is £_____, and on the Shares allotted partly for Cash is £_____.

(C) The Receipts and Payments of the Company made thereout to the [3]_____day of_____, 193 , are as follows [4]:—

PARTICULARS OF RECEIPTS.				PARTICULARS OF PAYMENTS.			

1 See note [1] on page 208.

2 Here state "as fully paid up" or "as paid up otherwise than in cash to the extent of ....per Share."

3 Insert date, which must be within seven days of the date of the Report.

4 Before the particulars are inserted careful attention should be given to Section 113, Subsection 3 (*c*) See page 208 *ante*.

The following is an Account (*or* Estimate) of the Preliminary Expenses of the Company:—

	£	s.	d.

(D) Names, Addresses, and Descriptions of the Directors, Auditors (if any), Managers (if any), and Secretary of the Company:—

DIRECTORS.

SURNAME.	CHRISTIAN NAME.	ADDRESS.	DESCRIPTION.

AUDITORS.

SURNAME.	CHRISTIAN NAME.	ADDRESS.	DESCRIPTION.

MANAGERS.

SURNAME.	CHRISTIAN NAME.	ADDRESS.	DESCRIPTION.

SECRETARY.

SURNAME.	CHRISTIAN NAME.	ADDRESS.	DESCRIPTION.

(E) 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:—

WE HEREBY CERTIFY THIS REPORT.

Two Directors.

WE HEREBY CERTIFY that so much of this Report as relates to the Shares allotted by the Company and to the Cash received in respect of such Shares and to the Receipts and Payments of the Company on Capital Account is correct.

Auditors.

Dated the_____day of_____, 193 .

the winding up of the company. Upon the hearing of the petition the Court may instead of making a winding-up order direct that the report be lodged with the Registrar or that a meeting be held, and may order that the costs of the petition be paid by any persons who in the opinion of the Court are responsible for the default (Section 168, Sub-section 2; Section 170, Sub-section 1 (*b*); Section 171, Sub-section 2).

A statutory meeting is not required to be held, or a statutory report to be sent out by, a Private Company, or a Company Limited by Guarantee not having a share capital, or an unlimited company.

ORDINARY AND EXTRAORDINARY MEETINGS.

The Articles of Association prescribe how general meetings shall be convened and the procedure to be followed thereat (see Table A, Clauses 39 to 53). General meetings (other than the statutory meeting) are either ordinary or extraordinary. Ordinary meetings are the annual meetings (generally held at a time prescribed by the company's Articles) for the purpose of considering the reports of the directors and auditors, the accounts and balance sheet, sanctioning the declaration of a dividend, electing directors and auditors and fixing their remuneration (see Table A, Clause 44), and transacting any other business which by the company's Articles an ordinary general meeting is authorised to transact. Any business other than that so

prescribed by the Articles for consideration by the company at an ordinary general meeting is " special " business, and notice must be given of the general nature of all such business which it is intended to submit.

Extraordinary general meetings are meetings at which only the special business of which notice has been given in the notice convening the meeting may be transacted (see Table A, Clause 44).

It may be useful to add here that the directors of a limited company, in the absence of express authority in the Articles, have no power to postpone a general meeting of the company properly convened.[1] This is, of course, different from an adjournment (see Table A, Clauses 46 and 49).

A general meeting (either ordinary or extraordinary) must be held once at least in every calendar year, and not more than fifteen months after the holding of the last preceding general meeting. If not so held, the company, and every director or manager (but not the secretary, as formerly) who is knowingly a party to the default, is liable to a heavy fine (Section 112). Section 112 creates two separate offences: (*a*) that of not holding a meeting in the calendar year; (*b*) that of not holding it within fifteen months after the last meeting.[2] By virtue of Section 11 of The Summary Jurisdiction Act, 1848, an information laid more than six months after the offence would be out of time. Further, the Court, on the application of any member of the company, may call or direct the calling of a general meeting where default in holding it has been made (Section 112, Sub-section 3). The Articles usually prescribe the time at which general meetings are to be held.

Under Section 123 there must be laid before the company in general meeting once at least in every year a profit and loss account (or, in the case of a company not trading for profit, an income and expenditure account), made up to a date not earlier than the date of the meeting by more than nine months, or if the company carries on or has business interests abroad, more than twelve months (Sub-section 1), and by Sub-section 2 of the section there must be laid before the company in general meeting a balance sheet as at the date to which the profit and loss account (or the income and expenditure account) is made up. The first

1 Smith *v.* Paringa Mines, [1906] 2 Ch. 193.
2 Smedley *v.* Registrar of Companies, [1919] 1 K. B. 97.

profit and loss account of a company is to be laid before the company within eighteen months of its incorporation; but the Board of Trade may extend that period and also the periods of nine months and twelve months if they think fit to do so. The information which must be disclosed in the balance sheet and the certification of the latter by the directors and auditors is dealt with under "FORM OF PUBLISHED ACCOUNTS," pages 158 *et seq., ante.* Any director who fails to take all reasonable steps to comply with the provisions of Section 123 is, in respect of each offence, liable on summary conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding £200. A sentence of imprisonment cannot be imposed unless, in the opinion of the Court, the offence was committed wilfully.

In the case of every company other than a private company a copy of every balance sheet which is to be laid before the company in General Meeting, including every document required by law to be annexed thereto, together with a copy of the auditors' report, must seven days at least before the meeting be sent to every person entitled to receive notice of general meetings (Section 130, Sub-section 1 (*a*)). Any member of the company, whether or not entitled to have sent to him a copy of the balance sheet under the above provision is entitled to be furnished on demand, without charge, with a copy of the last balance sheet of the company, with the documents required by law to be annexed thereto, and a copy of the auditors' report. A like right is conferred on holders of debentures of the company (Sub-section 1 (*b*)). Failure to comply with the requirements of Sub-section 1 (*a*) renders the company and every officer in default liable to a fine not exceeding £20; and failure to comply with a demand for a copy of the last balance sheet under Sub-section 1 (*b*), within seven days of the making of the demand, renders the company and every director, manager, secretary, or other officer knowingly a party to the default liable to a fine not exceeding £5 a day whilst the default continues, unless it is proved that the person has already made a demand for and has been furnished with a copy of the document.

In the case of a private company, any member is entitled to be furnished, within seven days after he has made a request to the company therefor, with a copy of the balance sheet and auditors' report at a charge not exceeding sixpence for every

hundred words, and failure to furnish a copy after a request has been made therefor, and the proper charge tendered, renders the company and every officer in default liable to a fine not exceeding £5 a day while the default continues (Subsection 2); but a holder of debentures of a private company has no statutory right whatever to receive or be furnished with a copy of the balance sheet.

The Articles usually state what notice is to be given of meetings. In the case of special business the notice must also state the general nature of the business (see, for instance, Table A, 1929, Clause 42). The notice must contain clear information as to what is proposed to be done, as an insufficient notice may invalidate the proceedings.[1] So many "clear days'" notice means so many days exclusive of the day of service of the notice and the day of meeting. Great care should be taken to ascertain that the notices sent out are in accordance with the provisions of the Articles, and to specify clearly any "special business" which is to be transacted. The terms of any specific resolution to be proposed need not be set out in the notice[2] unless, of course, an extraordinary or special resolution is to be passed. For further information the reader is referred to "RESOLUTIONS" (page 230, *post*).

The examples following, in their order, show notices of the Statutory or First General Meeting, of an Ordinary or Annual General Meeting, and of an Extraordinary General Meeting summoned to transact special business—

1. STATUTORY MEETING.

_____, LIMITED.

Address_____

_____193 .

NOTICE IS HEREBY GIVEN that the Statutory Meeting of the above named Company, pursuant to Section 113 of The Companies Act, 1929, will be held at the Registered Office as above on_____, the_____ day of_____, at_____o'clock in the_____noon.

By Order of the Board,

_____

*To*_____ *Secretary.*

[1] Tiessen *v.* Henderson, [1899] 1 Ch. 861; Normandy *v.* Ind Coope and Co., [1908] 1 Ch. 84; Baillie *v.* Oriental Telephone Co., [1915] 1 Ch. 503.

[2] Betts & Co. *v.* Macnaghten, [1910] 1 Ch. 430.

2. Ordinary General Meeting.

_____, LIMITED.

Address_____

_____193

Notice is hereby Given that the Ordinary General Meeting of the above-named Company will be held at_____on_____, the_____day of_____, at_____o'clock in the_____noon, for the following purposes:—

To receive and consider the Directors' Report, the Annual Statement of Accounts and Balance Sheet, and the report of the Auditor thereon.

To sanction the declaration of a Dividend, and to transact the other ordinary business of the Company.

Notice is also Given that the Transfer Books of the Company will be closed from the_____to the_____, 193 , both days inclusive.

By Order of the Board,

_____

*To*_____ *Secretary.*

3. Extraordinary General Meeting for Increasing Capital by Special Resolution.

_____, LIMITED.

Address_____

_____193

Notice is hereby Given that an Extraordinary General Meeting of the above-named Company will be held at_____on_____, the_____, at_____o'clock in the_____noon, for the purpose of considering, and if deemed desirable, passing (with or without modification) the following Special Resolution:—

"That the Capital of the Company be increased from £_____ to £_____ by the creation of_____new shares of £_____each."

By Order of the Board,

_____

*To*_____ *Secretary.*

*N.B. If you are unable to attend the Meeting, please fill up the enclosed Form of Proxy with the name of one of the Directors, or of any Member of the Company whom you think fit to appoint as your Proxy; sign it in the presence of a Witness, who must also sign, and return the Form to the Secretary on or before the*_____

As to the twenty-one days' notice required by the Act to be given of the meeting to pass a special resolution see page 230.

The secretary will be present at all general meetings, and should have with him the Register of Members, the Minute Book of General Meetings, a copy of the Articles or Table A,

and either a book or sheets of paper on which each member should be requested to sign his name on entering the room where the meeting is to be held. With large companies, however, it is a common practice to issue to the members cards of admission to general meetings. These cards should be signed by members, and given up on entering the room where the meeting is to be held. The following is a form of admission card:—

_____, LIMITED.

Admit_____
to the_____General Meeting of the above-named Company to be held at_____on_____the_____ day of_____, 193 .

Member's Signature_____

To prevent delay in entering, Members are requested to sign this Order of Admission before coming.

CONDUCT OF BUSINESS AT MEETINGS.

The record of the members present will be of great service if any question should arise as to the number or names of those present at the meeting. Before proceeding to the business of the meeting it must be ascertained whether a quorum of members is present. The Articles will usually state what number of members constitutes a quorum (see, for instance, Table A, 1929, Clause 45, which prescribes three members personally present); but if the Articles do not prescribe the quorum and Table A is excluded from operation, the quorum is, under Section 115, two members personally present in the case of a Private Company, and three such members in the case of any other company. If a quorum is not obtained, the meeting will be dissolved or adjourned, as may be provided by the Articles.[1] If a quorum is present, the business is commenced by the secretary reading the notice convening the meeting, and usually the minutes of the last general meeting. These last-mentioned minutes will, if approved, be signed by the chairman, thus:—

Read and approved,

_____
Chairman.

_____, 193 .

Sometimes the minutes of the last general meeting are not read, as they may have already been signed by the chairman of that meeting. The minutes would be admitted in evidence if

1 See Table A, [1929] Clause 46.

signed at either meeting. Any alteration should be initialled by the chairman who signed the minutes.

The agenda, previously prepared by the secretary, will next be laid before the chairman. The secretary will also have ready the exact terms of any resolution to be submitted to the meeting. During the meeting the secretary must make a careful note of what takes place, and for this purpose he may use a note book or rough minute book, and record the proceedings afterwards in the regular Minute Book.

The importance of keeping full and correct minutes cannot be exaggerated (see pages 110 and 111, *ante*). Section 120 of the Act makes the minutes, if purporting to be signed by the chairman of the meeting or by the chairman of the next succeeding meeting, evidence of the proceedings; and, until the contrary is proved, the meeting at which such minutes were made will be deemed to have been duly held and convened, and the proceedings thereat to have been duly had, and all appointments of directors, managers, or liquidators will be deemed valid. All incidental questions arising at a general meeting which require immediate decision may be determined by the chairman, whose decision as entered in the Minute Book is *prima facie* taken as correct.

Full directions as to voting at general meetings, taking polls, and giving proxies will be found in the Articles (see Table A, 1929, Clauses 50 to 62). Special provision is made by Section 116 for the representation of one company at meetings of another. Any company (whether a company within the meaning of the Companies Act or not) which is a member of a company within the meaning of the Companies Act may, by a resolution of the directors or other governing body, authorise any of its officials or any other person it thinks fit to act as its representative at any meeting of the latter company or at any meeting of any class of members of that company, and such representative will be entitled to exercise the same powers on behalf of the company which he represents as if he had been an individual shareholder.[1] A person representing a corporation under Section 116 must be included when considering the presence of a quorum.[2] It is the secretary's duty to see that

[1] The power so to appoint a representative was formerly exerciseable only by a company incorporated under the Companies Act, and in respect of general meetings. As to appointment by a company of a representative to act at meetings of debenture holders or creditors, see page 357.

[2] Kelantan Coconut Estates, in *re*, [1920] W. N. 274.

any proxies which have been sent in are properly stamped and attested in the form prescribed by the Articles, and that they have been deposited at the company's office for the requisite period before the meeting at which they are to be used. He will also see that the shareholders appointing the proxies are qualified to vote, and that the proxy holders are qualified to act.

The right to vote by proxy must be expressly given by the Articles of Association. Under Clause 59 of Table A (1929) a proxy need not be a member of the company; but under Table A of 1908, and frequently under special Articles, no person may be appointed a proxy who is not a member. Proxies cannot be used on a show of hands.[1] If proxy holders present at a general meeting are dissatisfied with the result of the voting where a vote is taken by a show of hands, they should demand a poll. A demand for a poll cannot be withdrawn after it has been accepted and the meeting has separated.[2] Where an extraordinary or a special resolution is submitted to be passed a poll may be demanded by such number of members not exceeding five for the time being entitled according to the Articles of the company to vote as the Articles may prescribe. If no provision is made by the Articles a poll may be demanded on an extraordinary or special resolution by three members entitled to vote or by one member alone or two members together, so entitled to vote, holding not less than fifteen per cent. of the paid-up share capital of the company (Section 117, Subsection 4). In the case of resolutions other than extraordinary or special resolutions reference must be made to the Articles for the requisite number (see *e.g.* Clause 50 of Table A, 1929, which allows a proxy to join in demanding a poll). Under Articles which provide in the ordinary way that votes shall be given either personally or by proxy, a poll taken by means of polling papers, to be signed and delivered at the company's office on or before a fixed day and hour, would be invalid. A shareholder must be present, personally or by proxy, at a proper meeting before he can vote. And this principle is not overridden by a provision in the Articles that if a poll is demanded it shall be taken in such manner and at such time and place as the chairman of the meeting directs[3] (see Table A, 1929, Clause 51).

[1] *Re* Caloric Engine Co., [1885] 54 L. T. N. S. 846; Ernest *v.* Loma Gold Mines, [1896] 1 Ch. 1.

[2] Reg. *v.* Wimbledon Local Board, [1882] 51 L. J., Q. B. 219; Rex *v.* Mayor of Dover, [1903] 72 L. J., K. B. 210.

[3] McMillan *v.* Le Roi Mining Co., [1906] 1 Ch 331.

The taking of a poll is not a meeting, or an adjournment of a meeting.[1] It is a continuation of the meeting at which the poll is directed to be taken. Where the Articles provide that a proxy is to be valid unless notice of the death of the principal or revocation of the proxy or transfer of the share is received before the meeting, a notice of revocation given between the date of the meeting and the taking of the poll is inoperative, being given "during," and not "before," the meeting.[2] But even if a shareholder has given an invalid or no notice of revocation, he can attend and vote personally, thus superseding the proxy.[3]

The following is a form of a demand for a poll:—

DEMAND FOR A POLL.

_____, LIMITED.

We, the undersigned Members of the above-named Company, holding _____Shares, do hereby demand a Poll upon the question that_____

(Signatures.)

Dated this_____day of_____, 193 .

A list of members for the purpose of taking the poll is generally made out by the secretary. The following is a specimen list:—

List of Members for the Purpose of Taking a Poll.

Names of Members.	Number of Shares.	Number of Votes.	Remarks	Votes Given. For.	Votes Given. Against.
A. B.	10	10		10	
C. D.	20	20	By E. F. his proxy.		20
E. F.	10	10			10
G. H.	5	5	Vote rejected under Clause __ of Articles of Association.		
I. J.	25	25	By K. L. his proxy, appointed by M. N. under power of attorney from I. J. dated the_____day of_____, 193 .	25	
K. L.	15	15		15	
A. Z. Company	50	50	By W. Y. appointed to act as representative of Company by resolution of Company of _____, 193 .		50

[1] As to the date of a resolution passed at an adjourned meeting see page 223.

[2] Shaw *v.* Tati Concessions, [1913] 1 Ch. 292; Spiller *v.* Mayo (Rhodesia) Co., [1926] W. N. 78; Cousins *v.* International Brick Company, [1931] 2 Ch. 90.

[3] Cousins *v.* International Brick Company, *supra*.

In some cases the Articles provide that two scrutineers shall be appointed to take the poll and to report to the chairman the result of the voting. If there is no provision in the Articles, scrutineers may be appointed by a resolution of the meeting, or by the chairman with the assent of the meeting. The following is a form of scrutineers' report to the chairman of the result of a poll:—

_____, LIMITED.

WE, the undersigned, being the Scrutineers appointed at the General Meeting of the above-named Company held at_____on the_____day of_____, 193 , on the motion "That the report and accounts of the Directors be adopted," and a Poll having been taken at the Company's Office on Monday, the_____day of_____, 193 , hereby report to you, as the Chairman of such Meeting, that the result of such poll was as follows:—

In favour of the motion - - - - - - -	
Against the motion - - - - - - - -	
Total - - - - - - - -	/
Majority in favour of the motion	

Dated the_____day of_____, 193 .

_____
_____ } *Scrutineers.*
_____

To A. B., Esq.,
Chairman of the above-mentioned Meeting.

The form of proxy given in the special Articles or Table A (see Clause 61 of Table A, 1929) is available for one meeting only, and requires a penny stamp, which may be impressed or adhesive. Any cancellation which renders the stamp incapable of being used for any other instrument or for any postal purpose is sufficient. It is not necessary that the person cancelling should write his name and the date across the stamp[1] (and see "STAMPS," page 326, *post*). So long as a proxy is properly stamped at execution, its operative parts—for example the name of the proxy, or the date of the meeting at which the proxy is to be used—may be filled in afterwards by any person properly authorised to do so.[2] They must, of course, be filled up before the proxies are lodged. The Articles sometimes require the

[1] McMullen *v.* Hickman Steamship Co., [1902] 71 L. J. Ch. 766.
[2] Ernest *v.* Loma Gold Mines, [1897] 1 Ch. 1; Sadgrove *v.* Bryden, [1907] 1 Ch. 318.

proxy to be witnessed, and if they do the proxy is invalid unless properly witnessed. The following is a form frequently used:—

_____, LIMITED.

I, the undersigned,_____, a Member of_____, Limited, do hereby appoint_____, or in his absence[1]_____, both Members of the said Company, to be my proxy, to vote and act for me at the Meeting which is to be held on the_____day of_____, 193 , and at every adjournment thereof, and at every poll that may take place in consequence thereof.

Signature_____

Witness_____

Dated this_____day of_____, 193 .

The term "proxy" in its strict sense means the person appointed to vote for another. The word, however, is commonly used to denote the instrument appointing the proxy, and sometimes even the appointing shareholder. So long as the intention is clear, the vote is good. Thus, "A. B., for self and proxies," has been held sufficient.[2]

For the purposes of a meeting of a particular class, only a member of that class can be appointed proxy.

If a proxy is given for more than one meeting, the instrument is in effect a power of attorney, and requires a ten-shilling impressed stamp. If, therefore, any such words as "at any general meeting of the company which may be held before the _____day of_____, 193 ," are used, the instrument requires a ten-shilling stamp. In such cases the member should execute a formal power of attorney. The Articles of Association of some companies allow shareholders to appoint an attorney for the purpose of appointing proxies to vote at general meetings. The following is a suitable form:—

Power of Attorney from Member for Attorney to Appoint Proxies at Meetings.

_____, LIMITED.

Know all Men by these Presents that I, A. B. [*full name and description*], a Shareholder in_____, Limited, hereby appoint C. D., of [*full name and description*], to be my Attorney, and in my name and on my behalf to appoint any person or persons to act as my proxy at any General Meeting of the said Company which may be

[1] Several persons may be thus appointed.

[2] Forester *v.* Newlands Mines, [1902] 46 Sol. Jo. 409.

held before the_____day of_____, 193 , and at which I shall not be present in person or by a proxy appointed under my own hand; and I authorise my said Attorney at his discretion to revoke any appointment made by him hereunder; and I declare that this Power of Attorney shall be void and cease to have any effect after the_____ day of_____, 193 ; and I hereby undertake to ratify all that my said Attorney shall do or purport to do by virtue of these presents.

In Witness, &c.

Date_____, 193 .

A power of attorney such as that given above must bear a ten-shilling stamp (impressed), and must, of course, be produced and noted by the secretary. All proxies handed in must be carefully preserved.

Articles usually provide that the chairman may, with the consent of a meeting, adjourn the meeting, and Clause 49 of Table A (1929) provides that he shall do so if directed by the meeting; but the chairman may, on proper ground, adjourn a meeting where the Articles are silent. Under Section 119 a resolution passed at an adjourned meeting of a company or of the holders of shares of any class in a company, or of the directors of a company, is to be treated for all purposes as having been passed on the date on which it was in fact passed, and is not to be deemed to have been passed on any earlier date.

REQUISITION FOR GENERAL MEETING.

If the members send in a requisition for a general meeting, the secretary must see that the Articles of Association have been strictly complied with, that the object of the meeting is fully and clearly defined in the requisition, and that the requisition is properly signed by duly qualified persons. The attention of the directors should be called to any irregularity, and, if necessary, the solicitor's advice should be taken.

Notwithstanding anything in any regulations of a company, the directors must, on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital as at the date of the deposit carries the right of voting at general meetings, or, where there is no capital, of members representing one tenth of the total voting rights of all the members, forthwith proceed duly to convene an extraordinary general meeting of the com-

pany (Section 114, Sub-section 1). If shares are registered in joint names each of the joint holders must sign the requisition, or the shares will not be taken into account.[1]

The requisition must state the objects of the meeting, and be signed by the requisitionists. It may consist of several documents in like form, each signed by one or more requisitionists. It must be deposited at the registered office of the company (Sub-section 2). It should be so deposited by some person who can, if necessary, prove the fact and date of deposit; and a note of the name and address of the person leaving the requisition should be made by the secretary.

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

Any meeting convened by requisitionists must be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors (Sub-section 4).

If the directors fail duly to convene the meeting, any reasonable expenses incurred by the requisitionists must be repaid by the company and be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to the directors who were in default (Sub-section 5).

The following is a form of requisition:—

To the Directors of

_____, LIMITED.

We, the undersigned Members of_____Company, Limited, holding in the aggregate_____Shares in the Capital thereof, do hereby, in pursuance of the provisions in that behalf contained in the Articles of Association of the said Company, require you to convene an Extraordinary General Meeting of the said Company to be held on_____, the_____ day of_____, 193 , at_____o'clock in the_____noon, for the purpose of considering, and if thought fit passing, the subjoined resolution: namely—

[*Here set out the resolution*].

(Signatures.)

Dated the_____day of_____, 193 .

[1] Patent Wood Keg Syndicate *v.* Pearse, [1906] W. N. 164.

In the very unusual case of there being no regulations as to meetings, the following section of the Act applies:—

115.—(1) The following provisions shall have effect in so far as the articles of the company do not make other provision in that behalf:—

(*a*) A meeting of a company, other than a meeting for the passing of a special resolution, may be called by seven days' notice in writing;

(*b*) Notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A, and for the purpose of this paragraph the expression "Table A" means that Table as for the time being in force;

(*c*) Two or more members holding not less than one tenth of the issued share capital, or, if the company has not a share capital, not less than five per cent. in number of the members of the company may call a meeting;

(*d*) In the case of a private company two members, and in the case of any other company three members, personally present shall be a quorum;

(*e*) Any member elected by the members present at a meeting may be chairman thereof;

(*f*) In the case of a company originally having a share capital, every member shall have one vote in respect of each share or each ten pounds of stock held by him, and in any other case every member shall have one vote.

(2) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in manner prescribed by the articles or this Act, the court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held, and conducted in such manner as the court thinks fit, and where any such order is made may give such ancillary or consequential directions as it thinks expedient, and any meeting called, held, and conducted in accordance with any such order shall for all purposes be deemed to be a meeting of the company duly called, held, and conducted.

BOARD MEETINGS.

THE Articles usually contain full provisions and directions as to the mode of holding board meetings (see, for instance Table A, 1929, Clauses 81 to 88), and they frequently give power to any director to call a board meeting; but the wishes of the chairman should always be considered, if only as a matter of courtesy. Notice of every meeting ought to be given to each member of the board.

The following is a form of letter of notice:—

_____, LIMITED.

Address_____

_____, 193 .

DEAR SIR,

I beg to inform you that a Meeting [*or* I beg to remind you that the next Meeting] of the Directors will be held at the Offices of the Company as above on_____, the_____day of_____, at_____o'clock in the_____noon, for the transaction of the business specified in the Agenda appended hereto.

Your obedient servant,

_____

Secretary.

*To*_____

The directors, being agents of the company, cannot, unless authorised to do so, delegate the powers vested in them to committees. They, however, as a general rule, are authorised by the Articles to delegate their powers to committees of their own body (see Table A, 1929, Clause 85), which may consist of only one person.[1] The Articles also generally prescribe the number of directors necessary to constitute a quorum; where this is not the case, the number who usually conduct the business of the company will be sufficient. To enable directors of a company incorporated under the Companies Acts to decide questions by a majority, there must be a special Article authorising them to do so[2] (*e.g.* Clause 81 of Table A, 1929).

The secretary would do well to satisfy himself that the board room is properly prepared for the meeting. He will of course

[1] Taurine Co., [1884] 25 Ch. D. 118.

[2] Cerott & Perrott *v.* Stephenson, [1934] 1 Ch. 171.

have ready the Agenda, Minute Book, Directors' Attendance Book, and all other books, letters, documents, &c., which are likely to be required during the meeting, so that no time may be lost in obtaining them. One or two copies of the Memorandum and Articles, neatly bound, should always be on the board table for reference if required, and a secretary will find it convenient to have a portfolio or case in which to keep, from one meeting to another, letters and other papers which have to be submitted to the board.

After obtaining the signatures of the directors in the Attendance Book, the secretary will read the minutes of the last preceding board meeting, which will be signed by the chairman if found correct.

The secretary should take notes of all business transacted at the meeting. It is advisable to take these notes in a book, and to avoid using scraps of paper. The minutes will afterwards be entered in the Minute Book kept for board meetings.

Sometimes the solicitor may by request be present at the meeting, in which case he will draft any important resolutions that are to be submitted, unless, as sometimes happens, the chairman himself prefers to do so. In other cases, a secretary is given general directions as to drafting resolutions. In any event it is scarcely possible to exaggerate the importance of keeping accurate minutes of proceedings, in clear language, and of copying carefully any resolutions that may have been previously drafted. The agenda paper, with the chairman's remarks and any drafts of resolutions, will be kept until the minutes in which they are incorporated are signed, when the papers can be destroyed. Where a resolution is passed at an adjourned meeting of the directors the resolution is to be treated for all purposes as having been passed on the date on which it was in fact passed and is not to be deemed to have been passed on any earlier date (Section 119).

The directors at a board meeting ought to have full information as to the financial position of the company. It is therefore desirable for the secretary to prepare and have ready for each board meeting a cash statement showing the balance brought forward from the preceding statement, summaries under various headings of the cash receipts and payments since the last meeting of the board, and the balance at the company's bankers.

It is also desirable for the directors to have at each board meeting a statement showing the cash at bank on deposit and current accounts and in hand, the amounts estimated to be received and paid under appropriate headings during the period to the date of the next board meeting, and the balance expected then to be in hand.

The amounts shown as at bank should be the balances on the cash book and on the deposit account in the ledger, and a statement should be prepared reconciling the former with the bank pass books, which should be made up to date and submitted for the inspection of the directors, together with the bankers' certificate of the balances.

There should also be included in the financial statement prepared for the board meeting a statement showing all existing current liabilities which will not mature for settlement until after the date of the next board meeting and any substantial or exceptional payments which fall to be made within (say) the next three months (the period depending upon the circumstances of the particular company).

The forms of the financial statements will vary in different businesses, and the secretary should consult the company's accountant and other officials before deciding upon the forms which he will use.

The following are specimens of agenda for board meetings. The secretary will arrange the different items of the agenda in order, but the board may depart from this order in any way it pleases.

_____, LIMITED.

Board Meeting on the_____day of_____, 193 .

AGENDA.

To resolve that_____do take the chair at this meeting.

To receive the report that the company was duly registered.

To receive the report of the registration of notice of the situation of the registered office.

To submit sketch of company's seal, prepared by order of_____for approval.

To pass resolution as to the custody of the keys of the seal.

To resolve that_____be appointed bankers of the company.

To resolve that_____be appointed solicitors.

To resolve that_____be appointed auditors.

To resolve that_____be appointed brokers.

To resolve that_____be appointed secretary to the company, at a salary of_____per annum.

To resolve that_____directors shall be a quorum for a board meeting.

To consider the appointment of a sub-committee of the board.

To resolve, in accordance with Article____, that the business of passing transfers, sealing certificates, and signing cheques for ordinary current expenses be delegated to a committee of_____directors.

To resolve, further, that such committee be empowered to deal with any matter which may urgently require attention.

To resolve that the prospectus dated the_____day of_____, 193 , a copy of which is signed by each of the directors, be issued forthwith, together with the form of application for shares, a copy of which is also signed by the chairman.

To resolve that_____shares of_____each in the capital of the company be allotted as follows: [here state names of allottees and number of shares to be allotted to each] and that the secretary do give notice of allotment to the above-named persons and of the shares allotted to them respectively.

To resolve that the seal of the company be affixed to certificates, numbered_____to_____inclusive, for_____ordinary [or preference] shares.[1]

[1] After entering this resolution in the Minute Book a record should be made that "the said certificates were accordingly sealed."

RESOLUTIONS.

RESOLUTIONS are of three kinds: namely—

1. Ordinary Resolution—*i.e.* a resolution passed by a simple majority of the members present at an ordinary or extraordinary general meeting.
2. Extraordinary Resolution—*i.e.* a resolution passed by a majority of not less than three fourths of such members as, being entitled so to do, vote in person or (where proxies are allowed) by proxy, at a general meeting of which notice specifying the intention to propose the resolution has been duly given (Section 117, Sub-section 1).
3. Special Resolution—*i.e.* a resolution which has been passed by such a majority as is required for the passing of an extraordinary resolution at a general meeting of which not less than twenty-one days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given: Provided that if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed at a meeting of which less than twenty-one days' notice has been given[1] (Section 117, Sub-section 2).

In the case of an ordinary resolution dealing with ordinary business submitted to an ordinary general meeting no notice of the resolution is necessary; but notice must be given of any special business with which it is intended to deal by ordinary resolution at an ordinary general meeting, and of any ordinary resolution which it is intended to submit to an extraordinary general meeting. (As to what is "ordinary" and what is "special" business see page 212 and Table A, 1929, Clause 44.) Examples of ordinary resolutions which are special business and of which, though capable of being passed at an ordinary general meeting, notice must be given, are ordinary resolutions to increase or otherwise alter the capital of a company pursuant to Section 50 (where the Articles do not prescribe a special or

[1] This means clear days (Hector Whaling Co., *in re*, [1935] W. N. 223).

extraordinary resolution therefor) and an ordinary resolution to wind up a company pursuant to Section 225, Sub-section 1 (*a*).

A meeting may be adjourned and the meeting and its adjournment constitute only one meeting, *i.e.* the original meeting.[1] When a resolution is passed at an adjourned meeting, the resolution is to be treated for all purposes as having been passed on the date on which it was in fact passed, and is not to be deemed to have been passed on any earlier date (Section 119).

Unless a poll is duly [2] demanded, a declaration by the chairman is conclusive evidence that a special or extraordinary resolution has been carried.[3] And where Clause 50 of Table A, 1929, applies, the declaration of the chairman, coupled with an entry in the Minute Book of the carrying (or otherwise) of the resolution, will be conclusive evidence in the case of other resolutions, unless a poll is demanded in accordance with the terms of that clause. If the declaration itself contains intrinsic evidence that it is wrong (*e.g.* where the chairman states that he has taken proxies into account, no poll having been demanded) it will not be conclusive.[4] Care should therefore be taken that the chairman declares the resolution carried, and that his declaration is properly recorded in the minutes.

If there is more than one resolution, each resolution must be put separately to the meeting. They must not all be put *en bloc* either on a show of hands or on a poll.[5]

When a poll is demanded the majority is not merely a majority of members, but regard is had to the votes to which each member is entitled by virtue of the Act or of the Articles (Section 117, Sub-section 5).

A printed copy of every special or extraordinary resolution must be lodged with the Registrar for filing within fifteen days after the passing of the resolution, and in case of default the company, and every officer of the company in default, is liable to a penalty (Section 118, Sub-sections 1 and 5).

There must also be lodged with the Registrar a printed copy of every resolution which has been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for its purpose unless passed as a special

1 Neuschild *v.* British Equatorial Oil Company, [1925] Ch. 346; Cousins *v.* International Brick Company, [1931] 2 Ch. 90. 2 See page 219, *ante*.

3 Arnot *v.* United African Lands, [1901] 1 Ch. 518, and The Companies Act, 1929, Section 117, Sub-section 3. 4 Patent Wood Keg Syndicate *v.* Pearse, [1906] W. N. 164.

5 *Re* Caratal (New) Mines, [1902] 2 Ch. 498.

or extraordinary resolution; every resolution or agreement which has been agreed to by all the members of some class of shareholders, but which, if not so agreed to, would not have been effective for its purpose unless it had been passed by some particular majority or otherwise in some particular manner; every resolution or agreement which effectively binds all the members of any class of shareholders although not agreed to by all those members; and of a resolution requiring a company to be wound up under Section 225, Sub-section 1 (*a*) (Section 118, Sub-section 4). The copy must be lodged within fifteen days of the passing of the resolution or the making of the agreement.

A printed copy must also be lodged of a resolution to increase the company's capital (Section 52, Sub-section 1). An ordinary resolution having that object must therefore be lodged with the Registrar.

A copy of every special and extraordinary resolution and of every other resolution or agreement as above specified for the time being in force must be embodied in or annexed to every copy of the Articles issued after the passing of the resolution or the making of the agreement, or, if Articles have not been registered, a printed copy of every such resolution or agreement must be forwarded to any member asking for it, upon payment of a sum not exceeding one shilling, and if these requirements are not complied with the company, and every officer of the company who is in default, is liable to a fine for each copy in respect of which default is made (Section 118, Sub-sections 2, 3, and 6).

The form of a notice convening a meeting to pass a resolution is given on page 216, *ante*.

The following are some specimens of resolutions:—

Resolved—That an account be opened with The_____Bank, Limited, in the name of_____, Limited, under the control of A. B. and C. D., &c., Directors, the signatures of any two of whom, together with the counter-signature of the Secretary, shall be a sufficient authority to The_____Bank, Limited, for the payment of all moneys, to permit the inspection or withdrawal of any securities, and to receive and act upon any instructions regarding the transactions of the said Company with the said Bank.

Resolved—That The_____Bank, Limited, be requested to negotiate the draft or drafts, at a term not exceeding_____days after sight, drawn or endorsed by_____& Co., of_____, as agents for this Company, for any sum or sums not exceeding £_____, and that the Company agree to duly accept same upon presentation and pay the

amount thereof at maturity, provided such draft or drafts shall be negotiated within_____months from this date.

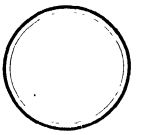
Some further forms of resolutions will be found in Appendix A, page 427 *et seq.*, *post*.

The following is the form in which a resolution should be set out for the purpose of lodging with the Registrar of Companies:—

*No. of Company*_____ FORM No 16.

"THE COMPANIES ACT, 1929.

COMPANY LIMITED BY SHARES.



A 5s. Companies Registration Fee Stamp must be impressed here

[COPY]

SPECIAL [*or Extraordinary or otherwise*] RESOLUTION

Pursuant to The Companies Act, 1929, *Section* 117 [*and any other Section under which the Resolution is passed*])

OF

_____, LIMITED.

*Passed*_____, 193 .

AT an EXTRAORDINARY [*or* ORDINARY] GENERAL MEETING of the Members of the above-named Company, duly convened, and held at _____, in the County of_____, on the_____day of _____, 193 , the following SPECIAL [*or* EXTRAORDINARY *or* ORDINARY] RESOLUTION was duly passed.

[*Resolution as passed to be set out.*]

The resolution must be printed, and the copy lodged for filing must be authenticated by the written signature of an officer of the company, and be impressed with a five-shilling Companies Registration fee stamp.

DIVIDENDS.

THE special Articles, or Table A (if Table A applies), regulate the rights of the members of the company to dividends (see Table A, 1929, Clauses 89 to 96).

The Articles of Association usually provide that the directors may, with the sanction of the company in general meeting, declare a dividend, or without such sanction may pay such sums on account of dividend (*i.e.* interim dividends) as they think fit.

Dividends are the proportions of profits which are payable per share or per cent. on the capital of the company, declared in the manner provided by the Articles, and paid by a cheque or dividend warrant sent by the secretary of the company, with the sanction of the directors, to each shareholder.

A dividend warrant is in effect a cheque—that is to say, an unconditional order to pay a sum of money; but bankers observe a distinction between the two. According to usual custom, a cheque, if not presented within six months of the date of issue, may not be paid without reference to the drawer, but a dividend warrant would be paid by some banks after the expiration of this period unless a time limit is fixed and stated upon the warrant.

Dividends are almost invariably paid on the amounts paid up or credited as paid up on the shares; but the Articles may provide that dividends are to be payable on the nominal amount of the shares. The Articles sometimes provide (see Table A, 1929, Clause 91) that dividends shall only be payable out of profits. This is a statement of the law on the subject, as dividends may not be paid out of capital. The Memorandum must therefore be looked at to ascertain precisely what is the business of the company, for it is that from which profits arise.

The question as to what are profits which may properly be expended in payment of dividends is often a difficult one, and has given a great deal of trouble to both legal and commercial experts in company matters. The word "profits" is a word which is not free from ambiguity. In the case of *Verner* v. *General and Commercial Investment Trust* (1894, 2 Ch. 239) the Court of Appeal said that the law was much more accurately expressed by saying that dividends cannot be paid out of capital than by saying that they can only be paid out of profits.[1]

[1] A valuable discussion of the word profits will be found in the judgment of Fletcher Moulton, L.J., *in re* The Spanish Prospecting Co., [1911] 1 Ch. 92

The provisions of the Articles of Association as to profits must also be attended to. Thus special Articles may provide that no dividends shall be payable except out of "realised profits." The words "realised profits" will be taken in their ordinary commercial sense as meaning at least "profits tangible for the purpose of division," and will not include estimated profits.[1] In the absence of special provisions, the profits of an undertaking may be defined as the excess of ordinary receipts over expenses properly chargeable to revenue account. But what expenses are properly chargeable to capital and what to revenue depends upon circumstances, and no general rule can be laid down. Clause 80 of Table A, 1862, shows in what manner profits are to be arrived at in the case of companies governed by that Table.[2]

Apart from special Articles limiting the fund out of which dividends may be paid, there is a statutory bar against paying them out of capital. In no case should dividends be recommended, declared, or paid, when such a course would be one which, having regard to the nature of the company's business and the other circumstances of the case, no reasonable man would adopt. Subject to this, past losses of capital, *i.e.* losses in financial periods for which the accounts have been made up and closed, may be ignored, whether the capital lost is fixed or circulating, when considering the question whether profits earned in a subsequent financial period should be distributed; and losses of fixed capital in the year in which the profits have been so earned may also be ignored. Losses of circulating capital in that year cannot be ignored because they enter into and form part of the gross profit, and must consequently be deducted in order to arrive at the real profit. The distinction between fixed and circulating capital is that the former consists of capital invested in assets intended to be retained by the company more or less permanently and used in producing an income; the latter consists of capital which is continually being parted with but which is always intended to return with an accretion. A good instance of circulating capital is the money spent by a manufacturing company in the purchase of raw material, and in turning that material into manufactured goods, and in the expenses of

[1] Oxford Benefit Building and Investment Society, [1887] 35 Ch. D. 502.

[2] Table A (1908 or 1929) contains no similar provisions.

sale. Until the money so spent has been replaced out of the proceeds of sale there is obviously no profit. When there are profits out of which a dividend can lawfully be paid, and it is necessary to justify the distribution of them from a commercial standpoint, an appreciation in the value of capital assets, as ascertained by a *bona fide* valuation, may be set off against losses in past years on revenue account, and depreciation which has been charged in account but has not actually occurred may be written back.[1] The question whether a company has profits available for distribution must be answered according to the nature of the company, the circumstances of each particular case, and the evidence of competent witnesses.[2] The common Article requiring dividends to be declared by the directors applies to fixed cumulative dividends on preference shares. If the directors in their discretion think that a dividend ought not to be declared, the Court will not be easily induced to override their decision.[3]

If a dividend has been paid out of capital, no individual shareholder who has received his dividend with knowledge of all the facts, and still retains it, can maintain an action against the directors to compel them to pay to the company the amount wrongly distributed in dividends.[4]

By Section 54 a company may in certain circumstances pay interest on paid-up share capital and charge the payment to capital account. The shares in respect of which such payment may be made must have been issued to defray the expenses of the construction of works &c., or the provision of plant, which cannot be made profitable for a lengthened period. The rate of interest specified in the section is four per cent. per annum, or such other rate as may for the time being be prescribed by Order in Council, and such an Order has been made fixing the rate allowable at six per cent. The payment of interest out of capital must be authorised by the company's Articles or by special resolution and before being paid be sanctioned by the Board of Trade, who may, at the expense of the company, appoint a person to inquire and report before giving the required

[1] Ammonia Soda Co. *v.* Chamberlain, [1918] 1 Ch. 266; Stapley *v.* Read Bros., [1924] 2 Ch. 1.

[2] A right under the Articles to share in "profits available for dividend" is not confined to net profits remaining after making any reserve which the directors think proper in the interests of the company (Long Acre Press *v.* Odhams Press, [1930] W. N. 147).

[3] Bond *v.* Barrow Haematite Steel Co., [1902] 1 Ch. 353.

[4] Towers *v.* African Tug Co., [1904] 1 Ch. 558.

sanction. The Board of Trade must further determine the period for which such payment may be made, and such period may not extend beyond the close of the half-year next after the half-year during which the works &c. have been made or the plant provided. The payment of interest does not operate as a reduction of the amount paid up on the shares in respect of which it is paid, and the accounts of the company must show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate. The payment will be charged to capital as part of the cost of the work, building, or plant.

In the payment of dividends on the preference shares in the capital of the company there may also be a question whether such dividends are contingent on the profits of each year being sufficient, or whether the deficiency of one year can be made up out of the profits of future years. In the former case the dividends are called "Non-cumulative," in the latter "Cumulative." The Articles, however, will generally afford a decisive answer to this question.

The principles upon which the accounts of a trading company should be kept for the purpose of showing how dividends ought to be paid were stated by Mr. Justice Chitty in a reported case.[1] His lordship said, "I have before me the defendant company's accounts up to December, 1890. They put down on the one side their liabilities, treating properly the £500,000 which has been subscribed by the shareholders as a liability, for the purpose of bringing it into account, as against the assets, which they have put down on the other side. Then on the same liability side they properly put their current liabilities and certain other liabilities and the reserve fund, which the company, according to its constitution, is justified in making, and they add up the total amount of those liabilities. On the other side they put down their assets, and, for the purpose of giving information to the shareholders, they divide the assets into certain heads—'Cash at Bank,' 'Bank Premises,'[2] and 'Managers' Residences'; and then they add up the total on that side. They put down therefore on the assets side the money value of their assets—some being in money itself, and some not. Then when the two sides of this account are compared there is

1 Lubbock *v.* British Bank of South America, [1892] 2 Ch. 198.

2 The company was a banking company.

a surplus of £44,000 shown, which goes, according to the accountants' regular method of keeping accounts, to the liability side, and represents the balance of assets over liabilities. Now what is the result of keeping an account in this form? The capital of the bank is intact, and the account shows it, and after providing for the capital there remains a surplus which rightly goes to the profit and loss account. All that the company is required to do by force of The Companies Act, 1862, is to keep its capital intact, and not to pay dividends out of its own capital: in other words, to keep that capital for its creditors and any others who may be concerned therein. That mode of keeping the account is an excellent illustration of the right way to divide profit and loss. Taking the figures on this account, this sum of £44,000 is profit made, and profit available within the Act of 1862 for division among the shareholders, unless there is something in the Articles which would prevent the directors, and prevent the company, from dividing the sum which thus stands to their credit."

Dividend warrants bear a twopenny stamp, which may be either impressed or adhesive: in practice an impressed stamp is invariably used.

Having regard to the fact that the letters or notices accompanying the warrants for dividends and interest are frequently used as vouchers in the recovery of income tax, it may be a convenience to certain holders of share warrants, and may also be advisable for the company, to adopt the usual form of dividend warrant (see pages 242 and 243, *post*). After providing the requisite number of forms for registered shareholders, further forms can be printed (with the omission of the date, which of course will vary) to be issued as required for dividends represented by coupons. The serial numbers given may follow those on the ordinary dividend list.

The particulars of coupons, with the names and addresses of the parties, should be given on a separate list, which may be attached to the list of dividends paid to registered shareholders. Such list may be made out in the form given on page 240.

A condition is commonly made on the issue of share warrants to bearer that a company shall announce by public advertisement in a newspaper the declaration of any dividend which may be payable upon the shares referred to in the share warrant. This would be done somewhat in the terms shown opposite

_____, LIMITED.

NOTICE IS HEREBY GIVEN that a Dividend at the rate of Six per centum per annum has been declared on the Preference Shares of the above Company for the Half-year ending_____, 193 , payable on and after the____instant. Holders of Share Warrants to Bearer must deposit their Coupons (No.____) at the Company's Registered Office, and leave them three clear days for the purpose of examination.

The Register of Transfers will be closed from the_____to the_____instant, both days inclusive.

By Order of the Board,

_____

_____Street, London, E.C., *Secretary.*

_____, 193 .

Coupons may, of course, be made payable at a bank, in which case the bankers would be formally advised of the declaration of the dividend, and authorised to pay the coupons as presented; but if it is considered more convenient to have the coupons presented at the registered office a receipt should be given in the following form:—

_____, LIMITED.

Street, London, E.C.

Coupons presented for payment on the_____day of_____, 193 , by_____

_____Coupons No._____each for_____Preference Shares @_____per coupon =	£	:	:
_____Coupons No._____each for_____Preference Shares @_____per coupon =	£	:	:
_____Coupons No._____each for_____Ordinary Shares @_____per coupon =	£	:	:
_____Coupons No._____each for_____Ordinary Shares @_____per coupon =	£	:	:
Total	£	:	:
Less Income Tax		:	:
Net Amount	£	:	:

Cheque will be exchanged for this receipt on the_____day of_____, 193 .

_____

Secretary.

..... , LIMITED. *Coupon No.*.....

Dividend on Preference Shares, at the rate of Six per centum per annum, for the Half-year ending 31st December, 193 .

Serial No.	Date.	Name.	Address.	No. of Coupons.	Distinctive Numbers.		No. of Shares.	Amount of Dividend.	Income Tax deducted.	Net. Amount payable.
					From	To		£ s. d.	£ s. d	£ s. d.

A holder of shares or debentures in a company who desires that his dividends should be paid to some person other than himself should write a letter of authority (which requires no stamp) to the company to pay the dividends to the bank or to a person named in the letter. All such letters must be very carefully preserved.

The following are forms:—

AUTHORITY TO PAY TO A BANK.

To the Directors of

_____, LIMITED.

GENTLEMEN,

Be good enough to transmit to The_____Bank, Limited [*address*], for credit of my account, all Cheques or Warrants for Dividends payable from time to time on all Stock and Shares of the above-named Company now or hereafter standing in my name—the receipt of the said Bank to be a full discharge for the same. This authority to remain in force until rescinded by me in writing.

Yours faithfully,

[Address and date.]

AUTHORITY TO PAY TO AN INDIVIDUAL.

[Address and date.]

_____, LIMITED.

GENTLEMEN,

Please pay to_____all Dividends and Interest payable in respect of Shares and Stock standing in my name in the books of your Company until further notice—his receipt to be a full discharge to you for the same.

Yours faithfully,

[Address and date.]

NOTICE RESCINDING AUTHORITY TO PAY DIVIDENDS.

To the Directors of

_____, LIMITED.

GENTLEMEN,

I,_____, of_____, hereby give you notice that I rescind, as from the_____day of_____, 193 , the direction given by me dated the_____day of_____, 193 , to pay the Dividends on my Shares and Stock in your Company to The_____ Bank, Limited, and I request that all Dividends and Interest accruing on or payable in respect of the said Shares and Stock after the last-mentioned date may be transmitted to me at the address as below [*or as the case may be*].

Yours faithfully,

[Address and date.]

[Interim] Dividend Notice and Warrant.

_____, LIMITED.

[Interim] Dividend for the [Half] Year ending———, 193 , payable———, 193 .

*No.*_____ Address_____

_____, 193 .

Dear Sir,

A [An Interim] Dividend at the rate of_____per centum per annum on the_____Shares [*or* on the amount paid up on the _____Shares] of the Company having been declared for the [half] year ended_____193 , a Warrant is annexed for the amount to which you are entitled, as follows:—

Dividend at_____per centum per annum on_____Shares of £____ each [on which £_____per Share has been paid]	£	:	:
Less Income Tax at_____in the £	£	:	:
Net amount of Dividend ..	£	:	:

I hereby certify that Income Tax on the profits of the Company, of which profits this Dividend forms a portion, has been, or will be, duly paid to the proper Officer for the Receipt of Taxes.

_____

*To*_____ *Secretary.*

_____

N.B.—This notice should be preserved as it will be accepted by the Inland Revenue Authorities in connection with any claim to allowance or relief from Income Tax.

_____, LIMITED. [*Twopenny Stamp.*]

Warrant for Dividend for [Half] Year ended_____193 .

Address_____

_____, 193 .

*No.*_____

To The_____ Bank, Limited.

Pay to the Order of_____

the Sum of_____

For the above-named Company,

_____ } *Directors.*

£ : : _____ }

_____*Secretary.*

*Payee's Signature*_____

This Draft must be signed by the Payee, and presented within three months from date.

[Interim] Dividend Notice and Warrant.

_____, LIMITED.

[Interim] Dividend for the [Half] Year ending———, 193 , payable———, 193 .

*No.*_____ Address_____

_____, 193 .

Dear Sir,

A [An Interim] Dividend at the rate of_____per centum per annum (free of Income Tax) on the_____Shares [*or* on the amount paid up on the_____Shares] of the Company having been declared for the [half] year ended_____193 , a Warrant is annexed for the amount to which you are entitled as follows:—

Dividend at_____per centum per annum on_____Shares of £_____each [on which £_____ per Share has been paid]			
This Dividend is equivalent to a gross amount of	£	:	:
Less Income Tax at____ in the £ ..	£	:	:
Net amount of Dividend ..	£	:	:

I hereby certify that Income Tax on the profits of the Company, of which profits this Dividend forms a portion, has been, or will be, duly paid to the proper Officer for the Receipt of Taxes.

_____

*To*_____ *Secretary.*

_____

N.B.—This notice should be preserved as it will be accepted by the Inland Revenue Authorities in connection with any claim to allowance or relief from Income Tax.

_____, LIMITED. [*Twopenny Stamp.*]

Warrant for Dividend for [Half] Year ended_____, 193 .

Address_____

_____, 193 .

*No.*_____

To The_____ Bank, Limited.

Pay to the Order of_____

the Sum of _____

For the above-named Company,

_____ } *Directors.*
_____ }

£ : : _____*Secretary.*

*Payee's Signature*_____

This Draft must be signed by the Payee, and presented within three months from date.

On pages 242 and 243, *ante*, are specimens of dividend warrants and of letters accompanying the warrants. It should be noted that warrants or cheques or other orders issued in payment of dividends or interest by a company must have annexed, or be accompanied by, a statement of the gross amount, the rate and amount of the income tax appropriate thereto, and the net amount paid (Finance Act, 1924, Section 33, Sub-section 1). A company which fails to comply with this requirement incurs a penalty of £10 for each offence, but so that the aggregate amount of penalties in respect of any one distribution of dividends or interest shall not exceed £100 (Sub-section 2).

Where dividends accrue during a period during which two rates of income tax are in force, tax is to be deducted at the standard rate for the year in which the amount payable becomes due (Finance Act, 1927, Section 39, Sub-section 1).

The footnote requiring signature by the payee, and presentation within three months, does not prevent the warrant from being a cheque. It is within the competence of the directors, under the general powers of management conferred by Clause 67 of Table A, 1929, to resolve that dividends shall be paid by warrant, and sent by post (see also Clause 95). It is desirable that there should be a formal resolution to this effect, either of the Board, in pursuance of their powers, or of the general meeting which declares the dividend. If the warrant is lost in the post, the company can demand an indemnity before issuing another.[1]

If a dividend warrant is mislaid, lost, or destroyed, the company, before issuing a fresh one, should obtain an indemnity against the risk of there being two warrants in existence. The following is a form (stamp sixpence, impressed or adhesive) :—

To the Directors of

_____, LIMITED.

GENTLEMEN,

The Warrant issued to me for the Dividend amounting to £_____ payable on the_____of_____, 193 , for the Half-year ended the _____day of_____, 193 , in respect of_____Shares, numbered _____to_____, standing in my name in your books, having been lost [*or as the case may be*], in consideration of your issuing to me a fresh Warrant for the same Dividend I hereby undertake and agree with you and the Directors for the time being of the above-named Company to deliver

[1] Thairlwall *v.* Great Northern Railway, [1910] 2 K. B. 59.

up the original Warrant to the said Company if it shall at any time hereafter be recovered, and in the meantime to indemnify and save harmless the said Company, and the Directors and Shareholders thereof, from all losses, charges, damages, and expenses which the said Company, or the Directors or Shareholders thereof, shall or may sustain or be put to by reason of your issuing the said new Warrant.

