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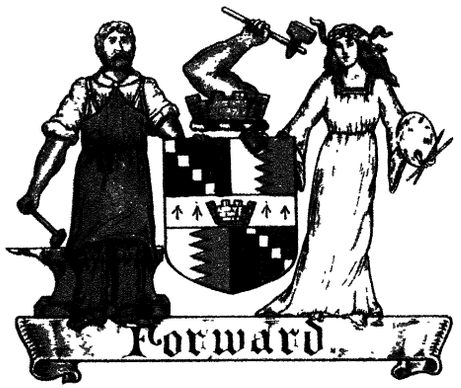
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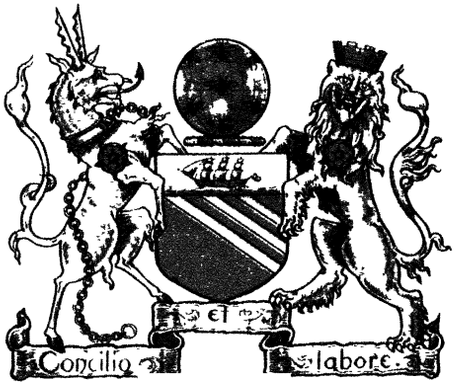
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COATS OF ARMS OF TOWNS.

THE
BUSINESS ENCYCLOPÆDIA
AND
LEGAL ADVISER

BY

W. S. M. KNIGHT

OF THE INNER TEMPLE, BARRISTER-AT-LAW

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

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THE
BUSINESS ENCYCLOPÆDIA

L

LIEN has been defined, in its most limited signification, as a right of detaining the property of another until some demand is satisfied. It is the right, for example, of a creditor who is in possession of property belonging to his debtor, under certain circumstances, to hold it until his debt is paid. Or, as Lord Ellenborough has said, it is "a right in one man to retain that which is in his possession belonging to another, till certain demands of him, the person in possession, are satisfied." Three kinds of liens may be distinguished—general, particular, and maritime; but to these may be added a fourth, namely, equitable lien. A general lien consists of a right to retain possession of a particular property in respect of monies due on a general balance of account; but in a particular lien the right of retention is restricted to the property in respect of which the indebtedness has accrued, and is limited in extent to that same indebtedness. An equitable lien is one which has been created by equitable doctrine, and is particularly distinguished from and is an exception to the main principle of the other three classes of lien, by reason of the fact that the person entitled to the benefit of the lien has no actual possession of the property itself. In the case of legal liens, as distinguished from equitable liens, the possession of the property affected is in general an essential factor in their validity. A lien is only possible in respect of certain and liquidated demands, and not of those in the nature of unascertained damages which can only be assessed by a jury, unless, indeed, a special contract exists. The debt or demand for which the lien is asserted must be due to the person claiming it in his own right, and not merely as the agent of a third person. It must also, in the absence of a special agreement, be a debt or demand due from the person for whose benefit the party is acting, and not from a third person, although the goods may be claimed through him. A lien is always a personal right, and cannot therefore be assigned. The possession, which is an essential characteristic of a legal lien, must be actual, and either by the person himself who claims the lien or by his own agent. A question may arise by whom the delivery is to be made. Where a person, in pursuance of the authority and directions of the owner of any goods, delivers them to a tradesman for the execution of his trade thereon, the tradesman will not have a general lien against the owner for a balance due from the person delivering it, if he knew that the one delivering was not the real owner.

Thus a carrier who, by the usage of trade, is to be paid by the consignor, has no lien for a general balance against the consignee; nor can a claim against a consignee destroy the consignor's right of stoppage in transitu. The possession must be continuous, for, the lien being dependent upon possession, once the possession is parted with the lien will as a rule be gone. The possession must also be in the ordinary course of business, and, moreover, it must be lawful. For example, if any one pays the freight of goods in order to obtain wrongful possession of them, he will not obtain a lien in respect of his payment; but if, having a lien on the goods, and in order to obtain possession it is necessary for him to pay the freight, then he will have a lien for the freight he may have so paid. A creditor cannot wrongfully seize his debtor's goods, and then claim to retain them by virtue of a lien; and, on the other hand, a delivery by a debtor for the purpose of preferring a creditor will not be allowed to operate as a delivery sufficient for a lien to attach.

General liens are regarded by the law with disfavour and are not encouraged. The courts therefore strictly scrutinise the circumstances under which a general lien is claimed, and, generally speaking, will recognise its existence only when it arises from express contract between the parties, the usage of trade, or by reason of previous dealings between the same parties wherein such a lien has been allowed; but where a general lien has been once established, the courts will not allow it to be disturbed. Of course where a general lien exists, a particular lien is included. Perhaps the best known instances of a general lien arising out of usage are those afforded by the relationships of solicitor and client, banker and customer, and principal and factor. A solicitor has a lien for the general balance of his account upon all papers of his client which may come into his possession during the course of his professional employment. But he can obtain no greater right to the possession of those papers than the client himself had, and, consequently, if the latter was merely a trustee or bailee of them for a third party, the solicitor must deliver them up to their rightful owner upon demand. And a banker would have a general lien upon all bills deposited with him by his customer for a general account, but not on securities casually left in his possession after he had refused to advance money upon them. And a factor has a lien upon each portion of goods in his possession, and on the proceeds of their sale for his general balance, as well as for the charges upon those particular goods. But a factor does not acquire a general lien in respect of any debts which may have accrued from his principal before the relationship between them of factor and principal had been actually created. If a number of tradesmen, not obliged by law to receive the goods of any one who offers, for the purposes of their trade agree not to receive goods unless they may be held subject to a general lien for the balance due to them, and their customers know this, and leave the goods, the lien attaches. And the same is true of an individual under the same circumstances. But where a tradesman is obliged to receive the goods, as in the case of a common carrier, then a lien for his general balance will be inferred only when an express assent thereto, on the part of the customer, can be clearly shown. As an illustration of a general lien arising by reason of previous dealings, the case may be instanced of a debtor who, having already pledged property

to secure a loan, borrows a further sum; here it will generally be understood that the creditor's lien is for the whole debt.

Particular liens may be created by mere operation of law from the relation and acts of the parties independently of any contract, as well as by any of the modes available for the creation of general liens. When a person has bestowed labour and skill in the alteration or improvement of any article delivered to him, he has a lien on it for his charges; and so, where a person is, from the nature of his occupation, under a legal obligation to receive and be at trouble or expense about the personal property of another, in every such case he is entitled to a particular lien thereon. Thus tailors, millers, shipwrights, warehousemen, wharfingers, innkeepers, and carriers have each a particular lien; so has a trainer for the expense of keeping and training a racehorse, for by his instruction he has wrought an essential improvement in the animal's character and capabilities. And this trainer's lien exists notwithstanding the owner of the horse has a right to take it out of his hands from time to time. But the rule does not appear to extend to agisters or keepers of livery stables, for they personally do nothing to improve the animals left with them. But it does extend to innkeepers who may detain a guest's horse for its keep, but cannot retake it after giving it up. The reason for this is that an innkeeper cannot refuse to take in his guest's horse. But an innkeeper has no lien in respect of a debt due to him in a capacity other than that of innkeeper (*Matsuda* v. *Waldorf Hotel Co.*). Every one, whether a solicitor or not, has by the common law a lien on the specific deed or paper delivered to him to do any specific work or business upon; but not on any other papers of the same party, unless he is a solicitor. A particular lien may even arise where there is strictly no bailment of the property, for where goods at sea (not on land) come into possession of a party by finding, and he has been to some trouble and expense about them, he is entitled to retain them until he is reimbursed his expenses.

How liens may be lost.—We have already seen that if the goods are parted with, except under some circumstances in the case of factors or insurance brokers, the lien, in general, is lost. But the parting to have this effect should in general be voluntary, and accordingly where the master of a ship in obedience to customs regulations lands goods at a particular wharf or dock, he doesnot thereby lose his lien on them for freight. Payment of the debt naturally discharges the lien; and so does a binding acceptance of a composition. And if the creditor takes a security for the debt this will *primâ facie* extinguish the lien. But in such a case the actual effect of the transaction will depend upon the particular circumstances, and especially upon the intention of the parties whether the security was to be cumulative or substitutive. If the former, then the lien continues; if the latter, it is extinguished. But, as a general rule, if a security is taken which is payable at a distant date the lien is gone. Merely to pledge the goods will entail the forfeiture of the lien thereon; and so will it, upon a demand being made by the owner for their delivery, to give an excuse for their retention other than that afforded by the lien claimed. But depositing the goods in a warehouse for their safety's sake will not operate as a discharge of the lien. Special agreement to that effect between the parties will of course forfeit or waive the lien; and so also will a contract between the parties which is inconsistent with the existence of a lien. But the lien may revive and reattach, upon the property coming again into the possession of the person

entitled to the lien, if the previous parting with the property had been involuntary, and it has so come as the property of the same owner against whom the right exists, and no new intermediate equities have affected that right. The lien will not be lost merely because legal proceedings for the recovery of the debt are barred by the statute of limitations, for the debt still exists even though the creditor is unable to recover it at law.

Under the **Sale of Goods** Act an unpaid vendor, who is in possession of the goods, has a lien thereon until tender or payment of the purchase price in the three following cases: (*a*) where the goods have been sold without any stipulation for credit; (*b*) where they have been sold on credit, but the term of credit has expired; and (*c*) where the purchaser becomes insolvent.

Rights under a lien.—A lien confers upon the person who holds it only the passive right of retaining the goods. An innkeeper, however, can sell under his statutory power, and a solicitor can obtain an order from the court. The most practical course is for the creditor to sue the debtor, and, having obtained a judgment, to levy an execution upon the goods over which he has the lien, and sell them under the execution. But if this execution is fraudulent the creditor will gain nothing, but will lose his lien.

Sea-Carriers' lien.—*Power of shipowner to land goods on default by their owner.* —Where the owner of goods imported in a ship from abroad into the United Kingdom fails to make entry thereof, or, having made entry, to land the same or take delivery of them, and to proceed therewith with all convenient speed, by the times severally herein aftermentioned, the shipowner, by virtue of the Merchant Shipping Act, may make entry of and land or unship the goods. The following are the times:—(*a*) If a time for the delivery of the goods is expressed in the charter-party, bill of lading, or agreement, then at any time after the time so expressed; (*b*) If no time for the delivery of the goods is expressed in the charter-party, bill of lading, or agreement, then at any time after the expiration of seventy-two hours, exclusive of a Sunday or holiday, from the time of the report of the ship. Where a shipowner thus lands goods he must place them, or cause them to be placed—(*a*) if any wharf or warehouse is named in the charter-party, bill of lading, or agreement, as the wharf or warehouse where the goods are to be placed and if they can be conveniently there received, on that wharf or in that warehouse; and (*b*) in any other case on some wharf or in some warehouse on or in which goods of a like nature are usually placed; the wharf or warehouse being, if the goods are dutiable, a wharf or warehouse duly approved by the Commissioners of Customs for the landing of dutiable goods. Any time before the goods are landed or unshipped the owner can himself land or take delivery of them, and his entry in that case will be preferred to any entry which may have been made by the shipowner. If goods, for the purpose of convenience in assorting the same, are landed at the wharf where the ship is discharged, and their owner at the time of that landing has made entry and is ready and offers to take delivery, and convey them to some other wharf or warehouse, they must be assorted at landing, and, if demanded, must be delivered to him within twenty-four hours after assortment. The expense of and consequent on that landing and assortment is to be borne by the shipowner. Any time before the goods are landed or unshipped the owner can make entry for their landing and warehousing at any particular wharf or warehouse other than that at which the ship is discharging; and if he has offered and been ready to take delivery, and the shipowner has failed to deliver, and has also failed at the time of that offer to give him correct information of the time at which the goods can be delivered, then the