*Name*_____

*Address*_____

*Occupation*_____

*Date*_____

If it is desired to supplement the above indemnity by a guarantee (either contained in the same letter or in an independent document) or by a statutory declaration, the form can easily be adapted from the forms given at pages 186 and 187, *ante*, for the case of lost certificates.

When persons are registered as joint holders it is usual to send the dividend warrants to the person named first on the Register of Members. By Clause 94 of Table A, 1929, the receipt of any one of several joint holders is made an effectual discharge for the dividend.

The letters authorising the company to pay dividends to persons other than the shareholder, of which specimens are given on page 241, *ante*, are exempt from stamp duty; but a power of attorney for the receipt of dividends or interest upon stock or shares requires a stamp of one shilling where made for the receipt of one payment only, and a stamp of five shillings in any other case (see Stamp Act, 1891, Schedule "Letter of Attorney"). If, however, the letter of attorney for the receipt of dividends contains a power for the attorney to appoint another attorney for the same purpose, a stamp of ten shillings is required (see "SUMMARY OF DUTIES ON VARIOUS DOCUMENTS," page 342, *post*).

The following is a form, with modifications, of a power of attorney to receive dividends:—

I,_____, of_____, hereby appoint_____, of_____, to be my attorney for me and in my name or otherwise to receive the next Dividend [*or* all Dividends from time to time] payable on the Shares registered in my name in the books of_____, Limited [and I authorise the said_____to appoint an attorney or attorneys for the above purpose].

Signature_____

_____, 193 .

The stamp duty will vary according to the form adopted, as above pointed out.

The dividends on shares, though payable at certain fixed times, accrue from day to day, and are legally subject to apportionment. But the practice is to pay the registered holder, leaving the parties to settle questions of apportionment among themselves. It would be impossible for the officials of a company to go into questions as to the rights of various persons to apportioned dividends.

Under The Finance Act, 1922, Section 21, The Finance Act, 1927, Section 31, and The Finance Act, 1928, Section 18, where it appears to the Special Commissioners of Income Tax that a company of a private character (not merely a Private Company as defined by the Companies Act) has not within a reasonable time distributed a " reasonable part of its actual income from all sources," they may regard the " said income " as the income of the members and apportion it among them accordingly for the purpose of surtax. The surtax chargeable thereon is to be assessed on the shareholders in the name of the company, which, in default of payment by the shareholder, will be liable for the amount of the tax.

In determining whether a company has not distributed a reasonable part of its income the commissioners may have regard to " requirements necessary or advisable for the maintenance and development of the business," and the sections referred to specify certain items that are to be regarded by the commissioners as " income available for distribution."

The Finance Act, 1930 (Part III, Estate Duty), by Section 34 provides that where there is transferred to a company to which Part III applies property in respect of which, if it had been in the disposition of the transferor at his death estate duty would have been payable, such property shall in cases which fall within that section be assessable for estate duty. By Section 35 it is provided that where property in which a person had a life interest is transferred by that person and the person interested in the remainder or reversion to such a company as has been referred to that property is, subject to the exceptions made by Section 35, to be deemed for the purposes of estate duty to pass on the death of the person having the life interest therein in like manner as if his interest had continued until his death.

Property deemed under Section 34 or 35 to pass on a death

is to be regarded as an estate by itself and is not to be aggregated with any other property.

Under Section 37 where shares (not being preference shares) of a company to which Part III applies pass on the death of a person and the control of the company was in that person's hands the value of the shares for the purposes of estate duty is to be ascertained by reference to the value of the total assets of the company after deducting the liabilities and not, as in other cases, by reference to the price which the shares would realise if sold in the open market at the time of the death.

"A company to which Part III applies" is a company which is so constituted as not to be controlled by its shareholders or any class thereof, or which has not issued or which will not issue to the public more than half of the shares by the holders whereof it is controlled.

A company is under the control of a person for the purposes of Section 37 if that person controls more than half the voting power of the company, or if he has by the Memorandum or Articles or otherwise the powers of a board of directors, or of a governing director, or the right to nominate a majority of the directors or to veto the appointment of a director, or powers of a like nature, or if he has otherwise the right to receive, or the power to dispose of, more than half of the income of the company.

The provisions of Sections 34, 35, and 37 apply on the death of any person subject thereto after the commencement of the Act, except that where the property was transferred to the company before the 1st August, 1918, the case does not fall within Section 34 or 35.

TRANSFER AND TRANSMISSION OF SHARES.

Of all the duties which have to be discharged by secretaries of companies, perhaps that of examining transfers of shares is the most important. Registration of a forged transfer may expose the company to the risk of an action for damages; and inattention to the formalities required by the Act, the Articles, and the general law may involve both the company and the secretary in trouble in a variety of ways

When instruments of transfer are presented at the company's office for registration, it will be the duty of the secretary to see that they are correctly signed by both transferor and transferee, witnessed, and properly stamped and that the particulars given in the instruments correspond with the accompanying certificates (or with the allotment letters if transfers be accepted before the issue of the certificates), and that the transfers are consistent with the accounts of the transferors in the Register of Members. It will be seen at once that these duties demand, not only good business qualifications, but also some knowledge of the requirements of Company Law.

Section 62 of the Act prescribes that shares in a company are to be personal estate, capable of being transferred in the manner provided by the Articles; but Section 63 provides that notwithstanding anything in its Articles a company may only register a transfer of shares or debentures upon delivery to the company of a proper instrument of transfer, except where the company is required to register as holder of shares or debentures any person to whom the right to the shares or debentures has been transmitted by operation of law. The object of requiring a written transfer is to prevent oral transfers, and to secure the payment of stamp duty.

The right of transfer conferred by the Statute, whether the company be a public or a private one, is absolute, though subject to be controlled by the Articles,[1] which usually determine how transfers are to be effected, and in some cases place restrictions upon the absolute right of transfer. Such re-

[1] Coalport China Co., [1895] 2 Ch. 404; Discoverers' Finance Corporation, [1910] 1 Ch. 312; Copal Varnish Co., *in re*, [1917] 2 Ch. 349.

strictions will always be found in the Articles of "private" companies. But they will not be readily construed as taking away the right of one member of a company to transfer his shares to another member of the company at any price which may be agreed upon between them.[1]

Where the Articles give to the directors power to refuse to register a transfer, they must exercise the power by a resolution of the board. If, therefore, the directors are equally divided, and the chairman has no casting vote, so that no resolution can be passed, the transfer must be registered.[2] And where the directors have a discretion, they must exercise it, and not act upon undertakings or promises given to intending purchasers.[3] If the directors refuse to register a transfer, notice of such refusal is required by Section 66 to be given to the transferee within two months of the date on which the transfer was lodged with the company.

In the case of companies the Articles of which contain no restriction on transfer, a shareholder may transfer his shares up to the last moment before liquidation. The directors cannot in such a case refuse registration, even though the transfer be made to a pauper, and for the express purpose of escaping liability in respect of partly paid shares. The transfer will none the less be good, if the transferor pays the transferee to take it, or agrees to indemnify him, so long as the intention is to transfer the beneficial interest in the shares absolutely to the transferee.[4] If liquidation ensues within twelve months, there would not be much advantage in this manœuvre, as the transferor would be liable to be put on the B list of contributories (see "WINDING UP," page 350, *post*).

The clauses as to transfer or transmission of shares contained in the Articles are usually full and explicit (see Table A, 1929, Clauses 17 to 22), and must be carefully studied and attended to. As stated, the Act requires transfers to be in writing, and Articles sometimes require transfers to be made by deed. In practice, however, instruments of transfer are called "deeds," and usually have seals affixed, though in

1 Delavenne *v.* Broadhurst, [1931] 1 Ch. 234.

2 *In re* Hackney Pavilion, [1924] 1 Ch. 276. 3 Clark *v.* Workman, [1920] 1 Ir. R. 107.

4 See Discoverers' Finance Corporation, *supra*, in which the whole subject of the validity of transfers in order to escape liability is fully discussed.

strictness seals are only necessary in the case of deeds. A deed is a document sealed and delivered, with certain legal attributes (which cannot be discussed in this work) attached to it. It is important to notice that a transfer with a blank left for the transferee's name is inoperative as a legal transfer if the Articles require transfers to be made by deed; but where it is only necessary that the transfers shall be "in writing," a transfer in blank may be effectual. The Articles usually contain a specimen form of transfer, give the directors power in certain circumstances to refuse to register transfers, and fix the fee to be paid on registration. If not stated in the Articles, the fee should be fixed by resolution of the board. The usual charge is two shillings and sixpence for each transfer. The Articles also in most cases direct that the transfer shall be executed by both transferor and transferee. Execution by the transferee as well as by the transferor is important, because the transferee then becomes bound by contract to take the shares. The power of the directors to refuse to register a transfer may be often exercised with advantage when the transferor is indebted to the company, or when there is a doubt whether the transferor or the transferee is liable to pay a call.

When the instruments of transfer are presented for registration they should be carefully examined to see that they are quite in order. Although in many companies where transfers are numerous the work of examination may be assigned to a special clerk (often called "the registrar"), the secretary is usually expected by the directors to have examined personally each transfer before it is submitted to the board. By practice the secretary will soon acquire sufficient skill to see almost at a glance whether all the details respecting dates, amount of stamp, signatures of parties and witnesses, addresses and descriptions, and other matters are accurate.

When transfers are executed abroad or in a British Colony the signatures should be attested by some person holding a public position, such as His Majesty's consul or vice-consul, a magistrate, notary public, or British chaplain.

The following is the form known as "the Common Form of Transfer":—

I, A. B., of _____, in consideration of the sum of £_____ paid to me by C. D., of _____ (hereinafter called "the said transferee"), do hereby bargain, sell, assign, and transfer to the said

transferee_____Shares of £_____each, £_____ paid up, numbered_____to_____inclusive, and in the undertaking called _____, Limited: To Hold unto the said transferee h____executors, administrators, and assigns, subject to the several conditions on which I held the same immediately before the execution hereof; and I the said transferee do hereby agree to accept and take the said Shares subject to the conditions aforesaid.

As Witness our hands and seals this_____day of_____in the year of Our Lord one thousand nine hundred and_____

Signed, sealed, and delivered by the above-named_____in the presence of_____

Signed, sealed, and delivered by the above-named_____in the presence of_____

The above form shows that the instrument should be executed by both parties. If a transfer is presented in a form differing from that prescribed by the Articles the secretary should mention the matter to the directors, who may wish to consult the solicitor as to the effect of the divergence. Omissions from the transfer of matters which are usually stated—*e.g.* the identifying numbers of the shares or the address of the transferor—will not necessarily be such a departure from the "common form" of transfer as to entitle the directors to refuse registration.[1]

The transfer is personally presented by the transferee or his broker, together with the certificate; but if the transferee does not apply to be registered, the application to enter the transfer may be made by the transferor (Section 65). The company cannot be compelled to accept a transferee who is a minor, lunatic, or bankrupt, and if the transferee be a married woman and the shares are not fully paid it is advisable to obtain satisfactory evidence that she has separate property. In most companies the directors have power to reject unsatisfactory transferees.

The certificates representing the shares to be transferred are left at the company's office, and all particulars respecting the distinctive numbers of shares &c. should in every case be checked with the entries in the Register of Members.

As a matter of business precaution it is advisable to give notice to a shareholder before registering a transfer, though such a notice is not obligatory on the company, and is not in itself a perfect safeguard against an action for damages. The notice may be in the following form, which is so drafted as to serve for several transfers:—

[1] *Re* Letheby & Christopher, [1904] 1 Ch. 815. In this case the transferor had only one share.

_____, LIMITED.

Address_____

_____, 193 .

DEAR SIR,

I beg to inform you that the undermentioned Deed of Transfer purporting to be signed by you and transferring Shares of this Company now standing in your name has been lodged at this Office for registration.

Unless I hear from you to the contrary by return of post, I shall assume that the matter is in order, and the Deed will be dealt with by the Directors in the usual way.

Yours faithfully,

_____

Secretary.

*To*_____

_____Shares to_____

_____ " " _____

_____ " " _____

_____ " " _____

In the case of joint holders a separate notice should be prepared and sent to each holder.

It is usual to give a receipt to the person leaving a transfer for registration, on which should be stated the date at which the new certificate can be obtained (see "TRANSFER RECEIPT BOOK," page 117, *ante*), and which can be given up in exchange for the new certificate. Such a receipt does not bind the company either to recognise the transferee's title to the shares or to issue the corresponding certificate.[1]

Transfers received within three days of a board meeting should not be brought forward at that meeting, but kept for a subsequent meeting, to enable the member, if he desires to do so, to communicate with the company, and also to give the clerk sufficient time to make the entries in the Transfer Register and to prepare certificates. With some companies, where transfers are numerous, it is the practice to deal with transfers at one meeting of the board or a committee of the board, and to sign and seal certificates in respect of such transfers at a subsequent meeting.

Except where the conditions of issue of the shares otherwise provide, Section 67 requires every company, within two months after the date on which a transfer is lodged with the company, to have ready for delivery the share certificates thereof.

Default in complying with this requirement renders the company and every director, manager, secretary, and other

[1] Longman v. Bath Electric Tramways, [1905] 1 Ch. 646.

officer knowingly a party thereto liable to a fine not exceeding five pounds a day whilst the default continues.

A company so in default which, after having served upon it a notice requiring the default to be made good, fails to make good the default within ten days of the service of the notice, may on the application of the person entitled to the certificate be ordered by the Court to make good the default within a time specified in the order, and the Court may by the order provide that the company and any officer responsible for the default shall bear the costs of and incidental to the application.

The provisions of the section do not apply to a transfer which the company is entitled to refuse to register and does refuse to register.

Before the transfers are presented to the board the particulars may be entered on the back of the old certificate representing the shares to be transferred, and these particulars initialled separately as the transfers are passed. For this purpose a ruling in the following form is sometimes printed at the back of share certificates:—

Date of Certification	No. of Shares.	Distinctive Numbers.	Transferee.	Transfer Number.	By whom left.	Director's Initials.

The particulars can be filled in on this form in every case, even if the transfers are only "certified,"[1] the numbers of the transfers being inserted as soon as they are settled. The presence or absence of the initials of a director would show whether any particular transfer had been accepted or not.

It is the practice of some companies to enter the particulars of each transfer in the Transfer Register as soon as received, and to number accordingly; but it is better to number the transfers when arranging them for the directors. They may be arranged according to the sellers or the buyers—that is to say, all transfers executed by the same transferor may be put together, or all those executed by the same transferee. There is an advantage in the latter plan, inasmuch as several lots of shares acquired by several transfers may be included in one

[1] See "CERTIFICATION OF TRANSFERS," page 266, *post*.

certificate, but in this case it will be necessary to ascertain that all the transfers have been lodged by one person, and that he alone holds all the transfer receipts.

On the other hand, if all the transfers executed by one transferor are placed together, the transferor's certificate which has been surrendered to the company may be attached to the transfers, and the checking will thereby be made easier. Both plans facilitate the posting of the transfers into the Register, and are adopted by secretaries of experience.

When the transfers have been completed the old certificates are cancelled and put away either in alphabetical or numerical order. The latter method may be recommended if a Transfer Register is used which records the numbers of certificates from which shares have been transferred and also of the new certificates issued for those shares (see "REGISTER OF TRANSFERS," page 114, *ante*). The advantages of this method are that any certificate can be traced at once, and if the cancelled certificates are again attached to their counterfoils in the Certificate Book it will be easy at any time to make out a list of certificates which are in circulation and the number of shares they represent. This should, in fact, be done from time to time when balancing the Share Ledger, so that a secretary may satisfy himself that all is in order. When a certificate has been lost or destroyed, and a letter of indemnity has been acted upon, a slip of paper should be attached to the counterfoil of the missing certificate marked "Certificate lost [*or* destroyed, *as the case may be*]. See Letter of Indemnity, No. ." The Letter of Indemnity will, of course, be preserved.

The effect and importance of transfers will show the secretary the care which should be taken to ensure their preservation. Where space will permit, the most convenient plan will perhaps be to have them pasted in a guard book immediately after they are passed by the board, the page of the book corresponding with the number of the document. An alternative plan is to bind the transfers in batches of, say, 200 to 300, with limp covers. The work of binding should be done in the company's office, as in that case the transfers will not leave the possession of the company.

All particulars which are required to be entered in the Register of Members should be copied direct from the instruments of transfer themselves, and not from the Register of Transfers.

A Register of Transfers may be entirely dispensed with if, in addition to the distinctive numbers, particulars are given on each transfer as to the numbers of the certificates surrendered and issued and the folios of the accounts in the Register of Members.

An india-rubber stamp may be provided for these particulars and impressed on all transfers. The following form will serve:—

No._____ Date of passing_____

Certificate Nos. Old_____ New_____

Register Folio_____ Transferor_____ Transferee_____

Of course a transfer of shares or stock may be absolutely prevented by an injunction, receiver, charging order, or notice in lieu of *Distringas*. A notice may also be received from a private person not to register a transfer which is to all appearances quite in order. For instance, a notice may be received that the shares are mortgaged, or held in trust, or that the transferee has executed several transfers to different persons.[1] In such cases the solicitor's advice should be taken. Generally, it will be prudent to write to the person giving the notice that, unless an Order of the Court stopping the transfer be obtained within a stated number of days, the transfer will be proceeded with and registered in due course.[2] At the same time notice should also be given to the transferee.

It should be mentioned that neither Section 101, which provides that "No notice of any trust, express, implied, or constructive, shall be entered on the register," nor an article in common use, to the effect that "no person shall be recognised by the company as holding any share upon trust" &c., enable a company, after receiving notice that persons other than the holders are beneficially interested in the shares, to deal with those shares subsequently for its own benefit in disregard of such notice.[3]

When a female shareholder marries, evidence of the marriage is commonly required. The best evidence is the marriage certificate, accompanied by a statutory declaration of identity, but in practice less formal evidence is often accepted. A marriage certificate when produced should be noted by the secretary.

[1] Bradford Banking Co. *v.* Briggs, [1887] 12 App. Ca. 29.

[2] See Société Générale de Paris *v.* Walker, [1886] 11 App. Ca. 20.

[3] Mackereth *v.* Wigan Coal Co., [1916] 2 Ch. 293.

The following is a form of request by a female shareholder who has married, and desires to be registered in her married name:—

To the Secretary of

_____, LIMITED

SIR,

As a holder of————————Shares in your Company, I beg to inform you that I am now the Wife of_____, and I request that the fact of my marriage may be duly noted, and that my address in the Company's books may be altered to_____.

Yours faithfully,

Present Name_____

Former Name_____

[Address and date.]

The following is a statutory declaration of identity (stamp two shillings and sixpence, impressed), which is sometimes required for greater security in support of the foregoing letter of request:—

STATUTORY DECLARATION AS TO MARRIAGE.

I, A. B., of [*residence and description*], do solemnly and sincerely declare as follows: that is to say—

1. That C. D. named in the Certificate of Marriage hereto annexed [and marked with my initials] is the same person as C. D., spinster, as I know from having been acquainted with the said C. D. and her family for_____years and upwards [and from having been present at the said marriage, which was solemnised on the_____day of_____, 193 , at _____].

2. That the said C. D. is the person who signed the Letter of Request dated the _____day of_____, 193 , addressed to the Secretary of_____, Limited, and shown to me, and hereto annexed.

3. I verily believe that the said C. D. is the holder of_____ Shares in_____, Limited.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of The Statutory Declarations Act, 1835.

Declared at_____
_____
the_____day of_____,
One thousand nine hundred
and _____,
before me,
_____
A Commissioner for Oaths.

_____

Notification of change of name should be supported by production of a deed poll or of a copy of the *Gazette*[1] containing an advertisement of the change.

Transfers may be executed in pursuance of a power of attorney bearing a ten-shilling impressed stamp. The power of attorney should be looked at with care, in order to see that the execution of the transfer by the attorney is authorised, and the power of attorney itself should be exhibited and noted. It should be ascertained that the power has not been revoked, and if there is any doubt on the point the solicitor should be consulted. A fee of two shillings and sixpence is by the practice of most companies payable on the registration of a power of attorney.

Transfers are stamped with an *ad valorem* stamp (impressed) on the consideration money, or, if the consideration consists of shares, on the value of the shares, calculated at the average market price on the day of the date of the instrument (Stamp Act, 1891, Section 55). Where there are sub-purchases the duty is payable upon the consideration for the sale by the original purchaser to the sub-purchaser (*ibid.*, Section 58, Sub-section 4). An adhesive stamp may be used for transfers of shares in cost-book mines.

The Stamp Act, 1891, Sections 114 and 115, contains provisions for the composition of stamp duties payable on transfers, which provisions are given under the head "STAMPS," page 326, *post*. When these duties are compounded for it is advisable to have additional columns in the Transfer Register headed, "Consideration" and "Stamp Duty"; or these particulars, as well as "Transfer Fees," may be entered in a separate book called the "TRANSFERS CASH BOOK," *or* "FEES BOOK" (see page 117, *ante*).

A secretary who registers an imperfectly stamped transfer is liable to a penalty of ten pounds (Stamp Act, 1891, Section 17). If a transfer is not properly stamped the directors may and ought to refuse to pass it; "the transfer would be inadmissible as evidence, and the directors would have no justification for having taken one name off the Register and put another on it."[2] Registration of an inadequately stamped transfer does not bring about a legal transfer of the shares into the name of the transferee.[3] If such a transfer, being apparently

[1] London or Edinburgh, as may be appropriate.

[2] Maynard *v.* Consolidated Kent Collieries, [1903] 2 K. B. at page 130.

[3] Indo-China Steam Navigation Co., *in re*, [1917] 2 Ch. 100.

properly stamped, is passed and the transferee is registered, subsequent payment of the proper duty and (if necessary) penalty, will validate the registration, and objection cannot be taken to the transferee's title.[1]

In every case of a transfer for a nominal consideration it will be necessary for a secretary who is registering officer to be furnished with information as to the facts of the transaction. In cases where a transfer is made for a nominal consideration by way of security for a loan, or to mere nominees of the transferor where no beneficial interest passes, a certificate to that effect signed by both the transferor and the transferee should be required. In any case of doubt the applicants for registration should be asked to have the amount of the stamp duty adjudicated.

Under Section 74 of The Finance Act, 1910, transfers operating as voluntary dispositions *inter vivos* are chargeable with *ad valorem* duty on the value of the shares transferred at the date of the transfer (see Table IV, page 338, *post*), and are required to be adjudicated. The Board of Inland Revenue, however, offers no objection to such transfer being registered, if fully stamped, without being adjudicated. Tranfers for nominal considerations may be accepted by the Registering Officer if passed by the Deed-Marking Officer at Somerset House and an explanation of the transaction on the transfer is marked by such officer, "Transfer passed for 10*s*.," with his initials and office stamp.

Transfers of shares &c. to trustees of any settlement other than an antenuptial settlement must be adjudicated.

Instruments of transfer are properly stamped with the fixed duty of 10*s*. when the transaction falls within one of the following descriptions:—

(*a*) Vesting the property in trustees on the appointment of a new trustee, or the retirement of a trustee.

(*b*) A transfer, as for a nominal consideration, to a mere nominee of the transferor where no beneficial interest in the property passes.

(*c*) A transfer by way of security for a loan; or a re-transfer to the original transferor on repayment of a loan.

[1] Indo-China Steam Navigation Co., *in re*, [1917] 2 Ch. 100.

(*d*) A transfer to a residuary legatee of stock &c. which forms part of the residue divisible under a will.

(*e*) A transfer to a beneficiary under a will of a ***specific legacy*** of stock &c.

(*f*) A transfer of stock &c. being the property of a person dying intestate, to the party or parties entitled to it.

By transmission, as distinguished from transfer, of shares is meant the passing of the title to shares from one person to another by act or operation of law. Thus, the right to deal with the shares of a deceased shareholder passes to his legal personal representatives; the right to a bankrupt's shares passes to his trustee in bankruptcy.

If a joint holder of shares dies leaving a survivor on the Register, a certificate of death and a statutory declaration as to death and identity are sufficient evidence; but where a sole holder dies, probate or letters of administration should be produced. The following is a form of statutory declaration which may be found useful if very strict evidence is required:—

STATUTORY DECLARATION OF IDENTITY. [*Stamp 2s. 6d., impressed.*]

I, A. B. [*residence and description*], do solemnly and sincerely declare as follows: that is to say—

1. That C. D., late of_____, died on the_____ day of_____, 193 , and is the same person as C. D. named in the Certificate of Death hereto annexed [and marked with my initials], as I know from having been well acquainted with the said C. D. for_____years and upwards.

2. That I verily believe that the said C. D. is registered in the books of_____, Limited, as the holder of_____ Shares jointly with E. F., of_____, and G. H., of_____

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of The Statutory Declarations Act, 1835.

Declared at_____
_____
the_____day of_____,
One thousand nine hundred
and _____,
before me,
_____
A Commissioner for Oaths.

_____

The above will be sufficient in the case of a joint holder. Where the title of executors or administrators, as well as the death, has to be proved, paragraph 1 of the foregoing declaration will be as follows:—

1. That_____, late of_____, died on the_____day of_____, 193 , and that_____, of_____, and_____, of_____, were appointed the Executors of his Will, dated the_____day of_____, 193 , which was duly proved by the said_____and_____on the_____day of_____, 193 .

Or,

1. That_____, late of_____, died on the_____day of_____, 193 , intestate, and Letters of Administration to his estate and effects were granted to_____, of_____, and_____ of _____, on the_____day of_____, 193 .

Probate is the proper evidence that a person is the executor, and letters of administration that a person is the administrator, of a deceased shareholder. To both the seal of the Court is attached. The probate is notice to the company of the names and addresses of persons who have been constituted the legal personal representatives of the deceased shareholder, but not of the contents of his will.[1] A foreign document not bearing the seal of the English Court should not be acted on. Production to a company of any document which is by law sufficient evidence of probate, or letters of administration of the estate, or confirmation as executor having been granted to some person is, notwithstanding anything in the company's Articles, to be accepted by the company as evidence of the grant (Section 69).

The probate or letters of administration must be noted by the secretary, and a record made of the names of the executors or administrators in the Register of Members. The signatures of the executors or administrators should also be obtained for the purpose of comparison, if necessary, when the transfers or other documents are subsequently presented.

Executors or administrators may execute a transfer, by virtue of Section 64 of the Act, as if they were members of the company. If they wish to become proprietors of the shares in their own right, and not merely in their representative capacity, it is not necessary that a formal transfer should be executed.

[1] Grundy *v.* Briggs, [1910] 1 Ch. 444.

Production of evidence of transmission by operation of law, *e.g.* probate &c., entitles them to be registered with a clean title.[1] When it is desired to take every possible precaution against the registration of a person not entitled to be registered, the executors may send a letter of request with a statutory declaration and the certificates, but in practice these formalities are not often observed.

Where executors desire to be registered no reference to their representative capacity should, strictly speaking, be placed upon the Register. Their names should be entered upon the Register and appear on the certificate precisely as in the case of any other joint holders, and without any qualification. They are entitled to specify the order in which their names shall stand.[2]

In some cases the executors or administrators make an application for the registration of a particular person, enclosing a properly executed transfer.

If there are two or more executors, and they are not all willing or able to join in the transfer, questions of some difficulty may arise. If there are several executors, they, in the eye of the law, are but as one person, and therefore most acts done by any one of them are considered as done by all. But a secretary must not suppose from this that he is justified in passing a transfer executed by only one of several executors. If the Articles require *all* the executors to join, they must all join before the transfer can be passed. If the Articles of Association do not contain such a provision, the circumstances should be inquired into, and the reason for all the executors not joining satisfactorily accounted for. If all the executors join in a transfer, and one of them subsequently and before registration of the transfer gives the company notice that he revokes his signature, the proper course is to give him notice that unless within a specified time he takes legal proceedings to prevent the company from proceeding to register the transfer, the transfer will, at the expiration of that time, be registered. Probate is not notice to the company of the contents of the will of the deceased shareholder, and it cannot be assumed that the transfer is a breach of trust.[3]

[1] Edwards *v.* Ransome and Rapier, [1930] W. N. 180.
[2] *Re* T. H. Saunders & Co., [1908] 1 Ch. 415.
[3] Grundy *v.* Briggs, [1910] 1 Ch. 444.

The following are forms of a Letter of Request and Statutory Declaration:—

LETTER OF REQUEST TO BE REGISTERED BY EXECUTORS OR ADMINISTRATORS.

GENTLEMEN,

We, A. B., of_____, and C. D., of_____, the Executors of the Will dated the_____day of_____, 193 , of E. F., late of_____, deceased, which Will was duly proved by us on the_____day of_____, 193 [*if Administrators, say* the Administrators of the estate and effects of E. F., late of &c. under or by virtue of Letters of Administration granted to us on the_____day of_____, 193], hereby request you to enter our names in the Register of Members of_____, Limited, in respect of_____Shares, Nos._____to_____, inclusive, now standing in the name of our testator [*or* the intestate].

Yours faithfully,

_____

_____

To the Directors of_____, Limited.

This is the Letter of Request referred to in the statutory declaration of_____, made before me this____day of____, 193 .

_____

A Commissioner &c.

STATUTORY DECLARATION IN SUPPORT OF LETTER OF REQUEST BY EXECUTORS OR ADMINISTRATORS. [*Stamp 2s. 6d. impressed.*]

I, A. B., of [*residence and description*], do solemnly and sincerely declare as follows: that is to say—

1. That C. D., of_____, and E. F., of_____, were appointed the Executors of the Will dated the_____day of_____, 193 , of G. H., late of_____, deceased, who died on the_____day of_____, 193 , which said Will was duly proved by the said C. D. and E. F. on the_____day of_____, 193 .

2. That the said C. D. and E. F. are the persons who signed the Letter of Request hereto annexed, dated the_____day of_____, 193 , and addressed to the Directors of_____, Limited.

3. That I verily believe that the said G. H. was the registered holder of_____Shares in the said Company.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of The Statutory Declarations Act, 1835.

Declared at_____
_____
the_____day of_____,
One thousand nine hundred and_____,
before me,
_____
A Commissioner for Oaths.

_____

In the case of administrators, paragraph 1 in the foregoing declaration will run—

> 1. That Letters of Administration to the estate and effects of_____, late of_____, deceased, who died on the_____day of_____, 193 , intestate, were granted to_____, of_____, and_____, of_____, on the_____day of_____, 193 .

A statutory declaration must be made by a disinterested person of known character and responsibility, must bear a half-crown impressed stamp, and be sworn before a justice or a commissioner to administer oaths.

Where a statutory declaration is sworn abroad before any of His Majesty's consuls or vice-consuls, judicial notice is taken of the consular seal; but if sworn abroad before any other person, there must be evidence that the person was authorised to administer an oath, and the signature of such person must be verified either by affidavit or by the certificate of a British diplomatic or consular agent.

Until the executors or administrators have personally accepted or transferred the shares the estate of the deceased shareholder remains liable.

It is the invariable practice before registering a legatee of shares to require a transfer from the executors.

In the case of the bankruptcy of a shareholder the *London Gazette* must be referred to for evidence. The Bankruptcy Act 1914 (Section 48, Sub-section 3), confers upon the trustee in bankruptcy full power to transfer a bankrupt's shares without being registered. The trustee in bankruptcy may also disclaim the bankrupt's shares, unless, perhaps, they are fully paid and unincumbered; in which case, however, the trustee would probably not desire to disclaim them even if he could. The disclaimer would not affect the rights or liabilities of any other person. For instance, if the shares were subject to an equitable charge in favour of a third person, the bankrupt's name remaining on the register, he will still be able to vote notwithstanding a disclaimer by the trustee, though he could only vote as directed by the mortgagee.[1] The proper evidence of the appointment of the trustee is the certificate of the Board of Trade. In cases where no trustee has been appointed the Official Receiver acts as trustee.

[1] Wise *v.* Lansdell, [1921] 1 Ch. 420.

If a shareholder becomes lunatic, the person appointed by the Court of Lunacy (generally the Committee) retains or transfers the shares as the Court directs. The evidence of the appointment will be the Order of the Court of Lunacy.

When a shareholder has absconded or cannot be found the Court sometimes appoints a person to transfer the shares standing in the name of the shareholder. An office copy of the order appointing the person to transfer should be produced as evidence of such appointment.

A forged transfer is no transfer, and gives the alleged transferee no rights, nor does such transferee acquire any rights by reason of the fact that the company has issued to him a certificate stating that he is the holder of the shares which the transfer purports to assign.[1] But if a person has paid money or given valuable consideration for the shares, or entered into a contract for the sale of the shares, relying not upon the forged transfer but upon the certificate issued to him by the company, the company is liable to make good, by way of damages, any loss which such person has sustained.[2] The letter of advice to the person on the register recommended on page 251 to be sent when a transfer is lodged is no protection to the company if the transfer is a forged one.[3]

If a company acts upon a forged transfer and places the supposed transferee on the Register in place of the person properly thereon it can be compelled to replace the true owner, restore his shares and pay him any dividends declared in the meantime.

Provision is made by The Forged Transfers Acts, 1891 and 1892, for preserving purchasers of stock from losses by forged transfers. By The Forged Transfers Act, 1891, when a company issues or has issued shares, stock, or securities transferable by an instrument in writing, the company has power to make compensation by a cash payment out of its funds for any loss arising from a transfer of such shares, stock, or securities in pursuance of a forged transfer or of a transfer under a forged power of attorney.

The company has power to provide a fund to meet claims for

[1] Simm *v.* Anglo-American Telegraph Co., [1879] 5 Q. B. D. 188.

[2] Bahia and San Francisco Railway Co., [1868] L. R., 3 Q. B. 584; Ottos Kopje Diamond Mines, [1893] 1 Ch. 618.

[3] Barton *v.* London and North-Western Railway Co., [1890] 24 Q. B. D.

compensation, for which purpose the company may borrow on the security of its property. After compensation has been made the company has the same rights and remedies against the persons liable for the loss as the person compensated would have had.

Where the shares, stock, or securities of a company have, by amalgamation or otherwise, become the shares, stock, or securities of another company, the last-mentioned company has the same power under the Forged Transfers Acts as the original company would have had if it had continued.

CERTIFICATION OF TRANSFERS.

CERTIFICATION of transfers is thus explained by Lord Justice Lindley in *Bishop* v. *The Balkis Consolidated Co.* (1890, 25 Q. B. D. 519) :—" The practice of giving ' Certifications ' has arisen from the difficulty felt by members of the Stock Exchange in settling their accounts as buyers and sellers of shares where the seller's certificate of title does not accompany his transfer. If the seller's certificate includes more shares than he sells, he does not deliver it to the buyer with the transfer; but the seller produces his certificate and the transfer to an officer of the company, and he ' certificates ' the transfer, and buyers and their brokers act on the faith of this ' certification ' just as they would if the certificate produced to the company had been produced to and lodged with themselves. No fee is paid for a certification. In every case the certification must be read in connection with the transfer on which it is put. The object of the certification is to enable the transferor to satisfy his transferee that he, the transferor, can make a good title to the shares mentioned in the transfer."

The secretary's duty in making a certification is merely to see that the documents are in order: that is to say, to see that they are right on the face of them; if they are not, he should refuse to certify. It is the ordinary course of practice with most companies to grant a certification if the secretary is satisfied that the transferor either has, or is entitled to have issued to him, a certificate for the shares specified in the transfer. It would therefore be quite regular to certificate a transfer by an original allottee who is absolutely entitled to call for a certificate.

If there were any doubt about the validity of the contract to take shares (see page 74, *ante*), a secretary should refuse to certify a transfer by a person to whom a certificate had not been issued. The secretary who gives a certification places on the transfer (either by means of a stamp or in writing)—

Certificate for_____Shares,_____paid, has been lodged at the Company's Office.

_____, Limited,

A. B., *Secretary.*

_____, 193 .

As has already been stated, certification is quite distinct from the issue of a certificate for shares. Certification is the

BALANCE TICKET.

[COUNTERFOIL.]

----------, LIMITED.

BALANCE RECEIPT.

No.------ ----------, 193 .

No. of Old Certificate----------

Name of Member----------

No. of Shares on Balance Certificate----------

Inclusive Numbers----------to----------

Issued to----------

----------, LIMITED.

BALANCE RECEIPT.

No.------ ----------, 193 .

Issued in respect of----------Shares in the above-named Company, numbered--------to--------, in the name of----------, which are included in Certificate No.----------deposited in the Company's Office.

Secretary.

NOTE.—Should a new Certificate be required it will be prepared on notice to that effect being received, and will be delivered in exchange for this receipt.

work of the secretary, who, as a rule, carries it out without consulting either the directors or the solicitor. The issue of a certificate under the seal of the company is necessarily an act more serious, requiring more consideration, and attended by more important consequences to the company than certification by the secretary. The former is the act of the company itself; the latter the act of a servant of the company. A transfer wrongly certified imposes no liability on the company.[1]

The balance certificate—that is, a certificate for the shares (if any) which have not been transferred, but which are included in the original certificate—should be handed only to the member himself, or to his broker or some other person duly authorised by the member. It is usually handed to the broker who lodges the certificates with the company in the first instance.

It will be advisable for a secretary to cancel at once every certificate deposited with the company for the purposes of transfer. This can be done by means of an india-rubber stamp or a perforating stamp having the word "Cancelled" in large letters. If the secretary, instead of cancelling, parts with the deposited certificates—*e.g.* by negligently sending them back to the transferor—the company would be liable to the transferee for any loss occasioned, but would incur no liability to a third person with whom the transferor might improperly pledge the certificates.[2]

After a certificate has been deposited at the company's office, and the depositor is entitled to a new certificate for the balance of his shares, a balance ticket is in some cases given to the depositor, which is surrendered when the new certificate representing the balance is issued. A form of Balance Ticket is given on the previous page.

In the Report of a Sub-Committee of the Stock Exchange appointed to consider the need for amendment of the Rules governing Grants of Permission to Deal it has been recommended that transfers should come more under Stock Exchange control, and the Report states that arrangements are being made with a view to certification of quoted and unquoted stock and quoted and unquoted fully paid shares being ultimately undertaken by the share and loan department of the Stock Exchange.[3]

[1] George Whitechurch *v.* Cavanagh, [1902] App. Ca. 117; Kleinwort, Sons & Co. *v.* Associated Automatic Machine Corporation, [1934] 50 T. L. R. 244 (H.L.).

[2] Longman *v.* Bath Electric Tramways, [1905] 1 Ch. 646.

[3] See Appendix C, page 446.

ANNUAL RETURN.

UNDER Section 108 of the Act every company having a share capital must make, once at least in every year, a return containing a list of all persons who, on the fourteenth day after the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return or (in the case of the first return) of the incorporation of the company. Such list must state the names, addreses, and occupations of all the past and present members therein mentioned, and the number of shares held by each of the existing members, specifying shares transferred since the date of the last return or (in the case of a first return) of the incorporation of the company by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers and, if the names therein are not arranged in alphabetical order, must have annexed to it an index sufficient to enable the name of any person in the list to be readily found. The registered office of the company must be given in the return, which must further contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and must specify the following particulars:—

(*a*) The amount of the share capital of the company, and the number of the shares into which it is divided;

(*b*) The number of shares taken from the commencement of the company up to the date of the return;

(*c*) The amount called up on each share;

(*d*) The total amount of calls received;

(*e*) The total amount of calls unpaid;

(*f*) The total amount of the sums (if any) paid by way of commission in respect of any shares or debentures;

(*g*) Particulars of the discount allowed on the issue of any shares issued at a discount, or of so much of that discount as has not been written off at the date on which the return is made;

(*h*) The total amount of the sums (if any) allowed by way of discount in respect of any debentures since the date of the last return;

(*i*) The total number of shares forfeited;

(*k*) The total amount of shares for which share warrants are outstanding at the date of the return;

(*l*) The total amount of share warrants issued and surrendered respectively since the date of the last return;

(*m*) The number of shares comprised in each share warrant;

(*n*) All such particulars with respect to the persons who at the date of the return are the directors of the company as are by the Act required to be contained with respect to directors in the Register of the directors of a company;

(*o*) The total amount of the indebtedness of the company in respect of all mortgages and charges which are required (or, in the case of a company registered in Scotland, which, if the company had been registered in England, would be required) to be registered with the Registrar of Companies under this Act, or which would have been required so to be registered if created after 1st July, 1908 (see page 297, *post*).

The particulars to be included under (*n*) are those required by Section 144, Sub-section 1 (*a*), to be recorded in the company's Register of Directors, which must contain in respect of each director or manager the following particulars, *i.e.* in the case of an individual his present Christian name and surname, any former Christian name or surname, his usual residential address, his nationality, and, if that nationality is not the nationality of origin, his nationality of origin, and his business occupation (if any), or, if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships. In the case of a corporation being a director or manager the corporate name and registered or principal office are required. For the purpose of the requirements of the Act in respect of Annual Returns the expression "director" includes any person who occupies the position of a director by whatever name called and any

person in accordance with whose directions or instructions the directors of a company are accustomed to act (Section 110, Sub-section 5, and Section 380). A person is not, however, to be deemed to come within this definition by reason only that the directors act on advice given by him in a professional capacity (Section 380, Sub-section 2). "Person" in this section has the statutory meaning given to the word by Section 19 of The Interpretation Act, 1899, and therefore includes any body of persons, corporate or unincorporate. It is submitted that the "person" aimed at is the individual, the collection of individuals, or the corporation from whom the directions or instructions really emanate, and not the agent or intermediary through whom they are conveyed, and this view is supported by paragraph (*b*) of Sub-section 1 of Section 144 which requires the Register to contain in the case of a corporation its corporate name and registered or principal office. The important conclusion follows that where one company is a director of another company, the directors of the director company are not directors of the directed company within the meaning of this section; although where default is made in complying with the requirements of Section 145 as to publication of the name of a corporation which is a director, every director, secretary, and officer of that corporation who is knowingly a party to the default is liable to a fine.

It will be noticed that the section says are "accustomed" to act, not "bound" to act, the intention obviously being to cover those cases in which a person not technically invested with legal power is, nevertheless, in a position to, and does, give effective directions or instructions to the directors. A single direction if intended to be and in fact followed by the directors over a substantial period would probably be sufficient to bring the case within this section, *e.g.* instructions as to what class of goods were to be manufactured within the next six months.

Except in the case of a private company (or of an assurance company which has complied with The Assurance Companies Act, 1909, Section 7, Sub-section 4) every Annual Return must include a "written" copy (which includes printed or typewritten) of the last balance sheet audited by the company's auditors, including every document required by law to be annexed thereto, together with a copy of the auditors' report thereon. The balance sheet and the auditors' report must be

certified by a director or the manager or secretary to be a true copy, and if the balance sheet is in a foreign language there must be annexed a translation in English certified in the prescribed manner to be a correct translation (Section 110, Sub-section 3). "Prescribed" means as prescribed by the Board of Trade (Section 380, Sub-section 1). The Companies (Form) Order, 1929, sets out in paragraph 5 how translations must be certified.

The balance sheet must contain, *inter alia*, a summary of the authorised and issued share capital of the company, its liabilities and assets, together with such particulars as are necessary to disclose the general nature of the liabilities and assets, and to distinguish between the amounts respectively of the fixed and floating assets and must state how the values of the fixed assets are arrived at (Section 124, Sub-section 1). For a statement in detail of the requirements of the Act in regard to the balance sheet see under "FORMS OF PUBLISHED ACCOUNTS," page 158.

"Fixed assets" means the same thing as "fixed capital": *i.e.* property acquired and intended for retention and employment with a view to profit, as distinguished from "circulating capital," meaning property acquired or produced with a view to sale or resale at a profit.[1]

The Annual Return must be contained in a separate part of the Register of Members, and be completed within twenty-eight days after the first or only general meeting in the year, and a copy, signed by a director or the manager or secretary of the company, impressed with a five-shilling fee stamp, forthwith be lodged with the Registrar of Companies. Default in complying with any of the foregoing requirements renders the company, and every officer of the company who is in default, liable to a penalty of five pounds for every day during which such default continues (Section 110, Sub-section 4). For the purpose of the foregoing provision the expression "officer," and for the purposes of the Act in regard to Annual Returns generally the expression "director," includes any person in accordance with whose directions or instructions the directors of a company are accustomed to act (Section 110, Sub-section 5).

The fact that no general meeting has been held during the

[1] This definition of fixed capital was put forward in *Buckley on Companies*, and was approved by the Divisional Court in Galloway *v.* Schill, Seebohm & Co., ([1912] 2 K. B. 354). The same case decides that it is not sufficient to lump together different kinds of fixed assets which have been valued by different methods, giving one figure as the total value of the whole.

year will not exempt a director or manager who is party to the default (in not holding the meeting) from liability for failing to make and file the Annual Return.[1]

Every private company is required by Section 111 to include with its Annual Return a certificate signed by a director or the secretary that the company has not, since the date of the last Return, or, in the case of a first Return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company; and, also where the list of members discloses the fact that the number of members of the company exceeds fifty, a certificate so signed that such excess consists wholly of persons who, under Section 26, are not to be included in reckoning the number of fifty (see page 11, *ante*).

The form of the Annual Return is given in the Sixth Schedule to the Act. By Section 379 the Board of Trade has power to make alterations in the form. The form at present in use is given on pages 275 to 279, *post*, with specimen entries inserted by way of illustration. The indebtedness under mortgage shown in Entry 20 on the first page agrees in the example with the balance sheet, but this will not necessarily always be so, as the amount shown on the first page should be the amount at the date at which the Return is made up.

Under Section 109 every company not having a share capital must in every calendar year make a return stating the address of the registered office, particulars of the directors required to be contained in the Register of Directors, and particulars of the total indebtedness of the company in respect of mortgages and charges requiring registration under the Act.

Every company incorporated outside Great Britain which has an established place of business within Great Britain must in every calendar year make out and lodge with the Registrar a balance sheet in such form and containing such particulars and including such documents as under the provisions of the Act it would, if it were a company within the Act, be required to make out and lay before the company in general meeting If any such balance sheet is not written in the English language a certified translation must be annexed (Section 347).

Entries in a dominion register of a company relating to

[1] Gibson *v.* Barton, [1875] L. R. 10 Q. B. 329, Park *v.* Lawton, [1911], 1 K. B. 588

matters required to be included in the Annual Return must appear in the Annual Return made next after the receipt of the particulars at the Registered Office.

A company registered pursuant to Section 18 (*i.e.* an association not for profit) and holding a licence from the Board of Trade to dispense with the word "Limited," is required to lodge with the Registrar the prescribed particulars respecting its directors or managers and notice of any change therein and the Annual Return under Section 109 above referred to; but it is not required to make a return of names and addresses of its members.

There are special provisions as to certain companies. Thus, every limited banking and insurance company, and every deposit, provident, or benefit society, before it commences business, and also on the *first Monday in February* and the *first Tuesday in August* in every year during which it carries on business, must make a statement in the Form set out in the Seventh Schedule to the Act; and a copy must be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on. Every member and every creditor is entitled to a copy of the last-mentioned statement on payment of a sum not exceeding sixpence (Section 131).

This document is not required to be lodged with the Registrar of Companies. Banking companies are, however, under an obligation to make returns, at the commencement of each year, to the Commissioners of Inland Revenue, of their shareholders and officers. By adding a statement of all their places of business to the Annual Return they will be relieved from this latter obligation (Revenue &c. Act, 1882, Section 11). And any life or other assurance company to which the provisions of The Assurance Companies Act, 1909, as to the annual account and balance sheets to be made and deposited with the Board of Trade by such companies, apply, and which complies with those provisions, is similarly relieved by Section 11 from the above-mentioned obligations and may, by sending to the Registrar a copy of such accounts and balance sheet at the same time as they are so deposited, avoid the necessity of lodging a copy of the balance sheet under Section 110, Sub-section 3, of the Act (Assurance Companies Act, 1909, Section 7, Sub-section 4).

*No. of Company*_____ FORM No. 6A1

[PUBLIC COMPANY]

"THE COMPANIES ACT, 1929"

FORM OF ANNUAL RETURN OF A COMPANY HAVING A SHARE CAPITAL

As required by Part IV of The Companies Act, 1929 (Section 108).

A Companies Registration Fee Stamp of 5s. must be impressed here.

ANNUAL RETURN OF THE X. Y. Z. PRINTING AND PUBLISHING COMPANY, LIMITED,

made up to the 3rd day of April, 193

(Being the Fourteenth Day after the date of the First or only Ordinary General Meeting in 193 *).*

The Address of the Registered Office of the Company is as follows:—
92 Gutenberg Street, Werville.

SUMMARY OF SHARE CAPITAL AND SHARES

1.	Nominal Share Capital, £300,000, divided into*	50,000 6 % Redeemable Preference 100,000 5½ % Preference 150,000 Ordinary	Shares of *£1 each.	
2.	Total Number of Shares taken up* to the 3rd day of April 193 , being the date of the Return (which Number must agree with the total shown in the list as held by existing Members)	40,000 6 % Redeemable Preference (excl. 10,000 redeemed). 60,000 5½ % Preference. 140,000 Ordinary.		
3.	Number of Shares issued subject to payment wholly in Cash	190,000 (excl. 10,000 redeemed).		
4.	Number of Shares issued as fully paid up otherwise than in Cash	40,000 Ord'y.		
5.	Number of Shares issued as partly paid up to the extent of 10s. per Share otherwise than in Cash	10,000 5½ % Preference.		
6.	†Number of 5½ % Preference Shares (if any) issued at a discount	50,000		
7.	†Number of ..... Shares (if any) issued at a discount			
8.	Total amount of discount on the issue of Shares which has not been written off at the date of this Return		£250	0 0
9.	‡There has been called up on each of 40,000 Redeemable Preference Shares		£1	0 0
10.	‡ " " " 50,000 5½ % Preference "		£0	8 0
11.	‡ " " " 100,000 Ordinary "		£0	17 0
12	§Total Amount of Calls received, including Payments on Application and Allotment, but excluding £10,000 received on Preference Shares which have been redeemed		£145,000	0 0
13.	Total Amount (if any) agreed to be considered as paid on 40,000 Ordinary Shares which have been issued as fully paid up otherwise than in Cash		£40,000	0 0
14.	Total Amount (if any) agreed to be considered as paid on 10,000 5½ % Preference Shares which have been issued as partly paid up to the extent of 10s. per Share otherwise than in Cash		£5,000	0 0
15.	Total Amount of Calls unpaid		Nil.	
16.	Total Amount of the sums (if any) paid by way of Commission in respect of any Shares or Debentures or allowed by way of Discount in respect of any Debentures since the date of the last Return		Nil.	
17.	Total Number of Shares forfeited		Nil.	
18.	Total Amount paid (if any) on Shares forfeited		Nil.	
19.	Total Amount of Shares for which Share Warrants to Bearer are outstanding		£5,000	0 0
20.	Total Amount of Share Warrants to Bearer issued and surrendered respectively since the date of the last Return	Issued Surrendered	£10,000 £5,000	0 0 0 0
21.	Number of Shares comprised in each Share Warrant to Bearer		Ten.	
22.	Total Amount of the Indebtedness of the Company in respect of all Mortgages and Charges of the kind which are required (or, in the case of a Company registered in Scotland, which, if the Company had been registered in England, would be required) to be registered with the Registrar of Companies under The Companies Act, 1929		£70,000	0 0

NOTE.—Banking Companies must add a List of all their Places of Business.

* Where there are Shares of different kinds or amounts (*e.g.* Preference and Ordinary, or £1 and 1s.), state the number and nominal values separately.

† If the Shares are of different kinds, state them separately.

‡ Where various amounts have been called, or there are Shares of different kinds, state them separately.

§ Include what has been received on forfeited as well as on existing Shares.

The Return must be signed, at the End, by a Director or by the Manager or Secretary of the Company.

Copy of last audited Balance Sheet of the Company.

NOTE.—Except where the Company is (1) a "Private Company" within the meaning of Section 26 of The Companies Act, 1929, or is (2) an Assurance Company which has complied with the provisions of Section 7 (4) of The Assurance Companies Act, 1909, this Return must include a written copy, certified by a Director or by the Manager or Secretary of the Company to be a true copy, of the last Balance Sheet which has been audited by the Company's Auditors (including every document required by law to be annexed thereto) together with a copy of the Report of the Auditors thereon (certified as aforesaid), and if any such Balance Sheet is in a foreign language there must also be annexed to it a translation thereof in English certified in the prescribed manner to be a correct translation. If the said last Balance Sheet did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets there must be made such additions to and corrections in the said copy as would have been required to be made in the said Balance Sheet in order to make it comply with the said requirements, and the fact that the said copy has been so amended must be stated thereon.

THE X. Y. Z. PRINTING AND PUBLISHING COMPANY LIMITED.

Balance Sheet as at 31*st December*, 193 .

Authorised Share Capital:								
300,000 Shares of £1 each		£300,000	0	0				
Issued Share Capital:								
40,000 6 per cent. Redeemable Preference Shares of £1 each, fully paid, redeemable on or before 31st December, 194					£40,000	0	0	
10,000 5½% Preference Shares of £1 each, 10*s.* paid	5,000	0	0					
50,000 ditto, 8*s.* paid	20,000	0	0					
					25,000	0	0	
40,000 Ordinary Shares of £1 each, fully paid	40,000	0	0					
100,000 ditto, 17*s.* paid	85,000	0	0					
					125,000	0	0	
					190,000	0	0	
Five per cent. Redeemable Mortgage Debentures secured by a Fixed Charge on Certain Assets of the Company								
Held by a Subsidiary Company ..	5,000	0	0					
Held by Others	40,000	0	0					
(£5,000 5 per cent. Debentures have been redeemed but can be reissued)					45,000	0	0	
The Capital Redemption Reserve Fund .					10,000	0	0	
Debenture Redemption Sinking Fund ..					5,000	0	0	
Bank Loan secured by a Floating Charge on the Company's Assets					25,000	0	0	
Sundry Creditors:								
Subsidiary Company .. £7,326 7 3								
Less Debentures as above 5,000 0 0								
	2,326	7	3					
Trade Creditors, Bills Payable, Reserve for Taxation and Expenses accruing..	21,794	10	5					
					24,120	17	8	
Profit and Loss Account					9,176	18	3	
Note.—Security has been provided by the Company in connection with a Loan of £2,000 made to a Director by a third party.								
					£308,297	15	11	

Goodwill.								
At cost *less* amounts written off ..					£10,000	0	0	
Patents and Trade Marks:								
At cost *less* amounts written off ..					15,000	0	0	
Freehold Land and Buildings:								
At cost *less* amounts written off .					80,221	17	3	
Fixed Plant and Machinery:								
At cost *less* Depreciation					71,742	19	5	
Loose Tools:								
At cost *less* amounts written off ..					5,000	0	0	
Investments at Cost (Market Value £8,500)					9,191	2	7	
Investments in and Indebtedness of Subsidiary Companies at Cost:								
Shares	40,000	0	0					
Indebtedness	5,273	18	11					
					45,273	18	11	
Stocks on Hand:								
As valued by the Company's Officials..					23,425	10	2	
Loans to Directors and Employees:								
Loans made during year	7,150	0	0					
Less repaid	7,150	0	0					
	-	-	-					
Balance due on Loans made in previous years	5,950	0	0		5,950	0	0	
Loans to Employees and to Trustees for Employees for the Purchase of Shares in the Company					1,980	0	0	
Sundry Debtors, Bills Receivable, and Expenses Paid in Advance					34,260	0	1	
Cash at Bank and in Hand					1,252	7	6	
Preliminary Expenses, *less* amounts written off					1,500	0	0	
Issue Expenses of Share Capital and Debentures, *less* amounts written off ..					1,150	0	0	
Commission on Shares and Debentures Issued and Discount on Debentures Issued, *less* amounts written off ..					2,100	0	0	
Discount on Shares Issued, *less* amounts written off					250	0	0	
					£308,297	15	11	

..... } Directors.

We report to the Members that we have examined the above Balance Sheet with the books of the Company and have obtained all the information and explanations we have required. We are of opinion that such Balance Sheet is properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs as at 31st December, 193 , according to the best of our information and the explanations given to us and as shown by the books of the Company.

London: 10th March, 193 . .....Chartered Accountants.
Auditors.

The loss incurred by one subsidiary company has, to the extent to which it concerns this Company, been taken into account in arriving at the profit of this Company. The other subsidiary companies have earned profits which, in arriving at this Company's profit, have been taken into account only to the extent of the dividends received. In the accounts of the subsidiary company which incurred a loss, that loss has been carried forward.

.....
..... } Directors.

I hereby certify the above to be a true copy of the Company's last audited balance sheet, and the Auditors' report thereon.

ARTHUR WILLIAMS, *Secretary.*

London, 3rd April, 193 .

Particulars of the * Directors of the X. Y. Z. PRINTING AND PUBLISHING COMPANY, LIMITED, at the date of the Annual Return.

† The present Christian Name or Names and Surname.	Any former Christian Name or Names or Surname.	Nationality.	Nationality of Origin (if other than the present Nationality).	Usual Residential Address.	‡ Other Business Occupation if any. If none, state so.
Herbert Morris . . .		British . .		The Old Oaks, Brinstead .	Director of Rhodo Rubber Company, Limited.
Eric George Anderson . .	Erik Georg Andersen . .	British . .	Danish .	40 Smith Street, Norville .	Colliery Owner.
Arthur Matthew Jenkins .	Arthur Mafeking . .	British . .		101 White Street, Wainborough	Director of Popular Publications, Limited.
Henry Alexander Maurice .	Henri Alexandre Morris .	French . .		409 Westgate Road, Mudbury	Director of Universal Language Bureau, Limited.
Henry Watson . . .		Citizen of the United States of America.		The Grange, Bathingham .	Director of Great Expectations, Limited.

* "Director" includes any person who occupies the position of a Director by whatever name called, and any person in accordance with whose directions or instructions the Directors of a Company are accustomed to act.

† In the case of a Corporation its Corporate Name and Registered or Principal Office should be shown.

‡ In the case of an individual who has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships must be entered.

The List should be annexed to the Annual Return, immediately after the List of Members.

List of Persons holding Shares in THE X. Y. Z. PRINTING AND
193 , and of Persons who have held Shares therein at any time
Return) of the incorporation of the Company, showing their

N.B.—If the names in this list are not arranged in alphabetical order, an
found must be

	NAMES, ADDRESSES, AND OCCUPATIONS.			
Folio in Register Ledger containing Particulars.	Surname.	Christian Name.	Address	Occupation
	Adams	Laura	Myrtle Villa, Woodford, Somerset	Spinster
1	Allen	Edward	16 Fore Street, Durham	Solicitor
16	Anderson	Eric George	40 Smith Street, Norville	Colliery Owner
3	Brown	Charles	390 Great George Street, Westminster	Architect
5	Clark	John	Clarence House, Hythe, Kent	Retired Captain R.N
9	Farmer	Henry John	The Rectory, Kemsford	Clerk in Holy Orders
7	Fraser	Thomas	Hazeldene, Waterford	M.D.
	Gardiner	Charles	15 White Street, Richmond	Farmer
			Carried	*forward*

* The Aggregate Number of Shares held, and *not* the Distinctive Numbers, must be stated, the Summary to have been taken up.

† When the Shares are of different classes these columns may be subdivided so that the number into Stock the amount of the Stock held by each member must be shown.

‡ The date of Registration of each Transfer should be given, as well as the Number of Shares and *not* opposite that of the Transferee, but the name of the Transferee may be inserted in the

PUBLISHING COMPANY, LIMITED, on the 3rd day of April, since the date of the last Return, or (in the case of the first Names and Addresses, and an Account of the Shares so held.

index sufficient to enable the name of any person in the list to be readily annexed to this list.

ACCOUNT OF SHARES.							
* Number of Shares held by existing Members at date of Return.†		‡Particulars of Shares transferred since the date of the last Return or (in the case of the first Return) of the incorporation of the Company by persons who are still Members.			‡Particulars of Shares transferred since the date of the last Return or (in the case of the first Return) of the incorporation of the Company by persons who have ceased to be Members.			REMARKS.
		Number.†		Date of Registration of Transfer.	Number.†		Date of Registration of Transfer.	
Ordinary.	Preference.	Ordinary.	Preference.		Ordinary.	Preference.		
20	20							
30	—	20		14th Nov., 193 .				Transferred to Charles Gardiner.
80	50							
—	—					15	3rd Dec., 193 .	Transferred to John Thompson.
25	15							
10	—							Deceased. Executor, Thomas Wilson, of Waterford.
20	5							
20	25							ARTHUR WILLIAMS, *Secretary.*
205	115							

and the column must be added up throughout, so as to make one total to agree with that stated in

of each class held, or transferred, may be shown separately. Where any Shares have been converted

transferred on each date. The particulars should be placed opposite the name of the Transferor "REMARKS" column, immediately opposite the particulars of each Transfer.

FORM OF STATEMENT

TO BE PUBLISHED BY

BANKING AND INSURANCE COMPANIES

AND

DEPOSIT, PROVIDENT, OR BENEFIT SOCIETIES

(Section 131 and the Seventh Schedule).

* The Share Capital of the Company is , divided into Shares of each.

The number of Shares issued is

Calls to the amount of . Pounds per Share have been made, under which the sum of Pounds has been received.

The Liabilities of the Company on the First day of January (*or* July) were—

Debts owing to Sundry Persons by the Company—

On Judgment, £
On Specialty, £
On Notes or Bills, £
On Simple Contracts, £
On Estimated Liabilities, £

The Assets of the Company on that day were—

Government Securities [*stating them*]
Bills of Exchange and Promissory Notes, £
Cash at the Bankers, £
Other Securities, £

COMPANIES INCORPORATED IN CHANNEL ISLANDS OR ISLE OF MAN.

A company incorporated in either of the above-mentioned places which has established or establishes a place of business in England or Scotland is required to lodge the same documents (other than those required on incorporation) as a company registered in England or Scotland, and if it has places of business in both England and Scotland these requirements apply as if the company were registered both in England and Scotland (Section 353).

* If the Company has no Share Capital the portion of the Statement relating to Capital and Shares must be omitted.

DEBENTURES AND MORTGAGES.

THERE is no precise legal definition of the word "Debenture"; but in the mercantile world it is usually understood to mean a security given by a company, under its seal, to secure the repayment of money borrowed, with interest in the meantime. For the purposes of the Companies Act the word "Debenture" includes debenture stock, bonds, and other securities of a company, whether constituting a charge on the assets of the company or not (Section 380). For a document to be a debenture it is not necessary that it should contain a charge, or be under seal, and it may be given by an individual. The primary characteristic of a debenture is that it contains an acknowledgment of indebtedness. What the company chooses to call the document does not matter, if in law it is a debenture. Thus a document described as an income stock certificate has been held to be a debenture, having regard to the terms under which it was issued.[1] Debentures are most frequently issued in a series to a number of persons, but not necessarily so, since a single debenture may be issued to one person only. The money borrowed by a company on debentures is frequently spoken of as "debenture capital"; but this term is inaccurate, as the money subscribed on an issue of debentures constitutes a debt. So-called "debenture capital" must not be confused with share capital, for what has been said (see pages 169 *et seq.*, *ante*) regarding the increase and reduction of capital has no application whatever to the proceeds of an issue of debentures.

The principal moneys subscribed on an issue of debentures or debenture stock may be repayable on the happening of a certain event, on notice being given, or at the expiration of a fixed period of time—say ten or fifteen years, this latter arrangement being the most frequent. Sometimes a perpetual loan is raised by an issue of debentures or debenture stock, and this is only repayable in the event of the company going into liquidation. As the interest on such perpetual debentures or debenture stock in is effect payment of an annuity, authority therefor must be contained in the company's Memorandum.

Debenture stock is offered for subscription in bulk, and the subscriber is invited to subscribe for such amount thereof as he

[1] Lemon v. Austin Friars Investment Trust, [1926] 1 Ch. 1.

chooses. Instead of each lender having a separate bond or mortgage he has a certificate entitling him to a certain sum, being a portion of one large loan. Any amount may be subscribed for, subject to the terms of issue, which generally stipulate that subscriptions must be for even amounts, *e.g.* multiples of a pound. This sum may vary to any extent in the case of different debenture stockholders, one having a large and another a very small holding. The issue of debenture stock is therefore very convenient for such investors. The power of issuing debenture stock for varying amounts constitutes the chief advantage which debenture stock possesses over ordinary debentures from the point of view of the investing world. Debenture stock is secured by a trust deed made between the company and the trustees for the stockholders, which is stamped *ad valorem* as a mortgage. This trust deed contains the conditions upon which the stock is issued, and is the title deed of the debenture stockholders.

Debenture stock is usually made payable to the registered holder for the time being of the stock, though it may be payable to bearer. The holder should have a certificate issued to him upon which the conditions specified in the trust deed are endorsed. Debenture stock is transferable in the manner stated in the conditions, which generally provide that no transfer will be registered unless the certificate is produced to the company, accompanied with such evidence of title and identity as the company may require, and a fee of two shillings and sixpence paid.

An application form for debentures or debenture stock of a company which is offered to the public for subscription, whether on the formation of the company or subsequently, may only be issued with a prospectus which complies with the requirements of Section 35 and the Fourth Schedule to the Act; but these requirements do not apply in the case of a form of application issued in connection with a *bona fide* invitation to a person to enter into an underwriting agreement, or in relation to debentures not offered to the public for subscription, nor do they apply in the case of the issue of a prospectus or form of application to an existing member or debenture holder, whether the applicant will or will not have a right to renounce in favour of other persons.

In some cases the deposit on application for the debentures

or stock is not paid until after allotment. If so, the words "Having paid to your Bankers, The————————Bank, Limited, the sum of £————," will be omitted from the letter of application, and the form when filled up will be sent to the secretary instead of to the bankers. Of course the reference to the guarantee of the debentures will be omitted if inappropriate.

A company must have the debentures or the certificates of debenture stock ready for delivery within two months after the allotment of any of its debentures or stock, or after any transfer thereof is lodged with the company for registration, unless the conditions of issue otherwise provide. The expression "transfer" for the purpose of this provision means a transfer duly stamped and otherwise valid, and does not include a transfer which the company is entitled to refuse to register and does not register. If default is made in complying with this obligation the company, and every director, manager, secretary, or other officer who is knowingly a party to the default is liable to a fine in respect of every day during which the default continues. A person entitled to have the debenture or debenture stock certificate delivered to him may in case of default serve a notice on the company requiring the company to make good the default, and if the company fails within ten days to make good the default the Court may, on the application of the person entitled to the debenture or certificate, make an order directing the company to make good the default within a time specified by the Court, and order the costs of the application to be borne by the company or by any officer responsible for the default (Section 67).

Unlike shares, debentures and debenture stock may, without an application for the consent of the Court, be issued at a discount.

Debentures may not be allotted by a company which does not issue a prospectus on or with reference to its formation, or which has issued a prospectus but has not proceeded to allot any of the shares offered, unless three days before the allotment of either shares or debentures a statement in lieu of prospectus has been lodged with the Registrar (Section 40). This does not apply to a private company.

A form of application for debentures will be found on the following page.

Ordinary debentures may be regarded from two points of

This form to be filled up and returned entire to the Bankers of the Company, The _____ Bank, Limited, together with the sum payable on application.

_____, LIMITED.

ISSUE OF_____FIRST MORTGAGE DEBENTURES OF £_____EACH.

To the Directors of

_____, LIMITED.

GENTLEMEN,

Having paid to your Bankers, THE_____BANK, LIMITED, the sum of £_____, I request you to allot to me_____ First Mortgage Debentures of the above issue on the terms of your Prospectus dated the_____day of_____, 193 , and I agree to accept the same or any less number you may allot me, subject to the conditions of the Form of Debenture annexed to such Prospectus, and to pay the further instalments on the said Debentures as they become due [*or* I desire to pay in full on allotment all Debentures which may be allotted to me].

I desire the Debentures allotted to me to be guaranteed on the terms of the Prospectus.

Yours faithfully,

*Usual Signature*_____

*Name in full*_____

*Address in full*_____

*Profession or Business*_____

These particulars must be written clearly.

*Date*_____, 193 .

N.B.—The above is to be retained by the Bankers and transmitted by them to the Company.

_____, LIMITED.

BANKERS' RECEIPT.

(To be retained by the Applicant.)

_____, 193

Received *of*_____*on account of*_____, LIMITED, *the sum of* £_____, *being a deposit of* £_____*per Debenture on*_____*Debentures applied for in the above Company.*

For THE_____BANK, LIMITED,

_____

Cashier.

£ : :

view—first, as regards their negotiability or non-negotiability; secondly, as regards the nature of the charge they create upon the company's property.

By a negotiable instrument is meant one which passes from hand to hand by delivery, and gives a complete title quite irrespective of any question between the person or company creating the charge and any prior holder. A bank note is a familiar instance of a negotiable instrument. A debenture to bearer so framed as to have the essential attributes of a negotiable instrument passes by mere delivery, and when presented at the company's office no question can be raised as to how the holder came by it. On the other hand, a debenture payable to the registered holder for the time being is a non-negotiable instrument, and the company will not be justified in paying to anyone except the registered holder or some person authorised by him.

Secondly, the debenture holder may have a specific mortgage of the company's property, or some part thereof, enforceable by sale or foreclosure like an ordinary mortgage: or he may have what is known as a "floating security," which leaves the company free to deal with its property as it pleases until default has been made in the payment of principal or interest, or until the winding up of the company.

A floating security is an equitable charge on the assets for the time being of a going concern, which attaches to the property charged in the varying condition in which it happens to be from time to time. The charge remains dormant until the undertaking charged ceases to be a going concern, or until the person in whose favour the charge is vested intervenes. Of course the right to intervene may be suspended by agreement, but this depends upon the wording of the instrument.[1]

In *Illingworth* v. *Houldsworth* (1904, App. Ca. at p. 358) the following comparison was made by Lord Macnaghten between a specific and a floating charge: "A specific charge, I think, is one that, without more, fastens on ascertained and definite property, or property capable of being ascertained and defined; a floating charge, on the other hand, is ambulatory and shifting in its nature, hovering over and, so to speak, floating with the property which it is intended to affect, until some event occurs or

1 Government Stock Investment Co. *v.* Manila Railway Co., [1897] App. Ca. 81; Evans *v.* Rival Granite Quarries [1910] 2 K. B. 979.

some act is done which causes it to settle and fasten on the subject of the charge within its reach and grasp."[1]

A floating security is enforced by the appointment of a receiver, which appointment may be made on an application to the Court or by an exercise of the powers given under the debentures; but until the winding up of the company, or the appointment of a receiver, the company may, in the ordinary course of its business, make specific charges on the property comprised in a floating security, which take priority over the floating security. (This is a difficult branch of the law, and legal advice will usually be desirable.)

Where a company is being wound up, a floating charge on the undertaking or property of the company created within six months of the commencement of the winding up will, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per centum per annum (Section 266). A payment made on account, in anticipation of the creation of the charge and in reliance on a promise to execute it, although made some days before its execution, is made at the time of its creation within the meaning of this section.[2]

A debenture may be framed as a promissory note containing simply a promise to pay, and in that case must be stamped as a promissory note according to Table V, page 339, *post*.

Debentures are almost invariably issued under seal. Unless, however, the Articles otherwise provide, a mortgage debenture does not require a seal, and, if unsealed, is a valid equitable charge. And even if the Articles do require debentures to be sealed, an unsealed debenture is good as an agreement to give a debenture.[3]

Debentures specifically charging the company's property are sometimes secured by a mortgage to trustees for the debenture holders, the mortgage being contained in a separate deed called a trust or covering deed.

If several companies issue joint debentures to secure a fund

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1 See also National Provincial Bank *v.* United Electric Theatres, [1916] 1 Ch. 132.
2 Columbian Fireproofing Co., *in re*, [1910] 1 Ch. 758; Stanton, (No. 2), *in re*, [1929] 1 Ch. 180.
3 Fireproof Doors, *in re*, [1916] 2 Ch. 142.

advanced for their mutual benefit, a valid charge will be created on the assets of each company to the extent to which the fund has been applied to the purposes of that company.[1]

The necessity for keeping a Register of Charges is discussed under the heading "BOOKS," page 100, *ante* (see also Section 88). Particulars of all mortgage debentures will appear in that Register. If there is a mortgage to trustees to secure the debentures it is only necessary to register the trust deed. If there is no trust deed it is necessary to register every individual debenture containing a charge on the company's property. Floating charges on the undertaking or property of a company must be recorded in the Register. The Register is open without charge to the inspection of members and creditors, and their solicitors or agents,[2] at all reasonable times, and to any other person on payment of such fee, not exceeding one shilling for each inspection, as may be fixed by the regulations of the company. As to the obligation of a company under Section 89 to keep at its registered office a copy of every instrument creating any charge which requires registration see page 309, *post*, and as to inspection thereof, page 165, *ante*.

If any director, manager, or other officer of a company knowingly and wilfully authorises or permits the omission of any required entry in the Register he is liable to a penalty, and liability to a penalty is likewise incurred if inspection of the Register or of copies of instruments required to be kept is refused (Sections 88 and 89). If such refusal occurs in relation to a company registered in England the Court may by order compel an immediate inspection (Section 89, Sub-section 3).

Subject to certain exceptions specified in the section, a public company having a share capital may not under Section 94 exercise any borrowing powers until it is entitled to commence business. If such a company does exercise borrowing powers in contravention of that section every person who is responsible for the contravention will, without prejudice to any other liability, be liable to a fine not exceeding fifty pounds for every day during which the contravention continues.

Directors may not borrow beyond the limit allowed by the Articles. If the limit named in the Articles is for the "amount secured" the premium (if any) at which debentures have to

[1] *Re* Johnston Foreign Patents Co., [1904] 2 Ch. 234.
[2] Credit Co., [1879] 11 Ch. D. 256.

be redeemed must be included with the principal sums[1]; but if the Articles provide that the "amount borrowed" shall not exceed a certain sum the premium apparently need not be included.

Where a company has general borrowing powers a lender is not bound to inquire into the purposes for which the money is intended to be applied, and a misapplication of it by the company will not invalidate his security, provided that the lender is not at the time of the loan aware of the intended misapplication.[2]

The interest is usually paid by means of coupons payable to bearer, and is not necessarily, like dividends on shares, only payable out of profits. The following is a form of Notice of Payment of Coupon by Advertisement:—

_____, LIMITED.

FIVE PER CENT. DEBENTURES.

NOTICE IS HEREBY GIVEN that Coupon No._____of the Five per Cent. Debentures issued by this Company will be paid on and after_____day, the_____day of_____, 193 , at THE_____BANK, LIMITED,_____Street, E.C., the Bankers of the Company.

Coupons must be left three clear days previously at the above-named Bank for examination.

By Order,

_____
Secretary.

_____Street, London, E.C.,
_____, 193 .

Coupons and warrants for interest attached to and issued with debentures are exempt from stamp duty.[3] The interest payable on coupons to debentures, though payable half-yearly, accrues from day to day, and is therefore legally subject to apportionment. But it is no part of the duty of a secretary of a company to go into questions of apportionment, which are questions for lawyers exclusively. When a transfer takes place between the dates when interest is payable there may be claims made both by the transferor and the transferee to the current interest. To ascertain to whom the interest is payable in such a case, the form of transfer should be looked at in order to determine the rights of the parties to the interest. In some forms of

[1] Rowell & Son *v.* Commissioners of Inland Revenue, [1897] 2 Q. B. 194.
[2] *Re* David Payne & Co., [1904] 2 Ch. 608.
[3] Stamp Act, 1891, Schedule, "Bill of Exchange," Exemptions.

transfer the conditions are "all interest henceforth to become due thereon." If the form is so worded, interest prior to the date of the transfer clearly belongs to the transferor; after that date to the transferee. If the conditions are "all interest thereon," or "all interest due and to become due," the transferee clearly has the right to interest, whether due at the date of the transfer or falling due afterwards.

The following are the different kinds of debentures, considered with regard to their negotiability:—

(A) *Debentures to Bearer.*—These are generally negotiable instruments passing by delivery. Owing to the heavy stamp duty (see page 338, *post*), debentures to bearer are frequently regarded with disfavour. Where debentures to bearer are secured by mortgage, the charge is generally contained in the debentures themselves. Sometimes debentures to bearer are made capable of registration.

(B) *Registered Debentures, or Debentures payable to Registered Holder.*—These are non-negotiable securities, and are stamped *ad valorem* according to Table III, page 337, *post*.

(C) *Registered Debentures, with Coupons payable to Bearer.*—These debentures are non-negotiable, though the coupons may be payable to bearer, and therefore negotiable. The principal sums are only payable to the registered holders. The stamp duty is as in (B).

Perpetual (often called in popular language "irredeemable") debentures are sometimes issued. No date for repayment is fixed, and the principal is made repayable as and when provided by the conditions endorsed on the debenture. A perpetual debenture and coupon may be made payable either to registered holder or to bearer. In early editions of this work doubts were expressed as to whether an ordinary company, not empowered by special Act of Parliament, could validly issue a perpetual debenture secured by a specific mortgage or charge. But by Section 74 (which reproduces Section 103 of the Act of 1908) it is expressly provided that debentures, whether issued or executed before or after the commencement of this Act, are not invalid by reason only that they are made irredeemable, or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

Some companies give bonds not secured by a charge. The interest is made payable by means of coupons as in the case of ordinary debentures, and the endorsed conditions are the same

as those of debentures to bearer with the omission of the conditions relating to the security.

Terminable debentures are sometimes issued for such periods as may be arranged, at varying rates of interest.

Books required by the Companies Act or by the Articles to be kept at the registered office cannot be mortgaged. Such books, therefore, as the Register of Members, the Minute Books of Board and General Meetings, and the Register of Charges cannot be affected by any charge created by the company. With these exceptions, a company may, under the present law, mortgage or charge all its property, real or personal, present or future, including its uncalled capital.

A trust or covering deed for securing the payment of debentures is not regarded as a collateral security for the purposes of stamp duty, and if the debentures are duly stamped the trust deed will only require a deed stamp (see page 349, *post*). If bonds or debentures terminating at a fixed date are renewed by endorsement during the currency of the security, the endorsement if under hand only is liable to the duty of sixpence, or if under seal to duty at the rate of sixpence for every £100 (with a maximum of ten shillings). If, however, the endorsement is made after maturity it is charged as a new security.

A debenture (other than a debenture to bearer) may only be transferred by instrument in writing under the hand of the holder or his legal representative, except that a company may register as the holder of a debenture any person to whom the right to the debenture has been transmitted by operation of law (Section 63). The transfer is delivered at the office of the company with a fee of two shillings and sixpence in most cases, and, if required, evidence of identity by statutory declaration or otherwise. The debenture (or in the case of debenture stock, the stock certificate) must be ready for delivery within two months after the date on which the transfer is lodged with the company, except where the transfer is one which the company is entitled to refuse to register and does so refuse. Default renders the company and every director, manager, secretary, or other officer knowingly a party to the default liable to a penalty. Further, if a company which is in default fails, after having had a notice served upon it, to make good the default within ten days after service of the notice the Court may order the debenture (or stock certificate) to be delivered within a specified time and

direct that the costs of the application be borne by the company or any officer responsible for the default (Section 67).

As to when the Register of Debenture Holders may be closed see page 102, *ante*.

On the death, bankruptcy, or lunacy of the holder of a debenture to bearer no difficulty arises as to the transmission of the debenture holder's interest; but on the death, bankruptcy, or lunacy of the holder of a registered debenture it may become necessary to procure proper evidence of the rights of the persons claiming to be entitled. What has been said (page 259, *ante*) respecting the transmission of shares will be applicable, *mutatis mutandis*, to the case of debentures. The conditions should contain provisions to meet the case of joint holders &c.

The following is a specimen form of transfer:—

I [*if by endorsement*, the within-named]_____, of_____ in consideration of the sum of £_____ paid to me by_____, of_____ do hereby transfer to the said_____a certain Debenture [*if by endorsement*, the within-written Debenture], numbered_____and dated the_____day of_____, 19 , and issued by_____, LIMITED and all principal moneys and interest secured by the said Debenture, and the full benefit thereof, subject to the conditions on which I hold the same; and I the said_____hereby agree to take the said Debenture subject to the same conditions.

AS WITNESS &c.

Attention must be given to the provisions of the Forged Transfers Acts (see page 264, *ante*), as a company registering a person claiming under a forged transfer may find itself in difficulties. If a company registers a person so claiming and issues to him a certificate of title, it arms him with the power of holding himself out as the true owner, and therefore a *bona fide* buyer from him may maintain an action for damages against the company for the implied representation it makes to all the world in having registered the seller as owner and issued the certificate vouching the ownership.

Transfers on sale of debentures which are marketable securities must be properly stamped with *ad valorem* stamps calculated according to Table IV, page 338, *post*.

When it is desired to raise money by means of debentures a prospectus or circular may be issued with full particulars of the loan, and a form of application will accompany the prospectus or circular. But such a form of application may not be issued except with a prospectus which complies with the

requirements of Section 35. This prohibition does not apply to an application form issued in connection with a *bona fide* invitation to enter into an underwriting agreement or in relation to debentures not offered to the public. On receipt of the form of application a letter of allotment (if the debentures are allotted) bearing an impressed stamp according to the amount allotted will be sent to the applicant. What has been already said respecting forms of application for and letters of allotment of shares applies, *mutatis mutandis*, to debentures (see *ante*, page 61 *et seq.*), but no returns of allotments of debentures have to be filed with the Registrar of Companies.

Where a prospectus or circular inviting applications for debentures is not issued, the company, if a public company, may not allot any debentures unless at least three days before the first allotment of debentures there has been lodged with the Registrar of Companies a statement in lieu of prospectus in the form and containing the particulars set out in the Fifth Schedule to the Act (Section 40).

There was formerly an important distinction with regard to the obligation to pay calls. A subscriber for shares is bound to take up and pay for shares allotted to him unless he can prove misrepresentation in the prospectus; but it was decided by the House of Lords, in the case of *South African Territories* v. *Wallington* (1898, App. Ca. 309), that a subscriber for debentures cannot be compelled to take and pay for them, the reason being that a promise to subscribe for debentures is in effect an agreement to lend money at interest, and does not in itself constitute a debt. This distinction was abolished by Section 16 of The Companies Act, 1907, now replaced by Section 76 of The Companies Act, 1929, which provides that "a contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance." The provision is not retrospective, and only applies to contracts made on or after the 1st July, 1908. The right to specific performance would be destroyed if a company, having power to do so, forfeited the debentures for nonpayment of calls.[1]

Provisional (or "scrip") certificates are often issued on payment of the amount due on allotment, and are exchanged

[1] Kuala Pahi Rubber Estate *v.* Mowbray, [1914] W. N. 321.

_____, LIMITED.

ISSUE OF_____DEBENTURES OF £_____EACH,

Bearing Interest at the rate of———per centum per annum on the amount from time to time paid up thereon.

No._____

Provisional Certificate for Debentures.

This is to Certify *that*_____

*of*_____*is the Holder of*_____

*Debentures of*_____*Pounds each of*_____

LIMITED, *on each of which, up to this date, there has been paid the sum of*_____

On each of the said Debentures the further sum of £_____ *will be due and payable on the*_____, *193 ;* £____*on the*_____, *193 , and the balance,* £_____, *on the , 193 .*

On completion of the payments this Certificate should be surrendered to the Company, to be exchanged for definitive Debentures.

*This Certificate is issued subject to the Conditions contained in the Prospectus dated the*_____, *193 .*

_____

Secretary.

Address_____

_____, 193 .

_____*193 .*

Received *the sum of* £_____, *being the amount of a Call of*_____ *Pounds each on the Debentures represented by this Certificate on the*_____*day of*_____*193 .*

*For*_____, LIMITED.

_____ } *Directors.*
_____ }

£ : :

_____*Secretary.*

for definitive debentures on completion of the payments. On the previous page is a form of provisional certificate, on which forms of receipt would be endorsed.

A provisional certificate is stamped with an impressed two-penny stamp. No issue of debentures should, of course, be made unless the provisional certificates have been lodged with the company.

Coupons attached to a certificate to be exchanged for definitive debentures when issued would require to be stamped, but such coupons are extremely rare.

Persons entitled to debentures which have been allotted to them but not issued may have the right to vote at a meeting of debenture holders.[1]

Debentures are often guaranteed by companies undertaking that class of business. Sometimes the interest alone is guaranteed, and sometimes both principal and interest. The debenture holder himself occasionally effects the policy; at other times the guarantee is arranged with a guarantee company by the company issuing the debentures. When this is the case, the borrowing company, by its prospectus, offers the debenture holder the option of having his debentures guaranteed by the guarantee company at a trifling premium, and the applicant states in his application whether he wishes guaranteed debentures allotted to him or not. The guarantee company then either issues policies of guarantee to the allottees or covenants by deed with a trustee for the holders of guaranteed debentures to pay any unpaid interest or principal, and certifies the debentures entitled to the guarantee by sealing them with its seal.

The Committee of the London Stock Exchange object to a company the debentures of which are guaranteed by the vendor to the company.

When debentures are finally paid off by the company a receipt to the following effect is endorsed on the debentures, which should be retained by the company:—

RECEIVED the_____day of_____, 193 , from_____ LIMITED, the within-mentioned principal sum of £_____ all interest thereon having been previously paid in accordance with the within-mentioned security.

As to the Entry of a Memorandum of Satisfaction on the Register see pages 309 and 310, *post*.

[1] Dey *v.* Rubber and Mercantile Corporation, [1923] 2 Ch. 528.

Section 75 contains important provisions as to the reissue of redeemed debentures. This section is retrospective in its operation, and provides that where either before or after the commencement of the Act of 1929[1] a company has redeemed debentures previously issued, the company shall have power, and shall be deemed always to have had power to reissue the debentures, either by reissuing the same debentures or by issuing others in their place, unless any express or implied provision to the contrary is contained in the Articles or in any contract entered into by the company, or the company has by passing a resolution to that effect or by some other act manifested its intention that the debentures shall be cancelled On a reissue of redeemed debentures the person entitled to the debentures has and is to be deemed always to have had the same priorities as if the debentures had never been redeemed.

Where a company has power to reissue debentures which have been redeemed, particulars of the debentures which may be reissued must be included in every balance sheet of the company (Sub-section 3). Debentures deposited to secure advances from time to time on current account or otherwise stand in an exceptional position, for they are not to be treated as redeemed by reason of the account of the company ceasing to be in debit whilst the debentures are so deposited (Sub-section 4) : that is to say, new advances may be made upon them without the formality of a reissue. The reissue of a debenture, whether it be the same debenture, or another in its place, or a transfer from a nominee of the company, is treated as the issue of a new debenture for the purposes of stamp duty. But it is not to be treated as the issue of a new debenture for the purposes of any provision limiting the amount or number of debentures to be issued (Sub-section 5). This latter provision is necessary to meet the case of the redemption of a portion of the issued debentures where the conditions of issue prohibit the creation of a mortgage or charge on the assets ranking *pari passu* with the security of the debenture holders; apart from this provision a reissue of the redeemed debentures would constitute such a charge.[2] A person who takes a reissued debenture appearing to be duly stamped is not obliged to pay stamp duty or a penalty before

[1] *i.e.* the 1st November, 1929.

[2] *Re* Russian Petroleum and Liquid Fuel Company, [1907] 2 Ch. 540.

he can give it in evidence for the purpose of enforcing his security, unless he had notice that it was not properly stamped or might, but for his negligence, have discovered the fact, but the company is liable to pay the proper stamp duty and penalty (Sub-section 5).

One debenture may be issued in the place of several redeemed debentures, if desired.[1] Nothing in the section prejudices any power to issue debentures in the place of any debentures paid off, or otherwise satisfied or extinguished, reserved to a company by its debentures or the securities for the same.

When debentures are redeemable at a sum in excess of the amount advanced, duty is chargeable on that additional amount as well as on the face value of the debentures,[2] but where debentures are payable at a fixed date at par, and a company merely has the option of redeeming them earlier at a premium, no duty is payable on the premium.[3]

The conditions generally reserve to the company the right to redeem the debentures after a specified date by notice or by periodical drawings, and either at par or at a premium. Redemption by periodical drawings is the usual method of redemption, and notice of redemption should be given. The following is a form of notice:—

_____, LIMITED.

_____PER CENT. MORTGAGE DEBENTURE BONDS.—FIRST DRAWING.

NOTICE IS HEREBY GIVEN that, in conformity with the conditions upon which the above issue was made, the undermentioned numbers of Debenture Bonds were this day drawn at the Offices of the Company,_____Street in the City of London, in the presence of_____, one of the Directors,_____, Secretary of the Company, and the undersigned Notary Public.

The said Debentures will be paid off at par on_____next, at the_____Bank,_____Street, London, E.C., after which date the interest thereon will cease.

DEBENTURES OF £_____EACH NUMBERED
[*Here set out the numbers*].
For £_____sterling each .. .. £_____

By Order,

Countersigned, _____
Secretary

_____
Notary Public,
_____Street, London,
_____, 193 .

[1] *Re* New London and Suburban Omnibus Company, [1908] 1 Ch. 621.
[2] Rowell and Son *v.* Commissioners of Inland Revenue, [1897] 2 Q. B. 194.
[3] Knight's Deep *v.* Commissioners of Inland Revenue, [1900] 1 Q. B. 217.

The provisions of Section 79 of the Act respecting the registration of charges by companies registered in England are most important, and must not be overlooked by directors and secretaries of companies.

Every charge (which expression includes a mortgage) created by a company after the fixed date and falling within any of the following categories:—

(*a*) A charge for the purpose of securing any issue of debentures;

(*b*) A charge on uncalled share capital of the company;

(*c*) A charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale;

(*d*) A charge on any land, wherever situate, or any interest therein;

(*e*) A charge on any book debts of the company;

(*f*) A floating charge on the undertaking or property of the company [1];

(*g*) A charge on calls made but not paid;

(*h*) A charge on a ship or a share in a ship;

(*i*) A charge on goodwill, or on a patent or a licence under a patent, on a trademark, or on a copyright or a licence under a copyright,

will, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge, together with the instrument (if any) by which the charge is created or evidenced, are delivered to or received by the Registrar for registration in manner required by the Act within twenty-one days after the date of its creation; but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a charge becomes void under the section the money thereby secured immediately becomes payable.

The "fixed date" means in relation to the charges specified

[1] An assignment of the present and future book debts of a company by way of security to the guarantor of its overdraft at a bank is within this expression (*re* Yorkshire Wool Combers Association; Illingworth *v.* Houldsworth, [1904] App. Ca. 355).

in paragraphs (*a*) to (*f*), both inclusive, the 1st July, 1908, and in relation to the charges specified in paragraphs (*g*) to (*i*), both inclusive, the 1st November, 1929.

The prescribed form of particulars is shown on page opposite. It will be noticed that column (5) relates to particulars of commission, allowance, or discount, but, though included in the particulars required for registration (Sub-section 9), it is expressly provided by that sub-section that the omission of them shall not affect the validity of the debentures issued. The proviso to Sub-section 9 further provides that the deposit of any debentures as security for any debt is not to be treated as the issue of debentures at a discount within the meaning of that sub-section.

Where on or after 1st November, 1929, a company registered in England acquires property which is subject to a charge of such a kind as would require registration under the Act if created by the company, prescribed particulars of the charge must be lodged with the Registrar, together with a certified copy of the instrument (if any) by which the charge was created, within twenty-one days after the acquisition is completed. Where the charge is created and the property situate outside Great Britain, the particulars must be delivered within twenty-one days after the date on which the copy of the instrument could in the ordinary course of post and if dispatched with due diligence be received in the United Kingdom (Section 81). Particulars must be lodged on Form 47B (see pages 300 and 301).

The requirements of the Act in respect of the registration of charges created on property and of charges to which property acquired by a company is subject apply to charges created, and to charges on property acquired in England on or after the 1st November, 1929, by companies incorporated outside England which have established a place of business in England, whether or not such companies are companies within the meaning of the Act (Section 90), and particulars of such charges must be delivered on Form No. 8F or No. 9F respectively.

Within six months after 1st November, 1929, every company must lodge with the Registrar the prescribed particulars of any charge created by the company before the date named and remaining unsatisfied thereat which would have required registration under paragraphs (*g*), (*h*), or (*i*) on page 297, or

*No. of Company*_____

FORM No. 47.

"THE COMPANIES ACT, 1929."

PARTICULARS

(to be delivered to the Registrar pursuant to Section 79 of The Companies Act, 1929)

OF A

MORTGAGE OR CHARGE CREATED BY_____, LIMITED,

A COMPANY REGISTERED IN ENGLAND.

(1) Date and Description of the Instrument Creating or Evidencing the Mortgage or Charge.*	(2) Amount secured by the Mortgage or Charge.	(3) Short Particulars of the Property Mortgaged or Charged.	(4) Names, Addresses, and Descriptions of the Mortgagees or Persons entitled to the Charge.	(5) Amount or rate per cent. of the Commission, Allowance, or Discount (if any) paid or made either directly or indirectly by the Company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any of the Debentures included in this Return.†

* A description of the Instrument—*e.g.* Trust Deed, Mortgage, Debenture, &c., as the case may be—should be given.

As to delivery of the Instrument with these Particulars see Section 79, Sub-section 1.

† The rate of interest payable under the terms of the Debenture should *not* be entered.

As to delivery in certain cases of (*a*) a copy of the Instrument, or (*b*) a copy of the Instrument and a prescribed Form [Form 47C] of Certificate, see Section 79, Sub-sections 3 and 5.

NOTE.—The Fees payable on Registration of Mortgages and Charges are as follow :—

Where the amount of the Mortgage or charge does not exceed £200 . . . 10s.

Where the amount exceeds £200 . . . . £1

Signature _____

Designation of position in relation to the Company _____

Date

under the provisions of Section 90 above referred to if the charge were created after the date named (Section 91, Sub-section 1 (*a*)).

Particulars must also be lodged within the same period of time of any charge to which any property acquired before the 1st November, 1929, is subject which would have required registration under the provisions of Section 81 (see page 298) or of Section 90 above referred to (Section 91, Sub-section 1 (*b*)) if the property were acquired after the date named.

Default in complying with the above requirements renders the company and every officer of the company liable to a penalty of fifty pounds.

In respect of the foregoing provisions of Section 91, "Company" includes a company (whether a company within the meaning of the Act or not) incorporated outside England which has an established place of business in England (Sub-section 4).

The Form on which the particulars of a charge to which property acquired by a company registered in England is subject must be delivered (Form 47B) is as follows:—

*No. of Company*_____ FORM No. 47B.

"THE COMPANIES ACT, 1929"

PARTICULARS

(to be delivered to the Registrar pursuant to Section 81 of The Companies Act, 1929)

OF A

MORTGAGE OR CHARGE

Subject to which property has been acquired on or after the 1st November, 1929,

BY

_____

LIMITED

(A Company Registered in England).

*Presented by*_____

There are matters referring to charges coming under paragraphs (*d*) and (*e*) of Sub-section 2 of Section 79 which

PARTICULARS of a MORTGAGE or CHARGE subject to which property has been acquired on or after 1st November, 1929, by_____Limited. a Company registered in England.

(1) Date and Description of the Instrument Creating or Evidencing the Mortgage or Charge.*	(2) Date of the Acquisition of the Property	(3) Amount Owing on Security of the Mortgage or Charge.	(4) Short Particulars of the Property Mortgaged or Charged.	(5) Names, Addresses and Descriptions of the Mortgagees or Persons entitled to the Charge.

* A description of the Instrument—*e.g.* "Trust Deed," "Mortgage," "Debenture," &c., as the case may be—should be given.

The fees payable on Registration of Mortgages and Charges are as follow:

Where the amount of the Mortgage or Charge does not exceed £200 . 10s.

Where the amount exceeds £200 . . . . . £1

A Copy of the Instrument, verified or certified to be a true copy under the Seal of the Company, or under the hand of some person interested otherwise than on behalf of the Company, must be delivered with these Particulars.

Signature

Designation of position in relation to the Company.

Dated the *day of* 193

require mention (see Sub-sections 6 and 7). The holding of debentures entitling the holder to a charge on land is not to be deemed to be an interest in land. The practical effect of this is to dispense with registration of a charge created by one company over debentures which it holds in another company. Secondly, where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument to secure an advance to the company is not to be treated for the purposes of the section as a charge on those book debts.

In the case of a charge created out of the United Kingdom and comprising solely property situate outside the United Kingdom, it is sufficient compliance with the section if a copy of the instrument by which the charge is created or evidenced, verified in the prescribed manner, is (together with the prescribed particulars) delivered to and received by the Registrar within twenty-one days after the instrument or copy could, in due course of post, and if dispatched with due diligence, have been received in the United Kingdom (Section 79, Sub-section 3).

Where a charge is created in the United Kingdom, but comprises property outside the United Kingdom, the instrument may be sent for registration notwithstanding that further proceedings may be necessary to make such charge valid or effectual according to the law of the country in which such property is situate (Section 79, Sub-section 4).

If a charge comprises property in Scotland or Northern Ireland and registration is necessary in the country where the property is situate to make the charge valid or effectual according to the law of that country, a certified copy of the instrument creating or evidencing the charge, with a certificate in the prescribed form certifying that the charge was presented on the date on which it was so presented, is to be accepted by the Registrar, and is to have the same effect as the delivery of the instrument itself (Section 79, Sub-section 5).

Where, however, a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it is sufficient if there are delivered to or received by the Registrar within twenty-one days after the execution of the deed containing the charge, or, if there is no such deed, after the execution of any debentures of the series, the following particulars, together with the deed

containing the charge, or if there is no such deed, one of the debentures of the series:—

(*a*) The total amount secured by the whole series;

(*b*) The dates of the resolutions authorising the issue of the series and the date of the covering deed (if any) by which the security is created or defined;

(*c*) A general description of the property charged; and

(*d*) The names of the trustees (if any) for the debenture holders.

Where more than one issue is made of debentures in the series, particulars of the date and the amount of each issue must be sent to the Registrar for entry on the Register, but an omission to do this does not affect the validity of the debentures issued (Section 79, Sub-section 8).

The Registrar must keep, with respect to each company, a Register in the prescribed form of all charges requiring registration, and must, on payment of the prescribed fee, enter in the Register with respect to every charge to the benefit of which the holders of a series of debentures are entitled –

The total amount secured by the whole series, the dates of the resolutions authorising the issue of the series and of the covering deed (if any), a general description of the property charged, and the names of the trustees (if any) for the debenture holders and the deed containing the charge or, if there is no deed, one of the debentures;

and in the case of any other charge—

If the charge is created by the company, the date of its creation, and if the charge was existing on property acquired by the company, the date of the acquisition of the property; and the amount secured; short particulars of the property charged; and the persons entitled to the charge (Section 82, Sub-section 1).

The Registrar will also enter on the register the fact of the appointment of a receiver or manager (Section 86, Sub-section 1); and of such receiver or manager ceasing to act (Sub-section 2).

The forms (*a*) for registration of particulars of the entire series (Form 47A), (*b*) when there is more than one issue of debentures of the series (Form 48) are shown on the following pages.

*No. of Company*_____ FORM No. 47A.

"THE COMPANIES ACT, 1929."

PARTICULARS

(to be delivered to the Registrar pursuant to Section 79, Sub-section 8, of The Companies Act, 1929), of a Series of Debentures containing, or giving by reference to any other Instrument, any Charge, to the benefit of which the Debenture Holders of the said series are entitled *pari passu*, created by_____, LIMITED (a company registered in England).

NOTE.—The Deed (if any) containing the Charge must be delivered with these Particulars to the Registrar within Twenty-one days after the execution of such Deed; or, if there is no such Deed, one of the Debentures must be so delivered within Twenty-one days after the execution of any Debentures of the series.

*Presented by*_____

Registration of a series under Sub-section 8 of Section 79 will protect documents purporting to be debentures of that series which, owing to some technical defect (*e.g.* absence of seal if the Articles require sealing), are only good as agreements for those debentures.[1]

The questions that may arise as to when a charge is created are somewhat difficult, and often depend upon special circumstances. A mere agreement to give security may require registration.[2] The date of the creation of a charge is the date when the instrument of charge is executed, and not the date when money is subsequently advanced under it.[3] Where the time for registration has been exceeded, the company can usually, by agreement with the lender, cancel the unregistered debentures and issue fresh ones in place of them.[4] These substituted debentures may, however, be liable to attack upon the ground of fraudulent preference.

Under Section 85 the Court has power to extend the time for registration or to order the rectification of any omission or misstatement in the required particulars of a charge or in a

1 Fireproof Doors, *in re*, [1916] 2 Ch. 142. See page 286, *ante*.

2 Jackson and Bassford, *in re*, [1906] 2 Ch., at page 476; Orleans Motor Co., *in re*, [1911] 2 Ch. 41.

3 Esberger & Son *v.* Capital and Counties Bank, [1913] 2 Ch. 366.

4 *Re* N. Defries & Co., [1904] 1 Ch. 37; *re* Cardiff Workmen's Cottage Company, [1906] 2 Ch. at page 630.

PARTICULARS of a series of DEBENTURES created by_____, LIMITED (a company registered in England).

(1) Total Amount Secured by the Whole Series.	(2) Amount of the Present Issue of the Series.	(3) Dates of Resolutions Authorising the Issue of the Series.	(4) Date of the Covering Deed (if any) by which the Security is created or defined; or, if there is no such Deed, the date of the first execution of any Debentures of the Series.	(5) *General* Description of the Property Charged.	(6) Names of the Trustees (if any) for the Debenture Holders.	(7) Amount or rate per cent. of the Commission, Allowance, or Discount (if any) paid or made either directly or indirectly by the Company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any of the Debentures included in this Return.*

* The rate of interest payable under the terms of the Debentures should *not* be entered in this column.

NOTE.—The Fees payable on the Registration of these Particulars are as follow:—

Where the amount of the whole Series does not exceed £200 10s.
Where the amount exceeds £200 .. .. £1.

Signature

Designation of position in relation to the Company

Date

memorandum of satisfaction, if satisfied that the failure to register the charge within the prescribed time or the omission or misstatement was accidental, or was due to inadvertence or some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company. The Court having jurisdiction is the Court having jurisdiction in a winding up (see Section 163). Where this relief is given, the Court will grant it without prejudice to rights acquired against the debenture holders before the time when the debentures are actually registered or the error rectified, as the case may be. This proviso only protects those who have acquired rights against or affecting the property charged by the debentures before registration.[1] The Court will not insert any terms for the protection of unsecured creditors of the company.[2] If a winding up has already supervened, no relief will be granted. But a motion to extend the time for registration may be made, and leave granted, notwithstanding that a meeting has been convened to consider a resolution for voluntary winding up. In such a case the order will give the liquidator, if and when appointed, an opportunity of challenging the right of the applicant to an extension.[3] Where relief is granted to some

*No. of Company*_____ FORM No. 48.

"THE COMPANIES ACT, 1929."

A 5s. Companies Registration Fee Stamp must be impressed here.

PARTICULARS

(to be delivered to the Registrar pursuant to Section 79, Sub-section 8, of The Companies Act, 1929), of an

ISSUE OF DEBENTURES IN A SERIES
Created by

_____, LIMITED
(a company registered in England).

NOTE. Sub-section 8 of Section 79 above mentioned provides—

(1) For Registration of Particulars of the Entire Series (for which purpose Form No. 47 must be used), and

(2) Where there is more than One Issue of Debentures of the Series—for the Registration of the Date and Amount of each Issue (for which purpose this Form must be used).

*Presented by*_____ _____

[1] *Re* Ehrmann Brothers, [1903] 2 Ch. 697; see also Cardiff Workmen's Cottage Company, *re* page 304, *ante*.

[2] M. J. G. Trust, in *re*, [1933] 1 Ch. 542.

[3] L. H. Charles & Co., in *re* [1936] W.N. 15.

PARTICULARS of an ISSUE of DEBENTURES in a Series when more than one Issue in the Series is made by ----------, LIMITED (a company registered in England).

(1) Date of Present Issue.	(2) Amount of Present Issue.	(3) Particulars as to the Amount or Rate per cent. of the Commission, Allowance, or Discount (if any) paid, or made, either directly, or indirectly, by the Company, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any of the Debentures included in this Return.*

The rate of interest payable under the terms of the Debentures should *not* be entered in this column.

Signature .....

Designation of position in relation to the Company .....

Date .....

of the holders of a series of debentures, other holders of the same series against whose security no objection can be taken will not be considered as having acquired any priority which must be protected. But they will not, on the other hand, be allowed to suffer: *e.g.* suppose a winding up supervened before the defective debentures were actually registered, so that the latter were avoided, the holders of the good debentures would not be required to accept a less share of the assets by reason of such avoidance.[1]

The fee payable on registration of a charge is ten shillings in cases where the amount of the charge does not exceed two hundred pounds, and one pound where the amount exeeeds two hundred pounds (Companies (Fees) No. 1 Order, 1929).[2]

Where more than one issue is made of debentures in a series, five shillings is required on registration of the particulars of each issue after the first.

The Registrar's certificate of the registration of any charge, stating the amount thereby secured, is conclusive[3] evidence that the requirements as to registration have been complied with (Section 82, Sub-section 2). A copy of the certificate must be endorsed on every debenture or certificate of debenture stock which is issued by the company and the payment of which is secured by the charge registered. Any person who knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock required to be registered, without this endorsement, is liable to a heavy fine. No endorsement is, however, necessary on any debenture or certificate of debenture stock which has been issued by the company before the particular charge was created (Section 83).

It is the duty of the company to lodge with the Registrar for registration the particulars of every mortgage or charge, and of the issues of debentures of a series, requiring registration. But registration of any such mortgage or charge may be made upon the application of any person interested therein, who will be then entitled to recover from the company the amount of any fees

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1 *Re* I. C. Johnston, [1902] 2 Ch. 101; *re* Joplin Brewery Co., [1902] 1 Ch. 79; *re* S. Abrahams & Sons, [1902] 1 Ch. 695

2 The Order of 1929 repeats the charge prescribed by the Board of Trade by notice advertised in the *London Gazette*, 1st January, 1901.

3 The Court will decline to go behind it (*re* Yolland, Husson & Birkett, [1907] 1 Ch. 471; affirmed [1908] 1 Ch. 152), even though the particulars furnished are defective, and the register itself not only defective but misleading (National Provincial Bank of England *v.* Charnley, [1924] 1 K. B. 131).

properly paid by him to the Registrar. Failure to comply with the requirements of the section will, unless registration is effected by some other person, expose the company, and every director, manager, secretary, or other person who is knowingly a party to the default, to a fine not exceeding fifty pounds for every day during which the default continues (Section 80).

The Register kept by the Registrar pursuant to Section 82 is open to inspection by any person on payment of the prescribed fee, not exceeding one shilling for each inspection.

Every company must keep at the registered office of the company a copy of every instrument creating any charge requiring registration under the Act. In the case of a series of uniform debentures a copy of one debenture is sufficient (Section 87). As to Inspection see page 165, *ante*.

If a debenture provides for payment of principal or interest at a particular place, the creditor must go to that place and ask for payment. If alternative places are given, the creditor must select one of them. If no place of payment is provided, the company must seek out the creditor, if within the realm, and pay him.[1]

Upon satisfactory evidence that the debt for which any registered mortgage or charge was given has been paid or satisfied, the Registrar may order that a memorandum of satisfaction be entered on the Register, and shall, if required, furnish the company with a copy thereof. Application for the memorandum of satisfaction should be made in the form shown on page 310, *post*.

In default of compliance with Section 79 of the Act as to registration of any charge created by a company, such charge will confer no security on the company's property or undertaking as against the liquidator and any creditor of the company (Sub-section 1). This principle applies even where a subsequent registered incumbrancer has express notice of the prior mortgage at the time when he took his own security.[2] The contract or obligation to repay the money is not, however, put an end to. And where a charge becomes void under the section the money becomes immediately repayable (Sub-section 1). This is an important provision in favour of the lender.

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1 See and compare Thorn *v.* City Rice Mills, 40 C. D. 357; Fowler *v.* Midland Electric Corporation [1917] 1 Ch. 656.