shipowner, before landing or unshipping, must give to the owner of the goods or of such wharf or warehouse as last mentioned twenty-four hours' notice in writing of his readiness to deliver the goods. And if the shipowner lands or unships the goods without that notice, he does so at his own risk and expense. *Lien for freight.*—When goods are landed from a ship, and placed in the custody of any one as a wharfinger or warehouseman, written notice should be given to the latter that the goods are to remain subject to a lien (if such is the case) for freight and other charges payable to the shipowner to an amount mentioned in the notice. Thereupon the goods so landed will remain in the hands of the wharfinger or warehouseman, subject to the same lien, if any, for such charges as they were subject to before the landing thereof; and the wharfinger or warehouseman receiving them must keep possession until the lien is discharged. Should he fail to do so, he will be liable to make good to the shipowner any loss thereby occasioned to him. Such a lien for freight and other charges will be discharged—(1) upon the production to the wharfinger or warehouseman of a receipt for the amount claimed as due, and delivery to the wharfinger or warehouseman of a copy thereof or of a release of freight from the shipowner; and (2) upon the deposit by the owner of the goods with the wharfinger or warehouseman of a sum of money equal in amount to the sum claimed as aforesaid by the shipowner. But, in the latter case, the lien is discharged without prejudice to any other remedy which the shipowner may have for the recovery of the freight. When a deposit is made as above, the person who makes it has a period of fifteen days thereafter wherein, if he desires so to do, to give to the wharfinger or warehouseman a written notice to retain it. This notice should state the sums, if any, which the owner of the goods admits to be payable to the shipowner, or as the case may be, that he does not admit any sum to be so payable. If no such notice is given, the wharfinger or warehouseman, at the expiration of the fifteen days, can pay the sum deposited over to the shipowner. Upon such a notice having been given, the wharfinger or warehouseman must forthwith apprise the shipowner of it, and pay or tender to him out of the sum deposited the sum, if any, admitted by the notice to be payable, and retain the balance, or, if no sum is admitted to be payable, the whole of the sum deposited, for thirty days from the date of the notice. At the expiration of those thirty days, the wharfinger or warehouseman must pay such balance or sum to the owner of the goods, unless legal proceedings have in the meantime been instituted by the shipowner against the owner of the goods to recover the balance or sum, or otherwise for the settlement of any disputes which may have arisen between them concerning the freight or other charges as foresaid, and written notice of those proceedings has been served on the wharfinger or warehouseman. By any such payment the wharfinger or warehouseman will be discharged from all liability in respect thereof. If the lien is not discharged, and no deposit is made as above-mentioned, the wharfinger or warehouseman may, and, if required by the shipowner, must, at the expiration of ninety days from the time when the goods were placed in his custody, or, if the goods are of a perishable nature, at such earlier period as in his discretion he thinks fit, sell by public auction, either for home use or for exportation, the goods or so much thereof as may be necessary to satisfy the charges hereinafter mentioned. Before making the sale he must give notice thereo by advertisement in two local newspapers, or in one daily newspaper published in London, and in one local newspaper; and also, if the address of the owner of the goods has been stated on the manifest of the cargo, or on any of the documents which have come into his possession, or is otherwise known to him, send notice of the sale to the owner of the goods by post. The title of a *bonâ fide* purchaser of the goods will not be invalidated by reason of the omission to send this notice, nor is any such

purchaser bound to inquire whether the notice has been sent. The proceeds of the sale should be applied by the wharfinger or warehouseman as follows, and in the following order :—(i) First, if the goods are sold for home use, in payment of any customs or excise duties owing in respect thereof; then (ii) in payment of the expenses of the sale; then (iii) in payment of the charges of the wharfinger or warehouseman and the shipowner according to such priority as may be determined by the terms of the agreement (if any) in that behalf between them; or, if there is no such agreement—(*a*) in payment of the rent, rates, and other charges due to the wharfinger or warehouseman in respect of the said goods; and then (*b*) in payment of the amount claimed by the shipowner as due for freight or other charges in respect of the said goods; and the surplus, if any, shall be paid by the owner of the goods. Whenever any goods are placed in the custody of a wharfinger or warehouseman, under the authority of this part of the Merchant Shipping Act, the wharfinger or warehouseman is entitled to rent in respect thereof, and also has power, at the expense of their owner, to do all such reasonable acts as in his judgment are necessary for the proper custody and preservation of the goods; and he has a lien on the goods for the rent and expenses. But there is nothing to compel a wharfinger or warehouseman to take charge of any goods which he would not have been liable to take charge of if the Act had not been passed; nor is he bound to see to the validity of any lien claimed by any shipowner under the Act. And nothing in the Act takes away or abridges any powers given by any local Act to any harbour authority, body corporate, or persons, whereby they are enabled to expedite the discharge of ships or the landing or delivery of goods; nor takes away or diminishes any rights or remedies given to any shipowner or wharfinger or warehouseman by any local Act.

LIFE ASSURANCE, or life insurance as it is frequently though scarcely correctly termed, is the name applied generally to the system by which one person, society, or company, called the assurer, in consideration of a payment, called a premium, made to it by another person known as the assured, enters into a contract to pay an agreed sum of money to a party indicated in the contract upon the death of the assured or perhaps some other specified person. Briefly, the assurer, in consideration of a premium, agrees to make a certain payment upon the death of a specified individual. This is the system described generally, but in practice there may be introduced various modifications, such for example as an agreement that if the subject of the assurance should attain a certain age, then, although the death contingency has not happened, the assurer will forthwith pay the agreed sum.

The history of life assurance, compared with that of marine insurance, is a quite recent one. The fifteenth and sixteenth centuries knew of a very general and commercially-sound practice of insurance against maritime loss. It was not, however, until the latter part of the eighteenth century that, with the establishment of the Equitable Society in 1762, there was any genuine attempt to place the practice of life assurance upon a sound basis. And even then the scientific means available, compared with those in hand at a much later period, were sadly inadequate. Fire insurance, also, is its senior by at least a century. But though life assurance is thus comparatively a branch of commercial enterprise of very late development, it is at least satisfactory to the Englishman to know that while the practice of marine insurance can only be considered as an importation from abroad, that of life assurance is his own creation, and has, until recently, developed entirely as a British institution. During the last fifty years, however, there has been a steady and most successful progress of life assurance on the European continent, in the United States, the British Colonies,

and even in nearly all civilised countries; and though British life assurance still shows most conspicuously, yet its younger rivals are pressing forward with distinct and increasing success. In fact, judging from comparative results, British life assurance is not nearly so extensive as it should be. In 1871 the population of the United Kingdom was 260 per square mile; in 1901 it had risen to 340 per square mile. In the former year the amount of assurance, excluding "industrial," per head of the population was £10, which increased in 1901 to £15, 10s. 0d.; and during the same period the annual premium paid per head of the population increased from 6s. 6d. to 10s. 6d. These figures are not by any means satisfactory if compared with those of the United States for example. Taking the years 1870 and 1900 it will be found that the population of the States increased per square mile from 13 to 26, while the amount of assurance per head increased from £10, 10s. 0d. to £18, and the annual premium from 9s. 6d. to 16s. 4d. Though the country in the United States is more extensive, and the population more scattered and so less easy of access by assurance agents, than is the case in the United Kingdom, yet it has been calculated that the assurance business of the United States has more than doubled during a period in which the British increase has been only 40 per cent. In fact in Australia, where the population is sparsest, the average amount of assurance per head is higher than in any other country—it is nearly £20. In 1871 the United Kingdom had a total of £320,000,000 of assurance in force, and in 1901 there was the sum of £640,000,000; in the United States the year 1870 showed a total of £400,000,000, and the year 1900 one of £1400,000,000. And other countries also show a progress which is very startling when compared with that of Great Britain. The German Empire had a total sum of £160,000,000 of assurance in force in 1885, and this increased to £352,000,000 in the year 1898; and in the same period the total assurance of the Austro-Hungarian Empire increased from £50,000,000 to £97,000,000. Nor is there any valid reason for this slow progress of British assurance. There are rather many solid reasons why it should progress. That life assurance is profitable as a business, and is certainly a supreme benefit to the individual and the State are undoubted facts. There is therefore some essential element of success—perhaps the spirit of enterprise—which is almost entirely absent from British life assurance efforts. Over the whole population there is only £15, 10s. 0d. of assurance (excluding industrial) per head—an absurdly inadequate average. And only 2,000,000 policies are in force averaging a sum of £326 each; yet there is a number of at least 6,000,000 men alone who are eligible and naturally available for assurance. Why are not the remaining 4,000,000 sought out? Why do they not themselves take the initiative? This is really a public problem of highest importance. Yet its solution seems not to be seriously attempted either by private enterprise or by the ludicrously inefficient and almost inert "action" of the State through the Post-Office Life Assurance Department. New Zealand, which has its own State Life Assurance Department, can show £10,000,000 of assurance in force in respect of a white population of only 750,000.

The life assurance business in England is carried on by proprietary and mutual companies. A "proprietary" company is one in which a body of shareholders raise a capital and pledge it for the payment of claims, in case the premiums are insufficient; for this security they receive dividends arising out of the profits of the business. A "mutual" company is one in which the members stand bound to each other and constitute the company itself; it has no capital in the same sense that a joint-stock or a proprietary company has, and consequently the profits of the business, instead of going to make dividends for shareholders,

are divided amongst the members. But in practice there is little difference to a policy holder whether his assurance is effected with a proprietary company or a mutual company. In both cases his premium contributes to the profits and, under the system of with-profit assurance, is returned to him less a small part allocated as dividend to the shareholders of a proprietary company, or less about an equal proportion which goes in higher working expenses in a mutual company. And, apart from with-profit assurance, there is practically no difference to him, for all the companies compete one with the other and strive to reduce their respective rates of premiums as near as possible to cost price. But from the public point of view, judging from results, it is possible that the mutual system is preferable; there is a more effective attempt at an extension of business. It may be safely said that all the increase in life assurance business in the United Kingdom is due to the efforts of the mutual companies, for the aggregate business of the proprietary companies is steadily declining. In 1898 they assured 60,000 fresh lives; in 1899, only 56,000; and in 1900, they could count only 55,000.

But whatever may be said about the comparative lack of reasonable progress in British life assurance, it is a matter of congratulation that, generally speaking, the established assurance companies of the United Kingdom are undoubtedly financially sound. And that this can be said is due, no doubt, to a wise legislation which most effectively protects the interests of the public. The Life Assurance Companies' Acts, 1870 to 1872, require every company established in the United Kingdom, or established abroad but carrying on business in the United Kingdom, to make a public deposit of the sum of £20,000, which sum is not returned to the company until its life assurance fund, accumulated out of premiums, has amounted to £40,000. Assurance companies are also required to keep their life funds separate, render annual statements of their revenue, and publish periodical actuarial reports and extracts of their financial condition. These statements and reports must be deposited with the Board of Trade, and supplied to every one of their shareholders; they are also subsequently published as parliamentary papers.

The methods of Life Assurance would now at first sight seem to have reached almost the high-water mark of development. But the same causes which have contributed to the progress already made are now contributing, and will continue to contribute, to a further and even more pronounced development. The needs of modern life are forever changing and becoming more and more complicated; actuarial science continues its investigations, and is always proceeding to more comprehensive and also exact practical application; and the business activity of the assurance companies themselves—their competition one with another, all tend to improved and more generally beneficial modes of assurance. Other causes might be enumerated, but it is sufficient to have enumerated some of the principal and most obvious. And the recent history of life assurance is distinctly illustrative of this development—there is no need to hark back to the days when its practice was bound up with speculation and empiricism, and to note the subsequent great change to legitimate assurance and scientific method. That change had taken place. The lines of development were thenceforth in the direction of applying the principles of legitimate assurance so that it should meet, as far as possible, every form of contingency dependent upon human life. In the first place the policy and its conditions were the subject of attention, and in this connection all modern developments have been marked by a spirit of increasing liberality. The very nature of the contract of life assurance has been permitted by the assurance companies to develop in a direction absolutely opposed

to their interests as against those of the assured. This permission was perhaps unconscious; perhaps merely an expression of negligence. But, nevertheless, it can fairly be urged that the insurance companies permitted, in the full sense of the term, the legal doctrine that a contract of life assurance is one of indemnity to exist so ineffectively, and with so great a disregard by them that it eventually gave way, once for all, to the modern legal doctrine that the contract is not one of indemnity but one of absolute assurance. This point will be referred to again hereafter. Then, also, it is now a growing practice for policies to contain no restriction whatever as to the place of residence of the assured—a departure, most beneficial to the assured, from the old system of limiting his place of residence. In this matter of *whole world Policies*, the practice of all the companies is not identical, so an intending assured will be wise to pay special regard to the particular conditions of the company he is negotiating with. A very general practice is for a policy to be issued subject to the condition that the assured does not reside outside the limits of 33° north and 30° south. But the most up to date policy is absolutely free, from the outset, from all restrictions as to foreign travel, residence and occupation, if the life assured is not connected with the Army, Navy, or Mercantile Marine, has a settled occupation, and satisfies the company that he has no intention nor any immediate prospect of incurring extra risk. A policy which is not free from restrictions from the outset should at least become so automatically after it has been five years in force, provided that the assured is not and has not been connected with the Army, Navy, or Mercantile Marine, and no extra premium has been incurred in the meanwhile for foreign travel, residence or occupation. Officers in the Army and Navy can be insured, as a rule, against all risks of climate and war for an annual extra premium of 10s. per cent. Whilst on this subject we may remark that some objection was taken by a portion of the press to these extra premiums being charged to officers engaged in the recent Boer war, it being alleged that such extra premiums were too high, that the companies were consequently deriving a profit from this source, and that they were generally lacking in patriotism. "All these allegations," writes the author of the Review of Life Assurance, in *The Insurance Register*, for 1901, "we need hardly assure our readers, can be proved to be absolutely groundless. In the first place, the published statistics, showing the mortality due in one way or another to the campaign in South Africa, are sufficient evidence that the Extra Premiums charged, so far from being too high, were quite inadequate to the additional risk sustained by the Offices, and we have reason to believe that in a large number of Offices these charges have not nearly covered the amount of premature claims during the war. Some Offices, indeed, like the *Prudential*, issued Policies for small amounts on the lives of those taking part in the campaign without any extra whatever; it may be added that, at the close of the year, the Extra Premiums which had been generally agreed upon, were largely reduced, while to those assured who returned from the war with unimpaired health, a remission of a part of the extra which they had paid was made."