2 Monolithic Building Co., in *re*, [1915] 1 Ch. 643.

*No. of Company*_____ FORM No. 49.

"THE COMPANIES ACT, 1929."

DECLARATION VERIFYING MEMORANDUM OF SATISFACTION OF MORTGAGE OR CHARGE PURSUANT TO SECTION 84.

_____, LIMITED.

*Presented by*_____

We,_____, of_____, a Director of the above-named Company, and_____, of_____, the Secretary thereof, solemnly and sincerely Declare that the particulars contained in the Memorandum of Satisfaction annexed hereto, and dated_____, are true to the best of our knowledge, information, and belief.

And we make this solemn Declaration, conscientiously believing the same to be true, and by virtue of the provisions of The Statutory Declarations Act, 1835.

Declared at_____
the_____day of_____, One thousand nine hundred and_____,
before me,
_____

A Commissioner for Oaths [or *Notary Public* or *Justice of the Peace*].

MEMORANDUM OF SATISFACTION OF MORTGAGE OR CHARGE

A 5s. Companies Registration Fee Stamp must be impressed here.

_____, LIMITED, hereby gives Notice that the registered Charge being [1]_____
_____, of which Particulars were registered with the Registrar of Companies on the_____day of_____, 193 , _____ was satisfied on the_____day of_____to the extent of £_____.

IN WITNESS whereof the Common Seal of the Company was hereunto affixed the_____day of_____, One thousand nine hundred and_____, in the presence of

_____*Directors.*
_____
_____*Secretary.*

Seal of Company.

[1] Insert here a description of the Instrument(s) creating or evidencing the Charge, *e.g.* "Mortgage," "Charge," "Debenture," &c., with the date thereof. If the registered Charge was a Series of Debentures, or Debenture Stock, the words "authorised by Resolution," together with the date of the Resolution, should be added.

By Section 266 of the Act, a floating charge on the undertaking or property of the company created within six months of the commencement of winding up will, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum.

By Section 8 of The Finance Act, 1899, any company which proposes to issue any loan capital must, before such issue, deliver to the Commissioners of Inland Revenue a statement of the amount thereof. Every such statement must be charged with an *ad valorem* duty of two shillings and sixpence for every hundred pounds, and any fraction of a hundred pounds over any multiple of a hundred pounds, of the amount proposed to be secured by the issue. Duty under this section is not to be charged to the extent to which it is shown to the satisfaction of the Commissioners that the stamp duty payable in respect of a mortgage or marketable security has been paid on any trust deed or other document securing the loan capital proposed to be issued.

If any company neglect to deliver a statement, or fail to pay the duty, the company is liable to pay, in addition to the duty, a sum equal to ten per cent. upon the amount of the duty, and a like sum for every month after the first month during which the neglect or failure continues.

"Loan capital" means any debenture stock, by whatever name known, or any capital raised by any company which is borrowed, or has the character of borrowed money, whether in the form of stock or in any other form; but by Section 29 of The Finance Act, 1934, does not for the purpose of Section 8 of The Finance Act 1899 include any loan capital which is of such a description as to be incapable of being dealt in on a Stock Exchange in the United Kingdom.

"Borrowed money" within the meaning of this section does not include any bank overdraft or other loan raised for a temporary purpose for a period not exceeding twelve months.

PENALTIES.

THE following are the principal penalties imposed under the Companies Act and otherwise for various faults of commission or omission on the part of companies and their officers:—

Act or Omission.	Persons liable.	Penalty.
Failure to deliver to Registrar documents relating to alteration of Memorandum (Section 5, Sub-section 7).	The company.	£10 for every day of default.
Failure to lodge with Registrar notice of increase in number of members by company not having share capital (Section 7, Sub-section 3).	The company and every officer in default.[1]	£5 for every day of default.
Failure on revocation of licence of Association Not for Profit to eliminate words "Chamber of Commerce" from name (Section 19).	The company.	£50 for every day of default.
Not sending copy of Memorandum and Articles, or copy of any Act of Parliament which alters Memorandum, to member on request (Section 23, Sub-section 2).	The company and every officer in default.[1]	£1 for each offence.
Not substituting registered minute showing reduction of capital for corresponding part of Memorandum of Association (Section 24 and Section 58, Sub-section 6).	The company and every officer in default.[1]	£1 for every copy as to which default is made.
Failure by any private company to comply with the provisions of Section 26 (Section 27, Sub-section 1).	The company.	Loss of certain exemptions and privileges enjoyed by private companies (see pages 12 and 13, *ante*).
Failure to lodge prospectus or statement in lieu of prospectus by company which has altered its Articles so as to be no longer a private company (Section 27, Sub-section 2).	The company and every officer in default.[1]	£50.

1 "Officer in default" means "any director, manager, secretary, or other officer of the company who knowingly and wilfully authorises or permits the default, refusal, or contravention" (Section 365).

Act or Omission.	Persons liable.	Penalty.
Carrying on business with fewer than seven members, or in the case of a private company, two members, for more than six months (Section 28).	Members of company during period after the six months cognisant of the fact.	Liability to pay debts contracted after such six months.
Issuing prospectus before copy filed for registration (Section 34, Sub-section 5).	The company and every person knowingly a party to the issue of the prospectus.	£5 for every day from date of issue of prospectus until a copy is filed.
Issuing application form unaccompanied by prospectus complying with Act (Section 35).	Any person.	£500.
Neglect to return application money within forty-eight days where conditions precedent to allotment not complied with (Section 39, Sub-section 4).	Directors jointly and severally.	To repay money with interest at 5 per cent. per annum.
Allotment of shares by a public company which has not issued a prospectus, or, having issued a prospectus, has not proceeded to allot any shares, without lodging a Statement in lieu of Prospectus (Section 40, Sub-section 3).	The company and every director knowingly authorising or permitting the contravention.	£100 fine.
Contravening any of the provisions of Sections 39 and 40 with respect to allotment (Section 41).	Directors.	To compensate company and allottee.
Default in lodging with Registrar returns of allotment and contracts constituting title to shares and contracts of sale, &c. (Section 42, Sub-section 3).	Director, manager, secretary, or officer knowingly a party to default.	£50 a day.
Default in lodging with Registrar Statement as to Commission in prescribed form by company not offering shares to the public (Section 43, Sub-section 5).	The company and every officer in default.[1]	£25.
Failure to include in balance sheet statement as to commissions paid and discounts allowed (Section 44, Sub-section 2).	The company and every officer in default.[1]	£5 for every day of default.

[1] See note on page 312.

Act or Omission.	Persons liable.	Penalty.
Contravening prohibition of loans in connection with purchase of shares (Section 45, Sub-section 3).	The company and every officer in default.[1]	£100.
Contravening provisions of Act relating to redeemable preference shares (Section 46, Sub-section 2).	The company and every officer in default.[1]	£100.
Non-disclosure in prospectus, balance sheet, or annual return of discount on shares (Sub-sections 47 and 108).	The company and every officer in default.[1]	£5 for every day of default.
Default in lodging with Registrar notice of consolidation and division or sub-division of shares, of conversion of shares into stock, or reconversion of stock into shares, of cancellation of shares, or redemption of redeemable preference shares (Section 51).	The company and every officer in default.[1]	£5 for every day of default.
Failure to lodge with Registrar printed copy of resolution authorising increase of capital (Section 52, Sub-section 3).	The company and every officer in default.[1]	£5 for every day of default.
Failure to lodge with Registrar notice of increase of nominal capital (Section 52, Sub-section 3).	The company and every officer in default.[1]	£5 for every day of default.
Failure to disclose in accounts share capital on which, and rate at which, interest has been paid out of capital (Section 54).	The company and every officer in default.[1]	£50.
Concealment of name of creditor in reduction of capital (Section 60).	Director, manager, secretary, or other officer of the company privy to concealment.	Guilty of a misdemeanour.
Default in lodging with Registrar copy of order confirming or disallowing variation of rights (Section 61).	The company and every officer in default.[1]	£5 for every day of default.
Failure to give notification to transferee of refusal to register transfer of shares or debentures (Section 66, Sub-section 2).	The company and every director, manager, secretary, or other officer knowingly a party to the default.	£5 for every day of default.

[1] See note on page 312.

Act or Omission.	Persons liable.	Penalty.
Failure to have certificates of shares, debentures, and certificates of debenture stock ready for delivery as required by Section 67.	The company and every director, manager, secretary, or other officer knowingly a party to the default.	£5 for every day of default. Court may make order directing default to be made good within time specified, and order payment of costs by person responsible for default.
Personation of shareholder (Section 71).	Any person who personates.	Penal servitude for life or not less than three years.
Forgery and issue of forged warrants &c. in Scotland.[1]	Any person.	Imprisonment for life or less.
Refusing inspection of Register of Debenture Holders, or failure to forward copy of Register or of Trust Deed (Section 73, Sub-sections 4 and 5).	The company and every officer in default.[2]	£5, and £2 for every day of refusal. Court may order an immediate inspection or direct copies to be sent.
Default in lodging with Registrar particulars of charge created by company, or of issue of debentures of a series, requiring registration (Section 80, Sub-section 3).	The company and every director, manager, secretary, or other person knowingly a party to the default.	£50 for every day during which default continues.
Failure to lodge particulars of charge to which property acquired by company is subject (Section 81).	Company and every officer in default.[2]	£50 for every day of default.
Authorising or permitting delivery of debenture or certificate of debenture stock required to be registered without copy of certificate of registration endorsed thereon (Section 83, Sub-section 2).	Any person authorising or permitting delivery.	£100.
Failure of person obtaining order for appointment of, or under powers contained in any instrument appointing, receiver or manager, to give notice of the fact to the Registrar (Section 86, Sub-section 3).	Person obtaining order or making appointment.	£5 for every day of default.

[1] The Forgery Act, 1913, prohibits in England the offences set out in the section, but that Act does not apply to Scotland.

[2] See note on page 312.

Act or Omission.	Persons liable.	Penalty.
Failure of person appointed receiver or manager under powers contained in any instrument to give notice of ceasing to act (Section 86, Sub-section 3).	Person appointed.	£5 for every day of default.
Not keeping proper Register of Charges (Section 88, Sub-section 2).	Director, manager, or other officer of company knowingly and wilfully authorising or permitting default.	£50.
Refusing to allow inspection of Register of Charges or of copies of instruments requiring registration (Section 89, Sub-sections 2 and 3).	Officer refusing, and directors and managers knowingly and wilfully authorising refusal.	£5, and £2 for every day of refusal. The Court may in relation to a company registered in England order immediate inspection.
Default in lodging with Registrar particulars of charges created by company, or existing on property acquired by company, prior to 1st November, 1929, which would require registration if created or acquired after that date (Section 91).	The company and every director, manager, secretary, or other officer or person knowingly a party to the default.	£50 for every day of default.
Not having registered office or giving notice of the situation thereof or of any change therein (Section 92).	The company and every officer in default.[1]	£5 a day.
Non-publication of name by company (Section 93, Sub-section 2).	The company and every officer in default.[1]	£5 for non-publication and £5 for every day of neglect.
Using Seal, issuing official publications or documents not bearing name of company (Section 93, Sub-sections 3 and 4).	The company and every director, manager, or officer, and any person acting on company's behalf.	£50. Personal liability to holder of bill of exchange &c.
Commencing business or exercising borrowing powers in contravention of Section 94 (Sub-section 6).	Every person responsible for contravention.	£50 a day.[2]
Not keeping proper Register of Members (Section 95, Sub-section 2).	The company and every officer in default.[1]	£5 for every day of default.

[1] See note on page 312.

[2] Does not apply to private company, company registered before January, 1901, or to company registered before July, 1908, which has not issued a prospectus.

Act or Omission.	Persons liable.	Penalty.
Default in having index to Register where more than fifty members and Register not kept in alphabetical order (Section 96, Sub-section 3).	The company and every officer in default.[1]	£5 for every day of default.
Refusal to allow inspection of or to furnish a copy of Register of Members or index thereto (Section 98, Sub-section 3).	The company and every officer in default.[1]	£2, and £2 for every day of refusal. The Court may order an immediate inspection or direct copies to be sent.
Failure to lodge notice of situation of office where any dominion register is kept or of change therein (Section 103, Sub-section 3).	The company and every officer in default.[1]	£5 for every day of default.
Failure to transmit to registered office copy of entries in dominion register (Section 104).	Company and officers.	£5 for every day of default.
Not making and lodging annual return under Section 108 by company having share capital (Section 110).	The company and every officer in default.[1]	£5 for every day of default.
Not making and lodging annual return under Section 109 by company not having share capital (Section 110).	The company and every officer in default.[1]	£5 for every day of default.
Failure to hold general meeting in every calendar year (Section 112, Sub-section 2).	The company and every director or manager.	£50.
Default in lodging statutory report and holding the statutory meeting (Section 113, Sub-section 9).	Directors responsible for default.	£50.
Failure to convene meeting on requisition therefor (Section 114).	Directors.	Liable to refund to requisitionists costs of convening meeting.
Failure to lodge with the Registrar printed copy of special or extraordinary resolution or any other resolution or any agreement required to be so lodged (Section 118, Sub-sections 1, 4 and 5).	The company and every officer in default.[2]	£2 for every day after the expiration of fifteen days from the passing of the resolution or making of the agreement.

[1] See note on page 312.

[2] See note on page 312. For the purposes of this provision a liquidator is deemed to be an officer (Section 118, Sub-section 7).

Act or Omission.	Persons liable.	Penalty.
Not embodying in or annexing to Articles resolution or agreement or forwarding printed copy thereof, where no Articles, to member requesting the same (Section 118).	The company and every officer in default.[1]	£1 for each copy in respect of which default is made,
Refusal to allow inspection of Minutes of General Meetings or to furnish copy (Section 121, Sub-sections 1, 3, and 4).	The company and every officer in default.[2]	£2, and £2 for every day of default. Court may order immediate inspection or direct copies to be sent.
Failure to keep proper books of account (Section 122, Sub-section 3).	Every director failing to take steps to secure compliance or by his wilful act causing default.	Six months imprisonment or fine of £200.
Failure to prepare and lay before company balance sheet or profit and loss account, or income and expenditure account (Section 123, Sub-section 3).	Director failing to take steps to secure compliance.	Six months imprisonment or fine of £200.
Issuing, circulating, or publishing copy of balance sheet either unsigned or without attaching thereto copy of auditor's report (Section 129, Sub-section 3).	The company and every director, manager, secretary, or other officer knowingly a party to the default.	Fine not exceeding £50.
Failure in the case of a public company (*a*) to send copy of balance sheet prior to meeting to persons entitled to notice of meeting, or (*b*) to furnish copy on request to member or holder of debentures (Section 130).	(*a*) The company and every officer in default.[2] (*b*) The company and every director, manager, secretary, or other officer knowingly a party to the default.	(*a*) £20. (*b*) £5 for every day of default.
Failure in the case of a private company to furnish on request and payment therefor copy of balance sheet (Section 130).	The company and every officer in default.[2]	£5 for every day of default.
Non-publication of statement by banking or insurance companies, and deposit, provident, or benefit societies (Section 131, Sub-section 4).	The company and directors and managers knowingly and wilfully authorising or permitting default.	£5 for every day of default.

[1] See note on page 312. For the purposes of this provision a liquidator is deemed to be an officer (Section 118, Sub-section 7).

[2] See note on page 312.

Act or Omission.	Persons liable.	Penalty.
Body corporate acting as auditor (Section 133). A director or officer or (except in case of a private company) partner or employee of director or officer is not qualified for office of auditor, but no penalty is imposed by Act.	Body corporate.	£100.
Refusal to produce books &c. to inspectors appointed by Board of Trade or by special resolution of the company (Section 135, Sub-section 5, and Section 137, Sub-section 3).	Officers and agents of the company.	Liable to punishment as for contempt of Court.
Insertion in List of Directors, on application to register a public company, of name of person who has not consented to act (Section 140, Sub-section 3).	Applicant for registration.	£50.
Unqualified person acting as director in contravention of Section 141, Sub-section 5.	Person so acting.	£5 a day.
Undischarged bankrupt acting as director or taking part in management without leave of Court (Section 142).	Person so acting.	Imprisonment and/or fine of £500.
Not keeping Register of Directors (Section 144, Sub-section 4).	The company and every officer in default.[1]	£5 for every day of default.
Not lodging particulars of directors or any change therein (Section 144, Sub-section 4).	The company and every officer in default.[1]	£5 for every day of default.
Refusal to allow inspection of Register of Directors or Managers (Section 144).	The company and every officer in default.[1]	£5 for every day of default. Court may compel immediate inspection.
Failure to state in trade catalogues, circulars, &c., particulars of directors required by Act (Section 145, Sub-section 3).	Every director (or in the case of a corporation director, every director, secretary, and officer of that corporation knowingly a party to the default).	£5 for each offence
Not adding statement to proposal on election of director that his liability will be unlimited (Section 146).	Directors, managers, and proposers.	Fine not exceeding £100 and damages.

1 See note on page 312.

Act of Omission.	Persons liable.	Penalty.
Not giving notice to director on his election that his liability will be unlimited (Sect. 146).	Promoters, directors, managers, and secretary.	Fine not exceeding £100 and damages.
Not embodying in copy of Memorandum of Association furnished to member special resolution as to unlimited liability of the directors (Sections 147 and 24).	The company and every officer of the company in default.	£1 for every copy as to which default is made.
Failure to comply with demand for statement as to remuneration of directors (Section 148, Sub-section 3).	Director in default.	Fine of £50.
Failure of director to disclose interest in contract with company (Section 149, Sub-section 4).	Director in default.	Fine of £100.
Failure to include particulars of compensation to directors in notice to shareholders of offer for shares (Section 150).	Director or person responsible for failure.	£25.
Default in lodging with Registrar copy of order of Court sanctioning reconstruction or annexing a copy to every copy of the Memorandum or instrument constituting or defining the constitution of the company issued thereafter (Section 153, Sub-section 4).	The company and every officer in default.[1]	£1 for each copy issued.
Default in lodging copy of Order of Court in respect of reconstruction or amalgamation (Section 154, Sub-section 3).	The company and every officer who is in default.[1]	£5 for every day of default.
Default in lodging statutory report or holding statutory meeting of public company (Section 171).	Persons responsible for default.	Liability to pay costs where petition for winding up presented.
Failure to furnish statement of company's affairs to Official Receiver (Section 181, Sub-section 5).	Person making default.	£10 for every day of default.
Untruthfully stating himself to be a creditor or contributory (Section 181, Sub-section 7).	Person so stating.	Punished as for contempt of Court.
Retention by liquidator of sums in excess of amount authorised (Section 194).	Liquidator.	To pay interest at 20 per cent. on amount so retained, to lose remuneration, and be removed from office.

[1] See note on page 312.

Act or Omission.	Persons liable.	Penalty.
Acting as director in contravention of Order forbidding person to take part in management of company (Section 217, Sub-section 4)	Person so acting.	Imprisonment and/or fine of £500.
Failure in winding up by Court to report Order of Court dissolving company to Registrar (Section 221).	Liquidator.	£5 for every day of default.
Default in giving notice by advertisement of resolution for voluntary winding up (Section 226).	The company and every officer in default.[1] For the purposes of this section a liquidator is deemed an officer.	£5 for every day of default.
Failure in a members' winding up to hold meeting at end of first year from commencement of winding up and each succeeding year (Section 235, Sub-section 2).	Liquidator.	£10.
Failure in members' winding up by liquidator to lodge return with Registrar at conclusion of winding up (Section 236, Sub-section 3).	Liquidator.	£5 for every day of default.
Failure in members' winding up of person obtaining order deferring date of dissolution or annulling dissolution of company, to lodge office copy of order within seven days with the Registrar (Section 236, Sub-section 5).	The person on whose application such order was made.	£5 for every day of default.
Failure in a creditors' winding up to convene and advertise meeting of creditors and otherwise comply with requirements of Section 238.	Company, or the director or directors as the case may be.	£100.
Failure in creditors' winding up by liquidator to call meeting at end of first year and each succeeding year (Section 244).	Liquidator.	£10.
Failure in creditors' winding up by liquidator to lodge returns with Registrar at conclusion of winding up (Section 245).	Liquidator.	£5 for every day of default.

[1] See note on page 312.

Act or Omission.	Persons liable.	Penalty.
Failure in creditors' winding up of person obtaining order deferring dissolution or annulling dissolution of company to lodge office copy with Registrar (Section 245).	The person on whose application order was made.	£5 for every day of default.
Failure of liquidator in voluntary winding up to lodge with Registrar notice of his appointment within twenty-one days thereafter (Section 250, Sub-section 2).	The liquidator.	£5 for every day of default.
Offences in relation to affairs of company before or during winding up (Section 271).	Past or present director,[1] manager, or other officer.	Imprisonment and fines.
Destruction, mutilation, or falsification of books (Section 272).	Directors, managers, officers, and contributories.	Guilty of a misdemeanour, and liable to imprisonment for two years, with or without hard labour.
Fraud by officers of company which has gone into liquidation (Section 273).	Any person a director, manager, or other officer when offence committed.	Imprisonment.
Failure during two years preceding winding up to keep proper books of account (Section 274).	Every director, manager, and other officer knowingly a party to the default.	Imprisonment.
Carrying on business with intent to defraud creditors or others or for other fraudulent purposes (Section 275).	Directors,[1] past or present.	Court may order guilty persons to be personally liable for debts of company. Liable also to imprisonment.
Acting as director in contravention of order of Court (Section 275).	Any person.	Imprisonment.
Misapplication of money or property of company (Section 276).	Persons taking part in formation or promotion of company and any past or present director, manager, liquidator, or other officer.	Liable in damages, notwithstanding liability to criminal prosecution.
Failure to give assistance in prosecution of delinquent directors (Section 277).	Person in default.	Liable to pay costs of application to Court to enforce section.

1 Includes any person in accordance with whose directions or instructions the directors have been accustmed to act.

Act or Omission.	Persons liable.	Penalty.
Body corporate acting as liquidator (Section 278).	Body corporate.	£100.
Failure to disclose in every invoice or order for goods or business letter that company is being wound up (Section 280).	The company and every director, manager, secretary, or other officer, and every liquidator and every receiver or manager knowingly or wilfully authorising or permitting the default.	£20.
Contravention of Board of Trade Order as to disposal of books (Section 283).	Any person.	£100.
Failure by liquidator to make periodical statement of proceedings (Section 284, Sub-section 3).	Liquidator.	£50 for every day of default.
Falsely claiming to be a creditor or contributory (Section 284, Sub-section 3).	Any person.	Punished as for contempt of Court.
Failure to lodge copy of order of Court declaring dissolution void (Section 294).	Person on whose application order made.	£5 for every day of default.
Body corporate acting as receiver (Section 306).	Body corporate.	£100.
Failure to show on invoices &c. that receiver or manager appointed (Section 308).	The company and every director, manager, secretary, or other officer, and every liquidator and every receiver or manager.	£20.
Failure of receiver or manager appointed under powers contained in instrument to lodge with Registrar abstract of receipts and payments whilst acting as receiver or manager and on ceasing to so act (Section 310).	The receiver or manager.	£5 for every day of default.
Failure of company to make any return required by Act to be made (Section 315).	The company and officers responsible for default.	On application by member or creditor or Registrar Court may order default to be made good and persons responsible to pay costs.

Act or Omission.	Persons liable.	Penalty.
Failure to comply with requirements of Part XI of the Act by companies incorporated outside Great Britain having a place of business in Great Britain (Section 351).	The company and every officer or agent of the company.	£50, or £5 for every day during which the failure continues.
Offering shares of foreign companies unlawfully (Section 354).	Any person.	£500.
House-to-house offer of shares for subscription or sale, or offer without specified particulars (Section 356).	Persons guilty.	Imprisonment and fine.
False statements in returns &c. (Section 362).	Persons making.	Fine, with or without imprisonment.
Trading under name of which "Limited" is last word without being duly incorporated with limited liability (Section 364).	The person or persons so trading.	£5 for every day upon which such name has been used.
Neglect to set forth facts and circumstances affecting stamp duty (Stamp Act, 1891, Section 5).	Persons neglecting &c. and persons executing instruments not setting forth &c., with intent to defraud.	£10.
Neglect to cancel adhesive stamp (Stamp Act, 1891, Section 8, Sub-section 3).	Person required by law to cancel.	£10.
Registering or entering instrument not duly stamped (Stamp Act, 1891, Section 17).	The person whose office it is to register or enter.	£10.
Executing, granting, issuing, or delivering out unstamped letter of allotment, letter of renunciation, scrip certificate, or scrip (Stamp Act, 1891, Section 79).	Any person who makes default.	£20.
Using unstamped proxy (Stamp Act, 1891, Section 80, Sub-section 3).	Every person making, executing, voting, or attempting to vote by.	£50.
Giving a receipt liable to duty not duly stamped or refusing to give receipt duly stamped (Stamp Act, 1891, Section 103).	Any person who gives such receipt.	£10.

Act or Omission.	Persons liable.	Penalty.
Issuing share warrant or instrument to bearer having like effect, not duly stamped (Stamp Act, 1891, Section 107; Finance Act, 1899, Section 5).	The company, and managing director, secretary, or other principal officer.	£50.
Issuing stock certificate to bearer, or instrument having like effect, not duly stamped (Stamp Act, 1891, Section 109; Finance Act, 1899, Section 5).	Any person issuing.	£50.
Neglect to deliver a statement of loan capital (Finance Act, 1890, Section 8).	The company.	£10 per cent. in addition to the duty, and a like sum for every month after the first month during which default continues.
Assigning &c. instruments chargeable with duty under Section 4 of Finance Act, 1899, not duly stamped.	Any person so assigning.	£20.
Not stamping and filing statement of increase of capital (Revenue Act, 1903).	The company.	Amount of duty with interest at 5 per cent. per annum from date of passing resolution, recoverable as a debt to His Majesty.
Non-compliance with Assurance Companies Act, 1909 (The Act, Section 23).	The company and every director, manager, secretary or other officer or agent of the company knowingly a party to the default.	£100, or, in case of continuing default, £50 for every day of default. If continued for three months after notice, ground for winding up.
Forging &c. share warrants and coupons (Forgery Act, 1913).	Any person who forges, &c.	Fourteen years or less sentence.
Perjury (Section 281; and The Perjury Act, 1911).	Any person who commits.	Penalties of wilful perjury.
Knowingly signing document false in any particular and required by The Assurance Companies Act (Section 24).	Persons signing.	Guilty of a misdemeanour; fine and imprisonment, or fine of £50.

STAMPS.[1]

ALL duties, except where express provision is made to the contrary, are to be denoted by impressed stamps only (Stamp Act, 1891, Section 2). Impressed stamps are therefore the rule, and adhesive the exception.

An instrument the duty upon which is required (or permitted) to be denoted by an adhesive stamp is not properly stamped unless the person required to cancel such adhesive stamp does so by writing on or across it his name or initials, or the name or initials of his firm, together with the true date of his so writing. The penalty for neglect is ten pounds.

An adhesive stamp cannot, as a rule, be affixed to an instrument after signature or delivery, but persons to whom bills of exchange payable on demand are presented unstamped may stamp the same.

From what has been said it will be seen that where an impressed stamp is used signature alone is necessary; where the stamp is adhesive, cancellation as well as signature is required. In practice, therefore, impressed are nearly always used in preference to adhesive stamps.

An appropriated stamp is a stamp which, by words on the face of it, is appropriated to any particular description of instrument.

Where the duty with which an instrument is chargeable depends on the duty paid upon another instrument, the duty may, upon application to the Commissioners of Inland Revenue, be denoted by means of a denoting stamp.

The Commissioners may adjudge the stamp duty to which any deed or instrument is liable, and affix a stamp denoting it to be properly stamped, after which the sufficiency of the duty cannot be questioned. The Commissioners may also adjudge deeds as not being liable to stamp duty.

Secretaries of companies are required to see that instruments chargeable with stamp duty are properly stamped before registration or entry. If there is any reason to doubt the sufficiency

[1] The particulars of the stamps on various instruments are given briefly on pages 342 *et seq. post*, under the heading "SUMMARY OF DUTIES ON VARIOUS DOCUMENTS," to which the reader's attention is especially directed.

of the stamp affixed to any document (*e.g.* a transfer deed), the secretary should make inquiry before accepting the document.

A company is not bound by the consideration stated in the transfer. Registration may be properly refused if the stamp is not adequate to the real consideration.[1]

The Registrar of Companies will decline to register a document which he considers improperly stamped.[2] In any case of doubt the Board of Inland Revenue may be asked to adjudicate upon and assess the duty. The stamp duties charged upon registered bonds, mortgages, debentures, and other securities for money which are transferable only by instrument of transfer; upon bonds, debentures, and other securities payable to bearer, or transferable otherwise than by an instrument of transfer; and upon substituted securities, are set out in Table III, page 337, *post.*

Persons executing instruments in which all the facts and circumstances affecting their liability to *ad valorem* duty, or the amount of such duty, are not fully stated, or who, being employed or concerned in the preparation of any instrument, neglect to set forth such facts and circumstances, are liable to a penalty of ten pounds.

In the case of substituted securities of any description chargeable with a reduced rate of duty, the duty can only be impressed thereon upon presentation at the chief Stamp Office in London of both the original and substituted securities.

Transfers on sale of any stock, shares, or marketable securities of any kind are chargeable with stamp duty according to Table IV, page 338, *post.*

A marketable security means a security of such a description as to be *capable of being sold* in any stock market in the United Kingdom. A security is *capable of being sold* in a stock market although there may be no quotation in any official list.

As to the stamp where debentures are redeemable at a sum in excess of amount advanced see page 296, *ante.*

Bills of exchange and promissory notes are subject to the following regulations: A stamp of twopence, which may be adhesive, is necessary for a bill of exchange payable on demand or at sight, or on presentation, or within three days after date

[1] Maynard *v.* Kent Collieries Corporation, [1900] 2 K. B. 121.
[2] The Queen *v.* The Registrar of Joint Stock Companies, 21 Q. B. D. 131.

or sight. Bills of exchange of any other kind, and promissory notes drawn or expressed to be payable, or actually paid, or endorsed, or in any manner negotiated in Great Britain and Northern Ireland, are chargeable with *ad valorem* duty according to Table V, page 339, *post*.

The Stamp Act, 1891, Section 115, empowers the Commissioners of Inland Revenue, if in their discretion they think proper, to agree with companies for the composition of the stamp duties chargeable on transfers of their stock and shares; and on share warrants, on payment of the duty of sixpence per cent. half-yearly on the nominal amount of all the stock and shares of the company, or the paid-up amount thereof if the whole sums payable in respect thereof have not been paid up.

Sub-section 6 of Section 115 of The Stamp Act, 1891, further empowers any company entering into an agreement for composition to charge the full amount of duty upon any transfer or upon the issue of any share warrant or stock certificate which would have been chargeable if no such agreement had been entered into, in addition to the usual transfer fee or fee chargeable by the company for the issue of such a warrant or certificate.

Applications for permission to compound for stamp duties should be addressed to the Secretary to the Board of Inland Revenue, Somerset House, London, and should contain the following particulars:—

1. Date of registration.
2. Number of shares.
3. Nominal amount of shares.
4. The amount paid up on each share.
5. Present market value of shares.
6. Whether it is proposed to register transfers of the shares on the same terms as at present, or to charge an equivalent of the stamp duty under the authority given by Section 115 of The Stamp Act, 1891.
7. The amount of stamp duty paid on transfers during each of the past three years, or from the date of registration of the company if within that period.

The following is a form of an account to be delivered with a view to composition:—

AN ACCOUNT OF THE SHARES, STOCK, AND FUNDED DEBT OF THE _____, delivered in pursuance of Section 115 of The Stamp Act, 1891 (54 & 55 Vict., Ch. 39).

Description of Shares, Stock, and Funded Debt.	Number of Shares or nominal amount of Stock (as the case may be).	Nominal amount of each Share.	Amount paid in respect of each Share, or in respect of each £100 of Stock.	Total Amount paid.

Total amount of the Shares, Stock, and Funded Debt in respect of which payment has been made } £

I declare that the above is a full and true account of all the Shares, Stock, and Funded Debt of The _____ existing at this date.

Name _____

Address _____

Date _____

I certify that the duty, at the rate of One Shilling for every £100, and any fractional part of £100, payable half-yearly in respect of the above Stock, for the period from _____ to _____ is £_____.

_____

Accountant and Comptroller-General.

Assess the duty at _____

The nominal capital of a company limited by shares is liable to capital duty and fee stamps.[1] As to capital duty The Stamp Act, 1891, enacts that there must be delivered to the Registrar of Companies a statement of the amount of nominal capital to be raised by shares of any company to be registered with limited liability, and a statement of the amount of any increase of registered capital of any company now registered or to be registered, and every such statement is charged with an *ad valorem* stamp duty of ten shillings for every one hundred pounds and any fraction of one hundred pounds of the amount of such capital or increase of capital as the case may be.[2] This duty is shown in the second column of Table I, given on page 333, *post.*

The fees (called " fee stamps " or " registration stamps ") payable to the Registrar of Companies upon registration under the Act are set out in three Tables which are given in the Tenth Schedule to the Act, as follows:—

I. By a Company Having a Share Capital.

	£	s.	d.
For registration of a Company the nominal share capital of which does not exceed £2000	2	0	0
For registration of a Company the nominal share capital of which exceeds £2000, the following fees, regulated according to the amount of nominal share capital: that is to say—			
For every £1000 of nominal share capital, or part of £1000, up to £5000 . . .	1	0	0
For every £1000 of nominal share capital, or part of £1000, after the first £5000, up to £100,000	0	5	0
For every £1000 of nominal share capital, or part of £1000, after the first £100,000 .	0	1	0
For registration of any increase of share capital made after the first registration of the Company, the same fees per £1000, or part of £1000, as would have been payable if the increased share capital had formed part of the original share capital at the time of registration:			

1 As to nominal capital see page 168, *ante.*

2 Stamp Act, 1891, Section 112, as amended by The Finance Act, 1899, Section 7, The Finance Act, 1920, Section 39, and The Finance Act, 1933, Section 41.

	£	s.	d.
Provided that no Company shall be liable to pay in respect of nominal share capital, on registration or afterwards, any greater amount of fees than £50, taking into account in the case of fees payable on an increase of share capital after registration the fees paid on registration.			
For registration of any existing Company, except such companies as are by the Act exempted from payment of fees in respect of registration under the Act, the same fee as is charged for registering a new Company.			
For registering any document by the Act required or authorised to be registered or required to be delivered, sent, or forwarded to the Registrar other than the Memorandum or the abstract required to be delivered to the Registrar by a receiver or manager, or the statement required to be delivered to the Registrar by the liquidator in a winding up in England	0	5	0
For making a record of any fact by this Act required or authorised to be recorded by the Registrar . . .	0	5	0

The fees payable on the Memorandum of Association in accordance with the foregoing Table are shown in the third column of Table I, page 333, *post*.

In addition to the capital duty and fee stamps, a further deed stamp of ten shillings must be impressed on the Memorandum of Association.

II. By a Company Not Having a Share Capital.

	£	s.	d.
For registration of a Company the number of Members of which, as stated in the Articles, does not exceed 25 . . .	2	0	0
For registration of a Company the number of Members of which, as stated in the Articles, exceeds 25 but does not exceed 100, the above fee of £2 with an additional £1 for every additional 25 members or less after the first 25.			
For registration of a Company the number of Members of which, as stated in the Articles, exceeds 100, but is not stated to be unlimited, a fee of £5, with an additional 5s. for every additional 50 Members or less after the first 100.			
For registration of a Company in which the number of Members is stated in the Articles to be unlimited	20	0	0
For registration of any increase in the number of Members made after the registration of the Company in respect of every 50 Members, or less than 50 Members, of that increase .	0	5	0

	£	s.	d
[Provided that no Company shall be liable to pay on the whole a greater fee than £20 in respect of its number of Members, taking into account the fee paid on the first registration of the Company.]			
For registration of any existing Company, except such Companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new Company.			
For registering any document by this Act required or authorised to be registered or required to be delivered, sent, or forwarded to the Registrar, other than the Memorandum or the abstract required to be delivered to the Registrar by a receiver or manager, or the statement required to be delivered to the Registrar by the liquidator in a winding up in England	0	5	0
For making a record of any fact by this Act required or authorised to be recorded by the Registrar . . .	0	5	0

The fee stamps payable on the Memorandum of Association in accordance with the foregoing Table are shown in Table II given on page 336, post.

III. By a Company to which Part XI[1] of the Act Applies.

	£	s.	d.
For registering any document required to be delivered to the Registrar under Part XI (except documents required to be delivered under Section 353)	0	5	0

TABLE I.[2]

Showing the amount of Duties and Fees payable on the Registration of the Memorandum and Articles[3] of Association of a Company Limited by Shares, and on the prescribed Forms of Declaration of Compliance with Requirements of the Act (Form No. 41) and Statement of Nominal Capital (Form No. 25) on which the *ad valorem* duty on Capital is impressed[4]:—

[1] Part XI deals with companies incorporated outside Great Britain carrying on business in Great Britain.

[2] See also page 336, *post*.

[3] Where special Articles are not registered with the Memorandum the total amount will in each case be 15s. less than above stated.

[4] For stamps payable on Registration of Forms required under the Companies Acts see page 335, *post*.

Nominal Capital.	Duty on Capital.	Fee Stamp on Memo. of Assn.	Deed Stamp on Memo.	Deed Stamp on Articles.	Fee Stamp on Articles.	Fee Stamp on Declaration of Compliance.	Total Duty and Fees.
£100	£0 10s.	£2 0	10s.	10s.	5s.	5s.	£4 0
500	2 10	2 0	10s.	10s.	5s.	5s.	6 0
1,000	5 0	2 0	10s.	10s.	5s.	5s.	8 10
1,500	7 10	2 0	10s.	10s.	5s.	5s.	11 0
2,000	10 0	2 0	10s.	10s.	5s.	5s.	13 10
2,500	12 10	3 0	10s.	10s.	5s.	5s.	17 0
3,000	15 0	3 0	10s.	10s.	5s.	5s.	19 10
3,500	17 10	4 0	10s.	10s.	5s.	5s.	23 0
4,000	20 0	4 0	10s.	10s.	5s.	5s.	25 10
4,500	22 10	5 0	10s.	10s.	5s.	5s.	29 0
5,000	25 0	5 0	10s.	10s.	5s.	5s.	31 10
5,500	27 10	5 5	10s.	10s.	5s.	5s.	34 5
6,000	30 0	5 5	10s.	10s.	5s.	5s.	36 15
6,500	32 10	5 10	10s.	10s.	5s.	5s.	39 10
7,000	35 0	5 10	10s.	10s.	5s.	5s.	42 0
7,500	37 10	5 15	10s.	10s.	5s.	5s.	44 15
8,000	40 0	5 15	10s.	10s.	5s.	5s.	47 5
8,500	42 10	6 0	10s.	10s.	5s.	5s.	50 0
9,000	45 0	6 0	10s.	10s.	5s.	5s.	52 10
9,500	47 10	6 5	10s.	10s.	5s.	5s.	55 5
10,000	50 0	6 5	10s.	10s.	5s.	5s.	57 15
11,000	55 0	6 10	10s.	10s.	5s.	5s.	63 0
12,000	60 0	6 15	10s.	10s.	5s.	5s.	68 5
13,000	65 0	7 0	10s.	10s.	5s.	5s.	73 10
14,000	70 0	7 5	10s.	10s.	5s.	5s.	78 15
15,000	75 0	7 10	10s.	10s.	5s.	5s.	84 0
16,000	80 0	7 15	10s.	10s.	5s.	5s.	89 5
17,000	85 0	8 0	10s.	10s.	5s.	5s.	94 10
18,000	90 0	8 5	10s.	10s.	5s.	5s.	99 15
19,000	95 0	8 10	10s.	10s.	5s.	5s.	105 0
20,000	100 0	8 15	10s.	10s.	5s.	5s.	110 5
25,000	125 0	10 0	10s.	10s.	5s.	5s.	136 10
30,000	150 0	11 5	10s.	10s.	5s.	5s.	162 15
35,000	175 0	12 10	10s.	10s.	5s.	5s.	189 0
40,000	200 0	13 15	10s.	10s.	5s.	5s.	215 5
45,000	225 0	15 0	10s.	10s.	5s.	5s.	241 10
50,000	250 0	16 5	10s.	10s.	5s.	5s.	267 15
55,000	275 0	17 10	10s.	10s.	5s.	5s.	294 0
60.000	300 0	18 15	10s.	10s.	5s.	5s.	320 5
65,000	325 0	20 0	10s.	10s.	5s.	5s.	346 10
70,000	350 0	21 5	10s.	10s.	5s.	5s.	372 15
75,000	375 0	22 10	10s.	10s.	5s.	5s.	399 0
80,000	400 0	23 15	10s.	10s.	5s.	5s.	425 5
85,000	425 0	25 0	10s.	10s.	5s.	5s.	451 10
90,000	450 0	26 5	10s.	10s.	5s.	5s.	477 15
95,000	475 0	27 10	10s.	10s.	5s.	5s.	504 0

Nominal Capital.	Duty on Capital.	Fee Stamp on Memo. of Assn.	Deed Stamp on Memo.	Deed Stamp on Articles.	Fee Stamp on Articles.	Fee Stamp on Declaration of Compliance.	Total Duty and Fees.
£100,000	£500	£28 15	10s.	10s.	5s.	5s.	£530 5
110,000	550	29 5	10s.	10s.	5s.	5s.	580 15
120,000	600	29 15	10s.	10s.	5s.	5s.	631 5
125,000	625	30 0	10s.	10s.	5s.	5s.	656 10
130,000	650	30 5	10s.	10s.	5s.	5s.	681 15
140,000	700	30 15	10s.	10s.	5s.	5s.	732 5
150,000	750	31 5	10s.	10s.	5s.	5s.	782 15
160,000	800	31 15	10s.	10s.	5s.	5s.	833 5
170,000	850	32 5	10s.	10s.	5s.	5s.	883 15
175,000	875	32 10	10s.	10s.	5s.	5s.	909 0
180,000	900	32 15	10s.	10s.	5s.	5s.	934 5
190,000	950	33 5	10s.	10s.	5s.	5s.	984 15
200,000	1000	33 15	10s.	10s.	5s.	5s.	1035 5
225,000	1125	35 0	10s.	10s.	5s.	5s.	1161 10
250,000	1250	36 5	10s.	10s.	5s.	5s.	1287 15
275,000	1375	37 10	10s.	10s.	5s.	5s.	1414 0
300,000	1500	38 15	10s.	10s.	5s.	5s.	1540 5
325,000	1625	40 0	10s.	10s.	5s.	5s.	1666 10
350,000	1750	41 5	10s.	10s.	5s.	5s.	1792 15
375,000	1875	42 10	10s.	10s.	5s.	5s.	1919 0
400,000	2000	43 15	10s.	10s.	5s.	5s.	2045 5
425,000	2125	45 0	10s.	10s.	5s.	5s.	2171 10
450,000	2250	46 5	10s.	10s.	5s.	5s.	2297 15
475,000	2375	47 10	10s.	10s.	5s.	5s.	2424 0
500,000	2500	48 15	10s.	10s.	5s.	5s.	2550 5
525,000	2625	50 0	10s.	10s.	5s.	5s.	2676 10
550,000	2750	50 0	10s.	10s.	5s.	5s.	2801 10
600,000	3000	50 0	10s.	10s.	5s.	5s.	3051 10
650,000	3250	50 0	10s.	10s.	5s.	5s.	3301 10
700,000	3500	50 0	10s.	10s.	5s.	5s.	3551 10
750,000	3750	50 0	10s.	10s.	5s.	5s.	3801 10
800,000	4000	50 0	10s.	10s.	5s.	5s.	4051 10
850,000	4250	50 0	10s.	10s.	5s.	5s.	4301 10
900,000	4500	50 0	10s.	10s.	5s.	5s.	4551 10
950,000	4750	50 0	10s.	10s.	5s.	5s.	4801 10
1,000,000	5000	50 0	10s.	10s.	5s.	5s.	5051 10

And so on at the rate of 10s. further capital duty for every additional £100, or fraction of £100, up to any amount. In the case of the fee stamp on the Memorandum the maximum is £50.

Should the capital be subsequently increased, further duty must be paid thereon at the specified rate, and (unless the maximum fee stamp of £50 has been reached), the same fees are required per £1000, or part of £1000, as would have been

payable if such increased capital had formed part of the original capital at the time of registration. The forms required to be lodged are set out on pages 171 and 172, *ante*.

In addition to the Stamp Duties and Fees above set out, a registration stamp of 5s. is payable on each of the following documents required (according to circumstances) under the Companies Act: viz.—

Notice of Situation of Registered Office (to be lodged within twenty-eight days of incorporation of company, or of any change in situation of office), Form 4;

Particulars of Directors (within fourteen days of appointment of first directors, or fourteen days of any change among the directors or in the particulars recorded in the Register of Directors), Form 9;

[1] Return of Allotments, Form 45.

And in the case of a public company the further documents or forms: viz.—

Prospectus; or

Statement in Lieu of Prospectus, Form 55;

Consent to act as Director where directors are named in the Articles, Form 42;

[1] Undertaking in writing by Directors to take and pay for Qualification Shares (where directors are named in the Articles but have not subscribed the Memorandum for shares to the amount of this qualification); Agreement Stamp in addition, Form 42A;

List of Persons who have consented to be Directors, Form 43;

[1] Declaration made on behalf of a Public Company before commencement of business, Form 44 (where company has issued prospectus) or Form 44A (where company has lodged Statement in Lieu of Prospectus).

Report prior to Statutory Meeting, Form 46.

[1] Not required to be filed by a Company Limited by Guarantee and not having a Capital divided into Shares (see page 337).

TABLE II.

Showing the Fees payable on the Registration of a Company not having a Capital divided into Shares:—

			£	s.	d
Where the number of Members as stated in the Articles of Association does not exceed		25	2	0	0
Exceeds	25 and does not exceed	50	3	0	0
„	50 „	75	4	0	0
„	75 „	100	5	0	0
„	100 „	150	5	5	0
„	150 „	200	5	10	0
„	200 „	250	5	15	0
„	250 „	300	6	0	0
„	300 „	350	6	5	0
„	350 „	400	6	10	0
„	400 „	450	6	15	0
„	450 „	500	7	0	0
„	500 „	550	7	5	0
„	550 „	600	7	10	0
„	600 „	650	7	15	0
„	650 „	700	8	0	0
„	700 „	750	8	5	0
„	750 „	800	8	10	0
„	800 „	850	8	15	0
„	850 „	900	9	0	0
„	900 „	950	9	5	0
„	950 „	1000	9	10	0
„	1000 „	1050	9	15	0
„	1050 „	1100	10	0	0
„	1100 „	1150	10	5	0
„	1150 „	1200	10	10	0
„	1200 „	1250	10	15	0
„	1250 „	1300	11	0	0
„	1300 „	1350	11	5	0
„	1350 „	1400	11	10	0

And an additional fee of 5s. for every 50 members, or less number than 50 members, up to 3100, which takes the maximum fee of £20.

For registration of a company in which the number of members is stated in the Articles of Association to be unlimited, a fee of £20.

For registration of any increase in the number of members made after the registration of the company, 5s. for every 50 members, or less than 50 members, of such increase, but no company is liable to pay on the whole of its members a greater

fee than £20, taking into account the fee paid on the first registration of the company.

On registration of a Company not having a Capital divided into Shares, the same Deed Stamps on the Memorandum and Articles and the same Fee Stamps on the Articles and Declaration of Compliance with the Act are required as in the case of a Company Limited by Shares. The further documents set out on page 335 are also required, in the appropriate circumstances, except only the Prospectus and those forms distinguished by an asterisk, which forms deal solely with Shares.

TABLE III.

Showing the *ad valorem* Duties on Registered Bonds, Mortgages, Debentures, and other Securities for Money transferable only by instrument of transfer [1]:—

1. Being the only, or principal, or primary security for the payment or repayment of money—

	s.	d.
Where the amount secured does not exceed £10 . . .	0	3
Exceeds £10 and does not exceed £25	0	8
„ 25 „ 50	1	3
„ 50 „ 100	2	6
„ 100 „ 150	3	9
„ 150 „ 200	5	0
„ 200 „ 250	6	3
„ 250 „ 300	7	6
For every additional £100, or fractional part of £100 . .	2	6

2. Being a collateral, or auxiliary, or additional, or substituted security, or by way of further assurance for the above-mentioned purpose, where the principal or primary security is duly stamped:—

[1] If Debentures are certainly redeemable on a fixed date at a sum in excess of the amount advanced duty is chargeable on the additional amount as well as on the face value of the Debenture (Rowel & Son *v.* Commissioners of Inland Revenue, [1897] 2 Q. B. 191); but if the Debentures are redeemable on a fixed date at par, with an option to redeem earlier at a premium, no duty is payable on the premium. *See* page 311, *ante*, as to Duty on Statement of Loan Capital.

	s.	d.
For every £100, and also for any fractional part of £100, or the amount secured with a minimum duty of 10s. .	0	6

N.B.—Debentures to Bearer pay a duty of 4s. for every £10 and fractional part of £10 secured, or if given in substitution for a *like security* duly stamped, then 2s. for every £20, or fractional part of £20 secured. So that if a security payable to bearer is issued in substitution for a registered security transferable only by instrument of transfer, this reduction does not apply, and the duty is 4s. for every £10 or fraction thereof. The reduced rate of duty will only be impressed upon presentation of both the original and substituted securities at the Chief Stamp Office in London at a date prior to the expiration of the original securities

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TABLE IV.

Showing the *ad valorem* Duties on Transfer on Sale of Stock, Shares, and Marketable Securities:—

Where the amount or value of the consideration for the sale	£	s.	d.
does not exceed £5.	0	1	0
Exceeds £5 and does not exceed £10.	0	2	0
„ 10 „ 15	0	3	0
„ 15 „ 20	0	4	0
„ 20 „ 25	0	5	0
„ 25 „ 50	0	10	0
„ 50 „ 75	0	15	0
„ 75 „ 100	1	0	0
„ 100 „ 125	1	5	0
„ 125 „ 150	1	10	0
„ 150 „ 175	1	15	0
„ 175 „ 200	2	0	0
„ 200 „ 225	2	5	0
„ 225 „ 250	2	10	0
„ 250 „ 275	2	15	0
„ 275 „ 300	3	0	0
„ 300 „ 350	3	10	0
„ 350 „ 400	4	0	0
„ 400 „ 450	4	10	0
„ 450 „ 500	5	0	0
And for every additional £50 or part of £50	0	10	0

A transfer of stock, shares, or marketable securities by way of voluntary disposition *inter vivos* is charged with *ad valorem* duty at the above rates on the value of the property transferred (Finance Act, 1910, Section 74). The amount of the duty payable must be adjudicated, and no transfer of this kind should be registered unless it bears the adjudication stamp of the Commissioners of Inland Revenue. See *ante*, page 258, and page 345 under "Mortgage."

TABLE V.

Showing the *ad valorem* Duties on Bills of Exchange and Promissory Notes:—

	£	s.	d.
Where the amount or value of the money for which the Bill or Note is drawn or made does not exceed £10 . . .	0	0	2
Exceeds £10 but does not exceed £25	0	0	3
„ 25 „ 50	0	0	6
„ 50 „ 75	0	0	9
„ 75 „ 100	0	1	0
„ 100, for every £100, and also for any fractional part of £100, of such amount or value . . .	0	1	0

The foregoing Duties refer to Inland Bills (*i.e.* Bills drawn and expressed to be payable within Great Britain and Northern Ireland) and must be denoted by appropriated stamps impressed before execution.

The Duties on Bills drawn and expressed to be payable out of Great Britain or Northern Ireland and actually paid, endorsed, or negotiated in Great Britain or Northern Ireland, should be denoted by adhesive stamps, and are the same as above up to £25. For sums exceeding £25 and not exceeding £100 the duty is 6d.; and for amounts exceeding £100, 6d. for every £100, or fractional part of £100 (Finance Act, 1899, Section 10).

N.B.—A Bill of Exchange payable on demand, at sight or within three days after date or sight requires a stamp of 2d. only.

TABLE VI.

Showing the *ad valorem* Duties on Contract Notes:—

	£	s.	d.
Where the value of the Stock or Marketable Security is £5 and does not exceed £100	0	0	6
Exceeds £100 „ £500	0	1	0
„ 500 „ 1000	0	2	0
„ 1000 „ 1500	0	3	0
„ 1500 „ 2500	0	4	0

For every £2,500, or part of £2,500, the duty is 2s. up to a maximum of £1 for £20,000 or greater value.

TIME FOR STAMPING INSTRUMENTS.

EXCEPT where express provision is made to the contrary, any unstamped or insufficiently stamped instrument may be stamped after execution, on payment of the unpaid duty and a penalty of ten pounds, and also by way of further penalty, where the unpaid duty exceeds ten pounds, of interest on such duty at the rate of five pounds per centum per annum from the day upon which the instrument was first executed up to the time when such interest is equal in amount to the unpaid duty (Stamp Act, 1891, Section 15). This rule is subject to the following provisions:—

(i) Any unstamped or insufficiently stamped instrument, which has been first executed at any place out of the United Kingdom, may be stamped at any time within thirty days after it has been first received in the United Kingdom, on payment of the unpaid duty only.

(ii) The Commissioners may, if they think fit, in a proper case remit the penalty or penalties, or any part thereof.

Under the second provision the Commissioners of Inland Revenue generally allow an executed instrument to be stamped on payment of the duty without penalty within thirty days after execution. There are the following very important exceptions:—

(i) Agreements under hand only liable to a sixpenny stamp must generally be stamped within fourteen days to avoid penalty.

(ii) On letters of allotment and renunciation, scrip certificates, and share warrants, if stamped after execution, the penalty as well as the duty is required to be paid.

(iii) Bills of exchange and promissory notes written on material bearing an impressed stamp of sufficient amount, but of improper denomination, may be properly stamped on payment of the duty and a penalty.

In no other case can a bill or promissory note be stamped with an impressed stamp after execution (Stamp Act, 1891, Section 37).

(iv) Proxies and voting papers, executed within the United Kingdom, liable to duty of one penny cannot be stamped after execution.

Transfers of shares and debentures which are chargeable with *ad valorem* duty, unless written upon duly stamped material, must be stamped within thirty days after execution (Stamp Act, 1891, Section 15).