Suicide of the assured was originally a reason for the avoidance of the policy. But even then, if the assured had *bonâ fide* assigned his policy and notice of the assignment had been given to the company before the suicide had taken place, the assignee would be entitled to the assurance money. And this is the law to-day, and can be relied upon in the event of the death of an assured by his own hand under such circumstances that his suicide is exempted from the risks assured against, provided, of course, that it is a *bonâ fide* assignee who makes the claim. But the modern practice of life assurance is either to make no distinction

at all in the case of suicide, or to make only some limited or temporary distinction. The latter course is perhaps the most usual, for only very few offices entirely dispense with the condition against suicide. In the policy of one company the suicide clause, which may be taken as fairly typical, is limited to thirteen months from the date of the policy, and during that period the beneficial interests of assignees are expressly protected. *Indisputable Policies* are another example of modern progress. Their object is to preclude the issuing company from resisting any claim made thereunder. But as a rule such a policy expressly states that it does not become indisputable until the expiration of five years from its date; and it is always provided that the company shall have the right to dispute it in case of fraud. In obtaining such a policy, therefore, the assured should pay special attention to the proposal form and declaration, to the medical examination, and to his referees. All questions should be plainly and accurately answered, and no information material to the risk which the company is asked to undertake should be concealed. Wilful or negligent inaccuracy or concealment may easily be construed as fraud, and, consequently, may vitiate even an indisputable policy. And because the policy is indisputable, more than ordinary care should be taken. If the age has been incorrectly given, but not so incorrectly as to constitute a material misrepresentation, the company will be entitled to readjust the premiums before paying a claim, and deduct from the amount the extra premiums to which they are entitled.

Non-forfeitable conditions. — The principle of non-forfeiture would be applied to a policy upon which sufficient premiums have been paid to give it a surrender value. The application of this principle meets one of the objections most commonly urged against life assurance, namely, that the money paid to a company is to a great extent lost in the event of the assured being unable to continue the payment of the premiums, and that assurance offices make very large profits out of the surrender and lapsing of policies. In some companies the procedure is to issue a *paid-up policy* in the place of the one lapsed. Generally a company requires a special application to be made by the policy holder before such a paid-up policy is issued; but a few offices make the system automatic as soon as the days of grace have expired, the assured being nevertheless allowed to revive the original policy within a year from the date upon which the omitted premium should have been paid. In other offices, when a policy which possesses a surrender value is about to lapse through non-payment of the premium, they do not issue a paid-up policy but apply the surrender value until it is exhausted, to payment of the premiums in arrear, and those which may subsequently become due. A company whose credit is good, and whose business has not been inflated by extravagant expenditure does not, as a rule, seek to increase its profits by the comparatively feeble aid of lapsed policies. It would rather act upon the belief that it is both equitable and for its permanent benefit to give as much assistance and protection as possible to policy holders who are unable to continue their periodical payments. One out of the two regulations of the *Guardian Assurance Company* relating to paid-up and non-forfeiture policies may be quoted as illustrating the above principle in actual practice. In this company, after three years' premiums have been paid, the assured may discontinue payment of the premium on surrendering to the company an equivalent part of the sum assured, the policy becoming a paid-up policy—that is, a policy on which no further premium is payable, except such as may become due in consequence of the life assured going beyond the limits of free residence. This rule applies to all that company's Whole Term Policies, with the premiums payable equally throughout the duration of the risk, but not to policies effected by increasing premiums, short or long period, or

survivorship assurances. The following table gives a few examples, for various ages of entry and duration, of the amount of the paid-up policy which will be granted so long as the company continues to make its valuations on the basis at present in use, for an ordinary Whole Term Policy for £100, with profits. The policy does not continue to participate in the profits as a paid-up policy, but, in addition to the amount given in the table, it carries with it any vested reversionary bonuses existing at the time of the change, less 10 per cent.

Age at Entry.	Policy 5 Years in Force.			Policy 10 Years in Force.			Policy 15 Years in Force.			Policy 20 Years in Force.			Policy 30 Years in Force.			Policy 40 Years in Force.			Age at Entry.
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	
25	11	0	0	21	0	0	30	0	0	39	0	0	54	0	0	65	0	0	25
30	12	0	0	22	0	0	32	0	0	41	0	0	56	0	0	67	0	0	30
35	13	0	0	24	0	0	35	0	0	44	0	0	59	0	0	69	0	0	35
40	14	0	0	26	0	0	37	0	0	46	0	0	61	0	0	70	0	0	40
45	15	0	0	28	0	0	39	0	0	49	0	0	63	0	0	71	0	0	45
50	16	0	0	30	0	0	41	0	0	51	0	0	65	0	0	73	0	0	50
55	17	0	0	32	0	0	44	0	0	53	0	0	66	0	0	76	0	0	55

Discontinued policies.—Quite apart from the above provision for the substitution of paid-up for lapsed policies, the general practice of assurance offices is now comparatively liberal in the matter of discontinued policies generally. *Surrender values* are now almost invariably incident to policies of life assurance, the assured being thus enabled to obtain a price or consideration, in cash or otherwise, for the discontinuance or surrender of his policy. In most cases, however, a larger price for a policy can be obtained by selling it to a private buyer than by surrendering it to its own company. But before so selling it the assured should inquire its surrender value from the company. In any case it should be valued by some assurance expert or by some competent and independent broker. A surrender value accrues, as a rule, only after the policy has been in force for several years, but some companies give a surrender value for certain whole-life and endowment assurances when only one year's premium has been paid, and for other assurances when three years' premiums have been paid. Some policies, such as Ordinary Term Policies which just cover a risk of death within a specified time at the end of which the assurance absolutely expires, do not carry surrender values; but in these cases the premiums are generally much smaller than those for the whole of life. Surrender values always depend on the age at entry and the duration of the particular policy; and a slip is attached to certain policies issued by some companies which enables a policy holder to calculate for himself what the surrender value of his particular policy will be at any point of time. The following may be taken as a fair basis for estimating a particular surrender value: 35 to 40 per cent. of the premiums after 5 years; 40 to 45 per cent. after 10 years; 45 to 50 per cent. after 20 years; and 50 to 60 per cent. after 30 years. The days of grace for payment of a premium are generally extended, if application is made before their expiration, on some such terms as that the assured pays in advance 5 per cent. interest on the unpaid premium. By this means the lapse of a policy may be prevented. And, as a general rule, a policy which has lapsed—but not for more than some reasonable period—may be revived upon special terms being arranged with the company; a fresh medical examination is usually included in these terms.

Payment of claims.—In this regard there has been a great improvement in favour of the assured in the practice of the assurance companies. At first six

months, and subsequently three months, were always required to elapse from the death of the assured before a company would pay the claim. This delay was no doubt at one time reasonable from the point of view of assurance companies—it afforded time for production of evidence of birth and death of the assured, and for the investigation of the circumstances of the particular case. Fifty years ago things moved more slowly than they do now, and the necessary evidence was not so easily and quickly obtained; and, moreover, frauds were then very frequently attempted. But these reasons have now no validity, and even apart from that, the stress of competition has forced on a system of speedy settlement. Delay is generally caused by the claimants themselves. All that a claimant actually need do, in the case of a whole life assurance, is to prove four things to the company:—(1) The death of the assured; (2) That the policy was in force at the time of the death; (3) The age of the assured; and (4) His title to make the claim. Having proved these things, the receipt of the cheque for the assurance money will follow forthwith. Number one is proved by the death certificate, a certificate of burial, and a certificate of the medical attendant of the assured showing the cause of death and the duration of the fatal illness. The certificate of burial may in some cases be dispensed with, but in every case a special form of claim, supplied by the company, must be filled up by the claimant to accompany the certificates. Number two is proved by the receipt for the last premium. Number three is usually proved by the assured during his own life, and an acknowledgment of the proof obtained from the company. But if this has not been done the claimant must produce a certificate of birth of the assured, or, in case the birth has not been registered, a baptismal certificate or a copy of an entry in a family Bible authenticated by a statutory declaration. Number four requires careful attention. If the assured died without having made a will—intestate, the only person who can claim the insurance money is the one to whom letters of administration of his estate have been granted by the Probate Court. The person entitled to administration is indicated, according to the circumstances of any particular case, in the article on INTESTACY. If the assured has made a will and appointed an executor, the latter should prove the will, and then, having obtained probate, will be entitled to claim payment from the company. In both these cases it is assumed that the assured had not, during his life, assigned the policy. He might, for example, have assigned it absolutely to a purchaser, or by way of mortgage to a mortgagee; in either of these circumstances the assignee, having already given notice of the assignment to the company during the assured's life, will be the person alone entitled to receive payment of the assurance money and give a valid receipt therefor. Where the policy specifies any particular person, such as a trustee or the assured's wife (see page 28), then the money can only be paid to that person. In the case of matured children's endowments or endowment assurances, where as a rule no such proofs as any of the foregoing are necessary, it is frequently the case that claims are settled on the very day upon which they become payable according to the provisions of the policy.

Non-medical examination.—One of the most radical of modern improvements in the practice of life assurance is that one which is probably the latest in order of date: the non-requirement of medical examination. This practice, which depends for its success upon the disclosures of the proposing assured in his proposal, originated with the scheme of deferred life assurance for children, but it is now, in the business of one or two companies, available in adult assurance. The *Sun Life Assurance Society*, for example, entertains proposals without medical examination on lives up to the age of 50 years. Both whole-life and endowment

policies may be thus taken out, and the business is accepted at the ordinary rates of premium. It is provided, however, as some protection to the company, that if the assured die during the first year following the date of assurance the amount payable is only one-third of the sum assured, and if he die during the second year two-thirds of that sum. On a claim occurring at any time after two years from the date of the assurance, the full sum assured is payable. And the full sum will be paid in the event of the assured's death from accident at any time. It can be easily understood, in connection with a proposed assurance without medical examination, that the questions in the proposal and those put to the referees must be answered with a most scrupulous regard to accuracy. Assurance without medical examination can also be effected with the Government through the Post-Office Savings Bank. The following are the conditions:—"Insurance from £5 to £25 inclusive may be effected without a medical examination upon production of satisfactory evidence as to health, but in such cases, if the insured shall die before the second annual premium becomes payable, the amount of the first premium, and no more, will be paid to his representatives, and if he should die after the payment of the second annual premium and before the third premium becomes payable, half the amount insured, and no more, will be paid to his representatives. In either of these cases, however, if it shall be proved to the satisfaction of the Postmaster-General that the death of the insured person was caused by accident, the full amount insured will be paid. In any case, immediately after the payment of the third annual premium, the insured person is, of course, entitled to the full benefit of insurance."

The *Death Duties*, which now are so heavy in amount, and which must be paid by the personal representatives of a deceased before they can obtain letters of administration, or a grant of probate, would seem to have opened up a most extensive field for the further operations of the assurance companies. Three important points must inevitably present themselves for the consideration of any extensive owner of property. They are, that upon his death a heavy duty must be paid out of his estate; it must be paid before administration or probate—before his personal representatives are legally constituted as such; and it will probably be necessary, in the ordinary course of things, to realise some part of his estate in order to pay the duties, at a time and under circumstances which will adversely affect the result of the realisation. Here the assurance companies come to his assistance. He may provide for the payment of death duties either by effecting a new policy with that special object, or by arranging for the object to be attained by an existing policy. Assuming that his estate amounts in value to £100,000, then, to provide for the duty thereon at the rate of 5½ per cent., he must specially insure a sum of £5500. When this policy becomes a claim, it will be paid immediately on proof of his death, and as soon as the company is satisfied that the persons claiming payment are properly entitled to it. Moreover, arrangements can generally be made for payment of the sum assured to be paid direct to the Inland Revenue authorities in discharge of the Death Duties immediately on proof of death only, and before grant of probate. Thus a policy of assurance may become one of the best means of providing for these duties, and may prevent the necessity for a forced realisation, perhaps at a serious loss, of a part of the deceased's estate.

Contingencies.—Having noticed the general improvement in the policy and its conditions, it now remains to pay attention to some of the contingencies dependent upon human life which modern life assurance is prepared to provide against.

ENDOWMENT ASSURANCE is the subject of an article elsewhere, and

certain risks undertaken by life assurance companies hardly need special reference in such a work as this. Examples of the latter are "Names and Arms" policies, which indemnify against loss caused by a person failing to use a certain name and arms, and "Sanity" policies, which provide against loss on a lunatic recovering sanity. The most generally important form is that known as *Whole-Life Assurance*, the very name of which is sufficiently indicative of its nature. This form is the oldest one generally adopted by the companies and the assured, and it is yet between this and endowment assurance that an intending assured will hesitate. It is the simplest form of assurance; the one that simply and solely assures against death. Nothing is more certain than death; nothing more uncertain than the hour of death. This fact is the mainspring of all forms of life assurance, and its force is most apparent in a simple assurance against death. A whole-life policy may be effected either with the right to share in the profits of the company or without that right, the contract in the former instance being usually known as a "with profit" assurance, and in the latter as "without profit." This profit is frequently referred to as a bonus, and is the subject of the article on DISTRIBUTION OF INSURANCE SURPLUS. But what a business man wants is the largest amount of assurance for the lowest possible premium. By adopting the without-profit system he may readily obtain this; but by investing in the with-profit system in order to grasp an elusive so-called "profit," he will most certainly effect his assurance at a comparatively expensive and unprofitable rate. It may do for the wealthy man, who desires only a fairly remunerative investment without personal trouble, but it is useless to the poor man. The "profit," or bonus, is merely created by the company taking so much annually out of one of the pockets of its with-profit assured and replacing it in another, with any interest (less expenses) it may have earned at the end of a certain period. The following tables, extracted from those of the *Legal and General Society*, will give some idea of the cost of whole-life assurance *without profit*. Each of the tables shows the rate of premium, or periodical cost of assuring £100. In Table I. the premium is an equal annual payment during the whole of the life of the assured; in Table II. the payment of the premium is limited to some specified number of times, after which no further premium is payable; and in Table III. is shown a scheme of ascending premiums, whereunder it is claimed that an assured can obtain the largest amount of assurance for the smallest present outlay.

TABLE I.

Ordinary Whole-Life—Without Profits.

Age not exceeding	Premium.	Age not exceeding	Premium.	Age not exceeding	Premium.
	£ s. d.		£ s. d.		£ s. d.
20	1 13 8	35	2 8 0	50	4 0 4
25	1 17 7	40	2 16 0	55	4 19 2
30	2 2 0	45	3 6 7	60	6 4 8

TABLE II.

Limited Premiums—Without Profits.

Age not exceeding	Number of Payments.			
	10	15	20	25
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
15	3 13 7	2 14 4	2 5 0	1 19 8
20	4 0 7	2 19 8	2 9 6	2 3 9
25	4 7 0	3 4 6	2 13 8	2 7 6
30	4 13 6	3 9 6	2 18 0	2 11 6
35	5 1 11	3 16 0	3 3 9	2 16 11
40	5 12 3	4 4 3	3 11 0	3 3 11
45	6 4 8	4 14 4	4 0 5	3 13 2
50	6 19 1	5 6 8	4 12 3	—

TABLE III.

Ascending Scale—Without Profits.

Age not exceeding	Premium for first Five Years.	Thereafter.	Age not exceeding	Premium for first Five Years.	Thereafter.
	£ s. d.	£ s. d.		£ s. d.	£ s. d.
15	0 19 3	1 12 11	45	2 2 0	3 17 3
20	1 3 6	1 16 9	50	2 11 2	4 14 10
25	1 6 10	2 1 0	55	3 5 0	5 19 0
30	1 8 2	2 6 8	60	3 17 6	7 13 4
35	1 10 11	2 14 2	65	6 4 9	10 6 6
40	1 14 10	3 4 3			

Before leaving these tables it will be useful specially to notice Table I. in relation to the cost price of life assurance. Taking the Actuaries Hm Mortality Table, and interest at the rate of 3 per cent., the cost price of a whole-life assurance of £100 is represented by the following scale of annual premiums:—

Age.	Premium.	Age.	Premium.	Age	Premium.
	£ s. d.		£ s. d.		£ s. d.
20	1 8 7	35	2 3 10	50	3 16 0
25	1 12 6	40	2 11 9	55	4 14 6
30	1 17 7	45	3 2 3	60	5 19 9

Comparing these figures with Table I. it will be seen that those in the latter exhibit a material increase. It is this increase which provides for the working expenses of the company, certain contingencies, and perhaps some profit. No company can operate without such an increase and be solvent; yet no company need make the increase too great, and so render its assurances comparatively

expensive to its policy holders. The increase slightly varies amongst the different companies, and provided the financial stability of the particular company is undeniable and its general conditions of assurance are sufficiently liberal, a whole life without-profit assurance is most advantageously effected with the company whose increase is the least. And in this connection it is worth pointing out that though the majority of companies continue to charge an extra premium for women, it is yet possible for a woman to make a selection from about twenty companies of the highest standing which are prepared to accept an assurance upon her life at the ordinary rates. The female policy holders in England are now only about five per cent. of the whole number assured—a disproportion the result of the old-fashioned and still very general practice of overcharging women. This sex surcharge, where it is made, is generally either an extra premium of 5s. per £100 per annum, or a single extra premium of £1 per £100 assured.

Partnership or Joint life—This class of policy is one which especially appeals to business men. It not infrequently happens in commercial firms that the death of a partner entails the withdrawal of his share of capital, and this withdrawal may leave the business in a weakened condition, or at least prove an inconvenient diminution of its resources. To meet these contingencies it is possible to effect assurances upon two or more lives, so that the sum assured is payable on the happening of the first death. If such an assurance, of sufficient amount, is effected upon the lives of partners, the withdrawal of a deceased member's share from the business would be compensated by the addition to Capital Account of the sum assured upon his life. Assurances of this class are also very frequently effected upon husband and wife, and are also used in connection with family arrangements. There is no limit to the number of lives which may thus be assured jointly, and doubtless any company would give a quotation for a combination of even a dozen or two persons. The following is from the tables of the *Commercial Union* :—

Joint Lives—Without Profits.

Annual Premium for the Assurance of £100, *to be paid at the First Death.*

Ages next Birthday.		Annual Premium.	Ages next Birthday.		Annual Premium.
		£ s. d.			£ s. d.
20	20	2 14 8	35	35	3 17 8
	30	3 2 5		45	4 11 7
	40	3 14 9		55	6 0 3
	50	4 15 7	40	40	4 10 1
	60	6 18 10		50	5 8 2
25	25	3 1 3		60	7 10 0
	35	3 10 2	45	45	5 3 1
	45	4 5 6		55	6 9 3
	55	5 15 2	50	50	6 2 11
30	30	3 9 2		60	8 0 3
	40	4 0 6	55	55	7 11 11
	50	5 0 6		60	8 14 11
	60	7 3 4	60	60	9 17 3

Last Survivor and Survivorships.—The first of these classes of assurance is designed to meet the practice, common in many districts of England and in Ireland, of granting Leases depending on two or more lives. The object of such an assurance is to enable the lessees, at a small annual cost, to provide against the loss caused by the death of their nominees. Separate proposals and Reports are usually required for each life. Assurances under the second of these classes are generally effected in connection with loans on reversions where the fund only comes into possession in the event of A. surviving B. In such a case the life A. only requires to undergo the usual medical examination. The following tables are extracted from those published by the *Guardian* :—

Last Survivor.—Without Profits.

Annual Premiums for the Assurance of **£100**, *payable on the Death of a Survivor of Two Lives. Premiums payable during the whole term of the Assurance.*

Ages next Birthday.		Yearly Premium.	Ages next Birthday.		Yearly Premium.	Ages next Birthday.		Yearly Premium.
		£ s. d.			£ s. d.			£ s. d.
20	20	1 0 0	30	30	1 7 6	40	50	2 6 7
	30	1 2 11		40	1 12 1		60	2 12 7
	40	1 5 10		50	1 16 3	45	45	2 7 11
	50	1 8 5		60	1 19 5		55	2 17 3
	60	1 10 5						
25	25	1 3 3	35	35	1 12 8	50	50	2 19 4
	35	1 7 0		45	1 18 6		60	3 11 3
	45	1 10 5		55	2 3 5	55	55	3 14 0
	55	1 13 4						
			40	40	1 19 4	60	60	4 14 2

Survivorships.—Without Profits.

Annual Premiums for the Assurance of **£100**, *payable in the event of a Life, A, predeceasing another Life, B.*

Ages.		Yearly Premium.	Ages.		Yearly Premium.
A, next Birthday.	B, last Birthday.		A, next Birthday.	B, last Birthday.	
		£ s. d.			£ s. d.
20	40	1 3 3	30	40	1 11 1
	50	1 1 4		50	1 7 5
	60	0 19 11		60	1 4 7
	70	0 18 9		70	1 2 6
25	40	1 6 5	35	40	1 17 4
	50	1 3 9		50	1 12 7
	60	1 1 8		60	1 8 6
	70	1 0 0		65	1 6 11
				75	1 4 4

Survivorships (*continued*).

Ages.		Yearly Premium.	Ages.		Yearly Premium.
A, next Birthday.	B, last Birthday.	£ s. d.	A, next Birthday.	B, last Birthday.	£ s. d.
40	40	2 6 9	50	50	3 6 2
	50	2 0 9		60	2 16 10
	60	1 15 2		70	2 8 1
	70	1 10 7			
45	45	2 15 1	55	55	4 1 5
	55	2 7 8		65	3 9 10
	65	2 0 8		75	2 18 10
	75	1 15 2			

Investment and leasehold insurances.—This form of assurance has been primarily devised in order to enable investors in leasehold and other deteriorating securities to provide for the repayment of their capital when the term of the investment expires. And many other objects can be covered by policies of this description with equal facility, particularly such objects as the repayment of mortgages, the repair or displacement of manufacturing plant, and the writing down of terminable stocks purchased at a premium. The *Norwich Union*, from whose tables the illustrative rates set out below are taken, enumerate the objects as follows:—(1) The repayment of loans on leaseholds or on any other class of security; (2) The redemption of leasehold values which would otherwise be lost to the leaseholder; (3) The redemption, on maturity, of capital invested in terminable securities; (4) Generally—the payment of any sum of money at any date. The creation of sinking funds to replace capital, cover depreciation or repay advances, has always been a matter of great difficulty for private individuals, and the general fall in the rate of interest on first-class securities has so increased the difficulty, that the maintenance of such funds is now particularly difficult for most people. It involves the yearly or half-yearly investment, not only of comparatively small sums, but also of the interest on these, however small, immediately on its being earned. The assurance companies, such as the one just mentioned, undertake to relieve the holder of a policy of this class of all the trouble and risk of creating such a fund; and they claim, moreover, that these policies, in most cases, will secure the particular object intended in a shorter time than could be accomplished by a private investor. A borrower cannot expect his creditor to accept repayment of an advance in small yearly or half-yearly sums, nor can he himself safely, conveniently, or profitably accumulate these at compound interest. But he can pay these small sums to an assurance company, and secure a capital redemption policy for the amount of the advance payable in full on maturity.