SUMMARY OF DUTIES AND FEES ON VARIOUS DOCUMENTS.

THE following list, arranged alphabetically, of duties and fees on the documents which chiefly concern secretaries of companies may be found useful:—

Affidavit (except where Statutorily exempted)—2s. 6d., impressed.

Agreement under hand only and not otherwise chargeable with any duty (except where the matter thereof is not of the value of £5 or is otherwise exempt under the Act)—Stamp 6d., impressed or adhesive; under seal, 10s. impressed.

Allotment, Letter of (see "Letter of Allotment").

Annual Return and Summary—5s. fee stamp, impressed.

Articles of Association (on incorporation of company)—10s. deed stamp and 5s. fee stamp, both impressed.

Attestation by Notary Public (see "Notarial Act").

Bill of Exchange not payable on demand—Stamp *ad valorem* according to Table V, page 339, *post*, impressed and appropriated.

Bill of Exchange payable on demand or at sight, or on presentation, or within three days after date or sight—2d., impressed or adhesive.

Bill of Sale—Absolute, as on a Conveyance on Sale; by way of security, as on a Mortgage.

Bond to secure repayment of money (see "Debenture," and Table III, page 337, *post*).

Certificate of Birth, Marriage, Death, or Burial—1d., impressed or adhesive.

Cheque—2d., impressed or adhesive.

Consent of Board of Trade to Change of Name—5s. fee stamp, impressed.

Consent to act as Director—5s. fee stamp, impressed.

Contract as to Shares not paid for in cash—5s. fee stamp, in addition to any other stamp duty.

Contract Note—*Ad valorem* duty according to Table VI, page 339, *post*, adhesive and appropriated. Any contract under which an option is given or taken to

purchase or sell any stock or marketable securities is chargeable with one half the duty chargeable on a contract note and any contract note made in pursuance of such an option, which bears a certificate by a broker or agent that it is so made, is chargeable with one half the duty which would otherwise have been chargeable.

Conveyance on Sale (see " Purchase Deed ").

Cost Book Mines, Transfer of Shares in—6d., impressed or adhesive.

Coupon or Warrant for Interest " attached to and issued with " any security is exempt from duty. The exemption only applies to coupons attached to and issued with securities (see page 288, *ante*).

Debenture to Bearer—4s. for every £10 and fractional part of £10, impressed (see also " Marketable Security ").

Debenture, other than to Bearer—*Ad valorem,* according to Table III, page 337, *ante,* impressed.

Declaration of Compliance with the Requirements of The Companies Act, 1929—5s. fee stamp, impressed.

Declaration that the Conditions of Section 94, Subsection 1 (*a*) and (*b*), of The Companies Act, 1929, have been complied with—5s. fee stamp, impressed.

Deed or Agreement under Seal—10s., impressed, and any other duty chargeable.

Dividend Warrant—2d., impressed or adhesive.

Document under Seal of Company—10s., and any other duty chargeable.

Extraordinary Resolution—5s. fee stamp, impressed, on copy for filing.

Final Order for Dissolution—5s. fee stamp, impressed.

Final Winding-up Meeting on conclusion of Voluntary Winding Up, Return of—5s. fee stamp, impressed.

Foreign Bill of Exchange payable on demand or at sight, or on presentation, or within three days after date or sight—2d. adhesive.

Foreign Bill of Exchange payable otherwise than last mentioned—Stamp *ad valorem* according to Table V, page 339, *ante,* adhesive and appropriated.

Foreign Bill of Exchange drawn and expressed to be pay-

able out of the United Kingdom, not payable on demand or within three days, paid, negotiated, or endorsed in the United Kingdom—Stamp *ad valorem* as above (Table V, page 339, *ante*).

Annual Return—5s. fee stamp, impressed.

Indemnity, Letter of (see "Agreement under hand only").

Instrument to Bearer not being Share Warrant or Stock Certificate to Bearer by means of which any share or stock of a company out of United Kingdom is after 1st August, 1899, assigned, transferred, or in any manner negotiated in the United Kingdom—3d. for every £25, or fractional part of £25, of nominal value of share or stock, impressed.

Letter of Allotment—under £5, 1d.; £5 and over, 6d., impressed.[1]

Letter of Renunciation—under £5, 1d.; £5 and over, 6d., impressed or adhesive.[1]

List of Persons who have Consented to become Directors—5s. fee stamp, impressed.

Marketable Securities transferable by delivery, made or issued by or on behalf of any company or body of persons formed or established in the United Kingdom, or by or on behalf of any foreign State or Government or foreign body, corporation, or company, which (the interest being payable in the United Kingdom) are in any manner negotiated in the United Kingdom, are chargeable with 4s. for every £10 or fractional part of £10; save as to those bearing date or signed after 3rd June, 1862, and on or before 6th August, 1885, which are chargeable with four times the rate of duty set out in Table III, page 337, *ante*. Under the provisions of the Treaty of Peace with Turkey of July, 1923, certain securities issued under the Treaty are exempt by Section 37 of The Finance Act, 1924, from duty in the territory of the contracting parties.

Memorandum of Association—10s. deed stamp, impressed; *ad valorem* fee stamp not to exceed £50, impressed; *ad valorem* capital duty (on Statement of Nominal

[1] This applies in the case of a fractional part of a share (Revenue Act, 1909, Section 9).

Capital filed with Memorandum), impressed (see Table I, page 332, *ante*).

Memorandum of Association altered under the Act—5s. fee stamp, impressed, on printed copy for registration.

Memorandum of Satisfaction of Mortgage or Charge—5s. fee stamp, impressed.

Minute on Reduction of Capital for registration—5s. fee stamp, impressed.

Mortgage (see "Debenture," and Table III, page 337, *ante*).

Mortgage of any Stock, Shares, or Marketable Securities—Chargeable according to scale of stamp duties set forth in Table III, page 337, *ante*. The instrument of transfer is charged with the fixed duty of 10s., impressed, but for the protection of Registering Officers, the Board of Inland Revenue has advised that such a document should not be admitted to registration unless there is annexed to the instrument either—(1) an explanation of the facts signed by both the transferor and the transferee; (2) a satisfactory certificate by a member of a Stock Exchange acting for one of the parties; or (3) a certificate by an accredited representative of a Bank to the effect that "the transfer is excepted from Section 74 of The Finance (1909-10) Act, 1910" (see also page 258, *ante*). Agreements under hand only, given upon the deposit of share warrants &c. or making redeemable duly stamped transfers of any registered stock or marketable securities, are chargeable with 6d. only (Section 23 of The Stamp Act, 1891).

Notarial Act, 1s. (except a Protest of a Bill of Exchange or Promissory Note)—Stamp may be adhesive.

Note (see "Promissory Note").

Notice of Appointment of Liquidator—5s. fee stamp, impressed.

Notice of Change of Registered Office—5s. fee stamp, impressed.

Notice of Consent by Liquidator of Old Company to New Company Taking its Name—5s. fee stamp, impressed.

Notice of Consolidation, Subdivision, or Cancellation of

Shares, or of Conversion of Shares into Stock or Reconversion of Stock into Shares, or of Redemption of Preference Shares—5s. fee stamp, impressed.

Notice of Increase of Capital—*Ad valorem* fee stamp impressed, if maximum of £50 not paid on original Capital. In any case, 5s. fee stamp, impressed.

Notice of Increase of Members by Companies not having Capital divided into Shares—Fee stamp, impressed, according to number of Members (see Table II page 336, *ante*), and 5s. fee stamp, impressed.

Notice of Situation of Registered Office, or of any Change thereof—5s. fee stamp, impressed.

Option to Subscribe for Shares in a Company—2d. stamp, impressed.

Order Altering Memorandum of Association—5s. fee stamp, impressed.

Order Confirming Reduction of Capital—5s. fee stamp, impressed.

Order of Court Sanctioning Compromise or Arrangement—5s. fee stamp, impressed.

Order for Dissolution—5s. fee stamp, impressed.

Order Rectifying Register (Copy of)—5s. fee stamp, impressed.

Order, Winding-up (Copy of)—5s. fee stamp, impressed.

Particulars of Contract (where Shares are allotted as fully or partly paid up otherwise than in cash and there is no agreement in writing)—5s. fee stamp, impressed, in addition to any other duty chargeable.

Particulars of Mortgage or Charge—£1 fee stamp, impressed.[1]

Particulars of Series of Debentures—£1 fee stamp, impressed.[1]

Particulars of further Issue of Debentures of a Series—5s fee stamp, impressed.

Particulars of Directors (filed within fourteen days of the appointment of the first directors or fourteen days of any change in the particulars specified in the Register of Directors)—5s. fee stamp, impressed.

[1] Where the amount of the mortgage or charge, or of the entire series, does not exceed £200 the stamp is 10s.

Power of Attorney—Generally, 10s., impressed; but the following are exceptions:—Power of Attorney to Receive Dividends—For one payment, 1s., impressed; for more than one payment, 5s., impressed.

Promissory Note—Stamp *ad valorem* according to Table V, page 339, *ante*.

Prospectus, by Public Company, offering Shares or Debentures to the public for subscription—5s. fee stamp, impressed.

Provisional Certificate—2d., impressed.

Proxy—For specified Meeting, 1d., impressed or adhesive (cannot unless executed abroad be stamped after signature); for more than one Meeting, 10s., impressed, as a Power of Attorney.

Purchase Deed or Assignment—If on sale, conveyance duty is chargeable on the total consideration at the rate set out in Table IV, page 338, *ante*. When the consideration does not exceed £500, and the deed contains a statement that the transaction does not form part of a larger transaction or series of transactions, for which the consideration exceeds £500, duty is chargeable at half the rate shown in Table IV. *Ad valorem* conveyance duty is chargeable on voluntary dispositions *inter vivos* on the value of the property transferred and the duty must be adjudicated.

Receipt for £2 and upwards—2d., impressed or adhesive. A receipt for (*inter alia*) wages or salary does not require a receipt stamp (Stamp Act, Schedule, as amended by Finance Act, 1924, Section 36). The fees paid to directors, whether fixed by the Articles or voted in general meeting, are within this exemption, but a receipt given for fees paid to auditors requires a receipt stamp.

Renunciation, Letter of (see "Letter of Renunciation").

Report to Members prior to Statutory Meeting of Public Company (Copy for Registration)—5s. fee stamp, impressed.

Return of Allotments—5s. fee stamp, impressed.

Scrip or Scrip Certificate—2d. impressed.

Share Warrant and Instrument to Bearer having a like effect—Stamp of three times the amount of the *ad*

valorem stamp duty chargeable on a deed transferring the shares or stock specified in the Warrant, if the consideration for the transfer were the nominal value of the shares or stock, impressed.

Share Warrant by means of which any share of a company out of the United Kingdom is assigned, transferred, or negotiated in the United Kingdom after the 1st August, 1899—4s. for every £10, or fractional part of £10, of nominal value of shares to which the Warrant relates, impressed.

Special Resolution—5s. fee stamp, impressed, on copy for filing.

Statement of Amount of Loan Capital—2s. 6d. per cent., impressed. A statement need not be rendered, or duty paid, if the stamp duty payable in respect of a mortgage or marketable security has been paid on any trust deed or other document securing the loan capital proposed to be issued. In the case of a duly stamped statement delivered after 9th August, 1907, in respect of loan capital which has been wholly or partly applied for the conversion or consolidation of existing loan capital, the company can claim repayment of the duty charged on the statement at the rate of 2s. for every £100 of the capital included therein which has been so applied (Finance Act, 1907, Section 10).

Statement of Amount or Increase of Nominal Capital—*Ad valorem* capital duty, impressed (see Table I. page 332, *ante*).

Statement of Amount or Rate of Commission paid or agreed to be paid in respect of Shares—5s. fee stamp, impressed.

Statement in Lieu of Prospectus by Public Company not issuing a Prospectus—5s. fee stamp, impressed.

Statement in Lieu of Prospectus on conversion of a Private Company into a Public Company—5s. fee stamp, impressed.

Statutory Declaration (except where Statutorily exempted) —2s. 6d., impressed.

Stock Certificate to Bearer and Instrument to Bearer having a like effect—Stamp duty, impressed, of three times

the amount of the *ad valorem* stamp duty chargeable on a deed transferring the stock specified in the Certificate, if the consideration for the transfer was the nominal value of such stock.

Stock Certificate to Bearer by means of which any stock of a company out of the United Kingdom is assigned transferred, or negotiated in the United Kingdom after the 1st August, 1899—4s. for every £10, or fractional part of £10, of the nominal value of the stock to which the Certificate relates, impressed.

Transfer by way of Mortgage (see " Mortgage ").

Transfer by way of Voluntary Disposition *inter vivos*—Stamp *ad valorem* on value of property transferred (see page 258, *ante*).

Transfer for Nominal Consideration only—10s., impressed (see page 258, *ante*).

Transfer of Shares in Cost Book Mines (request or authority to register transfer, or notice of transfer) —6d., impressed or adhesive.

Transfer on Sale of Marketable Security—Stamp *ad valorem,* impressed, according to Table IV, page 338, *ante.*

Transfer on Sale of Shares—Stamp *ad valorem,* impressed, according to Table IV, page 338, *ante.*

Trust Deed to Secure Debentures—10s., impressed, if Debentures are duly stamped.

Trust Deed to Secure Debenture Stock—Impressed stamp *ad valorem* as on a Mortgage, Table III, page 337, *ante.*

Undertaking by Directors appointed by Articles of a Public Company or named in Prospectus or Statement in Lieu of Prospectus, to take from the Company and pay for Qualification Shares (if any). Agreement stamp on same 6d., each signature, unless qualification under £5.

Underwriting Letter—Stamp 6d., impressed or adhesive, if under hand; under seal, 10s., impressed.

Voting Paper (see " Proxy ").

Warrant for Dividend—2d., impressed or adhesive.

Warrant for Interest (see " Coupon ").

WINDING UP.

THERE are three ways in which a company may be wound up—

1. By compulsory winding up.
2. By voluntary winding up.
3. By voluntary winding up under supervision of the Court.

A company may also be dissolved by being struck off the Register by the Registrar of Companies under Section 295. The companies so struck off by the Registrar are companies which he has reasonable cause to believe are not carrying on any business, or not in operation, or companies which are in course of being wound up where it appears to him that no liquidator is acting, or that the winding up is concluded.

There cannot be a winding up except under the Act. Section 265, Sub-section 3, provides that "Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents." An attempt was made to avoid the effect of this sub-section by the issue to a trustee of a debenture charging by way of floating charge all the assets of the company to secure a large sum to be applied for the benefit of all the company's creditors.[1] It was contended that this document, being a mere equitable charge, was not a "conveyance or assignment"; but the Court overruled this contention, describing the transaction as an attempt to have a clandestine winding up.

In a winding up under supervision the Court exercises a general control over the proceedings. A winding-up order operates as a discharge of the secretary, a voluntary winding up may or may not have this effect.[2]

The majority of cases of winding up are of the voluntary kind. The object of a voluntary winding up is frequently to dissolve a company for the purpose of reconstruction or amalgamation, whereas a compulsory winding up is usually a hostile proceeding designed to determine the existence of a company the

[1] London Joint City and Midland Bank *v.* Herbert Dickinson, [1922] W. N. 13.
[2] See page 396 *et seq. post.*

condition of which is hopeless. As the secretary of a company is sometimes appointed liquidator in a voluntary winding up, owing to his intimate acquaintance with its affairs, an explanation of the position and duties of a voluntary liquidator, and of the machinery of a voluntary liquidation, should hold a place in any work intended to be of practical use to secretaries.

By Section 225 a company may be wound up voluntarily—

(1) When the period (if any) fixed for the duration of the company by the Articles expires, or the event (if any) occurs, on the occurrence of which the Articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily:

(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.

A company is not often wound up under (1); and proceedings under (3) would generally be taken in order to put an end to an unsuccessful company; but the powers given by (2) are extensively employed for purposes of reconstruction, when the object is to reconstitute the company on a new basis.

By Section 230 of the Act of 1929 a distinction is created between the winding up voluntarily of a company which in the opinion of its directors is capable of discharging its liabilities and that of a company which is insolvent, and the two forms of winding up are respectively described in the Act as a "Members' Voluntary Winding Up" and a "Creditors' Voluntary Winding Up."

These distinctive characteristics could exist in the circumstances of any of the three paragraphs of Section 225 quoted above; but belief in the solvency of a company wound up under paragraph 3 would be so exceptional a case, and the occasions for winding up a company under paragraph 1 so rare, that for present purposes the distinction need only be considered in connection with Voluntary Liquidation under paragraph 2.

By Section 230 it is provided that where it is proposed to wind up voluntarily, the directors or, where there are more than two directors, the majority of the directors, may at a meeting

of the directors make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company and that, having done so, they have formed the opinion that the company will be able to pay its debts in full within a period, not exceeding twelve months, from the commencement of the winding up.

This declaration must be made and a copy thereof delivered to the Registrar before the date on which the notices of the meeting at which it is proposed to submit the resolution to wind up are sent out.

A winding up in the case of which such a declaration of solvency has been made in accordance with the terms of the section is a "Members' Voluntary Winding Up" and a winding up in respect of which such a declaration has not been made is a "Creditors' Voluntary Winding Up."

The importance of the Statutory Declaration of Solvency lies in the fact that where such a declaration has been made and duly lodged with the Registrar, the conduct of the liquidation, subject to observance of the requirements of the Act, is in the hands of the members, and the company in General Meeting is entitled to appoint the liquidator and settle his remuneration.

Where such a declaration is not made and lodged with the Registrar, the conduct of the liquidation and the appointment of the liquidator is largely in the hands of the creditors. Without the consent either of the Court or of the Committee of Inspection, the members of the company have no power to effect a sale of the property of the company for shares or other like interests in the manner usual on a reconstruction.

A Members' Winding Up having been found to be justified by the facts, the declaration required by Section 230 of the Act to be lodged with the Registrar should be in the form shown on page 353, *post*.

Such a declaration having been made and lodged with the Registrar the provisions of Sections 232 to 236 apply in relation to the winding up.

Notices of a meeting to pass a special resolution to wind up must be sent out after the lodging of the declaration. Unless all the members entitled to attend and vote at the meeting agree to a shorter notice twenty-one days' notice of the meeting must be given.

*No. of Company*_____ FORM No. 39B.

"THE COMPANIES ACT, 1929."

DECLARATION OF SOLVENCY

(pursuant to Section 230 of The Companies Act, 1929)

A 5s Companies Registration Fee Stamp must be impressed here.

IN RESPECT OF

_____

LIMITED.

MEMBERS' VOLUNTARY WINDING UP.

We_____

_____

_____

of_____

_____

_____

being*_____Directors

of_____, Limited,

do solemnly and sincerely declare:—

That we have made a full inquiry into the affairs of this Company, and that, having so done, we have formed the opinion that this Company will be able to pay its debts in full within a period, not exceeding twelve months, from the commencement of the winding up.

And we make this solemn Declaration, conscientiously believing the same to be true, and by virtue of the provisions of The Statutory Declarations Act, 1835.

Declared at_____ _____

_____

the_____day of _____

_____One thousand _____

nine hundred and_____

before me. _____

_____

A Commissioner for Oaths.†

* Insert "all the" *or* "the majority of the" *as the case may be.*

† *Or* Notary Public *or* Justice of the Peace.

The following is a suitable form of notice:—

_____, LIMITED.

NOTICE IS HEREBY GIVEN that an Extraordinary General Meeting of the above-named Company will be held at_____on_____, the_____day of_____next, at_____o'clock in the _____noon, for the purpose of considering and, if deemed desirable, of passing (with or without modification) the following Special Resolution:—

"That_____, Limited, be wound up voluntarily, and that A. B., of_____, be and is hereby appointed the Liquidator to conduct the winding up."

By Order of the Board,

_____

Secretary.

[Address and date.]

It will be observed in the example that the liquidator is named in and appointed by the resolution to wind up. This is a usual, but not a necessary practice; and the liquidator can be appointed by simple resolution after the special resolution has been passed. As soon as an effective resolution for winding up has been passed any person can be proposed as liquidator without notice and elected by an ordinary resolution of the members, and the remuneration of the liquidator may be settled at the time of appointment or afterwards (Section 232).

Under Sections 233 and 234 power is conferred upon the company in general meeting to fill vacancies in the office of liquidator and on the liquidator to accept shares, policies, or other like interests as consideration for the sale of property of the company to another company. Section 235 requires the liquidator in the event of the winding up continuing for more than a year to call a general meeting at the end of the first and each subsequent year, and Section 236 deals with the liquidator's statement of account and the final meeting and the dissolution of the company, as to which see page 381, *post*.

Where a Declaration of Solvency is not made by the directors and lodged with the Registrar prior to the sending out of the notices of the meeting to pass the resolution to wind up, the liquidation will be a Creditors' Voluntary Winding Up subject to the provisions of Sections 237 to 245, whatever the form of the resolution. If the winding up takes place under Section 225, Sub-section 3, as will usually be the case in a Creditors' Winding Up, the form of notice will be as follows:—

_____, LIMITED.

NOTICE IS HEREBY GIVEN that an Extraordinary General Meeting of the above-named Company will be held at_____on_____, the_____day of_____, next, at_____o'clock in the_____noon, for the purpose of considering and, if deemed desirable, of passing (with or without modification) the following Resolution as an Extraordinary Resolution:—

"That the Company cannot, by reason of its liabilities, continue its business and that it is advisable to wind up the same, and that the Company be wound up accordingly."

_____

[Address and date.] *Secretary.*

By Section 117 an extraordinary resolution is defined as a resolution passed in the manner required by the section "at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given."

Notice is "duly given" if given in accordance with the Articles, or if the Articles are silent in regard to notices and Table A is not adopted, in accordance with Section 115. The form of notice shown above describes the resolution to be submitted as the section requires, and this should be done, although in a case where every shareholder waived that formality by being present at the meeting and voting in favour of a resolution to wind up, and the only two shareholders in a private company met and passed an extraordinary resolution for winding up of which no notice had been given, the resolution was held valid.[1] The terms of the resolution must be in accordance with the section, and the exact resolution must be set out in the notice.[2]

Simultaneously with the sending out of the notices of the above meeting, there must be sent to all the creditors of the company notice of a meeting of the creditors, which meeting must be summoned for the same day as that for which the meeting of the company is convened or the day next following

Notice of the meeting of the creditors must be advertised once in the *Gazette*,[3] and once at least in two local news papers circulating in the district where the registered office or principal place of business of the company is situate

1 *In re* Oxted Motor Co., [1921] 3 K. B. 32. 2 MacConnell v. E. Prill & Co., [1916] 2 Ch. 57.

3 "Gazette" means in the case of a company registered in England, the *London Gazette* or in Scotland, the *Edinburgh Gazette* (Section 380).

(Section 238). The copy of the notice for the *Gazette* must be signed by a director or the secretary or manager of the company and be authenticated by the signature of a solicitor.

The following are appropriate forms of notice for the respective purposes:—

FORM No. 114B.

_____, LIMITED.

NOTICE IS HEREBY GIVEN, pursuant to Section 238 of The Companies Act, 1929, that a Meeting of the Creditors of the above-named Company will be held at_____on_____day, the_____day of_____, 193 , at_____o'clock in the_____, for the purpose, if thought fit, of nominating a Liquidator and of appointing a Committee of **Inspection.**

Forms of General and Special Proxy are enclosed, which, if intended to be used, must be duly completed and lodged at the Registered Office of the Company not later than 4 o'clock in the afternoon of the day before the Meeting.

NOTICE IS HEREBY ALSO GIVEN that, for the purpose of voting, secured Creditors are required (unless they surrender their security) to lodge at the Registered Office of the Company before the Meeting a Statement giving particulars of their security, the date when it was given, and the value at which it is assessed.

Dated this_____day of_____, 193 .

_____
Director, Secretary, or Manager.

Registered Office of the Company
(to which Proxies and Statement should be returned).

FORM No. 114A.

"THE COMPANIES ACT, 1929"

_____, LIMITED.

NOTICE IS HEREBY GIVEN, pursuant to Section 238 of The Companies Act, 1929, that a Meeting of the Creditors of the above-named Company will be held at_____on_____day, the_____day of_____, 193 , at_____o'clock in the_____for the purpose, if thought fit, of nominating a Liquidator and of appointing a Committee of Inspection.

NOTICE IS HEREBY ALSO GIVEN that, for the purpose of voting, secured Creditors are required (unless they surrender their security) to lodge at the Registered Office of the Company before the Meeting a Statement

giving particulars of their security, the date when it was given, and the value at which it is assessed.

Dated this_____day of_____, 193 .

_____
*Director, Secretary, or Manager.**

_____
Solicitor.

* To be signed by a Director, or the Secretary or Manager of the Company, and to be authenticated by the Signature of a Solicitor.

The directors must cause a full statement of the company's affairs, together with a list of the creditors and the estimated amount of their claims, to be laid before the meeting of creditors and must appoint one of the directors to attend and preside at the meeting of the creditors (Section 238, Sub-sections 3 and 4).

Provision is made for the imposition of heavy penalties on the company and the directors if default is made in any of these requirements.

There must be present or represented at the meeting at least three creditors entitled to vote or all the creditors if their number does not exceed three. If a quorum is not present within half an hour from the time appointed the meeting must be adjourned (Rule 136).

If the meeting of the company is adjourned and the resolution for winding up passed at the adjourned meeting, any resolution of the creditors is to have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

The members and the creditors at their respective meetings are entitled to nominate a person to be a liquidator for the winding up of the company and the distribution of the assets. If different persons are nominated, the nomination of the creditors (subject to what is said later) prevails, but if no person is nominated by the creditors, the nominee of the members is liquidator. Where different persons are nominated, any director, member, or creditor may within seven days of the date on which the nomination was made by the creditors apply to the Court for an order either directing that the nominee of the members should be liquidator instead of or jointly with the nominee of the creditors or that some other person be appointed instead of the person appointed by the creditors (Section 239). The Court having jurisdiction is the Court having jurisdiction in a Winding Up (see Section 163). A corporation which is a creditor or a debenture holder, whether

a company under the Act or not, may by resolution appoint a person to act as its representative. Such person may exercise the same powers as an individual creditor (Section 116).

The creditors may at the meeting above mentioned or at any subsequent meeting resolve that a Committee of Inspection consisting of not more than five persons be appointed, and when the creditors so resolve the members may likewise resolve that such number of persons as they think fit, not exceeding five, be members of the Committee of Inspection. If the creditors, however, resolve that the persons appointed by the company ought not to be members of the committee they will not be entitled to be on the committee unless the Court so directs. The Court may instead of directing that the persons in question be on the committee appoint other persons (Section 240).

The proceedings of the Committee of Inspection are governed by Section 199 (excepting Sub-section 1) and Section 201.

The Committee of Inspection, or if there is no committee the creditors, may fix the liquidator's remuneration.

Any vacancy in the office of liquidator (except where the appointment was made by the Court) may be filled by the creditors.

The foregoing remarks summarise very briefly the procedure in the initial stages of a liquidation by a Members' and by a Creditors' Voluntary Winding up. Except where otherwise indicated, what follows applies to cases of winding up generally.

Notice of any resolution passed for winding up a company voluntarily must be given by advertisement in the *Gazette* within seven days of the passing of the resolution (Section 226). The copy of the notice for the *Gazette*[1] should be signed by the chairman of the meeting at which the resolution was passed and verified by the signature of a practising solicitor and may be in the following form:—

In the Matter of_____, LIMITED.

At an Extraordinary General Meeting of the above-named Company, duly convened, and held at_____on the_____ day of_____, the following Special [or Extraordinary[2]] Resolution was duly passed:—

[*Here set out the Resolution.*]

_____

Chairman.

Date_____

1 See footnote on page 355, *ante*.

2 If the winding up is under paragraph 1 on page 351, the wording should be "the following Resolution of the Company."

A printed copy of the resolution in the form given on page 233, *ante*, must be lodged with the Registrar of Companies within fifteen days after the date of the passing of the resolution (Section 118, Sub-section 1). The form will, of course, require a slight modification to make it appropriate to an extraordinary or ordinary resolution.

A liquidator in a Voluntary Winding Up must, within twenty-one days after his appointment, lodge notice thereof in the prescribed form with the Registrar, under penalty of a fine for every day of default (Section 250). The prescribed form in the case of a Members' Winding Up is as follows:—

*No. of Company*_____ FORM No. 39C.

"THE COMPANIES ACT, 1929."

MEMBERS' VOLUNTARY WINDING UP.

NOTICE OF APPOINTMENT OF LIQUIDATOR.
(Pursuant to Section 250.)

A 5s. Companies Registration Fee Stamp must be impressed here.

NOTE. In a Members' Voluntary Winding Up, this notice must be lodged with the Registrar within 21 days of the appointment, in default of which a penalty not exceeding £5 for every day the default continues is incurred.

To the Registrar of Companies.

I (or We)_____

of_____

hereby give you Notice that I (or we) have been appointed Liquidator(s) of the_____Company, Limited, by Resolution [1] of the Company dated the_____day of_____, 193 .

Signature(s) [2]_____

_____

Date_____

*Presented by*_____

In the case of a Creditors' Voluntary Winding Up the notice must be given on Form 39D, which is a slight variation of the above form to suit the different circumstances of the liquidator's appointment. A body corporate is prohibited from holding the office of liquidator in any form of winding up (Section 278).

A careful record of all notices sent out should be preserved, in case evidence of the date of posting the notices should be at

[1] State how appointed, whether by Resolution of the Company, or how otherwise, and adapt if necessary. [2] To be signed by each liquidator if more than one.

any time required (see examples contained in "THE LIQUIDATOR'S RECORD BOOK," page 386 *et seq., post*).

A voluntary winding up commences at the time of the passing of the resolution authorising the winding up (Section 227). A resolution passed at an adjourned meeting is treated as having been passed on the date on which it was in fact passed and is not to be deemed to have been passed on any earlier date (Section 119). Where a petition for a compulsory winding up is subsequently presented and an order made the winding up is deemed to have commenced with the resolution for the voluntary winding up (Section 175).

One effect of the winding up is to put an end to the power of the company to carry on business, except for the purposes of the beneficial winding up (Section 228). Moreover, in a voluntary winding up, all transfers of shares (except transfers made to or with the sanction of the liquidator) or alterations in the status of the members of the company taking place after the commencement of the winding up are void (Section 229). As to the right to transfer partly paid shares on the eve of liquidation where there is no restriction upon transfer in the Articles see page 249, *ante*.

The power of a liquidator under Section 229 in a voluntary winding up to sanction a transfer of shares made after the commencement of the winding up involves the power to alter the Register of Members, and the transferor is thereupon released from the liability which he was under at the commencement of the winding up to contribute as a present member, and the transferee alone is the person to be placed on the "A" list of contributories. Where successive transfers are sanctioned by the liquidator under Section 229 the ultimate transferee only is liable to contribute as a present member, the transferor and prior transferees being liable as past members.[1]

The following consequences ensue upon the voluntary winding up of a company:—

1. The property of the company must be applied (after preferential payments) in satisfaction of its liabilities *pari passu*, and, subject thereto, unless it be otherwise provided by the Articles, be distributed amongst the members according to their rights and interests in the company (Section 247).

[1] *Re* National Bank of Wales, [1897] 1 Ch 298.

2. A liquidator or liquidators is or are appointed by the company in general meeting in the case of a Members' Voluntary Winding Up, or by the creditors or the Court (where the creditors and members nominate different persons) in a Creditors' Voluntary Winding Up, for the purpose of winding up the affairs and distributing the property of the company (Sections 232 and 239). In the first case the remuneration is fixed by the company in general meeting, in the second case by the Committee of Inspection or the creditors (Sections 232 and 241), or it may, on application, be fixed by the Court. In the absence of special circumstances the scale of fees fixed for the remuneration of trustees in bankruptcy will be adopted by the Court.[1]
3. Upon the appointment of the liquidator the powers of the directors cease, except in so far as the continuance of such powers may be sanctioned in the case of a Members' Winding Up by the company in general meeting or the liquidator (Section 232, Sub-section 2) or in the case of a Creditors' Winding Up by the Committee of Inspection, or if there is no such committee by the creditors (Section 241, Sub-section 2).
4. The liquidator may, without the sanction of the Court, exercise certain powers hereinafter mentioned (Section 248).
5. The liquidator may exercise the powers of the Court under the Act of settling the list of contributories of the company and of making calls; and must pay the debts of the company and adjust the rights of the contributories among themselves (Section 248).
6. The list so settled is *prima facie* evidence of the liability of the persons named therein to be contributories (Section 248, Sub-section 1 (*c*)).
7. When several liquidators are appointed these powers may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination by any number not less than two (Section 248, Sub-section 3).

[1] *In re* Carton, 128 L. T. 629.

8. If from any cause whatever there is no liquidator acting, the Court may appoint a liquidator (Section 249, Sub-section 1).
9. The Court may, on cause shown, remove a liquidator and appoint another liquidator (Section 249, Sub-section 2).
10. The Court may restrain actions or proceedings against the company, including executions and distresses (Sections 172 and 177 and Section 252), and the rights of creditors in respect of executions and attachments not completed are specifically restricted by Sections 268 and 269.

Where a company is being wound up, or a receiver or manager has been appointed, every invoice, order for goods, or business letter issued by or on behalf of the company or the receiver or manager or the liquidator being a document in which the name of the company appears must contain a statement that the company is being wound up (Section 280), or that a receiver or manager has been appointed (Section 308).

It has been stated that the liquidator may exercise certain powers without the sanction of the Court. These are powers to bring and defend actions, to carry on the business of the company for the purpose of winding it up, to employ a solicitor or other agent, to sell and transfer the property of the company, to execute deeds and give receipts &c. on behalf of the company (using the company's seal when necessary), to prove in the bankruptcy of contributories, to draw bills &c. and raise money on the security of the assets, to take out administration to deceased contributories, to take into his custody all the property of the company, to apply to the Court to determine questions (*e.g.* to enforce calls), to call meetings of the company, and generally to do what is necessary for winding up and distributing the assets of the company (Sections 191, 248, and 252). The liquidator in a voluntary winding up may also, in the case of a Members' Winding Up with the sanction of an extraordinary resolution, or in the case of a Creditors' Winding Up with the sanction of either the Court or the Committee of Inspection, pay any classes of creditors in full, and make and enter into arrangements and make compromises with creditors, debtors, and shareholders (Sections 191 and 248). A person entering into a compromise with the liquidator is not bound

to see that the liquidator has got the necessary sanction. He is entitled to assume that the requisite authority has been obtained.[1]

With the leave of the Court the liquidator in any liquidation may disclaim onerous property or assets (Section 267).[2] Leave is a matter for the discretion of the Court, and in the case of a lease it has been refused where the lessors would have suffered substantial injury.[3] The rights of creditors who obtain execution against a company in voluntary liquidation are by Sections 268 and 269 subjected to considerable restriction.

If in a Members' Winding Up a vacancy occurs in the office of liquidator the company in general meeting may, subject to any arrangement with its creditors, fill up the vacancy (Section 233, Sub-section 1), and in a Creditors' Winding Up the vacancy may be filled by the creditors (Section 242), except in either case where the liquidator was appointed by the Court. The Court may also appoint, or remove, a liquidator (Section 249).

Such being the powers and the nature of the office of a liquidator in a voluntary winding up, his first duty, after the resolution for voluntary winding up has been duly passed and advertised, as previously shown, will be to take possession of all the property and assets of the company, including its books and papers. It is his duty to ascertain who are creditors, and in order to enable him to "pay the debts of the company" (Section 248, Sub-section 2) and apply its property "in satisfaction of its liabilities" (Section 247) he should not only give notice by advertisement but should write to those whose existence is disclosed by the books and papers of the company and the statement of affairs, but who have not sent in their claims. If he neglects this duty, and distributes the assets, he will be liable, even after dissolution of the company, at least to such of those creditors as were unaware of the liquidation.[4] Conversely, if the liquidator negligently admits and pays dividends on an unfounded claim he is liable to the company as for a misfeasance.[5] Where the property of the company is land or any interest in land, or where it is desired to carry on the business of

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1 Cycle Makers' Supply Co. *v.* Sims [1903] 1 K. B. 477.

2 Failure to disclaim does not render a liquidator liable, even on a continuing contract (Stead Hazel & Co. *v.* Cooper, [1933] W.N.43).

3 In *re* Katherine et Cie., [1932] 1 Ch. 70.

4 Pulsford *v.* Devenish, [1903] 2 Ch 625.

5 Windsor Steam Coal Co., in *re*, [1929] 1 Ch. 151; Home and Colonial Insurance Co., in *re* [1930] 1 Ch. 102.

the company, or where there is a probability of litigation, or questions of unusual difficulty are likely to arise, the liquidator cannot be advised to act without consulting a solicitor.

The liquidator must keep such books of account as are necessary to show in detail all his receipts and all the payments made by him in the course of the liquidation, and to enable him to make the prescribed returns from time to time (Section 279) He should also keep a record book in which to enter minutes of all his transactions in relation to the winding up. Entries should be carefully made in a letters-dispatched book of all notices of meetings, calls, or dividends; each entry as made should be signed by the person who posted the notices, and should state the exact time and place of posting, so that in case of dispute it would be easy to prove the service of any notice to creditors or shareholders.

If a liquidator who has made default in filing, delivering, or making any return, account, or other document, or giving any notice which he is by law required to file, deliver, make, or give, fails to make good the default within fourteen days after service of notice requiring him to make good the default, the Court may make an Order directing the liquidator to make good the default within such time as may be specified in the Order. Application to the Court may be made by the Registrar or any contributory or creditor of the company. The liquidator may be ordered to bear the costs of the application. This provision does not prejudice the imposition of any other penalties to which the liquidator is liable in respect of such default (Section 279).

Where it is likely that calls will have to be made, or assets distributed, a list of contributories must be made out. The following is a form:—

In the matter of The Companies Act, 1929;
and
In the matter of_____, LIMITED.
FIRST PART.—Contributories in their own right.

Serial No. in List.	Name.	Address.	Description.	In what character included.	Number of Shares [or Extent of Interest].
				(As a present Member.)	

SECOND PART.—Contributories as being representatives of or liable for the debts of others.

Serial No. in List.	Name.	Address.	Description.	In what character included.	Number of Shares [*or* Extent of Interest].
				(*e.g.* As executor of deceased.)	

"Contributory" is defined (Section 158) as meaning 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. The holder of fully paid shares is a contributory within this definition,[1] although he has paid all that he is liable to pay; but he cannot be put upon the list if he objects to his name being placed there.[2] The purpose of placing the holder of fully paid shares upon the list of contributories is that he may receive dividends.

With reference to persons who are liable to contribute in a winding up, there is an important distinction between past and present members of the company. A past member of the company is liable to contribute unless he has ceased to be a member for one year or upwards before the commencement of the winding up. But a past member is not liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member, he is further only liable to the extent to which his corresponding present member or members do not pay, and he is not liable at all unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of the Act. A present member is liable to contribute to the extent to which his shares are unpaid. Present members are put upon what is called the "A" list of contributories, past members who have not ceased to be members for a year before the commencement of the winding up are put on the "B" list of contributories. If those on the "A" list are able to satisfy all contributions required, there will be no occasion for a "B" list. The required contributions are measured by the amount

[1] *In re* Anglesea Colliery Co., [1866] 1 Ch. 555. [2] *Re* Marlborough Club Co., [1868] 5 Eq. 365.

sufficient, with the assets of the company, for the payment of its debts and liabilities, and the costs, charges, and expenses of the winding up, and for the adjustment of the rights of the contributories amongst themselves (Section 157, Sub-section 1). A call which produces a surplus will be enforced so far as necessary to produce an equality of contribution and to make an equal distribution of the excess.[1] But a past member cannot be called upon to make contributions for the adjustment *inter se* of the rights of present members.[2]

In practice the liquidator will first ascertain the amount necessary, beyond the assets of the company, to satisfy its debts and liabilities, and the costs, charges, and expenses of the winding up. To realise this amount he will from time to time make calls upon the present members. If some of them do not pay and cannot be made to pay, further calls must be made upon those present members who are able to pay, in order to produce the sum required, up to (if necessary) the whole amount remaining unpaid on their shares. If the sum realised is still insufficient after the liability, or the resources, of present members has been exhausted, the liquidator must then apply (or credit) all the money, including the assets of the company, in paying all its debts and liabilities *pari passu*, irrespective of the date when they were incurred. This having been done, the liquidator will then be in a position to make calls upon past members in accordance with their qualified liability, as explained above.

In appropriate cases, calls will be made upon contributories to adjust their rights *inter se*. As questions of considerable difficulty are liable to arise, legal assistance in settling the list will frequently be necessary.

It must be remembered that the list of contributories as settled by the liquidator in a voluntary winding up has no binding effect upon the persons settled upon this list. In this respect it differs from the list when settled by a liquidator in a compulsory winding up. In the latter case a contributory must apply to the Court by summons within twenty-one days (or such further time as the Court may allow) from the date when notice of the settlement of the list is served upon him. In a voluntary liquidation the contributory need not apply to

[1] *In re* City of London Insurance Company, [1932] 1 Ch. 226.
[2] See Brett's Case, [1873] L. R. 3 Ch. at pages 808 and 809.

the Court, but can wait until a call has been made upon him and then resist any proceedings taken against him by the liquidator to enforce the call. When a contributory will not pay the call and the liquidator is compelled to resort to legal proceedings, the matter will naturally pass into the hands of solicitors, by whose advice the liquidator will be guided. It will be sufficient for the present purpose to state that the liquidator may proceed either by application for what is called a "balance order"—*i.e.* an order upon the contributory to pay—or by action in the name of the company. An action is the more appropriate method when questions of difficulty are involved, but the liquidator will probably be required to give security for the defendant's costs under Section 371.[1] Where the liquidator proceeds by way of an application for a balance order, he will probably not be required to give security for costs. But it must not be forgotten that the Court has power to order him to pay the costs if the application is unsuccessful, and if, therefore, he is not protected by a sufficiency of assets, the liquidator should, before taking any proceedings, obtain an indemnity from the persons—creditors or contributories—who are interested in having the call enforced. The solicitor employed by the liquidator looks, in the absence of a special arrangement, to the assets, and not to the liquidator personally, for the payment of his bill.[2] But the solicitor's costs, being costs of the liquidation, come before the remuneration of the liquidator.[3]

Another method by which calls in a liquidation may be enforced is by the sale or forfeiture of the shares upon which calls have not been paid. The sale or forfeiture must be carried through by the directors under the powers conferred by the Articles of Association of the company, with the sanction of the liquidator or of the company. If there are no directors, the liquidator may convene a general meeting of the company, which can then elect a sufficient number of directors and santion the exercise by them of powers of enforcing payment of calls by sale or forfeiture of shares.[4]

[1] The fact that a company is in course of winding up is sufficient ground for such an order (Pure Spirit Co. *v.* Fowler, [1890] 25 Q. B. D. 235).

[2] *Re* Trueman's Estate, [1872] 4 Eq. 278.

[3] *Re* Marsey, [1870] 9 Eq. 367.

[4] Ladd's Case, [1893] 3 Ch. 450. In this case the winding up had commenced eighteen years before the calls were made, and there were no longer any directors.

In most cases it will be advisable to have legal assistance in making up the list. The following is a form of notice that the list is ready for settlement :—

In the matter of The Companies Act, 1929;
and
In the matter of_____, LIMITED.

I HEREBY GIVE YOU NOTICE that I, the undersigned_____ the Liquidator of the above Company, have appointed_____day, the_____ day of_____, 193 , at_____o'clock in the_____noon, at my Offices, No._____Street, in the City of London, to settle the List of Contributories of_____, LIMITED, which has already been made out by me; and I hereby also give you notice that I have included you in such List in the character and for the number of Shares stated below, and if no sufficient cause is shown by you to the contrary at the time and place aforesaid, the List will be settled by me, including you therein.

_____
Liquidator.

[Address and date.]

*To Mr.*_____

No. in List.	Name.	Address.	Description.	In what character included.	No. of Shares [or Extent of Interest].

When the winding up is commenced for the purpose of carrying out a scheme of reconstruction, the following letter may accompany the list :—

*Re*_____, LIMITED.

SIR,

Enclosed I send you notice to settle List of Contributories of the above-named Company, which is required for the purpose of carrying out the Scheme of Reconstruction.

Should the particulars with reference to your Shares entered in the notice be correct, there will be no occasion for you to attend on the settlement of the List pursuant to the notice.

_____
Liquidator.

[Address and date.]

CERTIFICATE OF LIQUIDATOR OF FINAL SETTLEMENT OF THE LIST OF CONTRIBUTORIES.[1]

In the matter of The Companies Act, 1929;

and

In the matter of_____, LIMITED.

Pursuant to The Companies Act, 1929, I, the undersigned, being the Liquidator of the above-named Company, hereby certify that the result of the settlement of the List of Contributories of the above-named Company, so far as the said List has been settled up to the date of this Certificate, is as follows:—

1. The several persons whose names are set forth in the Second Column of the First Schedule hereto have been included in the said List of Contributories as Contributories of the said Company in respect of the number of Shares [*or* extent of interest] set opposite the names of such Contributories respectively in the said Schedule.

I have, in the First Part of the said Schedule, distinguished such of the said several persons included in the said List as are Contributories in their own right.

I have, in the Second Part of the said Schedule, distinguished such of the said several persons included in the said List as are Contributories as being representatives of or being liable to the debts of others.

2. The several persons whose names are set forth in the Second Column of the Second Schedule hereto, and were included in the Provisional List of Contributories, have been excluded from the said List of Contributories.

3. I have, in the Sixth Column of the First Part of the First Schedule, and in the Seventh Column of the Second Part of the First Schedule, and in the same Column of the Second Schedule, set forth opposite the name of each of the several persons respectively the date when such person was included in or excluded from the said List of Contributories.

4. Before settling the said List, I was satisfied by the Affidavit of _____, Clerk to_____, that notice was duly sent by post to each of the persons mentioned in the said List, informing him that he was included in such List in the character and for the number of Shares [*or* extent of interest] stated therein, and of the day appointed for finally settling the said List

[Date.] *Liquidator.*

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[1] This is a slight modification of the form in use for compulsory liquidations. A liquidator in a voluntary winding up is not bound to use any particular form.

In the matter of The Companies Act, 1929;
and
In the matter of_____, LIMITED.

THE FIRST SCHEDULE ABOVE REFERRED TO.

(FIRST PART.—Contributories in their own Right.)

Serial No. in List.	Name.	Address.	Description.	No. of Shares [*or* Extent of Interest].	Date when included in List.

In the matter of The Companies Act, 1929;
and
In the matter of_____, LIMITED.

THE SECOND SCHEDULE ABOVE REFERRED TO.

(SECOND PART.—Contributories as being Representatives of or Liable to the Debts of Others.)

Serial No. in List.	Name.	Address.	Description.	In what Character included.	No. of Shares [*or* Extent of Interest].	Date when included in List.

CALLS ON CONTRIBUTORIES.

Calls must be made by an instrument in writing, and should be entered in the Liquidator's Minute Book. The following is a form:—

In the matter of The Companies Act, 1929,
and
In the matter of_____, LIMITED.

THIS IS TO WITNESS that I,_____, of_____, the Liquidator of the above-named Company, do hereby make a Call of _____ per Share upon all the Contributions of the above-named Company in respect of all Shares not fully paid up [*or as the case may be*], and direct that the

amount of such Calls be paid to THE_____BANK LIMITED, _____Street, on or before the_____day of_____, 193 , to the account of_____, LIMITED.

_____

[Address and date.] *Liquidator.*

Notice of a call will be sent to the shareholders to the following effect:—

In the matter of The Companies Act, 1929,
and
In the matter of_____, LIMITED.

TAKE NOTICE that on the_____day of_____, 193 , I, the Liquidator of the above-named Company, did duly make a Call of_____ per Share upon all the Contributories of the said Company in respect of all Shares not fully paid up [*or as the case may be*], and that the amount due from you in respect of the Call so made is £_____, payable at THE_____BANK, LIMITED, _____Street, on or before the _____day of_____, 193 . If default is made in payment of the said Call interest will be charged at the rate of £_____per centum per annum.

_____

[Address and date.] *Liquidator.*

If the call be not paid, the liquidator should consult a solicitor as to what steps he ought to take.

SETTLEMENT OF LIST OF CREDITORS.

The liquidator should, as soon as possible after the resolution for voluntary winding up has been passed and registered, send notices to creditors to send in their claims. The notice is given by advertisement in the *Gazette* [1] and local papers. The following is a form:—

In the matter of The Companies Act, 1929,
and
In the matter of_____, LIMITED.

TAKE NOTICE that I,_____of_____, the Liquidator of the above-named Company, have fixed_____day, the_____of_____193 , as the day on or before which the creditors of the Company are to prove their debts or claims, or be excluded from the benefit of any distribution made before such debts are proved.

_____

[Address and date.] *Liquidator.*

As to what is meant by *Gazette* see note 2, page 355, *ante*.

The date fixed must not be less than fourteen days from the date of the notice. The liquidator must give notice in writing of the day so fixed by advertisement in such newspaper as he considers convenient, and also to the last known address or place of abode of each person who, to the knowledge of the liquidator, claims to be a creditor of the company, and whose claim has not been admitted. He must examine every proof of debt lodged with him, and in writing admit or reject it, in whole or in part, or require further evidence in support of it. If he rejects a proof he must state in writing to the creditor the grounds of the rejection. Any creditor or contributory who is dissatisfied with the decision of the liquidator in respect of a proof may apply to the Court to reverse or vary the decision. And if the liquidator thinks that a proof has been improperly admitted the Court may, on the application of the liquidator, and after notice to the creditor who made the proof, expunge or reduce it.

A creditor may prove his debt by delivering or sending through the post an affidavit verifying the debt. Such affidavit may be made by the creditor himself or by some person authorised by him in that behalf. If made by a person so authorised it must state his authority and means of knowledge. The affidavit must contain or refer to a statement of account showing the particulars of the debt, and specifying any vouchers by which it can be substantiated. The liquidator may at any time call for production of the vouchers. The affidavit must also state whether the creditor is or is not a secured creditor.

A creditor has to bear the cost of proving his debt unless the Court otherwise orders. When proving his debt, the creditor must deduct from it all trade discounts, but he is not obliged to deduct any discount not exceeding five per cent. on the net amount of his claim which he may have agreed to allow for payment in cash.

In the case of rent or other payments falling due at stated periods, the persons entitled to the rent or other payment may prove for a proportionate part thereof up to the date of the resolution for winding up as if the rent or payment grew due from day to day. Where the liquidator remains in occupation of premises demised to the company being wound up, the right of the landlord to claim payment by the company, or by the

liquidator, of rent during the period of the company's or the liquidator's occupation, is not affected by this rule.

On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the resolution for winding up, the creditor may prove for interest at a rate not exceeding four per cent. per annum to that date from the date when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made, giving notice that interest will be claimed from the date of the demand until the time of payment.

A creditor may prove for a debt not payable at the date of the resolution for winding up as if it were payable immediately, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of five per cent. per annum computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted.

Where there are numerous claims by workmen and others employed by the company it is sufficient that one proof on behalf of all such creditors should be made by a foreman or some other person. Such proof must have annexed thereto as forming part thereof, a schedule giving the names of the workmen and others, and the amounts severally due to them, and will have the same effect as if separate proofs had been made by each of the said workmen and others.

Where a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the company is liable, such bill of exchange, note, instrument, or security must, subject to any special order of the Court made to the contrary, be produced to the liquidator and be marked by him before the proof can be admitted either for voting or for any purpose.

In many cases it is necessary to make out a list of debts and claims, showing what debts should be allowed and what should be proved by the creditors. The assistance of the solicitor will probably be necessary in making out and finally settling the list. The assets of the company should be applied to the payment of its obligations in the following manner:—

1. The costs of the liquidation in full, including the liquidator's remuneration.
2. The debts of the company which have priority to other debts by virtue of Section 264. Debts due to the Crown other than those specified in this section, have no priority.[1]
3. The ordinary (unsecured) creditors will then be paid, they ranking equally, and receiving a dividend if there is not enough to pay them in full. If there is more than enough to pay the debts in full, interest must be paid on interest-bearing debts before any return is made to members. Creditors whose claims are statute-barred should not be paid.[2]
4. The balance is distributable amongst the members of the company according to the rights of the different classes of shares under the Articles of Association.
5. If the assets are not exhausted by repaying capital paid up, and in the absence of express provision, the remaining funds are then divisible amongst the shareholders in proportion to the nominal amount of share capital held by them respectively, and not in proportion to the amount paid up on their shares.[3] A provision giving preference shareholders priority in a winding up as to repayment of capital and arrears of dividend does not exclude their right to participate in surplus assets on this basis.[4]

So far as secured creditors are concerned the liquidator, as representing the company, is only entitled to an equity of redemption, and the proceeds of a security are applicable to the payment of the secured debt in priority to the costs of the liquidation. If, however, the liquidator of the company is also appointed a receiver on behalf of the debenture holders or mortgagees, he is entitled to pay first the costs of getting in the property on behalf of the mortgagees, and then the amount due to the mortgagees, after which he will pay the costs of the liquidation and proceed with the distribution of the surplus assets in the order given above.

[1] Webb & Co. (Smithfield, London), in *re*, [1922] 2 Ch. 369, affirmed *sub nom.* Food Controller *v.* Cork, [1923] A. C. 467.

[2] Fleetwood and District Electric Light and Power Syndicate, in *re*, [1915] 1 Ch. 486.

[3] Birch *v.* Cropper, [1889] 14 App. Ca. 525; Wakefield Rolling Stock Co., [1892] 3 Ch. 165.

[4] Fraser and Chalmers, in *re*, [1919] 2 Ch. 114.

A receiver may proceed to collect debts due to the company, but the power to call up unpaid capital vests in the liquidator, who, however, may delegate the power to the receiver. Even then the calls must be made in the name of the liquidator.

The Court may appoint a manager in a debenture holder's action, provided the goodwill or business of the company is charged by the debentures expressly or by implication. A charge on " all the company's property and effects whatsoever " is sufficient for this purpose.[1] The receiver and manager must obey strictly the terms of his appointment, and not act on his own responsibility and then come to the Court to ratify what he has done, otherwise he may find items of expenditure by way of management disallowed, as well as some of his remuneration.[2] The remuneration of a receiver or manager appointed under the powers contained in any instrument may, on application by a liquidator, be fixed by order of Court, and on application by the liquidator or the receiver or manager any such order may be varied or amended (Section 309).