Premiums to secure the Payment of £100 at the end of a given Term.

Term of Years.	Annual Premium.			Single Premium.			Term of Years.	Annual Premium.			Single Premium.		
	£	s.	d.	£	s.	d.		£	s.	d.	£	s.	d.
15	5	8	10	65	9	4	33	1	17	0	38	9	2
16	5	0	9	63	11	3	34	1	15	4	37	6	9
17	4	13	6	61	14	3	35	1	13	9	36	4	11
18	4	7	1	59	18	3	36	1	12	2	35	3	10
19	4	1	2	58	3	4	37	1	10	10	34	3	4
20	3	15	10	56	9	6	38	1	9	5	33	3	5
21	3	11	1	54	16	7	39	1	8	3	32	4	1
22	3	6	9	53	4	8	40	1	7	0	31	5	4
23	3	2	10	51	13	8	41	1	5	11	30	7	2
24	2	19	3	50	3	6	42	1	4	10	29	9	5
25	2	15	11	48	14	3	43	1	3	10	28	12	3
26	2	12	10	47	5	11	44	1	2	11	27	15	8
27	2	10	0	45	18	4	45	1	2	1	26	19	5
28	2	7	6	44	11	8	46	1	1	2	26	3	8
29	2	5	1	43	5	8	47	1	0	4	25	8	6
30	2	2	11	42	0	5	48	0	19	7	24	13	8
31	2	0	9	40	15	11	49	0	18	10	23	19	3
32	1	18	10	39	12	2	50	0	18	1	23	5	4

Why pay rent? This question is now being persistently asked in the public prints by a number of up-to-date assurance companies—the *Scottish Temperance* for example. The desire of these companies is to transform a tenant into a landlord. Assume the tenant to be living in a house at a rent of £45, the price of the house is £600, and he wishes to buy it, but has only £200 of his own. The company will provide the £400 balance on such terms that it will be repaid in 20 years, for example, by annual payments of £34, and that if the tenant-now-turned-landlord dies during that term the house will fall into his estate absolutely free.

Law.—*The contract.*—The contract of life insurance is not a contract of indemnity. It is a contract which assures the payment of a certain sum of money upon the death of some specified person in consideration of the due payment of certain monies called premiums. The contract is ordinarily expressed in an instrument called a policy of assurance, and the person whose life is the subject of the policy is called the assured. As life assurances are generally effected with companies and societies, it will be convenient to designate the parties liable on a policy for payment of the sum assured as "the company." The contract is based upon a proposal to the company by the assured, and an acceptance thereof. It is then formally embodied in the policy, which must be duly stamped. The conclusion of the contract by way of proposal and acceptance is best evidenced by the payment and receipt of the first premium. The contract may be complete even though no policy has been issued.

The policy.—This is often in a form similar to the one set out below. If upon a proposal and a contract for a life assurance a policy is drawn up by the company in a form which differs from the terms of the contract, and varies the rights of the assured, the court, upon due application being

made, will interfere, and deal with the case on the footing of the actual contract and not on that of the policy. And where there is an ambiguity in the terms of a policy the court will construe it on the principle of taking its words most strongly against the party who offers it. Even though a foreign law is expressly imported into a policy by, for example, the use of such words as "in conformity with the [foreign] statute," yet that foreign law will not, for every purpose, be considered by the English courts as incorporated in the policy. The reference to the foreign law, according to *ex parte Dever*, may only affect the interpretation of the policy. In Scotland it has been expressly held that there may be a valid assurance without any delivery at all of a policy, if the terms are agreed and the premiums have been paid (*Christie* v. *North British*); and in England too, though a policy is lost or destroyed, an action may be brought thereon to recover the assurance money, and the company must find its indemnity against other claims in the order of the court directing payment in the action (*Crokatt* v. *Ford*; *England* v. *Tredegar*).

Stamps.

	£	*s.*	*d.*
POLICY OF LIFE INSURANCE—			
Where the sum insured does not exceed £10 : . .	0	0	1
Exceeds £10 but does not exceed £25 : . . .	0	0	3
Exceeds £25 but does not exceed £500 :			
For every full sum of £50, and also for any fractional part of £50, of the amount insured . .	0	0	6
Exceeds £500 but does not exceed £1000 : . .			
For every full sum of £100, and also for any fractional part of £100, of the amount insured . .	0	1	0
Exceeds £1000 :			
For every full sum of £1000, and also for any fractional part of £1000, of the amount insured .	0	10	0
POLICY OF INSURANCE AGAINST ACCIDENT and POLICY of insurance for any payment agreed to be made during the sickness of any person, or his incapacity from personal injury, or by way of indemnity against loss or damage of or to any property . .	0	0	1

For the purposes of the Stamp Act the expression "policy of life insurance" means a policy of assurance upon a life or lives, or upon an event or contingency relating to or depending upon a life or lives except a policy of insurance against accident; and the expression "policy of insurance against accident" means a policy of insurance for a payment agreed to be made upon the death of a person only from accident or violence or otherwise than from a natural cause, or as compensation for personal injury. An accident policy includes any notice or advertisement in a newspaper or other publication, which purports to insure the payment of money upon the death of or injury to the holder or bearer of the newspaper or publication containing the notice, only from accident or violence or otherwise than from a natural cause. Such a policy is not charged with any further duty than one penny merely, because it insures some periodical payment during sickness or incapacity from personal injury. The duty of one penny upon a policy of insurance other than a policy of sea insurance or life insurance may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the policy is first executed. A fine of £20 is incurred by any one who—

(1) Receives, or takes credit for, a premium or consideration for an insurance other than a sea insurance, and does not, within one month after receiving it or taking credit therefor, make out and execute a duly stamped policy of insurance; or (2) Makes, executes, or delivers out, or pays or allows in account, or agrees to pay or allow in account, any money upon or in respect of a policy other than a policy of sea insurance which is not duly stamped.

Insurable interest.—The principles by which the existence of an insurable interest are determined are practically the same whether the case is one of life or any other form of insurance. There are, however, many cases peculiar to life assurance. As to an assurance of one's own life, it may be laid down that every man is presumed to have an interest in his own life, and in every part of it. It is only reasonable, therefore, that an executor who sues on a policy effected by his testator on a specified period of his life, say two years (*Wainwright* v. *Bland*), is not bound to show that the testator had any special reason for making such a limited assurance. The necessity for the existence of an insurable interest is created by the Gambling Act, 1774, which conclusively prohibited the gambling and speculative transactions in life assurance which the common law had formerly allowed. The provisions of this Act are to the following effect:—

Whereas it hath been found by experience that the making of assurances on lives, and other events wherein the assured shall have no interest, hath introduced a mischievous kind of gambling, be it enacted that from and after the passing of this Act no assurance shall be made by any person or company, on the life or lives of any person or persons, or on any other event or events whatsoever, wherein the person or persons for whose use, benefit, or on whose account such policies shall be made, shall have no interest, or by way of gaming and wagering; and that every assurance made contrary to the true intent and meaning hereof shall be null and void to all intents and purposes whatever. And be it further enacted that in all cases where the assured has an interest in such life or lives, event or events, no greater sum shall be recovered or received from the assurers than the amount or value of the interest of the assured in such life or lives, event or events.

And though a person has naturally an interest in his own life, yet the law will not permit the provisions of the above statute to be evaded by some subterfuge. For example, a policy may be effected by a certain person upon his own life, but by arrangement the premiums may be paid by some other person who has no insurable interest in the assured's life, and who is really intended to have the benefit of the assurance, and to whom the policy is to be bequeathed or assigned. Under such circumstances that other person is not entitled, by virtue of them alone, to the benefit of the assurance, for the policy will be in fact a wagering policy, and void. Gifts and assignments of policies of assurance are therefore void if merely cloaks for gambling, but not of course if *bonâ fide*. Where an assurance is really effected by the person assured, the mere circumstance that another pays the premiums is not conclusive, nor even *per se* sufficient evidence that the assured had no insurable interest in the policy. A wife is presumed to have an insurable interest in the life of her husband, and consequently when making a claim under a policy effected on his life, she is under no obligation to prove her interest.

An insurable interest must be a pecuniary one in the life assured. Accordingly a father has not necessarily an insurable interest in the life of his son, though under some circumstances he might easily prove that he had, and so be in a position to recover under the policy (*Worthington* v. *Curtis*; *Halford* v. *Kymer*). Nor has a child an insurable interest in the life of its parent, unless it is so young as to be legally entitled to maintenance by the parent. The following pronouncement of Lord Eldon, in *Lucena* v. *Crawford* (a case relating to the insurance of property), throws considerable light upon the subject:—"In order to distinguish that intermediate thing between a strict right or a right derived under a contract, and a mere expectation or hope, which has been termed an insurable interest, it has been said in many cases to be that which amounts to a moral certainty. I have in vain, however, endeavoured to find a fit definition for that which is between a certainty and an expectation, nor am I able to point out what is an interest unless it be a right in the property or a right derivable out of some contract about the property insured, which in either case may be lost upon some contingency affecting the possession or enjoyment of the party. Expectation, though founded upon the highest probability, is not interest, and it is equally not interest whatever might have been the chances in favour of the expectation. . . . If moral certainty be a ground for insurable interest, there are hundreds, perhaps thousands, who would be entitled to insure. First the dock company, then the dockmasters, then the warehouse-keeper, then the porter, then every other person who to a moral certainty would have anything to do with the property, and of course get something by it. Suppose A. to be possessed of a ship limited to B., in case A. dies without issue; that A. has twenty children, the eldest [*query*, youngest] of whom is twenty years, it is a moral certainty that B. will never come into possession, yet this is a clear interest. On the other hand, suppose the case of the heir-at-law of a man who has an estate worth £20,000 a year, and is ninety years of age, upon his deathbed intestate and incapable, from incurable lunacy, of making a will, there is no man who will deny that such heir-at-law has a moral certainty of succeeding to the estate, yet the law will not allow that he has any interest or anything more than a mere expectation." A creditor has an insurable interest in the life of his debtor to the extent of his debt (*Godsall* v. *Boldero*), and so he has in the life of a person who promises to pay a debt due from a deceased debtor (*Van Lindenau* v. *Desborough*). And the policy remains valid even though the debtor may have paid off the creditor. But, according to *Hebden* v. *West*, a debtor does not acquire an insurable interest in the life of his creditor merely because the latter (without any consideration or circumstance which would make the promise binding upon him) promises that during his life he will not enforce payment from the debtor. A child was maintained by her step-sister, who was the plaintiff in *Barnes* v. *London, Edinburgh, and Glasgow Assurance Co.* The plaintiff, having promised the deceased mother of the child that she would take care of the child and help to maintain it, had taken out a policy of insurance upon the life of the child with the defendant company. The child having died, she brought the action against the company and succeeded therein, for it was held that she had an insurable interest in the child's life. But it should be noted that the company did not take any objection—which they could have done—that the

plaintiff had not in fact incurred any expenditure in respect of the child. They only resisted the claim on the broad ground that the woman had no pecuniary interest in the child's life at the time of the insurance, for there was no binding agreement on her part to take care of the child, but at most a voluntary promise to that effect. Had they taken the above-mentioned objection, the plaintiff's insurable interest in the child's life would have been limited to the amount of the payments actually made by her on the child's account. Such an assurance is on the same lines as an assurance of a debtor. Where a creditor has effected a policy on the life of his debtor, he will be able, under *Dalby* v. *India and London Life Assurance Co.*, to recover thereunder upon the death of the debtor, even though, as already mentioned, the debt has been paid to him during the debtor's life. All that is essential is that the amount so recovered on the debtor's death is not in excess of the true amount of the creditor's insurable interest at the time the contract of assurance was effected. And even on this point the companies are not very strict in the absence of fraud. To this extent the last-mentioned case has overruled the older case of *Godsall* v. *Boldero*. There the view was taken that a creditor's assurance of his debtor is substantially a contract of indemnity against the loss of the debt. And this view is certainly a correct one at the present day to a certain extent, though those responsible for the later decisions would probably be inclined to deny it. That it is so would appear from the case of *Hebden* v. *West*, already referred to, which also decided that where a person, having an insurable interest in the life of another, has insured that life to the full extent of his interest in more than one company, he can only recover under one of the policies. But, notwithstanding this, it is clear that assurance by a creditor, as it now stands, is open to very serious objections, for instead of having something to lose by the death of his debtor, he may actually find himself in pocket thereby. "Where such policies are kept up at the debtor's expense," writes Mr. Porter in his *Laws of Insurance*, "they are a security given by him, and as such not open to objection; but where the creditor at his own expense insures the debtor, it is more economical for the creditor that the debtor should die quickly, since it enables him to get his debt paid at less cost. . . . Unlike a mortgagee, he has no security for his debt, and indeed insures to make up for the want of such a security, not to find a means of preserving the security which he has; and insurance enables him either to get both his debt and his policy, when the interest supporting his policy is his inability to get his debt, or to let off his debtor at the expense of his insurers." If a debtor effects an assurance upon his own life as a security for his creditor upon terms that he, the debtor, shall be responsible for the payment of the premiums, the creditor, as soon as he is fully paid off, is under an obligation to hand over the policy to the debtor (*Lee* v. *Hinton*; *Drysdale* v. *Pigott*); but the creditor may retain the policy after payment of the debt if he took it out upon his own responsibility, without any contract between the debtor and himself whereunder he was in a position to require the debtor to pay the premiums (*Bruce* v. *Garden*).