Any person who obtains an order for the appointment of a receiver or manager, or who appoints such a receiver or manager under any powers contained in any instrument, must, within seven days of such order or appointment, as the case may be, give notice of the fact to the Registrar of Companies. Upon payment of the prescribed fee the Registrar will enter the fact on the Register of Charges. Failure to give notice to the Registrar entails liability to a fine of five pounds for every day of the default (Section 86). A body corporate may not be appointed receiver or manager (Section 306). A receiver or manager who has been appointed under powers contained in any instrument must within one month after the expiration of six months from the date of his appointment and of every subsequent period of six months, and within one month of his ceasing to act, lodge with the Registrar an abstract of his receipts and payments during each period of six months or during the period from the end of the last six months up to the date of his ceasing to act, and also of the aggregate amount of his receipts and payments since his appointment (Section 310). On ceasing to act he must lodge notice to that effect with the Registrar, who will enter the notice on the Register of Charges.

1 *Re* Leas Hotel Co., [1902] 1 Ch. 332.

2 Wood Green and Hornsey Steam Laundry, in *re*, [1918] 1 Ch. 423.

Default on the part of the receiver or manager in complying with any of these requirements renders him liable to a heavy fine (Section 86). Further, it is provided by Section 311 that where default is made by a receiver or manager in lodging any document or making any return specified in the section the Court may on application as directed therein order the default to be made good and may require the person in default to bear the costs of the application to the Court.

The debts having priority under Section 264 are—Parochial and local rates which have become due and payable within twelve months of the date mentioned in the section (see *infra*); assessed taxes,[1] land tax, property and income tax assessed up to the 5th April next before such date, not exceeding in the whole one year's assessment; the wages or salary of any clerk or servant up to a limit of £50 in respect of services rendered to the company during the four months next before such date. the wages of any labourer or workman, not exceeding £25, for services rendered to the company during two months before such date. Any payment on account of wages or salary out of money advanced by some person for that purpose has priority up to the amount by which the amount of such wages or salary entitled to priority is diminished by reason of such payment.

By virtue of Section 5 of The Mercantile Law Amendment Act, 1856, a guarantor who has paid a preferential debt is, in a winding up, entitled to stand in the place of the creditor, and with the same right of priority.[2]

The date referred to in the section is (*a*) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding-up order; and (*b*) in any other case, the date of the commencement of the winding up. Where the resolution for winding up is passed at an adjourned meeting it is to be deemed to be passed on the date on which it was passed and not on any earlier date (Section 119). Where there is a voluntary winding up followed by a compulsory or supervision order, it is the commencement of the voluntary winding up that fixes the date. A person, therefore, who has acquired a preferential right under the voluntary winding up (*e.g.* in respect of four

[1] The actual assessment to tax need not have been made before the relevant date. It can be made after that date in respect of a proper period before it (Gowers *v.* Walker, [1930] 1 Ch. 262).

[2] Lamplugh Iron Ore Company, [1927] 1 Ch. 308.

months' wages not exceeding £50) is not deprived of such right if a compulsory order should afterwards be made.[1]

In the debts having priority under Section 264 there are to be included all amounts due in respect of any compensation or liability for compensation under The Workmen's Compensation Act, 1925, the amount of which became due or the liability wherefor accrued before the relevant date, and contributions payable during the twelve months next before the relevant date by the company under The National Health Insurance Acts, 1924 to 1928; The Widows', Orphans', and Old Age Contributory Pensions Act, 1925, or The Unemployment Insurance Acts, 1920 to 1929.[2] The priorities specified in this paragraph do not apply where the company is being wound up merely for the purposes of reconstruction or amalgamation or, in the case of compensation under The Workmen's Compensation Act, where the company has at the commencement of the winding up under such a contract with insurers as is mentioned in Section 7 of the Workmen's Compensation Act, rights capable of being transferred to and vested in the workman.

A creditor who has issued execution against the goods or lands of a company, or who has attached any debt due to a company, cannot retain the benefit of the execution or attachment unless he has before the commencement of the winding up completed the execution or attachment. This provision of the Act is subject to the provisos that (*a*) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall for the purposes of the foregoing provision be substituted for the date of the commencement of the winding up; and (*b*) a person who purchases in good faith under a sale by the sheriff any goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator (Section 268).

For the purposes of Section 268, an execution against goods is to be taken to be completed by seizure and sale, and an attachment of a debt is to be deemed to be completed by receipt of the debt, and an execution against land is to be deemed to be completed by seizure and, in the case of an equitable interest,

1 Havana Exploration Co., in *re*, [1916] 1 Ch. 8.

2 Some of the benefits conferred by the Acts of 1920 to 1929 are in certain respects amended and extended by The Unemployment Insurance Act 1930.

by the appointment of a receiver. In this section the expression "goods" includes all chattels personal, and the expression "sheriff" includes any officer charged with the execution of a writ or other process.

Where goods of a company are taken in execution and before the sale of the goods or completion of the execution by the receipt or recovery of the full amount of the levy, notice of the appointment of a provisional liquidator or of the making of a winding-up order or of the passing of a resolution for voluntary winding up is served on the Sheriff he must, on being so required, deliver the goods and any money seized to the liquidator (Section 269). But the costs of the execution are a first charge upon the goods or money so delivered.

In so far as the assets of the company available for payment of general creditors are insufficient to meet these debts, they have priority over the claims of holders of debentures creating a floating charge, and must be paid out of the property comprised in or subject to that charge (Section 264, Sub section 4 (*b*)). But such debts have no priority in a voluntary winding up as against a landlord distraining. Where a winding-up order has been made the case is different (Section 264, Sub-section 6). They have also a preference over the claims of holders of debentures creating a floating charge when the company is not in liquidation, but a receiver has been appointed or possession has been taken by or on behalf of those debenture holders. In such case the specified date is that of the appointment of the receiver or of possession being taken (Section 78). If the debentures contain a fixed charge as well as a floating charge, it is only the assets covered by the floating charge that are subject to preferential debts.[1]

All these rank equally, and abate in equal proportions, should the assets be insufficient.

A liquidator has no right to be paid his costs and expenses out of property covered by the debentures. But if there are any free assets not so covered he has, under Section 264, Sub-section 5, the right to retain his costs and expenses out of such assets before paying preferential debts, even though the result may be to throw the burden of paying these debts upon the debenture holders. The proper plaintiff to recover contribution

[1] Lewis Merthyr Consolidated Collieries, *in re*, [1929] 1 Ch. 489.

from a debenture holder with a floating charge towards payment of a preferential debt is the liquidator acting in the name of the company.[1]

Wages made up partly by fixed salary and partly by commission upon work done are wages within the section.[2] A managing director of a company is not a "clerk or servant."[3] The question in each case is whether the main indications of service exist. Four circumstances are important: (*a*) whether the claimant did his work entirely away from the office of the company; (*b*) whether he was exclusively employed by the company or might work for other persons; (*c*) whether he was bound to render services generally, or only a particular class of service; (*d*) whether he was working under the control of the company, or subject to its commands. Of these the fourth is the most important. A person working entirely away from the company's office, not exclusively employed, only rendering a particular class of service, and not working under the control of the company, is not a "clerk or servant" of the company.[4]

A receiver and manager who pays away the assets of the company in the course of carrying on its business, without providing for a preferential claim of which he has notice, is guilty of a breach of Section 78 and consequently is liable in damages to the person having the preferential claim.[5]

DECLARATION OF DIVIDEND TO CREDITORS.

The following are forms of declaration of dividends on debts:—

In the matter of The Companies Act, 1929;
and
In the matter of_____, LIMITED.

I,_____, of_____, the Liquidator of the above-named Company, hereby declare a Dividend at the rate of_____shillings and_____pence in the pound upon the amount of the respective debts of the Creditors of the above-named Company whose debts have been

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1 Westminster Corporation *v.* Chapman, [1916] 1 Ch. 161.

2 *Re* Earle's Shipbuilding Co., [1901] W. N. 78.

3 *Re* Newspaper Proprietary Syndicate, [1900] 2 Ch. 349; and see page 12, *ante*. But under special Articles and in special circumstances a director may be a "clerk or servant" (see in *re* Beeton & Co., [1913] 2 Ch. page 279).

4 Ashley & Smith, in *re*, [1918] 2 Ch. 378

5 Woods *v.* Winskill, [1913] 2 Ch. 303.

admitted or proved [*or* whose names and the amount of whose debts are set forth in the Schedule hereto annexed].

Liquidator.

[Address and date.]

SCHEDULE.

(*If a Schedule is thought necessary.*)

DECLARATION OF DIVIDEND ON SHARES.

(*Heading as in preceding Form.*)

I,_____, of_____, the Liquidator of the above-named Company, hereby declare a Dividend at the rate of_____per Share on the _____Shares of the said Company, payable to the Members thereof according to their rights.

Liquidator.

[Address and date.]

Notices that their dividends are ready for payment should be sent by letter to creditors and shareholders of the company.

Money representing unclaimed dividends which for six months from the date when the dividend became payable has remained in the hands or under the control of the liquidator must forthwith, on the expiration of the six months, be paid into the Companies Liquidation Account. Where the liquidator has to make a return under Section 284 (see page 384, *post*) he must pay into this account within fourteen days from the date to which his statement of account is brought down the minimum balance of money representing unclaimed or undistributed assets which has been in his hands or under his control during the six months immediately preceding such date, less such part (if any) as the Board of Trade may authorise him to retain for the immediate purposes of the liquidation. Moneys representing unclaimed or undistributed assets or dividends in the hands of the liquidator at the date when the company would, in the ordinary course of things, be deemed to be dissolved, must forthwith be paid into this account, otherwise the liquidation will remain open until this is done. The procedure prescribed for paying money into the Companies Liquidation Account is to apply to the Board of Trade for a paying-in order, which order is an authority to the Bank of England to receive the payment. Money deposited or invested at interest by a liquidator is deemed to be money under his

control, and at the times ordained for payment into the Companies Liquidation Account he must realise the investment or withdraw the deposit. If, however, the investment is in Government securities the Board of Trade may, as an alternative, allow the transfer of these securities to its control. The Board of Trade may require from a liquidator particulars, verified by affidavit, of money in his hands or under his control representing unclaimed or undistributed assets, and an account, verified by affidavit, of the sums received and paid by him as liquidator, and may direct and enforce an audit of the account. A liquidator who requires to make payments out of money paid into the Companies Liquidation Account must apply to the Board of Trade, who will either make an order for payment to the liquidator or direct cheques to be issued to the liquidator for transmission to the persons to whom the payments are to be made.

If either a Members' Voluntary Winding Up or a Creditors' Voluntary Winding Up continues for more than a year the liquidator must at the end of the first and any subsequent year from the commencement of the winding up, or as soon thereafter as may be convenient, summon a general meeting of the company and lay before it an account of his acts and dealings, and of the conduct of the winding up during the preceding year (Section 235, Sub-section 1). In the case of a Creditors' Voluntary Winding Up the liquidator must also summon a meeting of the creditors for that purpose (Section 244, Sub-section 1). Default renders the liquidator liable to a fine of £10. In the case of a compulsory winding up not concluded within a year of its commencement the liquidator need not merely on that account summon any meetings, but he is under the obligation common to all liquidators, whether in a compulsory or voluntary liquidation, to lodge with the Registrar the periodical statement of account referred to page 384, *post*.

A resolution passed at an adjourned meeting of creditors or contributories is to be deemed to have been passed on the date when it was passed and not on any earlier date (Section 287).

FINAL WINDING-UP MEETING.

As soon as the affairs of the company are fully wound up the liquidator must prepare an account showing how the liquidation has been conducted and the property of the company disposed

of. He must then call a general meeting of the members to consider the account (Section 236, Sub-section 1). In the case of a Creditors' Winding Up he must also call a meeting of the creditors, and lay the account before the meeting (Section 245, Sub-section 1). These meetings must be called by advertisement, specifying the time, place, and object of the meeting, at least one month prior to the date of the meeting in the *Gazette*[1] (Sections 236 and 245).

In the case of a Members' Winding Up the notice in the *Gazette* will be—

FORM No. 117B.

"THE COMPANIES ACT, 1929."

----------, LIMITED.

(IN VOLUNTARY LIQUIDATION.)

NOTICE IS HEREBY GIVEN that a GENERAL MEETING of the Members of the above-named Company will be held at_____ on_____day, the_____day of_____, 193 , at_____ o'clock in the_____precisely, to receive the Account of the Liquidator(s) showing how the winding up of the Company has been conducted and its property disposed of; to hear any explanation that may be furnished by the Liquidator(s); and to pass an Extraordinary Resolution as to the disposal of the books and papers of the Company and of the Liquidator(s).

Dated this_____day of_____, 193 .

} *Liquidator or Liquidators.*

Solicitor,

The Notice to the members may be in the form following:—

FORM No. 117A

----------, LIMITED.

(IN VOLUNTARY LIQUIDATION.)

NOTICE IS HEREBY GIVEN that a GENERAL MEETING of the Members of the above-named Company will be held at_____ on_____day, the_____day of_____, 193 , at_____ o'clock in the_____precisely, to receive the Account of the Liquidator(s) showing how the winding up of the Company has been conducted and its property disposed of; to hear any explanation that may be given by the Liquidator(s); and to pass an Extraordinary Resolution as to the disposal of the books and papers of the Company and of the Liquidator(s).

[1] For meaning of "Gazette" see note 2, page 355, *ante*.

AND NOTICE IS HEREBY FURTHER GIVEN that the Statutory Notice of the above Meeting was duly advertised in the *London*[1] *Gazette* of _____day the_____day of_____193 , pursuant to Section 236 of The Companies Act, 1929.

_____

_____

*To*_____ *Liquidator(s).*

_____193 .

In the case of a Creditors' Winding Up the preceding forms of notice will be varied by the omission of the notice of an extraordinary resolution as to disposal of the books and papers of the company and of the liquidator,[2] as Section 283 provides that the books and papers shall be disposed of in the case of a Members' Winding Up as the company by extraordinary resolution directs and in the case of a Creditors' Winding Up in such way as the committee of inspection, or if there is no such committee, as the creditors of the company may direct.

The Notice to the creditors for the *Gazette* may be as follows:—

_____, LIMITED.

(IN VOLUNTARY LIQUIDATION.)

NOTICE IS HEREBY GIVEN that a GENERAL MEETING of the Creditors of the above-named Company will be held at_____ on_____day, the_____day of_____, 193 , at_____ o'clock in the_____precisely, to receive the Account of the Liquidator(s) showing how the winding up of the Company has been conducted and its property disposed of; and to hear any explanation that may be furnished by the Liquidator(s) [and to pass a Resolution as to the disposal of the books and papers of the Company and of the Liquidator].

_____

_____

*To*_____ *Liquidator(s).*

_____, 193

Where a notice is sent by post to creditors the form should contain a statement that notice has been advertised in the *Gazette* as required by the Act.

If the committee of inspection has by resolution already dealt with the disposal of the books and papers the words in square brackets in the form given should be omitted.

[1] Or Edinburgh, as the case may be.

[2] The appropriate form is obtainable from the publishers.

In each case the form must be signed by the liquidator (or by each liquidator where there is more than one) and the copy for the *Gazette* must be authenticated by the signature of a solicitor.

RETURN OF FINAL WINDING UP MEETING.

Within a week after the meeting (or, in the case of a Creditors' Winding Up where the meeting of the members and that of the creditors is not held on the same day, within a week after the date of the later meeting) the liquidator must lodge with the Registrar a Return of the Final Winding-up Meeting, in the case of a Members' Winding Up on Form 15A and in the case of a Creditors' Winding Up on Form 15B.

If a quorum of members or creditors is not present at the respective meetings the Act provides by Section 236 (Members' Winding Up) and Section 245 (Creditors' Winding Up) that in lieu of the above-mentioned Return the liquidator shall make a Return that the meeting was duly summoned and that no quorum was present, and upon making such a Return the provisions of the Act as to making a Return of Final Meeting are to be deemed to have been complied with.

Notice is not required to be sent to members or creditors by the Act, which only prescribes notice by advertisement in the *Gazette*; but the liquidator may deem it desirable to make a special effort to get a meeting.

If the winding up is not concluded within one year after its commencement the liquidator must lodge a statement in the prescribed form with the Registrar of Companies (Section 284). The statement must be sent within thirty days after the expiration of the twelve months, and should show what assets have been realised and what payments made, and state the amount of assets and liabilities at the commencement of the winding up, the causes which delay the termination of the winding up, and the period within which the winding up may probably be completed. The statement must be lodged in duplicate and verified by affidavit. The forms applicable are Nos. 92, 93, 94, 95, and 96, which are set out on page 439 *et seq.*, *post*. Similar statements must be submitted half-yearly from the date of the first statement, and a final account up to the date of dissolution. If the liquidator has not, during any period for which a statement has to be sent, received or paid any money on account of

the company, he must, nevertheless, lodge the statement with the rest of the prescribed particulars filled in and verified by affidavit. If the winding up is concluded within one year of its commencement the statement in that particular form is not required. It must be borne in mind that the dissolution of a company in voluntary liquidation does not take place until three months from the day on which the return of the final winding-up meeting is lodged at the Companies Registry (Sections 236 and 245), and inasmuch as a voluntary winding up does not conclude until the date of the dissolution of the company (or if unclaimed or undistributed funds or assets remain under the control of the liquidator, not until these have been distributed or paid into the Companies Liquidation Account), the liability to furnish the statement required under Section 284 can only be avoided if the final meeting should be held, the return made, and the funds and assets properly dealt with within nine months from the commencement of the liquidation. The account of the winding up required under Section 236 to be laid before the members by the liquidator in a Members' Winding Up, or under Section 245 before meetings of members and creditors in a Creditors' Winding Up, as soon as the affairs of the company are fully wound up, must, however, accompany the Return of the Final Meeting made under the two sections referred to in every winding up irrespective of any question of time.

On the application of the liquidator or of any person who appears to the Court to be interested, the Court may in either a Members' or a Creditors' Winding Up (under Sections 236 and 245 respectively) make an order deferring the date at which the dissolution is to take effect for such time as the Court thinks fit. Where a company has been dissolved the Court may at any time within two years from the date of the dissolution, upon the application of the liquidator or any other person who appears to the Court to be interested, make an order, upon such terms as it thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved. The person who obtains such an order must lodge an office copy of it with the Registrar of Companies within seven days after the order is made under a penalty for every day of default (Sections 236, 245, and 294).

An order may be made by the Court that a voluntary winding up be continued under supervision of the Court (Section 256). Such orders are usually made on the application of creditors who are dissatisfied with the voluntary liquidator. The Court exercises a general control over the proceedings in the winding up, but the proceedings in so far as they differ from a voluntary winding up are strictly legal and therefore outside the scope of this work. As, however, Section 252 gives to creditors as well as to the liquidator and contributories the power to apply to the Court to determine any questions arising in the winding up of a company, and Section 249 gives the Court power to appoint or remove a liquidator in a voluntary winding up, a supervision order is not relatively of any great importance.

THE LIQUIDATOR'S RECORD BOOK.

Specimen entries for a Liquidator's Record Book in a Members' and in a Creditors' Voluntary Winding Up are given below. The examples printed in italic type are of the entries which vary in a Members' or Creditors' Winding Up and are distinguished by the letter **M** or **C** appearing at the commencement of the entry.

THE A. B. COMPANY, LIMITED.

_____193 .

M. *The following Special Resolution to wind up the Company and to appoint a Liquidator was passed at an Extraordinary General Meeting held at _____on this date.*[1]

_____193 .

C. *The following Extraordinary Resolution to wind up the Company was passed at an Extraordinary General Meeting held at_____ on this date.*[2]

_____193 .

C. *At an Extraordinary General Meeting held at_____on this date, for the passing of an Extraordinary Resolution to wind up the Company, Mr. K.____ of_____was on the proposition of Mr._____ nominated by the Company as Liquidator.*

[1] For form of resolution see page 354, *ante*.
[2] For form of resolution see page 355, *ante*.

_____193 .

C. *At a meeting of Creditors held at*_____*on this late, Mr.*_____, *Chairman of the Company in the chair, Mr. W.*_____ *of*_____*was on the proposition of*_____ *nominated by the Creditors as Liquidator, and a Committee of Inspection of five persons, namely A., B., C., D., and E., was appointed.*

_____193 .

C. *At a meeting of Members of the Company held at*_____ *on this date, a Committee of Inspection of five persons, namely F., G., H., I., and K., was appointed.*

_____193 .

Notice given to Bankers of Resolution to Wind Up and of Appointment of Liquidator.

_____193 .

M. *Printed copy of Special Resolution to wind up, signed by the Chairman of the Meeting, lodged with Registrar of Companies.*

_____193 .

C. *Printed copy of Extraordinary Resolution to wind up, signed by the Chairman, lodged with Registrar of Companies.*

_____193 .

M. *Copies of Special Resolutions, signed by the Chairman of the Meeting, lodged with Bankers, and arrangements made for transferring to the name of the Liquidator the balance of the Company's account.*

_____193 .

M. *Copies of the Special Resolutions, signed by the Chairman, attached hereto.*

_____193 .

Advertisement in the *Gazette*[1] of Special [*or* Extraordinary *or* Ordinary] Resolution passed on the_____day of_____193 .

_____193 .

Notice of Appointment of Liquidator lodged with Registrar of Companies.

_____193 .

C. *Meeting of Committee of Inspection held at*_____. *Remuneration of Liquidator determined.*

_____193 .

C. *Notice to Creditors of the Meeting of Creditors posted.*

[1] As to meaning of "Gazette" see note 2, page 355, *ante*.

_____193 .

C. *Advertisement of Meeting of Creditors inserted in the* Gazette[1] *and in*_____. *[Here give name of local paper.]*

_____193 .

C. *Meeting of Creditors. Resolution passed as follows:—*

_____193

C. *Notice in* Gazette *to Creditors to send in claims.*

_____193 .

Notice to Contributories to settle List.

_____193 .

Settling List of Contributories.

_____193 .

Notices calling up the unpaid balances (*e.g.* 2s. 6d. per Share) on the Shares dispatched to-day. Call letters posted at the post-office in_____ Street at 5 p.m. by Mr._____, whose certificate of posting is attached.

_____193 .

Notice of intended Dividend of 10s. in the £ sent to Creditors.

_____193 .

Dividend Warrants for 10s. in the £ signed for delivery.

_____193 .

Notice of Second and Final Dividend of 5s. in the £ sent to Creditors.

_____193 .

Dividend Warrants for Second and Final Dividend of 5s. in the £ signed for delivery.

_____193 .

Liquidator's Statement of Receipts and Payments (Form No. 92) in duplicate, Liquidator's Trading Account (Form No. 94) in duplicate, List of Dividends Paid (Form No. 95) in duplicate, with Affidavit (Form No. 93), lodged with the Registrar of Companies. Also List of Amounts paid to contributories (Form No. 96).

[Only necessary if liquidation is not completed within twelve months.]

_____193 .

First and Final Payment of 5s. 3d. in the £ to Contributories declared.

_____193 .

Warrants of First and Final Payments to Contributories signed for delivery.

[1] As to meaning of "Gazette" see note 2, page 355, *ante*.

_____193 .

M. *Advertisement of Final Winding-up Meeting inserted in the* Gazette,[1] *and Notice sent to Contributories.*

_____193 .

C *Advertisement of Final Winding-up Meeting of Company inserted in the* Gazette,[1] *and Notice sent to Contributories. Advertisement of Final Winding-up Meeting of Creditors of Company also inserted in the* Gazette[1] *and Notice to Creditors sent.*

_____193 .

M *Final Winding-up Meeting held. Liquidator's Account of the winding up adopted. Ordinary resolution as to remuneration of Liquidator passed. Following Extraordinary Resolution passed: "That the books and papers of the Company and of the Liquidator be retained by the Liquidator for two years from this date, and to be destroyed at the expiration of that period."*

_____193 .

C. *Final Winding-up Meeting of Company held. Liquidator's Account of winding up adopted.*

_____193 .

C. *Final Winding-up Meeting of Creditors held. Liquidator's Account of the winding up adopted. The Committee of Inspection not having given direction as to disposal of books and papers of the Company and of the Liquidator, the meeting directed that the said books and papers be retained by the Liquidator for two years and be destroyed at the expiration of that time.*

_____193 .

Notice of Final Winding-up Meeting having been held [*or* Return stating that Final Winding-up Meeting was duly summoned, but no quorum was present thereat] lodged at the Companies Registry.

---

[1] The notice must be published a month before the meeting.

RECONSTRUCTION.

A VOLUNTARY winding up followed by a reconstruction under Section 234 is the procedure commonly adopted by a company which desires to alter its constitution or reduce its capital in a manner not authorised by Statute. The secretary is often appointed liquidator of the company to be wound up, and afterwards secretary of the reconstructed company.

That section provides that where a company is wound up voluntarily, and its business or property is proposed to be transferred or sold to another company, the liquidator may, with the sanction of a special resolution, receive, in compensation for such transfer or sale, shares, policies, or other like interests in the other company, for distribution amongst the members of the company being wound up, or he may enter into any other arrangement whereby the members of the company being wound up may, either in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing company.

If a member of the company being wound up who has not voted in favour of the special resolution expresses his dissent in writing, addressed to the liquidator, and left at the registered office of the company not later than seven days after the passing of the special resolution, he (the dissentient member) may require the liquidator either to abstain from carrying the resolution into effect, or to purchase his interest (Sub-section 3). Executors of a deceased member have the same right of dissent as the deceased member would have had if living, even though they have not had his shares registered in their own names.[1] Leaving the notice at the registered office is not an essential condition, and strict compliance in this respect may be waived by the liquidator, or dispensed with, for good cause, by the Court.[2] A company cannot, by its Articles of Association, deprive members of the protection afforded to them by this section.[3] Nor can this result be produced by the exercise of powers taken in the Memorandum, for the provisions of Section 234 define rights in the members which cannot by any

[1] Llewellyn *v* Kasintoe Rubber Estates, [1914] 2 Ch. 670.
[2] Brailey *v.* Rhodesia, [1910] 2 Ch. 95. [3] Payne *v.* Cork Company, [1900] 1 Ch. 308.

clauses in the Memorandum and Articles of Association be excluded.[1] Unless a contrary intention appears, a power to sell for shares is not confined to a sale for fully paid-up shares.[2]

There is no power to compel a dissentient shareholder to take shares in the new company. A shareholder who does not assent to the transaction or determines to abandon all his interest in the new company will probably take steps to make the liquidator purchase his interest. The price is settled either by agreement or, in case of dispute, by arbitration (Sub-section 3). Dissentient shareholders may, in a proper case, petition for a compulsory winding-up order before the agreement for sale has been executed. The result would be that the scheme could not go through unless and until it was sanctioned by the Court.[3]

In the case of a reconstruction the company is usually solvent and the first step, assuming that to be the case, will be for the directors to make and lodge with the Registrar of Companies a Declaration of Solvency in accordance with Section 230 (see page 351 *et seq., ante*), after which there should be given notice of an extraordinary general meeting to pass a special resolution that a reconstruction is desirable and to wind up voluntarily. Sometimes a circular explaining the objects of the reconstruction is also addressed to the shareholders. The following is a form of notice:—

_____, LIMITED.

NOTICE IS HEREBY GIVEN that an Extraordinary General Meeting of the above-named Company will be held at No. _____Street, in the County of_____, on_____day the_____day of_____, 193 , at_____o'clock in the_____noon precisely, for the passing (with or without modification) of the following Special Resolutions:—

Resolutions.

1. That the Company be reconstructed under Section 234 of The Companies Act, 1929, by the sale and transfer of its property, assets, and liabilities to a new Company, upon the terms of the Scheme of Reconstruction now submitted to the Meeting and identified by the signature of the Chairman.

2. That, with a view to such Reconstruction—

(A) The Company be wound up voluntarily; and

(B) That Mr._____, of_____, be and he is hereby appointed Liquidator for the purpose

[1] Bisgood *v.* Henderson's Transvaal Estates, [1908] 1 Ch. 743.

[2] Mason *v.* Motor &c. Co., [1905] 1 Ch. 419.

[3] Consolidated South Rand Mines Deep, *in re*, [1909] 1 Ch. 491.

of such winding up, with power to enter into all such agreements and take all such proceedings as may be necessary or expedient for carrying out the said scheme.

The Scheme of Reconstruction is enclosed herewith, and also a proxy form, in case you should be unable to attend the Meeting on the_____day of_____.

[Address and date.] *Secretary.*

[ANOTHER FORM.]

THE_____ _____COMPANY, LIMITED.

NOTICE IS HEREBY GIVEN that an Extraordinary General Meeting of the above-named Company will be held at_____Street, _____, in the County of_____, on_____day, the_____day of_____, 193 , at_____o'clock in the_____noon precisely, for the purpose of considering and, if deemed desirable, of passing (with or without modification) the following Special Resolutions:—

1. That The_____Company, Limited, shall be wound up voluntarily, and that Mr._____, of_____, shall be the Liquidator for the purpose of such winding up, with full power to do all things which may be deemed necessary or expedient for carrying into effect this Resolution.

2. That, for the purpose of taking over the assets and liabilities of the said Company (hereinafter called "the Old Company"), another Company (hereinafter called "the New Company") shall be formed, and registered with limited liability under The Companies Act, 1929, and named "The New_____Company, Limited," having a Capital of £_____, divided into_____Shares of £_____each.

3. That each Shareholder in the Old Company shall be entitled (upon giving notice as is hereinafter mentioned, and upon satisfying all his liabilities to the Old Company) to receive in exchange for each Share held by him in the Old Company one Share in the New Company, to be issued on the footing of being paid up to the extent of_____ and with a liability to calls to the extent of_____per Share.

4. That, of the balance of_____to which Shares to be issued are liable as aforesaid, the amount of_____per Share shall forthwith be called up, and the remaining_____as and when the Directors of the New Company shall direct.

5. That every Shareholder in the Old Company who desires to exchange his Shares therein for Shares in the New Company upon the above-named terms shall signify such desire to the Liquidator within one calendar month after the passing of these Resolutions, or, in the case of Members resident abroad and holders of Share Warrants, within such extended period as the Liquidator shall name in the advertisements to be hereafter issued.

6. That the Liquidator shall have full power to make all such arrangements as he shall think proper for purchasing, as prescribed in Section 234 of The Companies Act, 1929, the Shares held in the Old Company by any Member thereof who may dissent from these Special Resolutions, and may express such dissent in accordance with the said enactment.

In case you should be unable to attend the Meeting, a form of proxy is enclosed. In order to enable it to be used, it should be returned to me, duly signed, not later than_____o'clock on_____day, the_____instant.

_____

Secretary.

[Address and date.]

If the resolutions are duly passed, the new company will be incorporated, and the agreement for sale and transfer executed by the liquidator of the company being wound up and by the new company. The agreement will contain provisions showing how the shares in the new company are to be allotted to the members of the old company.

If the directors are not able to make a Declaration of Solvency under Section 230, it will be necessary to ascertain the attitude of the creditors towards the proposed reconstruction, and with this purpose in view it will be advisable for the company to come to an agreement with the principal creditors to facilitate the winding up by appointing a Committee of Inspection which will approve the sale of the property and assets of the company to the new company, and also to nominate for the office of liquidator the same person as is nominated by the members of the company. The winding up would be a Creditors' Winding Up, and Section 234 applies, with the modification that the powers of the liquidator thereunder can only be exercised with the sanction either of the Court or of the Committee of Inspection (Section 243).

The notice should in any case clearly convey to the shareholders the intention of the liquidator to proceed under Section 234. Sometimes an arrangement with creditors under Section 251, or under Section 153, is carried out contemporaneously with a reconstruction, and notice of such arrangement given with the notice of reconstruction. The provisions of Section 153 are applicable to compromises or arrangements between a company and its members, or any class of them, as well as to those between a company and its creditors, and whether the company be in liquidation or not. When, therefore,

some compromise or arrangement has been proposed, it is competent for the Court to order a meeting of the members or any class thereof, or the creditors or any class thereof, and if the requisite majority (a majority in number representing three fourths in value of either members or creditors, as the case may be) give their consent to the compromise or arrangement the same may be made binding by an Order of Court. A reconstruction of an existing company by winding up and sale of the entire assets for shares in a new company may be effected under Section 153, provided that proper provision is made for dissentient members.[1] This enables the purchase consideration to be distributed according to the scheme, instead of in accordance with the strict rights of the members under the Memorandum and Articles. Difficult questions may arise as to what constitutes a class of members, and legal advice will sometimes be necessary. If a group of members forming a " class " are not summoned to a separate meeting the Court will not give its sanction to the scheme. Holders of shares partly paid up with the uncalled balance paid in advance of calls and carrying interest (see Clause 16 of Table A) are a different class to holders of fully paid shares, and to holders of partly paid shares who have not paid in advance of calls, even if all the shares are ordinary shares.[2] Should a class of shareholders disapprove the arrangement, the Court will, if satisfied that, having regard to the value of the company's assets, that class has no interest in them, disregard their disapproval.[3]

Under Section 154 it is provided that where an application is made to the Court under Section 153 for its sanction to a compromise or arrangement (which latter word includes a reorganisation of the share capital of the company), the Court may by its order provide, *inter alia,* for the dissolution without winding up of the company.

Where the reconstruction is carried through under Section 234, the company by which the business and property of the company being wound up is acquired need not be a company within the meaning of the Act. In connection with a compromise or arrangement under Section 153 " Company " means any company liable to be wound up under the Act; but

[1] Sandwell Park Colliery Co., in *re*, [1914] 1 Ch. 589.
[2] United Provident Assurance Co., in *re*, [1910] 2 Ch. 477
[3] *Re* Tea Corporation, [1904] 1 Ch. 12.

the operation of Section 154 is confined to a company which is a company within the meaning of the Act.

Under Section 155 power is conferred upon a transferee company to acquire compulsorily shares of dissentients where the scheme or contract involving the transfer of the shares has been approved by nine tenths of the holders of shares of the company being acquired. The company to which the shares are being transferred need not be a company within the meaning of the Act. A dissentient shareholder may apply to the Court for an order declaring that the transferee company is not entitled to acquire his shares on the terms of the scheme or contract; but the fact that so large a majority as the holders of nine-tenths in value of the shares affected approve the scheme or contract is *prima facie* evidence that the scheme or contract is fair.[1]

The various proceedings in a winding up will be found under "WINDING UP," page 350 *et seq.*, *ante*.

The amalgamation of two or more companies may be carried out in much the same way as a reconstruction.

Where in connection with a reconstruction or amalgamation scheme it is shown to the satisfaction of the Commissioners of Inland Revenue that a new company is to be incorporated, or the nominal capital of a company is to be increased, with a view to the acquisition of the whole or part of the undertaking or not less than ninety per cent. of the shares of an existing company, and the consideration is to be shares of the transferee company, relief from capital duty may be obtained by the transferee company under The Finance Act, 1927, Section 55, as amended by The Finance Act, 1928, Section 31, and the Finance Act, 1930, Section 41. The amount of capital duty to be remitted is calculated in the manner provided by the said Sections.

Concession in the case of such schemes is also made in respect of conveyance duty.[2]

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1 Hoare & Co., in *re*, [1934] 150 L. T. 374.

2 It is most important that the provisions of these Sections should be complied with exactly, and that no variation should be attempted. See Oswald Tillotson *v.* Commissioners of Inland Revenue; Brotex Cellulose Fibres *v.* Same; Murex *v.* Same, reported respectively, [1933] 1 K. B. at pp. 134, 158 and 173. Legal advice is essential.

SPECIAL EVENTS AFFECTING A SECRETARY'S POSITION.

It is not intended to deal in this chapter with the general relations between employer and employed. There are, however, some events in the history of a company which call for notice by reason of their special effect upon those in the employment of a company. For instance, an order for the compulsory winding up of a company will operate as a dismissal of all its servants. So will the appointment by the Court of a receiver for debenture holders, or an appointment of a receiver by the debenture holders on their own behalf, and not as an agent for the company. The result of these events will be, on the assumption that the terms of the contract of employment do not justify a dismissal without notice, to give rise to a claim for damages against the company. On the other hand, a voluntary winding up does not necessarily operate as a wrongful dismissal or put an end to the employment, as, for instance, where it is merely for the purpose of reconstruction. The appointment of a receiver for debenture holders who is to be agent for the company would not, of itself, affect the position of the company's servants. The main difficulties in connection with the subject arise when a servant of the company continues to discharge the same duties after the happening of one of the events named, and consist in the determination of the nature and incidents of the fresh contract of service expressly or impliedly entered into (if any), and the person or persons from whom the servant is entitled to enforce payment. For convenience of reference any such fresh contract is called in this chapter "the new contract," as distinguished from the "old contract" of service made with the company. The existence of a new contract of course implies the supersession of the old contract. In order to simplify matters as much as possible the material events have been classified, and dealt with under separate headings.

(A) Events which operate as a wrongful dismissal—

1. Order for compulsory winding up.
2. Appointment of receiver by Court at instance of debenture holders. (This is somewhat doubtful.)

3. Appointment of receiver by debenture holders on their own behalf, and not to act as agent for the company.

(B) Events which do not so operate—

1. Voluntary winding up (as a general rule).
2. Appointment of receiver by debenture holders as agent for company.

(A) 1. An order for compulsory winding up has the same effect as a notice of discharge given on the day when the winding-up order was made.[1] The secretary can prove in the winding up for what is due to him, and is a preferred creditor to a certain extent. The proof should take account of the remuneration and other advantages (*e.g.* free residence) down to the end of his engagement. If there is a long time to run, a deduction will be made in respect of the probability that he will obtain a new appointment.[2]

It has been stated that the reason for holding a compulsory winding up order to operate as a notice of discharge is that it changes the personality of the employer, *i.e.* substitutes the liquidator for the company, and that it is this fact, and not the circumstance that the nature of the business has been changed from that of a going concern to that of winding up the affairs of the company, that works the dismissal.[3] It follows that any services rendered after the winding-up order are rendered to the liquidator, and not to the company. Two of the older cases, viz. *ex parte Harding* (1867, L. R. 3 Eq. 341) and *MacDowall's Case* (1886, 32 Ch. D. 366), considered in the light of this principle, show that, where the circumstances justify the inference, a new contract between the liquidator and a

1 Chapman's Case, [1866] L. R. 1 Eq. 346.

2 Yelland's Case, [1867] L. R. 4 Eq. 350; *ex parte* Clarke, [1869] L. R. 7 Eq. 550; see also R. S. Newman, in *re*, [1916] 2 Ch. 309, and Gramophone Records, in *re*, [1930] W. N. 42. A provision in the agreement that in the event of the appointment being determined by the winding up of the company the person employed shall be entitled to prove in full, will not, when the company is insolvent, be binding on the Court (W. R. Snow & Co., in *re*, [1930] W. N. 68). Legal advice in settling the proof will usually be requisite

3 Midland Counties District Bank *v.* Attwood, [1905] 1 Ch. at page 362. Considerable doubt is thrown on this reasoning by the Court of Appeal in Reigate *v.* Union Manufacturing Co., [1918] 1 K. B. 592, but it is difficult to find any theory that better explains the cases. This authority at all events shows that a voluntary winding up may operate as a breach of a contract of employment, if the purpose of the voluntary winding up was to put an end to the employment, *i.e.* where there is a resolution for winding up which depends upon the company's inability to meet its obligations see *per* Greer, L.J., Fowler *v.* Commercial Timber Co., [1930] 2 K. B at page 6). A voluntary winding up will, *ipso facto*, determine the authority of a receiver, appointed under a debenture deed in the common form, to act as agent of the company (Thomas *v.* Todd, [1926] 2 K. B. 511).

clerk on the same terms as the old contract between the clerk and the company may be implied. The liquidator might, therefore, have to give or be entitled to receive the same length of notice to determine the employment as was formerly requisite between the clerk and the company. But it would require a strong case to establish such a right to notice. It would not result from the mere fact that the clerk remained on for a time, and was paid by the liquidator for his services during that time. If nothing more happened than that, the liquidator could apparently dispense with his further services at any time. Further, the period during which the clerk is employed and paid by the liquidator will, in a sense, be put to the credit of the company as against any claim for wrongful dismissal. Suppose, for instance, that the company had been bound to give three months' notice, and that the liquidator retained and paid the clerk for three months after the winding-up order at the same rate of salary. The latter would have no further claim against anyone, because he has sustained no damage through his wrongful dismissal by the company. This shows the necessity for a secretary or clerk to come to a definite agreement in writing with the liquidator personally as to what his position shall be, how much salary he is to receive, and what notice to terminate the employment.

Assuming that a new contract has been entered into with the liquidator, the question whether the liquidator is personally responsible under it is not so clear as it might be. In *Midland Counties District Bank* v. *Attwood* (*ante*) it is stated, at page 362, that "the business is from the date of the winding-up order carried on by the Court for the purpose of liquidation with the assistance of the official liquidator, who is an officer of the Court." This would seem to point to personal liability on the part of the liquidator, for it is upon reasons applicable to a position of this kind that a receiver and manager appointed by the Court has been held personally liable (see the opening sentences of Lord Esher's judgment in *Burt* v. *Bull*, 1895, 1 Q.B., *at page* 279). Moreover, the Court itself cannot possibly be liable, and it seems difficult to suppose that persons discharging the duties of a secretary, clerk, or servant are trusting for payment to the assets of the company. It is not at all like the case of a solicitor appointed by the liquidator with the sanction of the Court, to whom there are special statutory provisions

applicable, and who is deemed to look to the assets for payment.[1] And if the reason given above for holding a winding-up order to operate as a wrongful dismissal, viz. that it changes the personality of the employer, be correct, it seems necessarily to follow that the new employer—the liquidator—must be liable. There are, however, dicta in some of the cases (*e.g.* the one last cited) which treat a liquidator in a compulsory winding up as merely acting for the company, and not on his own personal responsibility.

2. The next point to consider is the effect of the appointment *by the Court* of a receiver and manager for debenture holders.[2]

This has been held to amount to a wrongful dismissal by the company of its manager (*Reid* v. *Explosives Company*, 19 Q. B. D. 264); but subsequent decisions render it doubtful whether the same result would follow in the case of every servant of the company (see *Whinney* v. *Moss Steamship Co.*, 1910, 2 K. B. *at page* 826; *Parsons* v. *Sovereign Bank of Canada*, 1913, App. Ca. *at page* 171). It depends upon the character of the contract of service. But it would seem clearly to have that result in the case of a secretary. Assuming that it does so operate, yet if the secretary or other employee, being entitled to a certain length of notice, continues to render services to the manager, at the same wage, for a period equal to the time agreed on for notice of dismissal, he can make no claim against the company for wrongful dismissal. Having received employment of equal value to that which he has lost, he has sustained no damage. It is no doubt possible that the receiver and manager might take the secretary &c. into his employment on the same terms as to notice and otherwise, but it would require a very strong case to establish such a position.

The appointment of a receiver and manager is in its nature temporary, and it would be almost absurd to infer (apart from express agreement) that he intended to bind himself to give a long notice of dismissal. It may be pointed out here that a receiver and manager cannot make a new contract of service on behalf of the company, even if he is voluntary liquidator as well as manager. He can make himself liable if he chooses to do so, but not the company, since he is not the agent of the

1 *Ex parte* Watkins, [1875] 1 Ch. D. 130.

2 As to secretary's preferential claim see page 397, *ante*.

company. Nor indeed has the company power to make any further contracts in the ordinary way of business. A receiver and manager appointed by the Court is personally liable on all contracts which he enters into, and he cannot get rid of this liability by describing the contract as made "on behalf of the company," and himself as receiver and manager (*Burt* v. *Bull*, 1895, 1 Q. B. 276). It is important to notice that a compulsory liquidation, whether it occurs before or after a receiver and manager has been appointed by the Court, does not necessarily introduce any fresh complication. In order to save expense it is the practice of the Court to appoint the same person as liquidator and receiver, even if the receiver is first in the field, because a liquidator can get in such assets as calls more easily and expeditiously than a receiver is able to do (*re Joshua Stubbs*, 1891, 1 Ch. 475). Even though a receiver and manager has been first appointed, the Court, if the business is to be carried on, will usually appoint the liquidator to be both receiver and manager (*ibid.*; *Strong* v. *Carlyle Press*, 1893, 1 Ch. 268; *British Linen Company* v. *South American and Mexican Company*, 1894, 1 Ch., *at page* 130). It is a question of discretion.

It is not always the case that the liquidator is the better able to carry on the business. It may require a specially qualified person, as in *Strong* v. *Carlyle Press* (*ante*), where the receiver and manager who was appointed first was given leave to continue his management. In any case the Court will have to determine who is to manage the business, and whichever is chosen is (certainly in the case of a receiver, and probably in case of a liquidator) personally responsible for any new contract entered into. The subsequent appointment of a receiver and manager to be voluntary liquidator does not supersede his capacity of receiver (*Reid* v. *Explosives Company* (*ante*), *per* Lord Esher, *at page* 268).

3. The chief difficulties connected with the subject arise when debenture holders appoint their own receiver.[1] They may, by contract, or by virtue of The Conveyancing Act, 1881, or The Law of Property Act, 1925, have power to do this without the need of any application to the Court, and the receiver may be appointed either as agent for the debenture holders or as agent for the company. The latter situation is dealt with under

[1] As to a secretary's preferential claim see page 397 *ante*.

the next heading. In either case the receiver may or may not have powers, more or less extensive, of managing and carrying on the business. The appointment of a receiver and manager by debenture holders as their own agent is the equivalent to the taking possession of a mortgagor's business by a mortgagee, and that would certainly operate as a wrongful dismissal by the mortgagor (*i.e.* the company) of its servants (*Reid* v. *Explosives Company, ante, at page* 267). A servant of a company kept on at an equal salary would lose *pro tanto* or altogether his right to damages against the company on the principle before explained.

Passing from this point, it must be carefully borne in mind that an employee appointed or continued by the receiver would not be in his employment. Both the receiver and the employee would be fellow servants of the same masters, *i.e.* the debenture holders, or the trustees for the debenture holders (*Owen & Co.* v. *Cronk*, 1895, 1 Q. B., *at page* 272).

It follows that the receiver, being a mere agent, would not incur any personal liability, unless (which is not unlikely) he contracted in such terms as to bind himself. He can, however, bind his principals or employers, and it is against them that any action must be brought if the receiver does not conform to the terms of a contract which he has made on their behalf. It remains to consider the effect produced upon the position by a winding up. A voluntary winding up would not alter the situation of the receiver, who would still carry on the business as before. But a compulsory winding up would stop the power of the receiver to carry on the business (*re Henry Pound*, 42 Ch. D. *at page* 421). It would be the liquidator's province to conduct the business. Should, however, the liquidator not interfere, but allow the receiver to carry on the business as before, the debenture holders or the trustees (as the case may be) would be liable on any contracts made by him in the same way as if there were no liquidator (see *per* Lord Watson, *Gosling* v. *Gaskell*, 1897, A. C. *at page* 588).

If the liquidator did interfere, a curious position might conceivably arise. It has already been seen that the appointment of a receiver and manager as agent for the debenture holders operates as a wrongful dismissal by the company of its servants. On the subsequent appointment and intervention of a compulsory liquidator there would be still another change in

the personality of the employer. It is an arguable question, therefore, whether, assuming that the receiver and manager had entered into fresh contracts of employment with former servants of the company, there would not be a fresh wrongful dismissal from that employment.

(B) 1. It has now been decided that a voluntary winding up does not necessarily operate as a dismissal of a company's servants, because it works no change in the personality of the employer (*Midland Counties District Bank* v. *Attwood, ante*).[1]

It is true that a voluntary winding up changes the business from one of a going concern to that of a beneficial winding up, but that is immaterial so long as the employer is the same, *i.e.* the company. The subsequent appointment of a receiver and manager either by the Court, or by the debenture holders (or by their trustees) as their own agent, would, however, result in a wrongful dismissal by the company, with the consequences above stated.

2. Appointment of a receiver and manager by the debenture holder (or by the trustees for debenture holders) to be agent for the company. Here the company would still be employer, and therefore there would be no automatic dismissal of its servants. There will, however, be an automatic determination of the authority of a receiver appointed under a debenture deed in the common form, as agent of the company, to manage its business. This is because Section 228 vests the power of managing the company's business in the voluntary liquidator. If, after the resolution for voluntary winding up, such a receiver continues to manage the business, he will be personally liable on any contracts that he makes, because he has no principal (*Thomas* v. *Todd*, 1926, 2 K. B. 511).

Difficulties sometimes arise in determining whether the receiver and manager has been appointed as agent for the company or as agent for the debenture holder. If appointed as receiver under the powers conferred by The Conveyancing Act, 1881, or The Law of Property Act, 1925, upon a mortgagee by deed, he would, unless the mortgage deed otherwise provided, be deemed to be the agent of the company. But the provisions of these Acts do not apply to an appointment of a receiver by the holder of one or some of the holders of debentures of a

[1] See, however, page 397, note 3.

series.[1] Such a receiver will be the agent of the debenture holder (or holders) who appointed him, and entitled to look to such debenture holder (or holders) for an indemnity.[2] The debenture or trust deed must be carefully looked at. It may contain an express statement on the point as in *Gosling* v. *Gaskell* (*ante*). If it does not, the nature of the powers given to the receiver and manager by the terms of the deed will be very material. "There is no general rule of law which is of any assistance." (See *per* Warrington, J., *Robinson Printing Co.* v. *Chic*, 1905, 2 Ch. 131. See also *re Vimbos, Limited*, 1900, 1 Ch. 470, and *Deyes* v. *Wood*, 1911, 1 K. B. 806, and compare these cases with *re Pound* (*ante*), where there was a reference to the Conveyancing Act, and *Cully* v. *Parsons*, 1923, 2 Ch. 512, where the debenture contained a provision to the effect that the holder should not in making or consenting to the appointment of a receiver incur any liability to the receiver for his remuneration or otherwise.)

A subsequent compulsory winding up stops the power of the company to appoint or employ agents altogether, and therefore the authority of the receiver and manager to carry on business as its agent is gone. It may, however, happen, as in *Gosling* v. *Gaskell* (*ante*), that the liquidator, instead of taking control, permits the receiver and manager to continue carrying on the business. In the case just referred to he did so for nearly three years. If, during such a period, the receiver and manager enters into any contracts the company will not be liable upon them, for he is not the company's agent. The debenture holders will not be liable, for they only appointed the receiver and manager to act as agent for the company, and not as their own agent. Unless they subsequently make him their agent by their acts, as, for instance, by giving him directions, they are not liable for what he does. It seems to follow that the receiver himself must be liable, either on the contract itself, or in damages for breach of warranty of authority (see *Gosling* v. *Gaskell* (*ante*), *at pages* 592, 595, 596; *Thomas* v. *Todd* (*ante*) *at page* 517).

1 Blaker *v.* Herts and Essex Waterworks Co., [1889] 41 C.D. 399, at p. 407.
2 Arctic Electric Supplies, *in re*, [1932] 48 T. L. R. 350.

TABLE A, 1929,

BEING THE

Statutory Regulations for the Management of Companies Limited by Shares

Contained in the First Schedule to The Companies Act, 1929.[1]

N.B.—*Every Company incorporated on or after the 1st November,* 1929 *is governed by the Regulations contained in this Table, except in so far as they are excluded or varied by Special Articles.*

PRELIMINARY.

1. In these regulations:—

"The Act" means The Companies Act, 1929.

When any provision of the Act is referred to, the reference is to that provision as modified by any statute for the time being in force.

Unless the context otherwise requires, expressions defined in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined.

The expressions defined by the Act are set out in Section 380 thereof. In addition, it should be mentioned that Table A is an Act of Parliament, and that therefore some of the provisions of the Interpretation Act, 1889, will apply, *e.g.* words in the singular include the plural and vice versâ. If a company is governed partly by Table A and partly by special Articles, the same rules of interpretation will be applied to the latter as to the clauses of Table A (Fell *v.* Derby Leather Co., [1931] 2 Ch. 252).

SHARES.

2. Subject to the provisions (if any) in that behalf of the Memorandum of Association, and without prejudice to any special rights previously conferred on the holders of existing shares, any share may be issued with such preferred, deferred, or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine, and any preference share may, with the sanction of a special resolution, be issued on the terms that it is, or at the option of the company, is liable, to be redeemed.

See the note to Clause 36, page 412, *post.* As to redeemable preference shares see page 177, *ante.*

3. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by

[1] Before a company is granted a quotation on the Stock Exchange, special Articles have to be approved by the Committee of the Stock Exchange. The points upon which the Committee always requires to be satisfied are, amongst others, the form of transfer, the call notices, that no restriction is placed by the Articles upon the transfer of shares, and that a limit is placed on the borrowing powers. See also Appendix C, page 446.

the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

This clause provides for the variation of the rights of different classes of shareholders in cases where their rights have been fixed by the Articles of Association only. Section 153 provides for modification of the rights of shareholders even when they have been fixed by the Memorandum itself. (See page 22, *ante*, and Australian Estates, in *re*, [1910] 1 Ch. 414, there cited.) Where all the shares of a class are held by one person, a formal assent by him will have the same effect as the sanction of an extraordinary resolution (East *v.* Bennett Brothers, [1911] 1 Ch. 163). In that case a memorandum of the consent was set out in the company's minute book, and signed by the shareholder.

4. Every person whose name is entered as a member in the Register of Members shall, without payment, be entitled to a certificate under the seal of the company, specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

This is in accordance with the requirements of the Stock Exchange, under which no charge is to be made for the first certificate. Clause 2 of Table A, 1862, made the right to a certificate conditional on the payment of one shilling, or such less sum as the company in general meeting might prescribe. Every company must, within two months after any allotment, or the lodging of a transfer for registration, as the case may be, have the certificate ready for delivery (Section 67, Sub-section 1). Failure to have the certificate ready within the time specified renders the company and its officers liable to a fine of £5 for every day of default (*ibid.* Sub-section 2), and if after service of notice on a company in default requiring it to make good the default this is not done, the Court may make an order directing the company to deliver the certificate to the person entitled within a time specified in the order and ordering the company and officers responsible for the default to bear the costs of the application to the Court. These requirements do not apply in the case of a transfer which a company is entitled to refuse to register, and does refuse to register. The Stock Exchange will not grant an official quotation until the share certificates are ready for delivery. Apart from Section 67 a shareholder is entitled to have his certificate issued to him within a reasonable time (Burdett *v.* Standard Exploration Co., [1900] 16 T. 112). As to Stock Exchange requirements see Appendix C, page 446.