Misrepresentation.—The issue of a policy is generally preceded by some declaration by the assured, in the form of a proposal as a rule, having reference to the state of his health, his age, habits, and other facts as the

company may require. This proposal is also usually accompanied by a medical examination of the intending assured, and at this examination the latter is required to answer certain further questions. And acquaintances of the proposer may also have to answer questions in the capacity of referees. It is largely on the faith of the statements contained in the declaration and in the answers given at the time of the medical examination, and those given by the referees, that the company agrees to accept the proposal and issue a policy. The statements must accordingly be accurate. But it may be that some statement has reference to a fact which is really an immaterial one, and is not one that would have much, if any, influence upon the decision of the company. A material fact should always be communicated to the company; though a proposer need not state anything that the company may know from some other source, nor what it ought to know, nor what it waives, nor what it takes upon itself the knowledge of (*Carter* v. *Boehm*). Where, however, it is doubtful whether a particular fact was material or not, the decision of that question, in the event of an action being brought on the policy, will rest with a jury. In *Huguenin* v. *Rayley*, which was an action upon a policy of insurance, the claim was resisted on the ground that there had been fraud in effecting the policy by the suppression of a fact which the conditions of the assurance required the assured to disclose. These conditions required a declaration of the state of health of the assured, and the policy was to be valid only if the statement were free from all misrepresentation and *all reservation*. The declaration that was made described the assured as resident at Fisherton, but as a matter of fact she was then a resident in the gaol there. It was decided that it ought to be submitted to the jury whether the omission of the fact of the imprisonment was or was not a material omission. A certain policy, the subject of the action *Macdonald* v. *The Law Union*, after stating the amount assured, the premium, &c., proceeded as follows:—

Provided, nevertheless, that if the declaration in writing under the hand of the plaintiff, dated the 6th of March 1872, delivered at this office as the basis for the insurance, is not in every respect true, or if there has been any misrepresentation, concealment, or untrue averment in treating for the insurance, or if the conditions herein contained shall not be in all respects observed and performed on the part of the plaintiff and K. M. Taylor, then the insurance shall be void, and the premium or premiums received in respect thereof shall be forfeited to the company.

On proposing the insurance, the plaintiff had answered in writing certain questions, and at the foot he had signed, as the person proposing the insurance, a declaration, "I declare that the above particulars are truly set forth." Now Question 10 in the proposal was, "Has the life been proposed for insurance at this or any other office or offices; if so, at what offices; was she accepted or declined?" The answer was "No." The policy was thereupon granted, but subsequently it was discovered that such answer was untrue to the knowledge of Mrs. Taylor, but not to the knowledge of the plaintiff. It was held that the proviso in the policy (by the terms of which the plaintiff was bound, having accepted it) avoided the assurance if the particulars in the declaration were untrue in fact, on a material matter, although not untrue to the plaintiff's knowledge. As Chief-Justice Cockburn

said, the proviso was "a condition that the declaration signed by the plaintiff shall be true in point of fact—not merely in the sense of being true in the absence of fraud, that is, true as far as the plaintiff's knowledge went. It is the same thing to the company whether the representations contained in the declaration be fraudulent or whether they be not. *The representation would have been fraudulent if the proposal for the insurance had been by the person whose life was to be insured*, and the company of course, under these circumstances, would be protected; but it is equally important to them to be protected when the insurance is effected by a third person. . . . The object of the proviso is that the company shall be protected against untruthful representations, whether those representations are untrue to the knowledge of the party effecting the insurance or not; the terms would *primâ facie* and naturally import, in the ordinary use of language, that the policy is vitiated if the representation, made as preliminary to the contract, was not in point of fact true. Whether untrue to the knowledge of the party proposing the life is to them a matter of very little importance." It may be, as in the case of *Canning* v. *Farquhar*, that the health of a proposed assured suffers a change between the time of the proposal and declaration and the date of his tender of the premium. It was there held that the nature of the risk having been altered at the time of the tender of the premium there was no contract binding the company to issue a policy. The action was brought against an insurance company for damages for breach of contract to grant a policy on the life of one Canning; the question was whether the company was bound to issue a policy. This turned, in the opinion of Lord-Justice Lindley, "on the question whether the office was bound to accept the premium which was tendered during the lifetime of Canning." His lordship proceeded: "It is said the office was so bound by contract, and we have to investigate this and see how it is made out. On the 8th of December Canning sent a proposal to the office. In that there was nothing about the premium that would be payable; with that document was a declaration of the truth of certain statements made by Canning, which was to be the basis of the contract. That was followed by the usual reference to friends, and an examination by the medical officer of the company. On the 14th of December the office made a communication to Canning, through Walters, that his proposal had been accepted subject to payment of a certain premium. I pause here for a moment to consider the effect of these negotiations. It was urged on the part of the plaintiff that there was then a complete contract binding the office on payment or tender of the premium to issue a policy of insurance. It is true that there had been an acceptance of Canning's offer, but he had not at this time assented to the company's terms; and until he assented to them there was no contract binding the company. The company's acceptance of Canning's offer was not a contract but a counter offer." On the 5th of January Canning, not having then paid the premium, fell over a cliff, and seriously injured himself. On the 9th of January the premium was tendered to the company, which, being at the same time informed of the accident, refused to accept it. "I think," said his lordship, "there would be considerable difficulty, if there had been no change in the risk, in saying that the company, under such circumstances, might decline to accept the premium and issue the policy. In the case supposed the counter offer would be a continu-

ing offer; the tender would be an acceptance of it, and the company would be bound to issue the policy. But the case supposed is not the case we have to deal with here, because another element is introduced by reason of the material change in the risk in the interval between what I have called the counter offer and the tender of the premium. If Canning had tendered the money and had not informed the office of the alteration in the character of the risk, he would have been attempting to take advantage of an offer intended to cover one risk in order to make it cover another risk not known to the office. In other words, if he had paid the money without disclosing to the office the fact that his statements, which were true when he made them, were so no longer, he would have done that which would have been plainly dishonest. . . . It comes to this: there was no contract before the tender; and the risk being changed the company's offer could not fairly be regarded as a continuing offer which Canning was entitled to accept. His tender was in truth a new offer for a new risk which the company were at liberty to decline."

Assurance companies are generally very careful to fortify their position with regard to these declarations by making their policies expressly provide that the declarations are the basis of the contract. Thus, in *Thomson* v *Weems*, the policy contained a proviso—

> That if anything averred in the declaration herein before referred to shall be untrue, this policy shall be void, and all monies received by the said company in respect thereof shall belong to the said company for their own benefit.

The declaration referred to was in a printed form, partly filled up and signed by one William Weems, an assurance against whose death was the subject-matter of the policy. In an action on the policy against the company the latter resisted the claim, and, though raising no defence based upon fraud, set up a defence that there was an untrue averment in the declaration. This averment, which was proved to be false, was contained in the answer, "Temperate: Yes," by Weems, to the questions, "(1) Are you temperate in your habits? (2) and have you always been strictly so?" And the company succeeded in its defence, for the policy was declared to be absolutely null and void, on the ground that the declaration of Weems, taken in connection with the policy, constituted an express warranty that the answer to the above question was true in fact, though, as a matter of fact, the answer was false. If there had been no more than a warranty to the above effect, and if it had been disproved, the risk would never have attached, the premiums therefore would never have become due, and might, if paid, have been recovered back as money paid without consideration. But it has become usual, at least for the last seventy years, to insert a term in the contract, that if certain statements are untrue the premiums shall be forfeited. This, no doubt, is a hard bargain for the assured if he has innocently warranted what was not accurate, but if he has warranted it at all, "untruth," without any moral guilt, avoids the insurance. And, as held in *Duckett* v. *Williams*, what is untrue so as to have the effect of avoiding an insurance, is also untrue so as to cause the forfeiture of the premium. But, in such a case as that of *Thomson* v. *Weems*, the burden is on the company to prove drinking carried on before the date of the declaration, to such an extent as to amount to intemperance, and so often and continuously as to

amount to habits of intemperance. More than this the company need not prove. And the case of *Hambro* v. *Mutual Life Insurance Co. of New York* goes so far as to decide that where in the proposal the applicant warrants the statements therein to be true, then the law will take it that a special contract is imported into the policy that the facts are actually such as they are represented in the proposal. The decision in *Everett* v. *Desborough* is also of considerable importance in connection with the topic of representation. The headnote to the report of this case in the Revised Reports may be usefully quoted at length. It runs as follows:—"1. In an insurance upon the life of another, the life insured, if applied to for information, is, in giving such information, impliedly the agent of the party insuring, who is bound by his statements, and must suffer if they are false, although he is unacquainted with the life insured, and the servant of the insurance office undertakes to do all that is required by his office. 2. Plaintiff effecting an insurance on the life of H., with whom he was unacquainted, desired the agent of the insurance office to do all that was requisite. The agent knew H. well, and made the usual inquiries. One of the terms of the contract was, a reference to the usual medical attendant of the life insured." Yet H. having given a false reference, it was held that the plaintiff could not recover upon the policy. But the recent case of *Bawden* v. *London, Edinburgh, and Glasgow Assurance Co.* very distinctly emphasises the fact that, under certain circumstances, the knowledge of a company's agent is the knowledge of the company itself. This was not a life assurance case but one of accident insurance; nevertheless the principle is the same. At the time the insured signed the proposal, which stated that he had no physical infirmity, and that there were no particular circumstances that rendered him peculiarly liable to accidents—he had lost the sight of one eye, a fact of which the company's agent was aware, though he did not communicate it to the company. The insured could not read or write, and was only able to sign his name. During the currency of the policy he met with an accident, which resulted in the complete loss of sight in his other eye, so that he became permanently blind and entitled to the benefit of the insurance. The company resisted the claim, but unsuccessfully.

Care should always be taken by a proposer to give a reference, when so required by the company, to his "regular" medical attendant, and not merely to one whose attendance has only been casual, for should he be remiss in this respect the policy may be held to be void (*Huckman* v. *Fernie; Everett* v. *Desborough*); and he must certainly not withhold information as to any companies which may have refused to assure him (*London Assurance Company* v. *Mansel*).