5. If a share certificate is defaced, lost, or destroyed, it may be renewed on payment of such fee (if any) not exceeding one shilling, and on such terms (if any) as to evidence and indemnity as the directors think fit.

Great caution should be exercised in the matter of renewing a certificate. A proper indemnity should be required, as well as satisfactory evidence of the loss or destruction of the old certificate In special Articles the charge for a new certificate in place of one lost or destroyed is frequently fixed at two shillings and sixpence, but the Stock Exchange prescribes one shilling as the maximum charge. Forms of indemnity are given on pages 186 and 187, *ante*.

6. No part of the funds of the company shall directly or indirectly be employed in the purchase of, or in loans upon the security of, the

company's shares, but nothing in this regulation shall prohibit transactions mentioned in the proviso to Section 45, Sub-section 1, of the Act.

A company cannot purchase its own shares, as to do so would be an unauthorised reduction of capital (Trevor *v.* Whitworth, [1887] 12 App. Ca. 409).

Section 45 allows, in certain circumstances, the provision by a company of financial assistance for the purpose of, or in connection with, a purchase of its shares. See page 169, *ante*.

LIEN.

7. The company shall have a lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully paid shares) standing registered in the name of a single person for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this regulation. The company's lien (if any) on a share shall extend to all dividends payable thereon.

Table A, 1862, contained no provisions as to lien, but some such clauses as the present and Clauses 8 and 10 have been for a long time commonly adopted as Special Articles. If an official quotation is desired, there must be no lien on fully paid shares (see Appendix C, page 447). Of the two liens on partly paid shares, that for money due in respect of the shares themselves will attach whether they are jointly held or not, but the lien for other sums due to the company only attaches if the shares are solely held. The reason for this is that shares held jointly are usually trust property. Shares cannot be forfeited for failure to pay money due otherwise than in respect of the shares themselves. See note to Clause 25.

8. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy.

The purpose of this clause is to enable the company to enforce its rights without the necessity of bringing an action.

9. For giving effect to any such sale the directors may authorise some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

As to the position of a purchaser see note to Clause 28, page 410, *post*.

10. The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale.

CALLS ON SHARES.

11. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares, provided that no call shall exceed one fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the company, at the time or times so specified, the amount called on his shares.

Under Clause 4 of Table A of 1862 the directors could specify the place where and the persons to whom payment was to be made, as well as the time or times of payment. The specimen letters given on pages 204 and 205, *ante*, should be modified, where the present Table A applies, by requiring payment to be made to the company at its registered office, instead of with bankers. See also the note to Clause 24. The provision of Clause 5 of Table A of 1862, that a call is deemed made when the resolution of the directors authorising the call was passed, is not reproduced and the resolution, coupled with a proper notice of the call, will therefore constitute the call (see *per* Parker, J., Shaw *v.* Rowley, [1847] 16 M. & W., at page 813). The Stock Exchange requires a limit on the amount payable at each call.

12. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

The several liability thus created continues as regards calls made during the joint lives after the death of one of the joint holders, and judgment against one will not release the others, as would be the case if the debt were joint only (Kendal *v.* Hamilton, [1879] 4 App. Ca. 504).

13. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of five pounds per centum per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

Directors should not waive the payment of interest unless it is to the company's interest to do so, *e.g.* as part of a bargain with the shareholder.

14. The provisions of these regulations as to the liability of joint holders and as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

This clause was first introduced by the Revised Table A, 1906.

15. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

This clause was first introduced by the Revised Table A, 1906. By virtue of arrangements made on the issue of shares, some may accordingly become fully paid before others.

16. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, six per cent.) as may

be agreed upon between the member paying the sum in advance and the directors.

The limit of six per cent. was introduced by the Revised Table A, 1906. Otherwise this clause is practically the same as Clause 7 of Table A, 1862. For the purposes of arrangements under Section 153 of the Act, members who have paid in advance of calls are a separate class (see page 393, *ante*).

TRANSFER AND TRANSMISSION OF SHARES.

17. The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the Register of Members in respect thereof.

18. Shares shall be transferred in the following form, or in any usual or common form which the directors shall approve:—

I, *A. B.*, of_____, in consideration of the sum of £_____paid to me by *C. D.*, of_____(hereinafter called "the said transferee"), do hereby transfer to the said transferee the share [*or* shares] numbered_____in the undertaking called the_____COMPANY, LIMITED, to hold unto the said transferee, subject to the several conditions on which I hold the same; and I, the said transferee, do hereby agree to take the said share [*or* shares] subject to the conditions aforesaid.

As witness our hands the_____day of_____.

Witness to the signatures of, &c.

In Clause 9 of Table A, 1862, the form of transfer is substantially the same as the one given here, but its use is made compulsory, which is sometimes inconvenient. The fact that a transfer form omits particulars which would be found in a common form, but are in the circumstances immaterial, will not entitle the directors to refuse to register it (*re* Letheby & Christopher, [1901] 1 Ch. 815). See page 251, *ante*. The Stock Exchange objects to a compulsory form of transfer other than the usual common form, and prefers words to the effect that "Shares in the company shall be transferred in the usual common form." The form given in the Articles should always be used in preference to any other. The usual common form is given on page 250, *ante*.

The instrument should be signed by both transferor and transferee, and the Secretary will refuse to register if it is not so signed. The directors of a company are entitled to a reasonable time for the consideration of every transfer before they pass it, even if the Articles contain no provision in that behalf (Ottos Kopje Diamond Mines, [1893] 1 Ch. 618). When a transfer is executed out of Great Britain, the signatures should be attested by some person holding a public position, such as a consul or vice-consul, a magistrate or a notary public.

19. The directors may decline to register any transfer of shares, not being fully paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless—

(*a*) A fee not exceeding two shillings and sixpence is paid to the company in respect thereof, and

(*b*) The instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the

directors may reasonably require to show the right of the transferor to make the transfer.

If the directors refuse to register a transfer of any shares, they shall within two months after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.

See pages 248 and 249, *ante*. The provisions of this clause are in accordance with the requirements of the London Stock Exchange. A discretionary power of rejecting a proposed transfer vested in the directors must be exercised *bona fide*, and properly considered at a board meeting. It must further be exercised by a formal resolution. Consequently if no formal resolution declining registration can be passed owing to the board being equally divided, and the chairman having no casting vote, registration has not been "declined," and the transfer must therefore be registered (Hackney Pavilion, *in re*, [1924] 1 Ch. 276). Subject, however, to the necessity of exercising the power *bona fide* and reasonably, directors in whom such a power is vested are not bound to state why they rejected a particular individual. In any case the secretary will be safe. A letter of renunciation of bonus shares in favour of a nominee, coupled with a letter of acceptance by that nominee, does not amount to a transfer, and therefore the directors cannot refuse, under an article in this form, to register the nominee upon the ground that they do not approve of him (Pool Shipping Co. *in re*, [1920] 1 Ch. 251).

20. The legal personal representatives of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the legal personal representatives of the deceased survivor, shall be the only persons recognised by the company as having any title to the share.

This clause renders it unnecessary for the company to ascertain whether there has been any bequest of the shares. The executors or administrators may transfer the shares without first becoming registered (see page 261, *ante*, and Clause 21). The remainder of the clause is explained by the fact that shares held jointly are usually held in trust. As to the liability of joint holders see Clause 12.

21. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be properly required by the directors, have the right, either to be registered as a member in respect of the share, or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

This carries out the provisions of Section 64 of the Act and (in relation to bankruptcy) of Section 48 of The Bankruptcy Act, 1914. Clauses 13 and 14 of Table A, 1862, did not contain the power for directors to decline or suspend registration. As to the exercise by the directors of the right to refuse registration see note to Clause 19.

22. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

The effect of this clause is that though an executor or trustee in bankruptcy is entitled to receive dividends and bonuses, he cannot vote unless he has become registered as holder of the shares. If there is any liability on the shares such executor or trustee would prefer not to be registered, as that would entail personal liability for calls.

FORFEITURE OF SHARES.

23. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

Clause 13 makes interest payable at the rate of five pounds per cent.

24. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of nonpayment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

See also the note to Clause 11 of this Table. In view of the wording of that clause it would perhaps be advisable that the notice should require payment to the company at its registered office, and that the form given on page 201, *ante*, should be modified accordingly.

25. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

To make a forfeiture of shares valid, the procedure prescribed by the Articles must be strictly followed. Powers of forfeiture when not contained in special Articles may be added by special resolution. The smallest irregularity in complying with the conditions imposed by the Articles for carrying out a forfeiture may be fatal to the validity of the forfeiture. As a great deal of the formal work will devolve on the secretary, he must be especially careful. Provisions for the cancellation of shares are also inserted in some special Articles. Shares cannot be forfeited for failure to pay money not due in respect of the shares themselves. This would amount to an unauthorised reduction of capital, and possibly also to a trafficking by the company in its own shares (Hopkinson *v.* Mortimer Harley & Co., [1917] 1 Ch. 646).

26. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

The forfeiture cannot be rescinded and the shareholder reinstated on the Register without his consent (*re* Exchange Trust, Larkworthy Case, [1903] 1 Ch. 711).

27. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company receive payment in full of the nominal amount of the shares.

The effect of Section 20 of the Act is to make this liability, which accrued before forfeiture, a specialty debt. It will accordingly not be barred by the Statute of Limitations until the lapse of twenty years from the date of the forfeiture.

28. A statutory declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence

of the facts therein stated as against all persons claiming to be entitled to the share. The company may receive the consideration (if any) given for the share on the sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of, and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money (if any) nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale, or disposal of the share.

This is substantially the same as Clause 22 of Table A, 1862, except that the words "discharged from all calls due prior to such purchase" are omitted. These words were, however, no real protection to the purchaser, for they did not relieve the purchaser from the liability to pay fresh calls up to the amount of the unpaid balance, even if they covered the same ground as the old call, for nonpayment of which the shares were forfeited (Randt Gold Mining Co. *v.* New Balkis, [1903] 1 K. B. 461). Under Clause 2 the ex-holder still remains liable for the old call, and if he pays it the purchaser of the forfeited shares is relieved to that extent (*re* Randt Gold Mining Co., [1904] App. Ca. 165).

29. The provisions of these regulations as to forfeiture shall apply in the case of nonpayment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

CONVERSION OF SHARES INTO STOCK.

30. The company may by ordinary resolution convert any paid-up shares into stock, and reconvert any stock into paid-up shares of any denomination.

See pages 21 and 178 to 179, *ante*.

31. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

The power to fix a minimum was not contained in the corresponding clause (24) of Table A, 1862. Fractions of a pound are inconvenient, and the right to transfer them can be excluded under the present clause.

32. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges, and advantages as regards dividends, voting at meetings of the company, and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

33. Such of the regulations of the company as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stock-holder."

SHARE WARRANTS.

[The Clauses of Table A of 1908 dealing with share warrants are not reproduced in the present table.]

ALTERATION OF CAPITAL.

34. The company may from time to time by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

Under Clause 26 of Table A, 1862, a special resolution was required, and under Clause 41 of the Table A of 1908 an extraordinary resolution; but by Section 41 of the Act of 1908 the power to increase capital was conferred on the company, and, unless an extraordinary or special resolution was prescribed the power could be exercised by resolution of the directors. Section 50 of the Act of 1929 requires a resolution of the company in general meeting. A company limited by guarantee, if it has a share capital, and is so authorised by its Articles, may increase or reduce its capital in like manner (Section 50). As to increase of capital see pages 169 to 172, *ante*. The specific increase proposed must be set out in the notice convening the meeting.

35. Subject to any direction to the contrary that may be given by the company in general meeting, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of those shares in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

This is substantially the same as Clause 27 of Table A, 1862. As to who are entitled to receive notices of general meetings see Clause 107

36. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture, and otherwise, as the shares in the original share capital.

It is usual to take powers to give any part of the original or new capital such preferences or priorities as the company shall determine, but a company whose Memorandum and Articles contain no provision whatever as to preference shares may, by special resolution, alter its Articles so as to enable it to issue preference shares by way of increase of capital (Andrews *v.* Gas Meter Co., [1897] 1 Ch. 361). Where the Memorandum contains such power, and the Articles do not contain any provision as to how it shall be exercised, it can be exercised by the Directors under such an article as Clause 67, post (Campbell *v.* Rofe, [1933] A. C. 91).

37. The company may by ordinary resolution—

(A) Consolidate and divide all or any of its share capital into shares of larger amount than its existing shares.

(B) Subdivide its existing shares, or any of them, into shares of smaller amount than is fixed by the Memorandum of Association, subject, nevertheless, to the provisions of Section 50 (1) (*d*) of the Act.

(c) Cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

Table A, 1862, contains no provisions of this kind. For the statutory provisions applicable see page 21, *ante*, and as to reduction of capital see pages 172 to 176, *ante*. A company must be authorised by its regulations as originally framed, or as altered by special resolution, to do these acts.

38. The company may by special resolution reduce its share capital and any capital redemption reserve fund in any manner and with, and subject to, any incident authorised, and consent required, by law.

GENERAL MEETINGS.

39. A general meeting shall be held once in every calendar 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 third 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 convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

This carries out the requirements of Section 112 of the Act. That section contains the expression "calendar year," but "year" in itself has the same meaning, *i.e.* a calendar year from January to December (Gibson *v.* Barton, [1875] L. R. 10 Q. B. 329). Besides the power given to any two members to convene the meeting if default is made in holding it, the Court has power under Section 112, Sub-section 2, on the application of any member, to call or direct the calling of the meeting.

40. The above-mentioned general meetings shall be called ordinary general meetings; all other general meetings shall be called extraordinary general meetings.

41. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists as provided by Section 114 of the Act. If at any time there are not within the United Kingdom sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

See pages 223 to 225, *ante*.

NOTICE OF GENERAL MEETINGS.

42. Subject to the provisions of Section 117 (2) of the Act relating to special resolutions, seven 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 manner hereinafter mentioned, or in such other manner (if any) as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but with the consent of all the members entitled to receive notice of some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit.

The notice, if sent by post, is deemed to be served at the time at which the letter would be delivered in the ordinary course of post (Clause 103). As to who are entitled to receive notices of general meetings see Clause 107. As to general meetings see page 208 *et seq.*, *ante*. "Special business" is defined by Clause 44. The provisions of Section 117, Sub-section 2, are set out page 130, *ante*.

43. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate the proceedings at any meeting.

PROCEEDINGS AT GENERAL MEETINGS.

44. 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.

This clause contains a few items beyond those mentioned in Clause 36 of Table A, 1862. On matters not included in the exceptions notice must be given of the general nature of the business under Clause 42, and it is of great importance that the notice should give correct and sufficient information as to the special business to be transacted. Otherwise any resolution passed in respect of it may be challenged. It is not necessary that the terms of any specific resolutions to be proposed should be set out in the notice unless an extraordinary or special resolution is to be passed (see page 215, *ante*).

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

This is much simpler than Clause 37 of Table A, 1862. Shareholders who are under any disqualification in respect of voting cannot be counted for the purposes of the necessary quorum (see *re* Greymouth-Point Elizabeth Railway and Coal Co., [1904] 1 Ch. 32). It will be observed that personal presence is required. Resolutions passed at meetings at which the proper number of members is not present, or at meetings irregularly convened, are invalid.

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

Clause 38 of Table A, 1862, provides that if a quorum is not present at the adjourned meeting the meeting shall be adjourned *sine die*. Under the present clause there must be at least two members present at the adjourned meeting, for one member cannot form a meeting of the company (Sharp *v.* Dawes, [1876] 2 Q. B. D. 27). For the purposes of a meeting of the holders of a particular class of shares, a person who holds all the shares of that class may, however, form a meeting. See note to Clause 3.

47. The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the company.

48. 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 some one of their number to be chairman.

49. 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.

This is a variation of Clause 41 of Table A, 1862.

50. 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 by at least three members present in person or by proxy entitled to vote or by one member or two members so present and entitled, if that member or those members hold not less than fifteen per cent. of the paid-up capital of the company, 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 such resolution.

This clause follows Clause 42 of Table A, 1862, except that the old clause made the declaration of the chairman merely "sufficient" evidence. As to demanding a poll in the case of extraordinary or special resolutions see page 219, *ante*.

51. 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.

This does not give the chairman power to direct a poll to be taken by polling papers. Such a course would be contrary to Clause 58 (McMillan *v.* Le Roi Mining Co., [1906] 1 Ch. 331).

52. 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.

53. 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.

VOTES OF MEMBERS.

54. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

Clause 44 of Table A, 1862, contained a graduated scale, so as to limit the voting power of the holders of large blocks of shares. The limitation can, however, easily be evaded by putting some of the shares into the names of nominees. On a show of hands those personally present have one vote each, whether they hold proxies or not. Votes by proxy are only counted on a poll (Ernest *v.* Loma Gold Mines, [1897] 1 Ch. 1). But where the Articles provide that a corporation may appoint as proxy a person who is not a member (see Clause 59), the proxy's vote must be counted on a show of hands (see Ernest *v.* Loma Gold Mines, [1897] 1 Ch. 1, at page 8, and see also pages 218 *et seq.*, *ante*).

55. 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.

This clause differs from Clause 46 of Table A, 1862, which only enabled the member whose name stood first to vote. Where, however, only the member whose name stands first is allowed to vote, two joint holders are entitled to require the company to split their holding into two joint holdings with their names in different orders. Otherwise, if the joint holder entitled to vote was ill or absent, and the other joint holder had no other shares in respect of which he could vote, he could not even be appointed as a proxy under such a clause as Clause 59 of Table A, because he would not be entitled on his own behalf to be present and vote (Burns *v.* Siemens Bros. Dynamo Works, [1919] 1 Ch. 225).

56. 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, *curator bonis*, or other person in the nature of a committee or *curator bonis* appointed by that Court, and any such committee, *curator bonis*, or other person may, on a poll, vote by proxy.

57. 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.

This clause applies not only to calls, but to sums due on allotment, and cases where shares are sued upon the terms that they are to be paid up by fixed instalments at stated times. The corresponding Clause (47) of Table A, 1862, required, as a general rule, that the person claiming to vote must have held the share for at least three months before the meeting at which he proposed to vote.

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

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

Clause 49 of the original Table A provides that the signature to the instrument appointing a proxy shall be attested by one or more witnesses, in which case failure to attest makes the instrument invalid (Harben *v.* Phillips, [1883] 23 Ch. D. 14) The provision that a corporation may appoint a proxy under the hand of an officer will enable a foreign company which has no seal to be represented at the meeting. Section 116 confers on every corporation, whether a company within the meaning of the Act or not, the right to be represented by any person authorised by its governing body, whereas in the Act " company " means a company formed under the Companies Acts (Section 380).

60. 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 forty-eight hours before the time for holding the meeting or adjourned 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.

As to proxies generally, see pages 218 to 220, *ante*. It would not be a good "deposit" within this clause if the instrument were addressed to the secretary by name (without describing him as such) at an office which was his own and where he carried on business, although it was also the registered office of the company (Burnett *v.* Gill, *Times* Newspaper, 13th June, 1906). Under an Article in this form "the meeting" means the original meeting. Special Articles often provide that proxies may be given for an adjourned meeting (see McLaren *v.* Thomson, [1917] 2 Ch. 261). Of course a proxy given in time for the original meeting is, under the form in the next clause, good for any adjournment.

61. 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 County of_____being a Member of the_____COMPANY, LIMITED, hereby appoint_____of_____ as my proxy to vote for me and on my behalf at the [ordinary *or* extraordinary *as the case may be*] general meeting of the company to be held on the_____day of_____and at any adjournment thereof."

Signed this_____day of_____.

This form differs materially from that contained in Table A, 1862, which provides for the number of votes to which the appointor was entitled being stated, for the instrument being available for one year, and for the appointor's signature being attested by a witness. Section 80, Sub-section 1 of The Stamp Act, 1891, prescribes that every instrument appointing a proxy "is to specify the day upon which the meeting at which it is intended to be used is to be held and is to be available only at the meeting so specified, or any adjournment thereof." An instrument of proxy for a specified meeting must bear a penny stamp, which may be either impressed or adhesive. If adhesive, it must be cancelled by the person by whom the instrument is executed. An instrument of proxy capable of being used at more than one meeting should be in the form of a power of attorney, and bear a ten shilling stamp (see page 222, *ante*) "Every person who makes or executes, or votes or attempts to vote, under or by means of any such letter or power of attorney or voting paper, not being duly stamped, shall incur a fine of fifty pounds, and every vote given or tendered under the authority or by means of the letter or power of attorney or voting paper shall be void" (Stamp Act, 1891, Section 80, Sub-section 3).

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

CORPORATIONS ACTING BY REPRESENTATIVES AT MEETINGS.

63. Any corporation which is a member of the company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company, or of any class of members of the company, and the person so authorised

shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

DIRECTORS.

64. 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.

This clause follows Clause 52 of Table A, 1862, save that the determination must be in writing. As to the procedure to be followed when the directors are named in the Articles see page 42, *ante*.

65. The remuneration of the directors shall from time to time be determined by the company in general meeting.

See pages 46 and 47, *ante*.

66. The qualification of a director shall be the holding of at least one share in the company.

See pages 42 to 44, *ante*. The holding of share warrants is not a sufficient share qualification (Section 141, Sub-section 2).

POWERS AND DUTIES OF DIRECTORS.

67. 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 Act, 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 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.

This clause gives the directors full power to manage the ordinary business of the company. In Quin & Axtens *v.* Salmon, [1909] App. Ca. 442, the opinion was expressed that the word "regulations" in the sixth line is equivalent to "Articles" and hence it would follow that such regulations would require a special resolution, and could not be "prescribed" by a simple resolution of the shareholders in general meeting. But if a special resolution is necessary, it is difficult to give any meaning to the words "being not inconsistent with the aforesaid regulations," since the company could, by special resolution, alter this clause to any extent that it thought fit (see *ante*, pages 25 to 27). However, in the Automatic Self-Cleansing Filter Co. *v.* Cunningham, [1906] 2 Ch. 34, the Court of Appeal decided, not only upon the construction of a special Article, but also on general principles, that directors in whom management is vested by the Articles cannot be controlled by the resolution of a simple majority of shareholders. In Marshall's Valve Gear Co. *v.* Manning, Wardle & Co., [1909] 1 Ch. at page 274, Neville, J., treated those observations upon general principles as *dicta* not binding upon him, and expressed the view that under the corresponding Clause (55) of Table A, 1862, the majority of shareholders at a general meeting have the right to control the action of the directors so long as they do not affect to control it in a direction contrary to the provisions of the Articles. In Gramophone *v.* Stanley, [1908] 2 K. B. 89, the Court of Appeal repeated the opinions expressed in the Automatic Self-Cleansing &c. case (*supra*) Fletcher Moulton, L.J., indicating that the remedy of the shareholders was to obtain the majority requisite o remove directors of whose policy they disapproved. In the above state of the authorities it is impossible to attribute much weight to a simple resolution of shareholders on a question of business policy. It is within both the right and duty of directors to advise the members of the company as to the advisability of adopting any particular course, and for that purpose to use the funds, machinery, and officers

of the company in order to circulate their views. And they are not bound at the same time to circulate the arguments of dissentient shareholders against their proposals (Campbell *v.* Australian &c. Provident Society, [1908] 99 L. T. 3).

68. 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 or retirement 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.

Directors cannot delegate their powers unless expressly authorised to do so (Howard's Case 1866] 1 Ch. 561; Horn *v.* H. Faulder & Co., [1908] 99 L. T. 524). Compare Clause 68 of Table A, 1862, and see page 226, *ante*.

69. 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.

There are no borrowing powers in Table A, 1862, but the ordinary trading company has an implied power to borrow money for the purposes of its business (General Auction Estate Co. *v.* Smith, [1891] 3 Ch. 432). A limit is required by the Stock Exchange Committee. (See Appendix C, page 447, *post*.)

70. The directors shall cause minutes to be made in books provided for the purpose—

(*a*) Of all 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.

Section 120 requires minutes of all proceedings of the company and of the directors to be kept and enacts that such minutes shall be evidence in all legal proceedings. The right to inspect minutes of general meetings is conferred by Section 121. (See pages 110 and 111, *ante*.)

THE SEAL.

71. 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 a director and of the secretary or such other person as the directors may appoint for the purpose; and that director and secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Persons dealing with a company should see that the sealing of a deed is properly attested. Section 74 of The Law of Property Act, 1925, contains important provisions in connection with the attestation of deeds.

DISQUALIFICATIONS OF DIRECTORS.

72. The office of director shall be vacated, if the director—

(*a*) Ceases to be a director by virtue of Section 141 of the Act; or

(*b*) Without the consent of the company in general meeting holds any other office of profit under the company except that of managing director or manager; or

(*c*) Becomes bankrupt; or

(*d*) Becomes prohibited from being a director by reason of any order made under Sections 217 or 275 of the Act; or

(*e*) Is found lunatic or becomes of unsound mind; or

(*f*) Resigns his office by notice in writing to the company; or

(*g*) Is directly or indirectly interested in any contract with the company or participates in the profits of any contract with the company.

Provided, however, that a director shall not vacate his office by reason of his being a member of any corporation which has entered into contracts with or done any work for the company if he shall have declared the nature of his interest in manner required by Section 149 of the Act, but the director shall not vote in respect of any such contract or work or any matter arising thereout, and if he does so vote his vote shall not be counted.

A resolution of the board may, in exceptional circumstances, be treated as a resolution of the company in general meeting, where all the shareholders are directors and all interested in the contract (see *in re* Express Engineering Works, cited in note to Clause 82). Indeed, where the transaction is honest and *intra vires*, and entered into for the benefit of the company, and all the members agree to it, they can waive the formality of a meeting (Parker and Cooper *v.* Reading, [1926] 1 Ch. 975).

It is only if and so far as authority is given by the Articles of Association, that the board can make a binding contract with any other company in which a member of the quorum holds shares, even if he holds them in trust and not beneficially. If the second company has notice of the irregularity, the first company may have the transaction set aside notwithstanding that it has been completed, provided that it is possible to restore the original position (Transvaal Lands Co. *v.* New Belgium Land and Development Co., [1914] 2 Ch. 488).

Accepting an appointment as solicitor at a fixed salary, and with the obligation of performing certain duties, would constitute the holding of an office of profit within (*b*) (The Liberator &c. Building Society, *in re*, [1894] 71 L. T. 406). But a resolution merely appointing a director solicitor to the company would not vacate his office as director (Harper's Ticket &c. Machine, *in re*, [1912] W. N. 263).

A director will come within (*g*) if he is "concerned" in a contract, even if he does not participate in the profits (if any) arising therefrom (Star Steam Laundry *v.* Dukas, *Times* Newspaper, 6th February, 1913).

On the happening of any of the events mentioned in this clause a director automatically vacates office, and the board have no power to waive the event which causes the vacation of the office (*re* The Bodega Co., [1904] 1 Ch. 276). Notwithstanding that (*f*) contemplates a written resignation, a verbal resignation given to, and accepted by, the company in general meeting is binding (Latchford Premier Cinema *v.* Ennion, [1931] 2 Ch. 409.

Some Articles of Association contain other causes of disqualification, *e.g.* "becoming insolvent." In order to come within this it is not necessary that a director should have committed some definite act on a definite day from which it could be said that the insolvency dated (London and Counties Assets Co. *v.* Brighton &c. Picture Palace, [1915] 2 K. B. 493).

Section 141, Sub-sections 3 and 4, provide that "The office of director of a company shall be vacated if the director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the articles, obtain his qualification, or if after the expiration of such period or shorter time he ceases at any time to hold his qualification. A person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification."

ROTATION OF DIRECTORS.

73. At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary general meeting in every subsequent year one third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest to one third, shall retire from office.

Under this clause the directors appointed by the subscribers to the Memorandum (see Clause 64) may be displaced.

74. 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.

75. A retiring director shall be eligible for re-election.

76. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto, and in default the retiring director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill up such vacated office.

This clause is intended to meet the case where a director retires by rotation, and the necessity of re-electing or replacing him is overlooked (Spencer *v.* Kennedy, [1926] 1 Ch. 125). If the meeting is held, and the subject overlooked, and the meeting adjourned, a vacating director will be deemed re-elected, even if the adjourned meeting is not held (Great Northern Salt Works, 44 Ch. D. 472, at p. 482) See also Holt *v.* Catterall [1931] 47 T. L. R. 332.

77. 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.

78. Any casual vacancy occurring in 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.

79. 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 election by the company at that meeting as an additional director.

This clause will be found convenient if one or more of the directors are temporarily unable to attend to the business of the company through illness or absence abroad. Of course the maximum number as fixed by the company in general meeting must not be exceeded. If directors having certain powers are unwilling or unable to exercise them, it appears that the company may do so (Barron *v.* Potter, [1914] 1 Ch. 895). In this case there were two directors, and the quorum was two, but one director declined to attend any directors' meeting with the other, or discuss the affairs of the company with him, and an appointment of an additional director by the company in general meeting was held valid.

80. 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.

This clause follows Clause 65 of Table A, 1862, substituting an extraordinary for a special resolution.

PROCEEDINGS OF DIRECTORS.

81. 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 the directors.

A board meeting may be held informally (Smith *v.* Paringa Mines, [1906] 2 Ch. 193). But the casual meeting of two directors, even at the office of the company and although the quorum is two, cannot be treated as a board meeting at the option of one against the will and intention of the other (Barron *v.* Potter, [1914] 1 Ch. 895).

82. 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, and when the number of directors does not exceed three be two.

Under this Article a board of directors may appoint a quorum of one (Fireproof Doors, *in re*, [1916] 2 Ch. 142).

A " quorum " means a quorum competent to transact and vote on the business before the board, and a resolution will not be valid if it be passed at a meeting of a quorum of directors some of whom are forbidden by the regulations of the company to vote on the business before the board (*re* Greymouth-Point Elizabeth Railway Co., [1904] 1 Ch. 32; North Eastern Insurance Co., *in re*, [1919] 1 Ch. 198; Victors *v.* Lingard, [1927] 1 Ch. 323). In Neal *v.* Quinn, [1916] W. N. 223, a board of five directors (three being a quorum) passed a single resolution allotting shares to (*inter alia*) three of themselves. It was held that the resolution was to that extent bad, and that it could not be split up on the basis that each director-applicant was to be treated as having refrained from voting on his own application. On the other hand, where all the shareholders were directors and all debarred by the Articles from voting as directors in respect of any contract in which they were interested, a full board meeting was treated by the Court as for practical purposes equivalent to a general meeting of shareholders, and the resolution passed thereat, though not good as a resolution of the board (since all the directors were interested), was valid as a resolution of the company (Express Engineering Works, *in re*, [1920] 1 Ch. 466; and see Parker and Cooper *v.* Reading, cited page 420, *ante*).

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

The expression " continuing directors " implies the previous existence of a numerically sufficient board. For instance, if the minimum number of directors fixed by the Articles is four, and three are to form a quorum, and the company has never had more than three directors, the board cannot transact business. The three directors would neither be " continuing directors " nor could they constitute a quorum (Sly, Spink & Co., *in re*, [1911] 2 Ch. 430).

84. 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.

If the directors do not fix the time for which the chairman is to hold office, they can at any time substitute another chairman in his place (Foster *v.* Foster, [1916] 1 Ch., at page 542). The appointment by the directors of one of their body as chairman, or as managing director, without remuneration, is not a contract, but a mere delegation of powers (*ibid.*, at page 543).

85. 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.

As to delegation see the note to Clause 68. The wording of the present clause shows that one member may constitute a committee (see also Taurine Co., *in re*, [1884] 25 Ch. D. 118).

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

87. 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 case of an equality of votes the chairman shall have a second or casting vote.

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

This clause follows Section 143 which provides that all acts done by directors shall be valid notwithstanding any defect that may afterwards be discovered in their election.

DIVIDENDS AND RESERVE.

89. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

90. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

91. No dividend shall be paid otherwise than out of profits.

As to dividends generally, see pages 234 *et seq.*, *ante*.

92. Subject to the rights of persons (if any), entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid up on any of the shares in the company dividends may be declared

and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this Article as paid on the share.

Under Clause 72 of Table A, 1862, dividends were payable to the members in proportion to their shares irrespective of the extent to which those shares had been paid up.

93. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalising dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

This is a variation of Clause 74 of Table A, 1862.

94. If several persons are registered as joint holders of any share any one of them may give effectual receipts for any dividend or other moneys payable on or in respect of the share.

Where there are joint holders of a share, the practice is to send the dividend warrant or cheque to the first of such persons named in the Register of Members, and to make it payable to his or her order (see also Clause 105).

95. Any dividend may be paid by cheque or warrant sent through the post to the registered address of the member or person entitled thereto, or in the case of joint holders to any one of such joint holders at his registered address or to such person and such address as the member or person entitled, or the joint holders, as the case may be, may direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent, or to the order of such other person as the member or person entitled or such joint holders, as the case may be, may direct.

The power to forfeit dividends unclaimed for three years, which was contained in Clause 76 of Table A, 1862, is not given by Table A of 1908 or the present Table. The Stock Exchange objects to such a power. As to giving notice see Clauses 103 to 107, *post*.

96. No dividend shall bear interest against the company.

ACCOUNTS.

97. The directors shall cause proper books of account to be kept with respect to—

All sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

All sales and purchases of goods by the company; and

The assets and liabilities of the company.

As to penalties for false statements in returns &c., and falsification of books, see under PENALTIES.

98. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

99. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by Statute or authorised by the directors or by the company in general meeting.

Members of a company have a statutory right to inspect the Register of Members (Section 98), and the Register of Charges (Section 82), and copies of instruments creating any charge (Section 89). The right to inspect the Register of Members does not include the right to take copies (*re* Balaghat Gold Mining Co., [1901] 2 K. B. 665); but a copy may be obtained on payment of sixpence for every hundred words. The right to inspect the Register of Charges includes the right to take copies (Nelson *v.* Anglo American Land Co., [1897] 1 Ch. 130).

100. The directors shall from time to time in accordance with Section 23 of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets and reports as are referred to in that section.

As to the contents of the balance sheet see page 160 *et seq.*, *ante*.

101. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting, together with a copy of the auditor's report shall not less than seven days before the date of the meeting, be sent to all persons entitled to receive notices of general meetings of the company.

Two copies must be forwarded to the Secretary of the Share and Loan Department of the London Stock Exchange at least seven days previous to the general meeting if an official quotation is desired (See Appendix C, page 447.)

AUDIT.

102. Auditors shall be appointed and their duties regulated in accordance with Sections 132, 133, and 134 of the Act.

For the powers and duties of auditors see pages 95 to 98, *ante*. An auditor may or may not be an "officer" of the company in the technical sense. (Western Counties Steam Bakeries and Milling Co., [1897] 1 Ch. 617.)

NOTICES.

103. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address within the United Kingdom) to the address (if any) within the United Kingdom supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected, in the case of a notice of a meeting, at the expiration of twenty-four hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

There was no provision in Table A of 1862 with regard to sending notices to members resident abroad. In the absence of special provisions such members are not entitled to notice (Union Hill Silver Co., [1870] 22 L. T. 200. Newcastle United Football Co., in *re*, [1932] W. N. 109). Note, that if there are members in distant parts of the United Kingdom, the course of post may be two days, and in some of the Hebrides more.

104. If a member has no registered address in the United Kingdom and has not supplied to the company an address within the United Kingdom for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company, shall be deemed to be duly given to him at noon on the day on which the advertisement appears.

Notices of general meetings need not be given to the persons referred to in this clause (see Clause 107) (Dickson *v.* Halesowen Steel Co., [1928] W. N. 33). It appears to relate to matters personal to the members, such as notices of calls, forfeitures, and the like, and in such cases the notice must be "addressed" to the member in question, which presumably means that he must be named in the advertisement, as, for instance, "To John Jones, Thomas Smith, and Ozias Midwinter, members of the X. Y. Z. Company, Limited. Take notice that . . ."

105. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register of members in respect of the share.

106. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address (if any) within the United Kingdom supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

107. Notice of every general meeting shall be given in some manner hereinbefore authorised to (*a*) every member except those members who (having no registered address within the United Kingdom) have not supplied to the company an address within the United Kingdom for the giving of notices to them, and also to (*b*) every person entitled to a share in consequence of the death or bankruptcy of a member, who, but for his death or bankruptcy, would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notices of general meetings.

This clause only relates to notices of general meetings (Section 97, Sub-section 1). Members who have no registered address and who have not furnished to the company any address in the United Kingdom for the service of notices, are not entitled as of right to receive notices of general meetings (Dickson *v.* Halesowen Steel Company, [1928] W. N. 33).

APPENDIX A.

The following specimens of Resolutions, and Notices, in addition to those already given, may be found useful to Secretaries of Companies as precedents in drafting Resolutions and Notices:—

RESOLUTIONS.

To Adopt and Authorise Issue of Prospectus.

Resolved—That the prospectus dated the_____day of_____, 193 , duplicate copies of which are signed by the Chairman and each of the Directors, be approved and adopted; that one of such copies be lodged forthwith with the Registrar of Companies; and that the Secretary be authorised to issue copies of the prospectus, together with forms of application, and to advertise it *in extenso* in the following newspapers: viz.—_____(one insertion only in each paper).

To Seal Draft Agreement.

Resolved—That the draft agreement with Messrs._____ for the purchase of_____be approved and engrossed in duplicate, and that the seal of the Company be affixed thereto.

To Seal and Carry into Effect Contract.

Resolved—That the contract dated the_____day of_____, 193 , and read at this Meeting be approved, and that the Directors be authorised to affix the seal of the Company thereto and to carry the same into effect.

To Appoint a Person other than the Secretary for the Purposes of Affixing the Seal.

Resolved—That, in the absence of the Secretary, and pursuant to [Clause 71 of Table A, 1929, *or* Article____of the Company's Articles], A.B., of_____, be and is hereby appointed for the purposes of affixing the seal of the Company to_____.

To Issue Fully Paid Shares.

Resolved—That in accordance with the contract dated the_____day of_____, 193 , and made between_____, Limited, and this Company,_____fully paid shares, numbered____to____inclusive, be issued to_____, Limited, in payment for the_____ referred to in Clause 1 of the above-named contract.

To Seal Power of Attorney.

Resolved—That the seal of the Company be affixed to the power of attorney in favour of Messrs._____, and that the certificates of a notary public and the consul for_____be obtained thereto.

To Appoint Committee of Directors with Full Powers.

Resolved—That (subject to any future resolution of the Board) Mr._____be appointed a Committee of the Directors, to act until a Board Meeting shall be held, with power to exercise any of the powers of the Directors.

To Appoint Committee of Directors with Limited Powers.

Resolved—That Messrs._____and_____[*or* Mr._____] be and they are [*or* he is] hereby appointed a Committee with power on behalf of the Company to [*set out what the power is*].

To Open Banking Account.

Resolved—

That an account be opened at The_____Bank, Limited, in the name of the Company.

That the said Bank be and they are hereby authorised to pay to the debit of such account all cheques drawn upon same, and all bills, drafts, &c., made payable at the said Bank when signed by two of the Directors of the Company and countersigned by the Secretary for the time being.

That a copy of this resolution, signed by the Chairman and accompanied by specimens of the signatures of the Directors and Secretary, be forwarded to the Bank.

To Adopt Common Seal.

Resolved—That the common seal, an impression whereof is affixed to these minutes, be and is hereby adopted as the common seal of the Company.

To Determine as to Custody of Keys of Seal.

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

To Declare Dividend in Cash.

Resolved—That an interim dividend of_____per share, free of income tax, be and is hereby declared payable on the_____day of_____to the shareholders on the books of the Company on the_____, and that the transfer books be closed during the said_____.

To Declare Dividend in Shares.

Resolved—That an interim dividend, free of income tax, represented by fully paid ordinary shares in_____Limited, in the proportion of one share in the said Company for every_____shares held in this Company, be and is hereby declared payable to the shareholders whose names are on the books of the Company on_____, and that the transfer books be closed during the said_____. The letters of

allotment to be issued on_____, and the requisite contracts to be lodged with the Registrar of Companies within one month from the date of allotment of such shares.

To Close Transfer Books.

Resolved—That the share transfer books of the Company be closed from_____to_____, both days inclusive, to allow of the preparation of warrants for the dividend payable on the latter date.

To Increase Capital.

Resolved—That, at the Extraordinary General Meeting of the Company to be held immediately upon the close of the approaching Annual General Meeting, a resolution be submitted to the shareholders for the increase of the nominal share capital of the Company by the creation of_____ additional shares of £_____each.

Another Form.

Resolved—

1. That the nominal share capital of the Company be increased by the creation of_____new shares of £_____each.

2. That the new shares be called preference shares, and that the holders thereof be entitled to a cumulative preferential dividend of_____per centum per annum on the amount paid up thereon, but to no further share in the profits of the Company.

3. That in the event of the Company being wound up, the holders of the said shares shall be entitled to have the surplus assets of the Company applied, in the first place, in repaying to them the amount paid up on the preference shares held by them respectively.

4. That the said shares shall not be offered to the Members in accordance with Article_____of the Articles of Association, but shall be under the absolute control of the Directors, who shall be at liberty to allot or otherwise dispose of the same to such persons, on such conditions and at such times as they shall think fit.

To Reduce Capital.

Resolved—That the capital of the Company (now consisting of £____, divided into____shares of £____each, fully paid up) be reduced to £_____, divided into____shares of £____each, fully paid up, and that such reduction be effected by cancelling paid-up capital to the extent of £_____per share.

To Subdivide Shares.

Resolved—That the capital of the Company be £100,000, divided into 100,000 shares of £1 each, in lieu of 10,000 shares of £10 each, and that ten shares of the new denomination, credited with £1 per share paid up, be issued in exchange for each one of the old shares credited with £10 per share paid up.

To Forfeit Shares.

Resolved—That_____shares of £_____each, numbered____ to_____inclusive, whereon £_____ per share has been paid, and which were

at the date of this resolution standing in the name of_____ of_____, be and the same are hereby forfeited for nonpayment of calls of £_____each, made on the____day of_____, 193 , and the_____day of_____, 193 , respectively, and that the said shares be disposed of as the Directors shall think fit.

To Adopt Provisions of Forged Transfers Acts.

Resolved—That, with the view of securing to registered transferees of the shares and stock of the Company an undoubted title to their property, the Directors be requested to adopt, on behalf of the Company, the provisions of The Forged Transfers Acts, 1891 and 1892.

To Alter Memorandum of Association.

Resolved—That the provisions of the Memorandum of Association of the Company with respect to the objects of the Company be altered by adding to Clause_____of such Memorandum, after Sub-clause (*d*), the following Sub-clause: namely—(*dd*) To acquire by purchase, lease, exchange, or otherwise, or to adopt the previous purchase by the company of any land, buildings, or hereditaments, in the town or county of_____, adjoining or in proximity to or which may seem to the Company suitable or desirable to be acquired for the purpose of developing, using, or turning to profitable account, any part of the property mentioned in Sub-clause (*a*), or any other property of the Company, whether acquired under this Clause or otherwise. To erect on any land of the Company any factories, warehouses, dwelling-houses, shops, or other buildings, and generally to manage, sell, lease, develop, turn to account, mortgage, charge (by debentures or otherwise), and deal with any land, buildings, or other property or rights of the Company, real or personal, whatsoever and whensoever acquired.

NOTICES.

Of Ordinary General Meeting.

_____, LIMITED.

Notice is hereby Given that the Annual Ordinary General Meeting of _____, Limited, will be held at_____ on_____day, the_____day of_____, 193 , at _____o'clock in the_____noon precisely, to receive and consider the Directors' Report and Statement of Accounts, to declare a Dividend, to elect a Director in place of_____retiring, to appoint Auditors and fix their remuneration, and to transact the other ordinary business of the Company.

Holders of Share Warrants to Bearer desiring to attend the General Meeting must lodge their Warrants at the Office of the Company on or before the _____instant.

The transfer books of the Company will be closed from_____to _____, 193 , both days inclusive.

_____

[Address and date.] *Secretary.*

OF EXTRAORDINARY GENERAL MEETING TO ALTER ARTICLES OF ASSOCIATION &C.

_____, LIMITED.

NOTICE IS HEREBY GIVEN that an Extraordinary General Meeting of the above-named Company will be held at_____on _____day, the_____day of_____, 193 , at_____o'clock in the_____noon, for the purpose of considering and, if deemed desirable, passing (with or without modification) the following Special Resolutions:—

1. That Article_____be deleted and the following new Article numbered_____be adopted in place thereof: that is to say—
   "The Directors shall be entitled to be remunerated out of the funds of the Company for their services at the rate of £250 each per annum, and in addition every director shall be entitled to be reimbursed all travelling and hotel expenses properly incurred by him in or about the business of the Company.
2. That the nominal share capital of the Company be increased from £_____ [divided into_____preference shares and_____ ordinary shares (*where there is more than one class of shares*)] to £_____by the creation of_____[new preference or ordinary, *as the case may be, where there is more than one class of shares*] additional shares of £1 each.
3. That the Company hereby authorise the Board from time to time to raise for the purposes of the Company, by way of loan, upon such security, and upon such terms and conditions, and in such manner generally as the Board think fit, having due regard to existing securities, such sums as the Board may from time to time deem expedient, but so that there shall not be outstanding at any one time more than £_____in addition to the amount already authorised under the Articles of Association.

_____

[Address and date.] *Secretary.*

OF EXCHANGE OF CERTIFICATES.

_____, LIMITED.

NOTICE IS HEREBY GIVEN that on and after_____, upon shareholders depositing their old Share Certificates at the Registered Office of the Company, new Certificates, rendered necessary by the reduction of the Capital of the Company, will be issued in exchange therefor.

The transfer books, as regards the old Certificates, will be finally closed on_____. No transfer of old shares will be recognised after that date, and the new issue will be made only to registered holders as on_____.

_____

[Address and date.] *Secretary.*

To Holders of Share Warrants of Declaration of Dividend.

_____, LIMITED.

A Quarterly Interim Dividend at_____per centum per annum, free of Income Tax, has been declared by the Directors of_____Limited, being the second Dividend for the half year ending_____, payable on and after_____, 193 . Coupon No._____must be presented through a banker or deposited in person with The_____Bank, Limited, _____Street, London, E.C., three clear days for inspection and payment of same. The books of the Company are closed for seven days from the_____instant.

[Address and date.] *Secretary.*

Of Drawing of Mortgage Debenture Bonds.

_____, LIMITED.

Notice is hereby Given that the undermentioned Mortgage Debenture Bonds of this Company have this day been drawn for redemption in the presence of_____and_____, two of the Trustees;_____, one of the Directors of the Company; and_____, of_____, Notary Public:—

Nos._____.

The Bonds so drawn will be paid on presentation at the Company's Office,_____, on or after _____day, the_____instant, between the hours of_____o'clock in the forenoon and_____ o'clock in the afternoon (Saturdays excepted).

[Address and date.] *Secretary.*

Another Form.

_____, LIMITED.

Six per Cent. Bonds (Sinking Fund).

Twenty-fourth Half-yearly Drawing, Payable_____, 193 .

Notice is hereby Given that, in accordance with the Deed of Trust dated_____, the following Numbers of Bonds, to the amount of &_____, for payment at par on_____next, were this day publicly drawn at the Offices of the Company in the presence of Mr._____, Notary Public:—

Bonds of £_____each .. .. .. £_____

Distinctive Numbers.		No. of Bonds.	Distinctive Numbers.		No. of Bonds.
From	To		From	To	

Total drawn to date .. .. .. £_____

The above Bonds will be paid on and after_____next at the Company's Office.

Bonds to be paid must be left four clear days previously for examination.

N.B.—Interest on the Bonds so drawn will cease on_____next.

_____

Secretary.

Present—

_____

Notary Public.

[Address and date.]

OF PAYMENT OF COUPONS.

_____, LIMITED.

The Directors of the above Company beg to notify that the Half-yearly Coupons of the Debentures of the Company will be payable on and after the_____instant at The_____Bank, Limited. Coupons must be deposited for inspection three clear days before the date of payment.

_____

[Address and date.] *Secretary.*

OF PAYMENT OF COUPONS AND DRAWN BONDS.

_____, LIMITED.

SIX PER CENT. DEBENTURE BONDS.

The Coupons of the above Bonds due on_____next, together with the Bonds drawn on the_____instant (the numbers of which have been duly advertised), will be paid on and after_____next (Saturdays excepted), at the Offices of the Company.

The Coupons and drawn Bonds must be left three days previous to payment.

_____ _____

[Address and date.] *Secretary.*

OF RENEWAL OF DEBENTURES.

_____, LIMITED.

The Directors of _____, Limited, give notice that, of the £_____Debentures which fall due on_____, they are willing to renew £_____Debentures for a further period of_____years from that date, with interest at_____per centum per annum, and that the holders of the above-mentioned Debentures will, to the extent above named, be allowed the option of renewing their Debentures on these terms, on giving notice of their desire by letter addressed to the Secretary on or before the_____day of_____, 193 . Applications (which must state the number and amount of each Debenture to be renewed) will be acceded to in the order of priority of receipt.

_____

[Address and date.] *Secretary.*

OF APPORTIONMENT OF NEW SHARES.

_____, LIMITED.

NOTICE IS HEREBY GIVEN that, pursuant to resolutions passed at the General Meeting of Shareholders held on_____, the Directors are prepared to allot_____Preference Shares of £_____each to the present Shareholders, being the *pro rata* proportion on the footing of One Preference Share for every [Five] Ordinary Shares of the issued Capital, exclusive of fractions.

Shareholders must make application for the proportion of the Preference Shares to which they are entitled, and remit the amount due thereon to the Offices of the Company as below, on or before the____day of_____. Holders of Share Warrants to Bearer must lodge their Share Warrants with their applications. Shareholders not resident in the United Kingdom should forward their applications, accompanied by the requisite remittance, to the Company's Agents, as under, on or before the date named, and, if Holders of Share Warrants to Bearer, they must lodge their Share Warrants with such Agents at the same time:—

In Paris, at the office of Mr._____, before_____.
In Calcutta, with Messrs. _____, before_____.
In Colombo, with Mr._____, before_____.

The requisite application forms may be obtained at the Office of the Company, or from its Agents, as above. In default of receiving an application with remittance from any Shareholder by the dates above mentioned the Directors will assume that he does not desire an allotment, and they will deal with the shares in the manner authorised.

_____

[Address and date.] *Secretary.*

OF EXTRAORDINARY GENERAL MEETING TO WIND UP.

_____, LIMITED.

NOTICE IS HEREBY GIVEN that an Extraordinary General Meeting of the above-named company will be held at_____on _____day, the_____day of_____, 193 , at_____o'clock in the_____noon, for the purpose of considering and, if deemed desirable, passing (with or without modification) the following Special Resolutions:—

1. That the Company be wound up voluntarily, and that_____ and_____be and they are hereby appointed joint Liquidators.
2. That the Liquidators be and are hereby empowered to sell the assets and undertaking of the Company to another Company, to be called _____, Limited, or some similar name, such other Company undertaking all the liabilities of_____ Limited, for the sum of £_____, to be paid in fully paid shares of such other Company, such other Company also paying all expenses and costs of the winding up and the receipt and distribution of the shares.

_____

[Address and date.] *Secretary.*

TO HOLDERS OF SHARE WARRANTS OF COMPANY IN LIQUIDATION.

_____, LIMITED.
(*In Liquidation.*)

NOTICE IS HEREBY GIVEN that the above-named Company being, in pursuance of the Special Resolutions recently passed, now in course of liquidation, the Shareholders resident abroad and the Holders of Share Warrants are required within_____days from this date to signify to me, the undersigned, whether or not they desire to receive in exchange for each share held in the above Company one £_____ _____share in New_____, Limited, formed to take over the property and assets of the above Company, to be issued on the footing of being paid up to the extent of_____, and with a liability to calls to the extent of_____, of which_____per share shall be forthwith called up, and the balance of_____as and when the Directors shall determine. Any shares in New_____, Limited, not taken up by the Members of_____, Limited, may be issued and allotted by the Directors to persons other than the persons now entitled.

_____

[Address and date.] *Liquidator.*

OF FURTHER ISSUE OF CAPITAL.

_____, LIMITED.

SIR,—The Directors have recently received a report from_____, from which it is clear that it will be necessary to issue some further part of the Capital which was authorised in_____last. The Directors have determined to offer_____shares of £_____each for subscription at par; and, in accordance with Article_____of the Articles of Association, these shares must be "offered in the first instance to the Members of the Company *pro rata*." I am therefore directed to offer you_____shares of this new issue. If you desire to subscribe for these shares, or any of them, be good enough to fill up the enclosed form, and return it to me not later than_____next, as a Meeting of Directors for the purpose of allotment will be held on_____in next week. In the event of my not hearing from you, it will be assumed that you decline to subscribe.

Your obedient servant,

_____

Secretary.

[*To the foregoing letter will be annexed a form of application and bankers' receipt.*]

SPECIMEN FORMS

FORM OF TRANSFER BY EXECUTORS OR ADMINISTRATORS.

WE, being the executors [*or* administrators] of A.B., deceased, in consideration of the sum of £_____, paid by_____, of_____ (hereinafter called "the transferee"), hereby sell and transfer to the said transferee the shares, numbered____to____inclusive, in_____ Limited, subject to the conditions upon which the said A.B. would have held the said shares if he were living at the date hereof; and I, the said transferee, do hereby accept and take the said shares subject to the conditions aforesaid.

As Witness &c.

LETTER OF GUARANTEE THAT BILLS SHALL BE PAID AT MATURITY.

(*Stamp, 6d., impressed or adhesive*).

To_____, LIMITED, AND THE DIRECTORS THEREOF.

GENTLEMEN,—In consideration of the above-named Company agreeing to discount the bills of_____, on and accepted by_____,

for £_____, due as per list at foot, I hereby agree to guarantee and indemnify the said Company from all loss that it may incur by so doing; and in the event of the said bills or any of them not being duly paid at maturity, I hereby undertake to pay the amount of the said bills on demand, or such of them as shall not be paid as aforesaid.

I am, your obedient servant,

_____

[*Here set out list of bills.*]

FORMS OF ATTESTATION OF THE SIGNATURE OF A MARKSMAN (*i.e.* A PERSON WHO CANNOT SIGN HIS NAME).

Witness to the signature of A.B., by his mark, the word [*or* figure] _____(being the number of shares taken by him), having been written opposite his name and at his direction by me.

*Name of Witness*_____

*Address*_____

*Occupation*_____

Or,

Witness to the signature of_____by his mark, he being unable to write, and his name and the number of shares he agreed to take having been previously written by me, in his presence and at his request.

*Name of Witness*_____

*Address*_____

*Occupation*_____

AFFIDAVIT OF SERVICE OF NOTICES.

I, A.B., of_____, in the county of_____ make oath and say as follows:—

1. I did, on the_____day of_____, in the manner hereinafter mentioned, serve a true copy of the notice now produced &c., upon each of the respective persons whose names and addresses appear in the Company's Register of Members as holders of shares in the capital of the Company.

2. I served the said respective copies of the said notice by putting such copies respectively, duly addressed to such persons respectively, according

to their respective names and addresses appearing in the said Register of Members, being the last known addresses or places of abode of such persons respectively, and with the proper postage stamps affixed thereto as prepaid letters, into the Post Office Receiving House, No._____, in_____Street, _____, in the County of_____, between the hours of_____and of_____o'clock in the_____noon of the said_____day of_____.

3. As regards those members of the Company whose addresses are, or in accordance with the Articles of Association are to be deemed to be, at the registered office of the Company, I served the said respective copies of the said notice by posting up such copies in a conspicuous place in the said office, and providing copies to be handed to any of such members as should come to the said office.

Sworn &c.

INDEMNITY FOR SECRETARY ACCEPTING COMMISSION

To A. B., the Secretary of

_____, LIMITED.

Re the purchase of_____by_____.

We [names and descriptions in full], being the Directors of_____, Limited, hereby undertake and agree with the above-named A. B., in consideration of his having introduced the above matter to the said Company to pay him a commission of [one third] of the profits arising out of the said matter, such [one third] to be paid when and as the said profits shall be received by the said Company; and we hereby further agree and undertake, and each one of us for himself hereby agrees and undertakes, to indemnify and save harmless the said A. B., his estate and effects, from all losses, damages, claims, demands, and liability for or on account or by reason of his having received such commission as aforesaid or any part thereof.

Date. Signatures.

APPENDIX B.

FORM 92.

"THE COMPANIES ACT, 1929."

Re——————————————————, LIMITED
This is the exhibit marked B referred to
in the affidavit of
Sworn before me this Fourteenth day of January, 1931.

——————————————————
A Commissioner or Oaths.

No. of Company——————

——————————————————, LIMITED.

STATEMENT OF RECEIPTS AND PAYMENTS AND GENERAL DIRECTIONS AS TO STATEMENTS.

Size of Sheets.

1. Every statement must be on sheets 13 inches by 16 inches.

Form and Contents of Statement.

2. Every statement must contain a detailed account of all the liquidator's realisations and disbursements in respect of the Company. The statement of realisations should contain a record of all receipts derived from assets existing at the date of the winding-up resolution and subsequently realised, including balance in Bank, Book debts and Calls Collected, Property Sold, &c.; and the account of disbursements should contain all payments for costs and charges, or to creditors or contributories. Where property has been realised, the gross proceeds of sale must be entered under realisations, and the necessary payments incidental to sales must be entered as disbursements. These accounts should not contain payments into the Companies Liquidation Account (except unclaimed dividends—see paragraph 5), or payments into or out of bank, or temporary investments by the liquidator, or the proceeds of such investments when realised, which should be shown separately—

(*a*) By means of the bank pass book;

(*b*) By a separate detailed statement of moneys invested by the liquidator, and investments realised.

Interest allowed or charged by the Bank, Bank commission, &c., and profit or loss upon the realisation of temporary investments, should,

however, be inserted in the accounts of realisations or disbursements, as the case may be. Each receipt and payment must be entered in the account in such a manner as sufficiently to explain its nature. The receipts and payments must severally be added up at the foot of each sheet, *and the totals carried forward from one account to another without any intermediate balance, so that the gross totals shall represent the total amounts received and paid by the liquidator respectively.*

Trading Account.

3. When the liquidator carries on a business, a trading account must be forwarded as a distinct account, and the totals of receipts and payments on the trading account must alone be set out in the statement.

Dividends &c.

4. When dividends or instalments of compositions are paid to creditors, or a return of surplus assets is made to contributories, the total amount of each dividend, or instalment of composition, or return to contributories, actually paid must be entered in the statement of disbursements as one sum; and the liquidator must forward separate accounts showing in lists the amount of the claim of each creditor, and the amount of dividend or composition payable to each creditor, and of surplus assets payable to each contributory, distinguishing in each list the dividends or instalments of composition and shares of surplus assets actually paid and those remaining unclaimed. Each list must be on sheets 13 inches by 8 inches.

5. When unclaimed dividends, instalments of compositions, or returns of surplus assets are paid into the Companies Liquidation Account, the total amount so paid in should be entered in the statement of disbursements as one sum.

6. Credit should not be taken in the statement of disbursements for any amount in respect of liquidator's remuneration, unless it has been duly allowed by resolution of the Committee of Inspection, or of the creditors, or of the Company in General Meeting, or by Order of the Court, as the case may require.

LIQUIDATOR'S STATEMENT OF ACCOUNT.

Pursuant to Section 284 of The Companies Act, 1929.

----------, LIMITED.

Nature of proceedings (whether a Members' or a Creditors' Voluntary Winding Up or a Winding Up under the Supervision of the Court).

Date of commencement of winding up: 10th June, 1931.
Date to which Statement is brought down: 9th June, 1932.
Name and Address of Liquidator----------

(This Statement is required in duplicate.)

Liquidator's Statement of Account

Pursuant to Section 284 of The Companies Act, 1929.

REALISATIONS.

Date.	Of whom Received.	Nature of Assets Realised.	Amount. £	s.	d.
1931.		Brought Forward ...	Nil.		
Nov. 16	John Smith	Book Debt	33	1	5
Dec. 1	F. Adams	,,	78	14	4
,, 1	L. Finch	,,	43	18	10
1932.					
Jan. 4	S. Small	,,	13	18	2
Feb. 16	Ditto	,,	10	17	0
,, 17	Messrs. Lewis & Co.	Proceeds of Sale of Office Furniture	13	1	0
	Western Insurance Co.	Rebate on Insurance Premium	3	11	4
March 17	Stone Quarry Co.	Proceeds of Sale of Plant and Machinery	70	0	0
April 2	F. Brown	Book Debt	22	16	7
May 9	Trading Account	Total Receipts as per Separate Account to date	301	12	6
		Carried Forward ... £	591	11	2

DISBURSEMENTS.

Date.	To whom Paid.	Nature of Disbursements.	Amount. £	s.	d.
1931.		Brought Forward ...	Nil.		
Dec. 15	Advertisers, Limited	Advertising in *London Gazette* &c.	3	18	8
	London & Dublin Bank	Cheque Book supplied		5	0
	Wm. G. Welsh	Rates of 14 London Wall made 14th Oct., 1930	5	11	5
,, 30	Building Proprietary Co. Limited	Rent of 14 London Wall Quarter ended Christmas, 1930	25	0	0
	Metropolitan Water Board	Water Rate due Christmas	1	9	0
	William Martin & Co.	Printing and Stationery supplied	2	12	0
	Teller & Smith	Accountancy Charges	21	0	0
	Gordon Iliffe	Surveyor's Fee	3	3	0
1932.	Telephone Company	Rent of Telephone	3	7	8
May 9	Trading Account	Total Payments as per Separate Account to date	279	8	3
		Carried Forward .. *£	345	15	0

* NOTE.—No balance should be shown on this Account, but only the total Realisations and Disbursements which should be carried forward to the next Account.

ANALYSIS OF BALANCE.

	£	s.	d.
Total Realisations	591	11	2
,, Disbursements	345	15	0
Balance	£245	16	2

The balance is made up as follows:—	£ s. d.	£ s. d.
1. Cash in hands of Liquidator . .		2 3 8
2. Total payments into Bank, including balance at date of commencement of winding up (*as per Bank Book*)	589 7 6	
Total withdrawals from bank .	495 15 0	
Balance at bank		93 12 6
3. Amount in Companies Liquidation Account		
*4. Amounts invested by Liquidator		150 0 0
Less amounts realised from same		
Balance .		
Total balance as shown above .		£245 16 2

[NOTE.—*Full details of Stocks purchased for investment and of realisation thereof should be given a separate statement.*]

* The investment or deposit of money by the Liquidator does not withdraw it from the operation of Section 285 of The Companies Act, 1929, and any such investments representing money held for six months or upwards must be realised and paid into the Companies Liquidation Account, except in the case of investment in Government Securities, the transfer of which to the control of the Board of Trade will be accepted as a sufficient compliance with the terms of the Section.

NOTE.—The Liquidator should also state—

1. The amount of the estimated assets and liabilities at the date of the commencement of the winding up.	Assets (after deducting amounts charged to secured creditors and debenture holders)	£1500 0 0	
	Liabilities: Secured creditors .	£426 5 3	
	Debenture holders . .	Nil.	
	Unsecured creditors . .	Nil.	
2. The total amount of the Capital paid up at the date of the commencement of the winding up .	Paid up in cash . .	£3000 0 0	
	Issued as paid up otherwise than for cash .	£500 0 0	
3. The general description and estimated value of outstanding assets (if any) . .	Sundry outstanding debts estimated to realise .	£700 0 0	
4. The causes which delay the termination of the winding up	The settlement of the above debts.		
5. The period within which the winding up may probably be completed	About six months.		

FORM 93.

"THE COMPANIES ACT, 1929."

AFFIDAVIT VERIFYING STATEMENT OF LIQUIDATOR'S ACCOUNT.

_____, LIMITED.

I,_____of_____
the Liquidator of the above-named Company, make Oath and say—That **the account hereunto annexed marked "B" contains a full and true account of my receipts and payments in the winding up of the above-named Company,* from the_____day of_____, 193 , to the_____day of_____, 193 inclusive, **and that* I have not, nor has any other person by my order or for my use during such period, received or paid any moneys on account of the said Company **other than and except the items mentioned and specified in the said account.*

I further say that the particulars given in the annexed Form 92, marked "B," with respect to the proceedings in and position of the liquidation are true to the best of my knowledge and belief.

Sworn at_____
by the above-named_____
this_____day of_____193 ,
Before me,

_____

A Commissioner to administer Oaths in the Supreme Court of Judicature.

* NOTE.—If no receipts or payments, strike out the words in italics.

This affidavit is *not* required in duplicate, but it must in every case be accompanied by a statement on Form 92 in Duplicate.
*Presented by*_____

FORM No. 94.

No. of Company_____

"THE COMPANIES ACT, 1929."

LIQUIDATOR'S TRADING ACCOUNT

under Section 284, *and pursuant to Rules* 194 *and* 198 *of the Companies (Winding Up) Rules,* 1929.

_____, LIMITED.

*Name of Liquidator*_____

the Liquidator of the above-named Company in account with the Estate.

(This Account is required in duplicate in addition to Form No. 92.)

Dr. RECEIPTS.

Date.		£	s.	d.
1931.				
Nov. 20	To Rex & Co. for goods sold and/or work done ..	50	0	0
Dec. 15	,, Brown & Sons ,, ,, ..	65	0	0
,, 15	,, John Jacobs, Limited ..	35	0	0
1932.				
Jan. 4	,, Paul Jones ,, ,, ..	1	12	6
Feb. 15	,, Harry Williams & Co. ,, ,, ..	50	0	0
	,, Rex & Co. ,, ,, ..	53	19	10
May 7	,, Harry Williams & Co. ,, ,, ..	46	0	2
	£	301	12	6

PAYMENTS. *Cr.*

Date.		£	s.	d.
1931.				
Nov. 16	By Wages and Salaries for week ended this date..	21	0	7
	,, Petty Disbursements	2	0	0
	,, Stone Quarry Co., Purchase of Material	22	17	9
Dec. 1	,, Sundry persons, Goods bought	0	5	2
	,, A. Barber, Cartage	8	4	6
,, 14	,, Wages and Salaries for week ended this date	17	15	2
,, 22	,, Ditto	18	19	2
	,, Petty Disbursements	0	14	2
	,, Stone Quarry Co., purchase of Material	113	3	10
	,, J. W. Butler, Travelling Expenses	1	9	2
	,, William Martin & Co., Printing	2	1	2
	,, Jeremiah Robinson, Sundries	1	16	10
,, 27	,, Wages and Salaries for week ended this date	21	10	8
	,, Petty Disbursements	0	16	8
	,, John Simon, Travelling Expenses..	4	13	5
1932.				
Jan. 15	,, Stone Quarry Co., Purchase of Material	42	0	0
	£	279	8	3

_____

Liquidator.

Dated 15th June, 1932.

*Presented by*_____

FORM No. 95.

No. of Company_____

"THE COMPANIES ACT, 1929."

LIST OF DIVIDENDS OR COMPOSITION

under Section 284 of The Companies Act, 1929, and pursuant to Rules 194 and 198 of the Companies (Winding Up) Rules, 1929.

_____, LIMITED.

I HEREBY CERTIFY that a Dividend (or Composition) of Ten Shillings in the £ was declared payable on and after the_____day of_____ and that the creditors whose names are set forth herein are entitled to the amounts set opposite their respective names, and have been paid such amounts except in the cases specified as unclaimed.

_____
Liquidator.

Dated the_____day of_____.

To the Board of Trade.

Surname.	Christian Name.	Amount of Proof.			Amount of Dividend (or Composition).					
					Paid.			Unclaimed.		
		£	s.	d.	£	s.	d.	£	s.	d.
Mackintosh	Donald	20	2	10	10	1	5			
Goodwin & Sons	Charles	41	3	4	20	11	8			
Harvey Bros. & Co., Limited		36	4	5	18	2	3			
Parkes	Josiah	5	5	0	2	12	6			
Farnley	Frederick W.	10	8	3				5	4	1
Brown, Gordon & Co.		2	5	7				1	2	9
Robinson	Richard	146	3	3	73	1	8			
London Stationery Co		19	12	11	9	16	6			
Williams	Gregory	3	3	9	1	11	11			
Smith	John	3	0	0	1	10	0			
Childs	Arnold	2	6	0	1	3	0			
Hawker	James V.	54	3	2	27	1	7			
Harcourt	Albert George	2	10	0	1	5	0			
Chamberlayne	Thomas	2	4	5	1	2	3			
Courtenay	Edward	6	18	0	3	9	0			
Stuart	James	4	17	7				2	8	9
Tudor	Henry	6	4	3	3	2	1			
Wettin	Edward Albert	5	2	10	2	11	5			
Talbot	Edmond	54	9	8	27	4	10			
		426	5	3	204	7	1	8	15	7
								204	7	1
								£ 213	2	8

(This List is required in duplicate.)

*Presented by*_____

FORM No. 96.

No. of Company_____

"THE COMPANIES ACT, 1929."

LIST OF AMOUNTS PAID OR PAYABLE TO CONTRIBUTORIES under Section 284 of The Companies Act, 1929, and pursuant to Rules 194 and 198 of the Companies (Winding Up) Rules, 1929.

_____, LIMITED.

I HEREBY CERTIFY that a return of Surplus Assets was declared payable to Contributories on and after the_____day of_____,193 , at the rate of Two Shillings per Share, and that the Contributories whose names are set forth herein are entitled to the amounts set opposite their respective names, and have been paid such amounts, except in the cases specified as unclaimed.

_____

Liquidator.

Dated the____day of_____, 193 .

To the Board of Trade.

Surname.	Christian Name.	No. of Shares.	Amount returned on Shares. Paid. £	s.	d.	Unclaimed. £	s.	d.
Williams	Reginald	500	50	0	0			
Robinson	Arthur Ernest	100	10	0	0			
Jones	Phineas	25	2	10	0			
Smithson	James	25				2	10	0
Arnold	Alfred Harold	75	7	10	0			
Pierrepont	Sidney George	20	2	0	0			
Godwin	Harold	100	10	0	0			
Payne	Edward	10	1	0	0			
Webb	Gordon	10	1	0	0			
Johnson	Samuel	250	25	0	0			
Hogarth	William	50				5	0	0
Leighton	Frederick	40	4	0	0			
Gilmore	James Duncan	45	4	10	0			
Ridd	John	50	5	0	0			
Pomeroy	Ives	5	0	10	0			
Jukes	Jane Edith	20	2	0	0			
Macgregor	Elsie	25				2	10	0
Douglas	James William	1000	100	0	0			
Courtenay	Edward	100	10	0	0			
Courtenay	Constance	100	10	0	0			
Brown	Archibald	50	5	0	0			
Martin	George	200	20	0	0			
Gregory	William Henry	100				10	0	0
Barr	Joseph	400	40	0	0			
Crocker	Jessie	200	20	0	0			
		3500	330	0	0	20	0	0
						330	0	0
						£ 350	0	0

(This List is required in duplicate.)

*Presented by*_____

APPENDIX C.

STOCK EXCHANGE QUOTATIONS, AND PERMISSION TO DEAL IN NEW ISSUES.

PRIOR to August, 1914, there was only one publication under the authority of the London Stock Exchange Committee in which transactions could be recorded, viz. the "Official List," issued daily.[1] In this list appeared the current quotations and the markings of "business done" in such shares and securities as had been granted an official quotation. When the Stock Exchange reopened in January, 1915, one of the regulations under which dealings were permitted was that every transaction taking place in the House should be "marked."[2] In the case of officially quoted shares and securities these markings, of course, appeared in the Daily Official List; but for the vast number of companies which had never been granted an official quotation the Committee instituted a "Supplementary List." The Supplementary List has grown to very large proportions, and records every day the transactions in many of the most active securities on the Stock Exchange. Many of these markings are republished by the London and Provincial newspapers, so that the company which has never received an official quotation secures, nowadays, almost as much publicity as a company which has.

In order that transactions may appear in the Supplementary List every share or security issued since 4th January, 1915, requires "permission to deal" from the Stock Exchange Committee. Until such permission has been granted members of the Stock Exchange are absolutely forbidden to do any bargains in the new share or security, and this prohibition extends even to renunciation letters for new issues. When a new company is incorporated, therefore, or when an existing concern makes any issue of fresh capital, it is essential to make prompt application for permission to deal. For this the services of a member of the Stock Exchange are requisite, who has to attend to various

1 A weekly edition containing all notices as to dividends, "rights," &c., is also published.

2 Previously this had been left to the option of the parties to the bargain, which in practice meant the discretion of the broker.

formalities and to appear in support of the application before the Stock Exchange Committee. The usual procedure is for the company to apply through its own brokers. If, for any reason, brokers have not previously been appointed, it is necessary for the officials of the company to remedy the omission, so that the requisite steps may be taken to make it possible for the new shares to change hands in the Stock Exchange. The company's brokers, having applied for permission to deal, the Stock Exchange authorities notify the secretary of the company as to the documents &c. which will be required. The broker who has charge of the application will, of course, furnish the secretary with all necessary explanations and assistance on the technical side, and time may be saved if the secretary knows beforehand what will be required by the Stock Exchange Committee. From time to time the regulations subject to which an official quotation or permission to deal is granted are reviewed and where thought desirable amended by a Committee appointed for that purpose. The regulations in force are at present as set out below.

REGULATIONS FOR OBTAINING PERMISSION TO DEAL IN NEW ISSUES.

(Rule 159.)

A. The following documents and particulars should be sent to the Secretary of the Share and Loan Department, when application is made for permission to deal:—

1. (*a*) Certificate of incorporation (in the case of a company registered abroad notarially certified copy or translation of certificate of incorporation and of bye-laws), (*b*) the certificate entitling the company to commence business (if required), and (*c*) Memorandum and Articles of Association and copy or draft of trust deed (if applicable).

2. Copy of resolutions authorising issue.

3. Certified copy of agreement relating to issue of shares credited as fully paid and of any other contracts mentioned in prospectus.

4. In the case of an issue for cash, copy of prospectus, offer for sale or circular of issue, stating all material conditions relating to the flotation of the issue, and (in the case of a new company) to the formation of the company and if publicly advertised, copy of principal London newspaper in

which the full prospectus was advertised. In the case of an issue by prospectus, offer for sale, or circular, it must be stated whether any shares are under option and if so at what prices, when such options expire and the consideration (if any) given for such options. The London broker's name must appear on any prospectus or offer for sale; but this regulation shall not apply to issues by Foreign Governments or Foreign Municipal Securities.

5. Specimen (or advance proof) of allotment letter, and, if possible, of scrip and definitive certificates. Allotment letters must be serially numbered and be printed on good quality paper. Any renunciation letter attached to an allotment letter for fully-paid shares must not be current for a period exceeding six weeks and for partly-paid shares for a period exceeding one month from the date of the final call. When, at the same time as an allotment is made for shares issued for cash, shares of the same class are also allotted, credited as fully paid, to vendors or others for a consideration other than cash, the period for renunciation may be the same as, but not longer than, that allowed in the case of shares issued for cash. The form of renunciation on allotment letters (and letters of rights) must be printed on the back of, or attached to, the document in question. Split allotment letters and split letters of rights must be certified by an official of the company.

NOTE.—In cases where an Issuing House or other body or person has purchased an issue of stock which is subsequently offered to the public, a certified copy of the resolution or other document, evidencing that the purchaser has received due authority to issue scrip on account of the seller, must be supplied. If no such authority has been given, the scrip must be enfaced "Contractor's Scrip." "Contractor's Scrip" may not be issued in cases of issues made by County Councils, Municipal Corporations or other Local Authorities of Great Britain and Northern Ireland.

In order to facilitate the certification of transfers it is suggested that the allotment letters should contain the distinctive numbers of the shares to which they relate.

6. Letter (*a*) giving distinctive numbers:—

(1) Of shares for which permission to deal is being applied for, distinguishing those to be allotted:

(*c*) For cash;

(*v*) To vendors or others for a consideration other than cash or in exchange for cash;

(*o*) In pursuance of an option.

(2) Giving number of shares unissued or for which permission to deal is not applied for, distinguishing those:

(*v*) Allotted to vendors or others for a consideration other than cash or in exchange for cash;

(*o*) Under option;

(*r*) Reserved for future issue.

(3) In the case of a further issue stating whether or not the shares are identical[1] in all respects with existing shares.

7. Approximate date when definitive certificates will be ready for issue.

8. List of allottees or present holders—name, address and holding (when required).

9. In all cases other than Government and municipal loans, and issues by statutory boards, companies incorporated by special Act of Parliament and other similar authorities, whether the issue is made by prospectus or otherwise, particulars of any underwriting or commission must be disclosed and a copy of the underwriting agreement and of sub-underwriting letter (if any) together with (if required) a list containing the names, addresses and descriptions of sub-underwriters and the amount sub-underwritten must be lodged with the Department.

10. An undertaking under the seal of the company in the following form and to the following effect (printed copies of such undertaking are available in the Share and Loan Department):—

(1) To split letters of allotment and if a "Rights" issue to split letters of rights, and to have any such "Splits" certified by an official of the company.

(2) To issue the definitive certificates within one month of the date of the lodgment of the transfer and to issue balance certificates, if required, within the same period.

(3) To notify the share or stockholder as soon as a transfer out of his name has been certified by the company's officials or notification of certification has been received from the Share and Loan Department or any Associated Stock Exchange.

(4) To issue all allotment letters simultaneously numbered serially and in the event of its being impossible to issue letters of regret at the same time to insert in the Press a Notice to that effect, so that the Notice shall appear on the morning after the letters of allotment have been posted.

(5) To certify transfers against allotment letters.

(6) Where power has been taken in the Articles to issue share warrants to bearer, in the event of the company deciding to make such an issue: (i) to issue such warrants in exchange for registered shares within three weeks of the deposit of the share certificates; and (ii) to certify transfers against the deposit of share warrants to bearer.

[1] A statement that shares are in all respects identical is understood to mean that:—

(1) They are of the same nominal value, and that the same amount per share has been called up.

(2) They carry the same rights as to unrestricted transfer, attendance and voting at meetings, and in all other respects.

(3) They are entitled to dividend at the same rate and for the same period, so that at the next ensuing distribution the dividend payable on each share will amount to exactly the same sum.

(7) To notify the Share and Loan Department without delay:—

i. Of any changes in the directorate by death, resignation or removal;

ii. Of any extension of time granted for the currency of temporary documents.

(8) To forward to the Share and Loan Department:—

(*a*) Three copies of the statutory and annual report and accounts as soon as issued (unless such provision is contained in the Articles of Association).

(*b*) Three copies of all resolutions increasing the capital and all notices relating to further issues of capital, call letters or any other circular at the same time as sent to the shareholders.

(*c*) Three copies of all resolutions passed by the company in general meeting other than resolutions passed at an ordinary general meeting for the purpose of adopting the report and accounts, declaring dividends, and re-electing directors and auditors; and

(*d*) To advise the Share and Loan Department by letter of all dividends recommended or declared immediately the board meeting has been held to fix the same.

11. In issues made by County Councils, Municipal Corporations or other Local Authorities (hereinafter all referred to as the "Local Authority") the following regulations must also be complied with.

(1) If Scrip Certificates are to be issued:—

(*a*) The denominations must be stated in the Prospectus or the advertisement published under Appendix 34B.

(*b*) They must be ready for issue within 21 days of allotment.

(*c*) They must bear an autographic signature and there must be supplied to the Committee and (in cases where the official signing is not the Registrar or his officer) to the Registrar of the Stock, specimen signatures of the official or officials of the Borrower, Bank or Issuing House authorised to sign together with the distinctive numbers of the Scrip signed by each official.

(2) The following letter, signed by a duly authorised official of the Borrower, must accompany the application.

To THE COMMITTEE FOR GENERAL PURPOSES,
THE STOCK EXCHANGE.

In connection with the issue of £_____Stock of the _____ (Local Authority) I hereby certify that arrangements to the following effect have been duly made:—

If the issue is made by Prospectus. All moneys received by the _____ Bank / Issuing House under the Prospectus dated _____on behalf of the_____ (Local

Authority) and to which they are entitled will be paid within the following periods to the _____Bank at_____ being the ordinary Bankers of the _____(Local Authority) for credit to a special account which has been opened in the name of the Stock:—

Moneys paid prior to allotment—3 days after allotment.

All other moneys—24 hours after collection.

If the Stock has been sold outright to a Purchaser. Allotment letters and Scrip Certificates are not being issued by_____ (Purchaser) on his (or their) own behalf but by or on behalf of the_____(Local Authority). No such document will be issued until the_____(Purchaser) has paid to the _____(Bank) at_____being the ordinary Bankers of the_____(Local Authority) for credit to a Special Banking Account which has been opened in the name of the Stock all sums due from the_____(Purchaser) in respect of the amount certified in the document to have been paid by the holder thereof.

The_____ Bank / Issuing House will supply the Registrar:

(1) As early as practicable with a complete record of the Scrip Certificates issued by them showing in each case the number and other identification mark of the Certificate, the amount of stock to which it relates and a description of the manner in which it has been authenticated and

(2) will notify the Registrar immediately payment has been made in full on any Scrip Certificate.

(NOTE.—Where Scrip Certificates are not to be issued the above Clause to be amended so that it applies to allotment letters.)

OR

(In cases where the Bank or Issuing House are also Registrars of the Stock.)

The_____ Bank / Issuing House are the duly appointed Registrars of the Stock.

The Registrar will not register or inscribe any person as a holder of the Stock except on surrender for cancellation of fully-paid Scrip Certificates for that amount. Provided that if a Scrip Certificate is lost or destroyed the Registrar may not earlier than the first day on which Scrip Certificates can be lodged for registration or inscription register or inscribe a person claiming to be the holder of the lost or destroyed Scrip upon such indemnity being given as may be required.

NOTE.—

(1) If Scrip Certificates are not to be issued amend by substituting "fully-paid allotment letters" for "Scrip Certificates."

(2) This Clause will not be required in cases where the Local Authority themselves carry out the issue of the allotment letters and Scrip Certificates and the Registrar of the Stock is their officer. In such a case it will be sufficient to state the fact.

B. In the absence of any prospectus publicly advertised in this country, or circular to shareholders, the Committee will also require an advertisement in two leading London morning papers giving all material conditions relating to the formation of the company and to the flotation of the issue, and headed as under:—

"This notice is not an invitation to the public to subscribe, but is issued in compliance with the regulations of the Committee of the Stock Exchange, London, for the purpose of giving information to the public with regard to the company. The directors collectively and individually accept full responsibility for the accuracy of the information given."

The advertisement must be in the appropriate form I, II, III or IV herein.

A copy of the advertisement must be signed by or (with the consent of the Committee) on behalf of all the directors, and a signed copy together with a properly certified copy of the resolution of the board of the company approving and authorising the advertisement must be lodged with the Share and Loan Department, except that in the case of foreign companies the Committee may dispense with a copy of the advertisement so signed on receiving satisfactory evidence that it has been approved and authorised by a resolution of the board of the company.

A copy of each of the newspapers in which the advertisement appears must be supplied.

I.

In the case of a company (other than a company incorporated by special Act of Parliament): (*a*) no part of whose share or loan capital is already dealt in or quoted on the Stock Exchange, and (*b*) whose annual accounts for at least two years have not been made up and audited, the statement required to be advertised by Appendix 34B must contain the following information:—

(1) How, when and where the company was incorporated.

(2) The principal objects of the company.

(3) In the case of a company not incorporated in the United Kingdom, whether it has or has not a place of business in the United Kingdom, and the address of the principal place of business in the United Kingdom (if any).

(4) The names, addresses and descriptions of the directors.

(5) The name, address and professional qualification of the auditors. (NOTE.—Qualification means Chartered Accountant, Incorporated Accountant, &c.)

(6) The names and addresses of the bankers, London brokers and secretary, and situation of registered office.

(7) The nominal capital of the company, the amount issued or agreed to be issued, the amount paid up and, where there is more than one class of share, the rights of each class of share as regards dividend, capital and voting.

(8) Particulars of any loan capital created and the amount issued and outstanding or agreed to be issued, and of the rights conferred upon the holders thereof and the obligations undertaken by the company in respect thereof, and short particulars of any mortgages and charges subsisting on any part of the company's assets.

(9) In the case of share or loan capital issued or agreed to be issued for cash, the price and terms upon which the same has been or is to be issued and (if not already fully paid) the dates when instalments are payable with the amount of all calls or instalments in arrear.

(10) The provisions of the Articles of Association, bye-laws or other corresponding document with regard to:—

(*a*) Qualification of directors.

(*b*) Remuneration of directors or other similar body.

(*c*) Any provisions enabling the directors to vote remuneration to themselves or any members of their body.

(*d*) Any provisions with regard to the borrowing powers of the directors and how such borrowing powers can be varied.

(11) Particulars of any preliminary expenses incurred or proposed to be incurred.

(12) A statement setting out clearly the working capital with which the company started or is to start business, additions (if any) since made and whence derived, and the amount available at the date of the statement for working capital, after providing for all purchase considerations, promotion profits, preliminary expenses, losses, and interest or dividend payments to date, with a statement by the directors that in their opinion the working capital available is sufficient or, if not, how it is proposed to provide the additional working capital thought by the directors to be necessary.

(13) Particulars of the share or loan capital that has been issued or is proposed to be issued fully or partly paid up otherwise than in cash and the consideration for which the same has been issued or is proposed to be issued.

(14) The names and addresses of the vendors of any property purchased or acquired by the company or proposed to be purchased or acquired on capital account and the amount paid or payable in cash, shares or securities to the vendor and, where there is

more than one separate vendor or the company is a sub-purchaser, the amount so paid or payable to each vendor and the amount (if any) payable for goodwill.

(15) The amount of any cash, shares or securities paid or proposed to be paid to any promoter and the consideration for such payment.

(16) Particulars of any commissions, discounts, brokerages or other special terms granted to any persons in connection with the issue or sale of any of the share or loan capital of the company.

(17) A statement of the issued share capital of any company acting as promoter or principal underwriter; the amount paid up thereon; the date of its incorporation; the names of its directors, bankers and auditors; and such other particulars as the Committee think necessary in connection therewith, unless particulars of such company are contained in the issue of the "Stock Exchange Official Year Book" current at the date of the publication of this advertisement.

(18) The dates of and parties to all material contracts with a description of the nature of the contracts not being contracts entered into in the ordinary course of the business carried on or intended to be carried on by the company.

(19) Particulars of any of the share or loan capital of the company which is under option, or agreed to be put under option, with the price and term of the option and consideration for which the option was granted.

(20) Full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or the property proposed to be acquired by, the company, and, where the interest of such a director consists of being a partner in a firm, the nature or extent of the interest of the firm.

(21) A statement of all sums paid or agreed to be paid to any director or to any firm of which he is a member in cash or shares or otherwise by any person either to induce him to become or to qualify him as a director or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.

(22) A statement certified by the company's auditors as to the periods (if any) for which the company's accounts have been made up and audited and particulars of the share or loan capital subscribed and the cash actually received by the company in connection therewith, also particulars of all dividends paid and amounts carried forward and carried or proposed to be carried to reserve out of the profits of any such periods as shown in the accounts submitted to the shareholders or in the directors' reports attached to the balance sheet under Section 123 (2) of The Companies Act, 1929.

(23) A copy of the last audited balance sheet and profit and loss account with a copy of the auditors' certificate and any notes

or observations in or on the balance sheet required to be published by any Act of Parliament relating to the company.

(24) If the company has acquired or is proposing to acquire any business, a report by the accountants named in the advertisement upon the profits of the business proposed to be acquired for each of the three financial years for which accounts have been made up immediately preceding the date of the advertisement.

(25) A reasonable time (not being less than seven days) during which and a place in the City of London at which a copy of the Memorandum and Articles of Association of the company, any statute or orders having statutory effect affecting the company, copies of all material contracts, trust deed (if any) referred to in the advertisement, and copies of all the audited accounts of the company since its formation, with the auditors' certificates, copies of all other reports and accounts referred to in the advertisement and all notes or information required to be given by the Companies Act affecting such accounts can be inspected by any member of the public during usual business hours.

NOTE 1.—In the case of foreign companies, the documents to be offered for inspection will be the documents corresponding to those above mentioned in the case of British companies, and where such documents are not in the English language notarially certified translations thereof must be available for inspection.

NOTE 2.—In cases where it is contended that contracts cannot be offered for inspection without disclosing to trade competitors important information which might be detrimental to the company's interests, application can be made to the Committee to dispense with the offering of such documents for inspection.

NOTE 3.—In any case where information is not given under any of the above heads Nos. 11, 13, 14, 15, 16, 19, 20 and 21, the advertised particulars must state that no such payments have been made or explain why the information is not given.

II.

In the case of a company (other than a company incorporated by special Act of Parliament): (*a*) no part of whose share or loan capital is already dealt in or quoted on the Stock Exchange; and (*b*) whose annual accounts for at least two years have been made up and audited, the statement required to be advertised by Appendix 34B must contain the following information:—

(1) How, when and where the company was incorporated.

(2) The principal objects of the company.

(3) In the case of a company not incorporated in the United Kingdom, whether it has or has not a place of business in the United Kingdom and the address of the principal place of business in the United Kingdom (if any).

(4) The names, addresses and descriptions of the directors.

(5) The name, address and professional qualification of the auditors. (NOTE.—Qualification means Chartered Accountant, Incorporated Accountant, &c.)

(6) The names and addresses of the bankers, London brokers and secretary, and the situation of the registered office.

(7) The nominal capital of the company, the amount issued or agreed to be issued, the amount paid up and, where there is more than one class of share, the rights of each class of share as regards dividend, capital and voting.

(8) Particulars of any loan capital created and the amount issued and outstanding or agreed to be issued, and of the rights conferred upon the holders thereof and the obligations undertaken by the company in respect thereof, and short particulars of any mortgages and charges subsisting upon any part of the company's assets.

(9) In the case of share or loan capital issued or agreed to be issued for cash within twelve months of the date of the advertisement, the price and terms upon which the same has been or is to be issued, and if not already fully paid the dates when instalments are payable with the amount of all calls or instalments in arrear.

(10) The provisions of the Articles of Association, bye-laws or other corresponding document with regard to the borrowing powers of the directors and how such borrowing powers can be varied.

(11) A statement that in the opinion of the directors the company has sufficient working capital for the purposes of its business or, if not, showing how the necessary working capital is to be provided.

(12) Particulars of the share or loan capital that has, within two years preceding the date of the advertisement, been issued or is proposed to be issued fully or partly paid up otherwise than in cash and the consideration for which the same has been issued or is proposed to be issued.

(13) The names and addresses of the vendors of any property purchased or acquired by the company or proposed to be purchased or acquired on capital account within two years preceding the date of the advertisement and the amount paid or payable in cash, shares or securities to the vendor and, where there is more than one separate vendor or the company is a sub-purchaser, the amount so paid or payable to each vendor and the amount (if any) payable for goodwill.

(14) Particulars of any commissions, discounts, brokerages or other special terms granted within two years preceding the date of the advertisement to any persons in connection with the issue or sale of any stocks, shares or securities of the company.

(15) The dates of and parties to all material contracts with a description of the nature of the contract entered into within the two years preceding the date of the advertisement not being con-

tracts entered into in the ordinary course of the business carried on or intended to be carried on by the company.

(16) Particulars of any of the share or loan capital of the company which is under option, or agreed to be put under option, with the price and term of the option and consideration for which the option was granted.

(17) Either a copy or with the approval of the Committee a summary of the last audited balance sheet and profit and loss account with a copy of the auditors' certificate and any notes or observations in or on the balance sheet required to be published by any Act of Parliament relating to the company.

(18) A statement certified by the company's auditors giving particulars of the share or loan capital subscribed and the cash actually received by the company in connection therewith within twelve months preceding the date of the advertisement, also particulars of all dividends paid and amounts carried forward or carried, or proposed to be carried, to reserve out of the profits as shown in the accounts submitted to the shareholders or in the directors' reports attached to the balance sheet under Section 123 (2) of The Companies Act, 1929, in respect of each of the two financial years preceding the advertisement for which accounts have been made up and audited.

(19) A reasonable time (not being less than seven days) during which and a place in the City of London at which a copy of the Memorandum and Articles of Association of the company, any statute or order having statutory effect affecting the company, copies of all material contracts, trust deed (if any) referred to in the advertisement, and copies of the audited accounts of the company for each of the two financial years preceding the date of the advertisement for which accounts have been made up and audited, with the auditors' certificates, copies of all other reports and accounts referred to in the advertisement, and all notes or information required to be given by the Companies Act affecting such accounts can be inspected by any member of the public during usual business hours.

NOTE 1.—In the case of foreign companies the documents to be offered for inspection will be the documents corresponding to those above mentioned in the case of British companies, and where such documents are not in the English language notarially certified translations thereof must be available for inspection.

NOTE 2.—In cases where it is contended that contracts cannot be offered for inspection without disclosing to trade competitors important information which might be detrimental to the company's interests, application can be made to the Committee to dispense with the offering of such documents for inspection.

NOTE 3.—In any case where information is not given under any of the above heads Nos. 12, 13, 14 and 16, the advertised particulars must state that no such payments have been made or explain why the information is not given.

III.

In the case of a company (other than a company incorporated by special Act of Parliament) where leave to deal in or a quotation for any of its share or loan capital has already been granted, the statement required to be advertised by Appendix 34B must contain the following information:—

(1) Full particulars of the further share or loan capital in which leave to deal is to be applied for, and in particular:—

(*a*) In the case of stocks or shares the rights conferred as regards income, capital and voting. In the case of debentures, debenture stock or securities, the rights conferred as regards income and capital, and full information as to the amount and application of any sinking fund, any right of the company to redeem before maturity, any rights of conversion, or other similar rights, and in either case the limits of the authorised issue.

(*b*) The price at which and terms upon which such share or loan capital has been issued or agreed to be issued and whether the same has or has not been paid up in full. If not paid in full, particulars of all payments still to be made with due dates of payment. Where any such share or loan capital has been or is to be issued in whole or in part for a consideration other than cash, full particulars of the consideration received or receivable by the company for the issue thereof must be given.

(*c*) Particulars of any commissions, discounts, brokerages, or other special terms granted to any parties in connection with the issue or sale of any such stocks, shares or securities.

(*d*) The dates of and parties to all material contracts affecting the issue of such share or loan capital with a description of the nature of the contract.

(*e*) A reasonable time (not being less than seven days) during which and a place in the City of London at which a copy of the Memorandum and Articles of Association of the company, any statute or order having statutory effect affecting the company, copies of all the contracts and trust deed (if any) referred to in the advertisement can be inspected by any member of the public during usual business hours.

(2) Particulars of any of the share or loan capital of the company which is under option or agreed to be put under option with the price and term of option and consideration for which the same was granted.

(3) Names of the directors of the company.

(4) Name, address and professional qualification of the auditors of the company. (NOTE.—Qualification means Chartered Accountant, Incorporated Accountant, &c.)

(5) Names of London brokers.

(6) A statement that further particulars of the company are contained in the "Stock Exchange Official Year Book" current at the date of the publication of this advertisement.

(7) Such other information as in the circumstances of any particular case the Committee think it advisable to require.

IV.

In the case of Government and municipal loans and issues by statutory boards, companies incorporated by special Act of Parliament and other similar authorities, the statement required to be advertised by Appendix 34B must contain the following information:—

(1) Full particulars of the share or loan capital in which leave to deal is to be applied for and in particular:—

(*a*) The rights conferred as regards income and capital, with full information as to the amount and application of any sinking fund, any right of the authority to redeem before maturity, any rights of conversion, or other similar rights, and the security upon which any loan is charged.

(*b*) The price at which and the terms upon which any such share or loan capital has been issued or agreed to be issued, and whether the same has or has not been paid up in full. If not paid in full, particulars of all payments still to be made with due dates of payment must be given.

(*c*) The dates of and parties to all material contracts affecting the issue of such share or loan capital with a description of the nature of the contract.

(*d*) A reasonable time (not being less than seven days) during which and a place in the City of London at which a copy of the statutes, orders or other authorities under which the share or loan capital has been created and issued, with copies of all the material contracts, trust deed (if any) above referred to and, where any of the above-mentioned documents are not in the English language, notarially certified translations thereof, can be inspected by any member of the public during usual business hours.

(2) Particulars of any of the share or loan capital which is under option or agreed to be put under option with the price and terms of option and consideration for which the same was granted.

(3) Names of directors (if any) and auditors (if any), stating qualification. (NOTE.—Qualification means Chartered Accountant, Incorporated Accountant, &c.)

(4) Name and address of secretary (if any) and situation of chief office (if any).

(5) Name of bankers and London brokers.

C. Where a broker is instructed to sell on behalf of a company a further issue of stock or shares forming a part of an amount previously created (permission to deal, if necessary, having been given for the original issue), he may obtain permission to deal on presentation of a letter from the company authorising him to make the sale, or he may sell the stock or shares previous to permission being given, provided he makes the sale subject to the permission being granted.

D. In the case of securities of a purely local nature within Great Britain or Northern Ireland or of a Dominion, Colonial or Foreign issue of which no former security has been quoted previously on a Dominion, Colonial or Foreign Exchange, a broker may make a specific bargain with the authority of the Sub-Committee on New Issues and Official Quotations, but bargains shall not be recorded in the Supplementary List until permission to deal in the issue has been granted by the Committee.

E. In the case of securities quoted on a Dominion, Colonial or Foreign Exchange, or in the case of new issues where a previous issue or issues of the same Country, Corporation or Company have been quoted on a Dominion, Colonial or Foreign Exchange, a Member may make a bargain, provided that a Jobber may not make such bargain out of a market in which he acts as a Jobber.

Such bargains shall not be recorded in the Supplementary List until permission to deal in the issue has been granted by the Committee.

NOTICE.

(Rule 159.)

Committee Room,
The Stock Exchange,
....., 19....

Dealings in the following securities as shown in Column (1) have been allowed by the Committee under Rule 159.

In the case of securities marked with an asterisk dealings will not be permitted until after the issue of Letters of Allotment or Acceptance.

(1) Permission to Deal *Granted*.	(2) Securities unissued or for which Permission to Deal has *not* been applied for.
(*c*) Allotted for cash; (*v*) Allotted to vendors or others for a consideration other than cash or in exchange for cash; (*o*) Allotted in pursuance of an option.	(*v*) Allotted to vendors or others for a consideration other than cash or in exchange for cash; (*o*) Under option; (*r*) Reserved for future issue.

MATERIAL CONDITIONS.

These include the following:—

The capital, dividend, voting and other rights conferred by the different classes of shares, and whether or not the shares are fully-paid up, and of not, to what extent they are paid up.

The amount of shares and debentures or debenture stock that have been issued (in the case of debentures or debenture stock, giving the rate of interest payable thereon), the dates and prices at which they have been issued, and the amounts of any underwriting or other commissions that have been paid in connection therewith.

The names and addresses of the vendors or any property purchased or acquired by the company or proposed so to be purchased or acquired, and the amount payable in cash, shares or debentures to the vendor, or any other consideration for the sale, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount or consideration so payable or granted to each vendor.

The amount or estimated amount of the preliminary expenses.

Full particulars of the value and extent of the interest of every director in the promotion of or the property proposed to be acquired by the company or in any profit made by any vendor or promoter with a statement of the amount paid or agreed to be made to any director or to his firm or any company in which he is interested either to qualify him or to induce him to become a director or otherwise for services rendered by him.

The names and parties to every material contract and the place where they can be inspected.

The Memorandum and Articles of Association (and Trust Deed if the issue relates to debentures or debenture stock) must be open for inspection at the same time and place.

Whether any shares are under option, and if so, at what prices, when such options expire and the consideration (if any) given for such options.

Particulars as to qualification and remuneration of directors.

OFFICIAL QUOTATIONS.

A company in respect of the shares or securities of which permission to deal has been obtained is in most respects on the same footing as a concern which has received an "official quotation." The latter, however, is still regarded as a sort of hall-mark, as shares and securities which are included in the official list are looked upon as specially suitable for "bankers' security" for loans.

What has already been said as to the necessity of securing the services of a competent broker for any application for permission to deal applies, with increased emphasis, to applications for an official quotation, and the first step to be taken to obtain the quotation of a share or security in the *Official List* is to nominate some member of the Stock Exchange to represent the interests of the undertaking before the Committee, and to send through him copies in duplicate of the Articles of Association and of the Prospectus. In the case of an old company (*i.e.* one

that has been in existence more than a year), a copy of the last report and accounts will also be required. The secretary of a company seeking such a quotation should consult the company's brokers at every step, as many technicalities are involved, but the particulars here given will assist a secretary to understand generally what is required.

A. CONDITIONS PRECEDENT TO AN APPLICATION FOR OFFICIAL QUOTATION

(Rule 162.)

1. That the Memorandum, Articles of Association, Bye-Laws or Charter of Incorporation, and Trust Deed (in the case of an Application for Debentures or Debenture Stock so secured), or other authority under which the Share or Loan Capital has been created and issued, shall be in a form approved by the Committee.
2. That the Stock Certificate, Share Certificate, Debenture, Bond or other document representing the Security shall be in a form approved by the Committee.

   NOTE.—The relevant documents referred to in 1 and 2 above must be submitted (in duplicate) to the Secretary of the Share and Loan Department for approval before application for Official Quotation is formally made.
3. That Permission to Deal in the Security shall have been given or that (prior to August, 1914) a Special Settling Day in the Security had been fixed. In the case of Securities dealt in prior to August, 1914, and for which no Special Settling Day had been fixed, or Permission to Deal granted, inquiry should first be made of the Secretary of the Share and Loan Department to ascertain the requirements under this heading.
4. That two-thirds of the issue for which application for Official Quotation is made, whether such issue be the whole or part of the authorised amount, shall have been applied for by and unconditionally allotted to the public, any part of the issue made in lieu of money payments not being considered to form part of the public allotment.
5. That the Definitive Stock or Share Certificate, Debenture Bond or other Security shall have been or shall be ready to be delivered.
6. That at least the first Annual Report and Accounts shall have been issued. (This condition does not apply to Government and Municipal Loans and the like.)
7. That there is sufficient public interest in the Security, and that it is of sufficient magnitude and importance.

ARTICLES OF ASSOCIATION.

Unless the Articles of Association have been specially framed with a view to meeting the requirements of the Stock Exchange, it may be necessary to effect certain alterations so as to bring them into accord with the demands of the Committee.

B. Articles of Association should contain the following provisions:—

1. That directors must hold a share qualification which must not be merely nominal.
2. That the borrowing powers of the board are limited to a reasonable amount.
3. That the non-forfeiture of dividends is secured.
4. That the common form of transfer shall be used, and that there shall not be any restriction on the transfer of fully-paid shares.
5. That all forms of certificates for shares, stock, debenture stock or representing any other form of security (other than Letters of Allotment or Scrip Certificates) shall be issued under the common seal of the company, and shall bear the autographic signatures of one or more directors and the secretary.
6. That fully paid shares shall be free from all lien.
7. That a director shall not vote on any contract in which he is interested and if he do so vote, his vote shall not be counted.
8. That the directors shall have power at any time and from time to time to appoint any other person as a director 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 number authorised by the Articles of Association; but that any director so appointed shall hold office only until the next following ordinary general meeting of the company, and shall then be eligible for re-election.
9. That the Company in General Meeting shall have power by Extraordinary Resolution to remove any director before the expiration of his period of office.
10. That a printed copy of the report, accompanied by the balance sheet (including every document required by law to be annexed thereto) and profit and loss account or income and expenditure account shall, at least seven days previous to the general meeting, be delivered or sent by post to the registered address of every member, and that three copies of each of these documents shall at the same time be forwarded to the Secretary of the Share and Loan Department, the Stock Exchange, London.
11. That any amount paid up in advance of calls on any share shall carry interest only, and shall not entitle the holder of the share to participate in respect thereof in a dividend subsequently declared.

12. That where a company takes power to refuse to register more than three persons as joint holders of a share, such power shall not apply to the executors or trustees of a deceased holder.

13. That the charge for a new share certificate issued to replace one that has been worn out, lost, or destroyed, shall not exceed one shilling.

NOTE.—The above requirements are not exhaustive. The Committee will take exception to any provisions contained in the Articles of Association which may, in any way, restrict free dealings in the shares, or which may, in the Committee's opinion, be unreasonable in the case of a public company.

C. TRUST DEEDS AND DEBENTURES NOT SECURED BY TRUST DEED.

Trust Deeds and Debentures not secured by a Trust Deed must contain provisions to the following effect:—

1. Where provision is made that the Security shall be repayable at a premium either at a fixed date or at any time upon notice having been given, it must be provided that, should the company go into voluntary liquidation, the Security shall not be repayable at less than the premium then current.

2. That any new Trustee appointed under any statutory or other power must prior to appointment be approved by a Resolution of the Debenture (or Debenture Stock) Holders by Extraordinary Resolution. A corporation or company may be appointed a Trustee. Except where the Trustee or one of the Trustees is a Body Corporate, the Trust Deed shall provide that there shall always be at least two Trustees.

3. That a Meeting of Debenture (or Debenture Stock) Holders must be called on a requisition in writing signed by holders of at least one-tenth of the nominal amount of the Debenture (or Debenture Stock) for the time being outstanding.

4. The clause defining an Extraordinary Resolution must provide—
   (*i*) That the quorum for passing such resolution shall be the holders of a clear majority in value of the whole of the outstanding Debentures (or Debenture Stock) present in person or by proxy. If such a quorum be not obtained, provision may be made for the adjournment of the meeting for not less than 14 days, and in that event that notice of the adjourned meeting shall be sent to every Debenture (or Debenture Stock) Holder, and that such notice shall state that if a quorum as above defined shall not be present at the adjourned meeting, the Debenture (or Debenture Stock) Holders then present will form a quorum.

(*ii*) That the necessary majority for passing an Extraordinary Resolution shall be not less than three-fourths of the persons voting thereat on a show of hands, and if a poll is demanded then not less than three-fourths of the votes given on such a poll.

(*iii*) That on a poll, each holder of Debentures or Debenture Stock shall be entitled to at least one vote in respect of every £10 of Debentures or Debenture Stock held by him, except that where the lowest denomination in which such securities can be transferred is more than £10, such denomination may be substituted for the £10 above referred to.

5. That on any payment off of part of the amount due on the Security, unless a new document is issued, a note of such payment shall be enfaced (not endorsed) on the document.
6. That in the case of a Registered Security the common form transfer shall be used and the fee for a new registered Debenture, or Debenture Stock Certificate to replace one that has been worn out, lost or destroyed shall not exceed one shilling.
7. In the case of Securities which are entitled "Mortgage," it is essential that the same should be secured to a substantial extent by a direct specific mortgage on freehold or long leasehold estate or other immovable property or on ships. In the case of Debentures or Debenture Stocks or other issues which will constitute an unsecured liability, it is essential that the same should be entitled "unsecured."

NOTE.—The above requirements are not exhaustive. The Committee will take exception to any provision contained in the Trust Deed or Debentures which may, in any way, restrict free dealings, or which may, in the Committee's opinion, be unreasonable in the case of a Security to be included in the Official List.

SHARE AND STOCK CERTIFICATES.

The following information with regard to share and stock certificates should also be noted as having an important bearing upon the question of obtaining an official quotation:—

D. All certificates or debentures must state on their face the authority under which the company is constituted and the amount of the authorised capital of the company.

All registered certificates or debentures must bear a footnote that no transfer of any portion of the holding can be registered without the production of the certificate.

Where the capital of the company consists of more than one class of shares of the same denomination, the distinctive numbers of the shares of each class must be printed on the face of the share certificates.

All certificates and debentures must be under seal and bear the requisite autographic signatures.

All preference share (or stock) certificates must, in addition, bear (preferably on their face) a statement of the conditions, both as to capital and dividends and redemption (if any), under which the security is issued.

Debentures and debenture stock certificates must state, in addition, on their face, the dates when the interest is payable, and the authority under which the issue is made (*i.e.* Articles of Association and resolutions and directors); and on their back all conditions of the issue, as to redemption, and transfer.

For any information beyond the above, a secretary should refer to the company's brokers, as much, of course, depends upon the nature of the particular issue for which an official quotation is desired.

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