Disposition of Policy.—When a man has effected an assurance upon his own life, he has usually done so under a policy which provides for payment, upon his death, to his executors or administrators; but it is equally customary at the present day to provide for payment to him personally if and when he attains a certain age. In either of these cases the policy, while current, is in fact a security for money due to him, and this security he is entitled to sell, mortgage, or give away, as freely as he can so deal with any other security he may possess, subject, however, to compliance with formalities specially incidental to policies of insurance. And it

also follows that so long as he continues to hold the policy as his own property, it forms, during his life, a part of his available estate in case he should become a bankrupt. But there are other modes of assurance, some of which have already been indicated in this article. He may assure his life for the benefit of another—his creditor, for instance—and the policy in such a case, in order that the intended benefit should be effective, must expressly state that it is payable to that other person. Here it is evident that *primâ facie* the policy is not the property of the assured, and he is accordingly unable to dispose of it. This latter form is that usually adopted when it is desired to make some certain *provision for a wife* and family; an object the public utility of which has been recognised by the legislature. At present the statutes governing this matter are, in Scotland, The Policies of Assurance Act, 1880, and, in England, the Married Women's Property Act, 1882. Section 11 of the latter Act, which is on similar lines to the Scots Act, first confers on a married woman the power to effect a policy upon her own life or the life of her husband for her separate use. It then proceeds to declare that a policy "effected by any man on his own life, and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or any of them, or by any woman on her own life, and expressed to be for the benefit of her husband, or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects therein named, and the monies payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured, or be subject to his or her debts." But if it can be proved that the policy was effected and the premiums paid with intent to defraud the creditors of the assured, those creditors will be entitled to receive, out of the monies payable under the policy, a sum equal to the premium so paid. The assured may appoint a trustee or trustees of the monies payable under the policy. He may also from time to time appoint a new trustee or new trustees thereof, and make provision for the appointment of a new trustee or new trustees. He can also make provision for the investment of the monies payable under such a policy. These appointments or provisions can be made in the policy, or by any memorandum under the hand of the assured. In default of the appointment of a trustee the policy, immediately on its being effected, vests in the assured and his or her legal personal representatives, in trust for the above-mentioned purposes. If there is no trustee at the time of the assured's death, or at any time after, or there is then a need for a new trustee, the court will make any necessary appointment. The receipt of a trustee or trustees duly appointed, or in default of appointment, or in default of notice to the assurance office, the receipt of the legal personal representative of the assured will be a discharge to the company for the sums secured by the policy, or for the value thereof, in whole or in part. If a wife, for whose benefit such a policy has been effected, feloniously causes the death of her husband, as by poisoning him, neither she nor her estate will be entitled to the monies payable under the policy. Nor will the company be allowed to retain them. According to *Cleaver* v. *Mutual Reserve Fund Life Association*, a case which arose out of the Maybrick poisoning, the trust created in favour of the wife will have been defeated

by her crime, and the insurance money will become the property of the husband and his estate. As between his legal representatives and the company no question of public policy can be said to arise which would afford the latter a defence to a claim made by the assured's representatives.

Sale or mortgage.—An assured derives his power to make a legal assignment of his policy of life assurance through the Policies of Assurance Act, 1867, and the Judicature Act. The features of an assignment under the Judicature Act are noticed in the article entitled CHOSE IN ACTION; here it will be convenient to notice the provisions of the Act of 1867. The Act, in the first place, confers upon an assignee the right to receive and to give an effectual discharge to the assurance company for the money assured by the policy, and to sue therefor. And in an action on a policy of assurance, a defence on equitable grounds may be pleaded and relied upon in the same manner and to the same extent as in any other personal action. It is absolutely essential to the effective validity of a legal assignment that notice thereof should be given the company. As to this section 3 provides that no assignment "of a policy of life assurance shall confer on the assignee therein named, his executors, administrators, or assigns, any right to sue for the amount of such policy, or the monies assured or secured thereby, until a written notice of the date and purport of such assignment shall have been given to the assurance company liable under such policy at their principal place of business for the time being; or in case they have two or more principal places of business, then at some one of such principal places of business, either in *England* or *Scotland* or *Ireland*, and the date on which such notice shall be received shall regulate the priority of all claims under any assignment; and a payment *bonâ fide* made in respect of any policy by any assurance company before the date on which such notice shall have been received shall be as valid against the assignee giving such notice as if this Act had not been passed." For the purpose of this notice of assignment the principal place of business of an assurance company must be specified on every policy it issues. An assignment may be made either by indorsement on the policy or by a separate instrument, and must be duly stamped. The following is a short form of assignment set forth in the schedule to the Act.

I, A. B. of, &c., in consideration of, &c., do hereby assign unto C. D. of, &c., his executors, administrators and assigns, the [within] policy of assurance granted, &c. [*here describe the policy*]. In witness, &c.

An assurance company is bound to acknowledge the receipt of a notice of assignment upon the conditions specified in the Act. Section 6 provides that "every assurance company to whom notice shall have been duly given of the assignment of any policy under which they are liable shall, upon the request in writing of any person by whom any such notice was given or signed, or by his executors or administrators, and upon payment in each case of a fee not exceeding Five Shillings, deliver an acknowledgment in writing under the hand of the manager, secretary, treasurer, or other principal officer of the assurance company of their receipt of such notice." Every such written acknowledgment, if signed by a person *de jure* or *de facto* the manager or other principal officer, as the case may be, will be conclusive evidence against

the assurance company of its having duly received the notice to which the acknowledgment relates. A policy of life assurance can also be the subject of an equitable assignment. According to the decision in *Chowne* v. *Baylis*, if an assured writes a letter to the company in words such as the following:—"Please to take notice that I wish to transfer my interest in the policies [*specifying them*] to B.," and the letter is duly delivered and noted in the books of the company, it will constitute a good equitable assignment, even as against a subsequent assignee of the policies who may, in addition, have obtained possession of them. And such an assignment can be effected by merely a deposit of a policy. Thus, in *Maugham* v. *Ridley*, A., who was indebted to B., deposited with the latter a policy of assurance upon his own (A.'s) life, and though no written document accompanied the deposit, yet, because there was a mutual understanding between the parties that the deposit was intended as a security for a debt, already due from A. to B., and for any further advances that the latter might make, it was decided that B. could prove the nature of the deposit by an affidavit and claim it as an equitable assignment. No notice of such a deposit need be given to the company; but the depositee runs the risk of losing the benefit of his security in case the depositor should assign the policy to a *bonâ fide* third party and due notice of that assignment be given to the company. Where, as in *Crossley* v. *City of Glasgow Life Assurance Co.*, a policy on the life of a debtor is deposited by the latter with his creditor as a security for a debt, and the debtor dies before notice of the assignment has been given to the assurance company, that deposit does not operate as an equitable assignment which will justify the company in paying the assurance money to the creditor without the assent of the assured's personal representatives. In such circumstances, however, upon application by the creditor, the court has power to dispense with the assured's legal personal representatives, and can order payment by the company to the creditor. A written agreement to execute on request an effectual mortgage of a policy of assurance deposited at the time of the agreement as security for a loan, is not, according to *Spencer* v. *Clarke*, an assignment of the policy within the meaning of the Act of 1867. An equitable assignment of a policy of assurance is, strictly speaking, merely the creation of a lien on the policy. The case of *Leslie* v. *French* summed up the law in this connection as follows:—"A lien may be created upon the monies secured by a policy by payment of premiums in the following cases: (1) By contact with the beneficial owner of the policy; (2) by reason of the right of the trustees to an indemnity out of the trust property for money expended by them for its preservation; (3) subrogation to the rights of the trustees of some person who may have advanced money at their request for the preservation of the property; (4) by reason of the right vested in mortgagees, or other persons having a charge upon the policy to add to that charge any monies which have been paid by them to preserve the policy."

The notice of assignment.—This is necessary to complete the assignment, and the date upon which it is received by the company regulates the priority of all claims under that assignment and any former and subsequent assignments. But though by statute a company is bound to regard this rule of priority of notice in order to determine the direction of its own liabilities, yet it has no concern whatever with the rights, amongst themselves, of persons

claiming to be interested in the monies payable under the policy. A person, however, who has a lien on a policy, as in the case of a solicitor for costs, is not bound to give notice of it to the assurance company in order to preserve his lien against subsequent mortgagees of the policy who give such notice (*West of England Bank* v. *Batchelor*), and—*Newman* v. *Newman*—where a first mortgagee has failed to give the prescribed notice, and a second mortgagee, *having a knowledge of the prior mortgage*, has given his own notice, the second mortgagee will not thereby obtain a priority. So long as specific particulars are given as to the policy assigned and the assignee, there is no need to follow any particular form of notice. *Rights of mortgagor and mortgagee.*—As in other cases of mortgage, a mortgagee of a life policy is entitled to sell it if the mortgagor makes default in payment of principal and interest in accordance with the terms of the security. And so also can he sell it if the mortgagor fails to keep up the premiums; or if there is no fund out of which the premiums can be paid (*Ford* v. *Tynte*). And where he can sell, he can surrender the policy to the company. And after the assured's death, the mortgagee is, of course, entitled to receive the assurance money. But, like mortgagees generally, a mortgagee of a life policy, after sale or surrender, is a trustee for the mortgagor in respect of any monies which remain in his hands after he has satisfied his own claim for principal, interest and costs. And though, as against the mortgagor, he may retain thereout sufficient to repay any unsecured monies there may yet remain due to him, he cannot exercise this right of retainer as against the creditors of the mortgagor when, for example, the latter is insolvent (*Talbot* v. *Frere*; *Christison* v. *Bolam*). The bonuses and profits always belong to the assignee or mortgagee of the policy of assurance, unless there is an express agreement to the contrary (*Roberts* v. *Edwards*); and he is under no obligation to allow them to be applied in payment or reduction of premiums (*Gilley* v. *Burley*; *Macdonald* v. *Irvine*). And see the article (in Appendix) on INSURANCE COMPANIES.

Form of a Policy of Life Assurance.

(*As published by the Economic Life Assurance Society.*)

No.— **Whole-World Free.**

ECONOMIC LIFE ASSURANCE SOCIETY.

FOUNDED 1823.

6 NEW BRIDGE STREET, BLACKFRIARS, LONDON.

Sum Assured, £10,000. *Premium, £200 0 0*

Whereas John Bull of Surrey House, Sutton Valence, in the county of Kent, Solicitor (who, with his Executors, Administrators, or Assigns, is hereinafter called "the Assured"), has paid to the ECONOMIC LIFE ASSURANCE SOCIETY (hereinafter called "the Society") the Sum of Two Hundred Pounds as a first Premium for this Policy of Assurance:

Now these Presents witness, That in case there shall be paid to the Society, by way of further Premium, the Sum of Two Hundred Pounds on or before each thirty-first day of December in each year during the continuance of this Policy, the Society shall be liable to pay to the Assured, at the Registered

Office of the Society, the Sum of Ten Thousand Pounds, together with such further Sums (if any) as shall have been declared by way of Bonus or Addition to the said Sum here by assured, upon acceptance at the said Registered Office of proof satisfactory to the Directors of the Society of the Death, at any time after the date of this Policy, of the said John Bull:

Provided, That this Policy shall lapse and become void if any Premium be not paid before the expiration of thirty days from the date hereinbefore appointed for payment; but that the Assured shall be entitled to revive the Policy on payment of a Fine not exceeding Five per cent. of one year's Premium hereon, and of all Premiums in arrear, with compound Interest on such Premiums at the rate of Five per cent. per annum, at any time, so long as the Surrender Value of this Policy, at the date of its so lapsing, shall exceed the total amount of the Fine and the Premiums so in arrear, with such interest thereon:

Provided also, That the Society shall be liable, at any time after three years' Premiums have been paid hereon, and so long as all Premiums shall have been paid as hereinbefore provided, to pay at the said Registered Office for the Surrender of this Policy a Value calculated according to the Society's Scale of Surrender Values in force at the time of such Surrender:

Provided also, That the person whose Life is Assured under this Policy may, without notice to the Society and without payment of any extra Premium, proceed to and reside in any part of the World, or engage in any Trade, Occupation, or Profession:

Provided also, That no payment shall be made by the Society until evidence of the title of the person or persons claiming hereunder shall have been left at the said Registered Office and approved by the said Directors:

Provided always, That the Society shall only be liable under this Policy to the extent of its Assets and Property from time to time existing after payment of all prior charges thereon, and that no Member of the Society or other person interested in any Policy shall be liable to any call or contribution in Liquidation, or otherwise, for satisfying the demands of the Assured, and that no Director or Officer of the Society shall in anywise be individually liable to any Claim or Demand under or in respect of this Policy on any ground or pretence whatsoever.

In Witness whereof, the Common Seal of the Society is hereunto affixed, this thirty-first day of December, Nineteen Hundred and Ten.

Attested by

_____ *Director.*

Exd. _____ *Director.* (L S)

_____ *Actuary.*

Receipts for Premiums on this Policy must be upon the Society's printed form and signed by a Director or by the Actuary of the Society. The Registered Office and Principal Place of Business of the Society, at which only Notices of Assignment may be given, in pursuance of the Act 30 *and* 31 *Vict. cap.* 144, *is* 6 *New Bridge Street, Blackfriars, London.*

Mortgage of Policy of Assurance.

This Indenture, made **between** the within named A. B. of, &c. (hereinafter called "the Mortgagor"), of the one part, and C. D. of, &c. (hereinafter called "the Mortgagee"), of the other part: **Witnesseth** that in consideration of the sum of to the Mortgagor paid by the Mortgagee on or before the execution of these presents (the receipt whereof the Mortgagor doth hereby acknowledge), the Mortgagor as beneficial owner hereby assigns unto the Mortgagee **All** that the within written Policy of Assurance on the life of the Mortgagor and all bonuses and other monies assured by or to become payable under the said Policy and the full benefit and advantage thereof **To hold** the same unto the Mortgagee. **Provided always** that if the Mortgagor shall pay to the Mortgagee the said sum of with interest thereon in the meantime at the rate of pounds per cent. per annum on the day of next, then the Mortgagee will at any time thereafter upon the request and at the cost of the Mortgagor reassign the said Policy unto the Mortgagor or otherwise as he shall direct. **And** the Mortgagor hereby covenants with the Mortgagee that he the Mortgagor will pay to the Mortgagee the said sum of on the day of next together with interest thereon at the rate aforesaid computed from the day of the date hereof, and will also if and so long as the said principal money or any part thereof shall remain unpaid after the day hereinbefore appointed for payment thereof pay to the Mortgagee interest thereon at the rate aforesaid by equal half-yearly payments on the day of and the day of in every year. **And** further, that he the Mortgagor will not do any act or suffer anything whereby the said Policy or any new Policy to be effected in lieu thereof as hereinafter provided may become void or voidable or the Mortgagee be prevented from receiving all or any of the monies assured or to become payable under the same, **and** that if the said Policy or any Policy in lieu thereof shall by any means become void the Mortgagor will forthwith at his own cost effect a new Policy on his life in the name of the Mortgagee in some office to be approved by him in the sum of at the least, and that every such new Policy and the monies to become payable thereunder shall be subject to the proviso for redemption hereinbefore contained and to the trusts applicable by virtue of these presents to the existing Policy of Assurance and to the monies to become payable thereunder, and shall be subject to the statutory power of sale in like manner in all respects as if originally comprised in these presents. **And** that he the Mortgagor will from time to time punctually pay the premiums and other sums of money (if any) which shall become payable for keeping the said Policy or any new Policy as aforesaid in force, and will deliver to the Mortgagee the receipt for every such premium within seven days after the same shall have become due and payable. **And also** that forthwith on demand the Mortgagor will repay to the Mortgagee all monies which the Mortgagee may have reasonably expended in keeping the said Policy or any new Policy in force, together with interest thereon at the rate aforesaid from the time or respective times of expenditure, and that until such monies and interest thereon shall have been repaid the said Policy and any new Policy and the monies to become payable thereunder respectively shall be charged with the payment thereof. **And** it is hereby declared that the statutory power of sale may at the option of the Mortgagee be exercised by way of surrender. **In witness** whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

A. B. (L.S.)

Signed, sealed, and delivered by the said A. B. in the presence of E. F. of, &c.

IV.

LIFE-SAVING APPLIANCES.—Certain rules known as the Rules for Life-saving Appliances are made by the Board of Trade under the authority of the Merchant Shipping Act, 1894. These rules are concerned with some or all of the following matters :—(*a*) The arranging of British ships into classes, having regard to the services in which they are employed, to the nature and duration of the voyage, and to the number of persons carried; (*b*) the number and description of the boats, life-boats, life-rafts, life-jackets, and life-buoys to be carried by British ships, according to the class in which they are arranged and the mode of their construction, also the equipments to be carried by the boats and rafts, and the methods to be provided to get the boats and other life-saving appliances into the water, which methods may include oil for use in stormy weather; and (*c*) the quantity, quality, and description of buoyant apparatus to be carried on board British ships carrying passengers, either in addition to or in substitution for boats, life-boats, life-rafts, life-jackets, and life-buoys. These rules are laid before Parliament as soon as they are made, and do not come into operation until they have lain there forty days during a session; on coming into operation they have the effect of an Act of Parliament. They never apply to a fishing-boat for the time being entered in the fishing-boat register. The owner and master of every British ship are bound to see that their ship is provided, in accordance with these rules, with such of the appliances as, having regard to the nature of the service on which the ship is employed and the avoidance of undue encumbrance of the ship's deck, are best adapted for securing the safety of her crew and passengers. A surveyor of ships can inspect a ship, and must give a written notice of a deficiency to the master or owner, and point out what is requisite to remedy the deficiency. The notice is also communicated to the chief officer of customs of the port, so that the deficiency may be made good before the ship can obtain a clearance or transire. The owner of a ship (if in fault) is liable for each of certain offences to a fine of £100, and the master (if in fault) to a fine of £50. These offences are :—(*a*) Allowing the ship to proceed on a voyage or excursion without being provided according to the rules; (*b*) wilfully and negligently allowing an appliance to be lost or rendered unfit for use in the course of the voyage; (*c*) wilfully and negligently failing to repair and replace a loss or damage at the first opportunity; (*d*) not keeping an appliance at all times fit and ready for use. By the Merchant Shipping Act, 1906, these rules now apply to foreign ships while in a port of the United Kingdom, and also in certain other cases to such ships. In regard to MINES, the Home Secretary, under the Mines Accidents Act, 1910, can issue an Order as to organisation for accidents.

LIGHTER—LIGHTERMAN.—A lighter is a small vessel used in the loading and unloading of larger vessels, usually when the latter are so placed in regard to the dock or wharf as to prevent a direct loading or unloading. The term "lighterman" is applied to the owner or manager of a lighter. He is, in law, regarded as a common carrier, and therefore enjoys the rights and is subject to the obligations of such a carrier. It has been held that by contracting to carry goods for hire he impliedly promises that his vessel shall be light and fit for the purpose, and is consequently answerable for damage arising from leakage. By the custom of the river Thames, if a consignee sends a lighter to fetch his goods, the master of the ship is obliged to watch them into the lighter until the lighter is fully laden; and he cannot discharge himself from this obligation by declaring

to the lighterman that he has no men free to guard the lighter, unless the consignee consents to release him from it. A shipowner is relieved by statute from responsibility for damage done by accidental fire to the cargo on his ship; but the operation of the statute is confined to cargo on the ship, and consequently he is so liable in the case of a fire on a lighter. But this liability is usually accepted in the contract of affreightment. Apart from special agreement or custom, the shipper must at his own expense bring his goods to the place where the ship is lying. And where the contract provides that the cargo is to be brought "alongside," that means, it seems, actually to the side of the ship. Accordingly, if the loading is done by lighters, the cost of lightering must be paid by the shipper, though the vessel may not be able to be at the usual loading place. Notwithstanding the above-mentioned custom of London a shipowner is under no general obligation to cause his crew alone to get the cargo outside the ship and into the lighters, and for that purpose to put men on board the lighters. His obligation is only to bring the cargo within reach of the consignee's men in the lighters, it then being the duty of the latter to take their part in the joint operation of delivering and receiving the goods. And this was held to be so in a case, *Petersen v. Freebody*, where the charter-party provided that the ship should "discharge over side on the river or dock into lighters or otherwise if required by consignees." There is also a custom for steamships having a general cargo coming into the port of London, and using the Victoria Docks, to discharge the goods in the quay, and thence into lighters. And this custom will bind a consignee, even if he is able and willing to himself cart away his goods from the quay. *See* WATERMEN.

LIGHTHOUSES.—By the common law of England the erection of light-houses, beacons, and sea-marks is a branch of the royal prerogative, the King having exclusive power to erect or permit them to be erected upon either the demesnes of the crown or even the land of his subjects. This power is now vested in three general lighthouse authorities for three respective lighthouse areas: the Trinity House, for England and Wales; the Commissioners of Northern Lights, for Scotland; and the Commissioners of Irish Lights, for Ireland; there are also certain local lighthouse authorities. Its exercise is regulated by the Merchant Shipping Act, 1894. At one time lighthouses and beacons were almost universally private property, having been erected either on sufferance or under charters or Acts of Parliament. They were, in fact, an irresponsible department of private commercial enterprise, though the shipping that passed was bound to pay toll for the advantage and convenience they afforded. Gradually, however, the public nature of the enterprise became more and more appreciated, and the necessity recognised for some form of public supervision. Trinity House, which in the reign of Elizabeth had acquired certain extensive powers in regard to light-houses, developed an imposing authority and influence; so much so that in 1854 the lighthouses were definitively placed under its exclusive control.

The Merchant Shipping Act requires the general authorities to furnish the Board of Trade with returns and information relating to the lighthouses within their respective areas. And the Board of Trade, on complaint that a lighthouse buoy, or beacon, or any work connected therewith is inefficient or improperly managed, or is unnecessary, will direct an official inspection

and obtain a report. Trinity House has wider powers than those of the other general authorities; its servants have power for example to enter and inspect any lighthouse, no matter within what area it may be situated. The tolls paid by ships in respect of the lighthouses by which they navigate are known as "light dues." In the case of new lighthouses the dues are fixed by orders of the Privy Council, and, by the same authority, any existing dues may be increased, varied, or reduced. With the consent of the King in council, a general authority may: (*a*) exempt any ships or any classes of ships from the payment of light dues receivable by that authority, and annex any terms or conditions to those exemptions; (*b*) alter the times, places, and modes at and in which the light dues receivable by the authority are payable; (*c*) substitute any other dues or class of dues, whether by way of annual payment or otherwise, in respect of any ships or classes of ships, for the dues payable to that authority for the time being. Tables of all light dues, and a copy of the regulations for the time being in force in respect thereof, are posted up at all Customs Houses in the United Kingdom. The following persons are liable to pay the dues for any ship in respect of which they are payable: (*a*) the owner or master; or (*b*) such consignees or agents thereof as have paid, or made themselves liable to pay, any other charge on account of the ship in the port of her arrival or discharge; and these duties are recoverable in a court of summary jurisdiction. But a consignee or agent (not the owner or master of the ship) who has paid light dues for her may retain the amount so paid, together with any reasonable expenses he may have incurred by reason of the payment or his liability therefor, out of any monies received by him on account of that ship or belonging to her owner. If the owner or master of a ship fails upon demand to pay light dues to the authorised collector, the latter can distrain therefor upon the ship's goods and tackle, which he can sell after the expiration of three days.

Offences.—*Injury to lighthouses.*—No one may wilfully or negligently: (*a*) injure any lighthouse or the lights exhibited therein, or any buoy or beacon; (*b*) remove, alter, or destroy any lightship, buoy, or beacon; or (*c*) ride by, make fast to, or run foul of any lightship or buoy. A fine of £50 is the penalty for a breach of this prohibition, in addition to the expenses of making good the damage. *Prevention of false lights.*—A fire or light must not be burnt or exhibited at a place or in a manner in which it is liable to be mistaken for a light proceeding from a lighthouse. Where such a fire or light exists the general lighthouse authority gives notice that, within a reasonable specified time, effectual means must be taken for extinguishing or effectively screening the fire or light, and preventing its improper existence in the future. The notice is served upon the owner of the place where the fire or light is burnt or exhibited, or on the person in charge. The owner and the person so served will be responsible for compliance with the notice. Affixing the notice on a conspicuous spot near the fire or light will be sufficient service. In case the notice is not complied with within a reasonable time, the person offending will be guilty of a common nuisance, and also be liable to a fine of £100. And if the fire or light is not extinguished or effectively screened within seven days the authority may enter upon the premises and forthwith extinguish it, doing, however, no unneces-

sary damage, and the expenses may be recovered in a court of summary jurisdiction.

LIGHT LOCOMOTIVES and MOTOR CARS.—The use of these vehicles is regulated by the Locomotives on Highways Act, 1896, and the Motor Car Act, 1903. These two statutes, which are cited as the Motor Car Acts, 1896 and 1903, though conferring upon the Local Government Board and certain local authorities the power to make regulations and bye-laws respectively, yet themselves contain some extremely important provisions on matters of detail. Part of the existing Local Government Board Regulations are appended hereto, the others being placed in the Appendix. And these regulations, if the Board deem it necessary, may be of only a local nature and limited in their application to a particular area; and also, on the application of any local authority, they may prohibit or restrict the use of locomotives for purposes of traction in crowded streets, or in other places where such use may be attended with danger to the public. They have full effect notwithstanding anything in any Act of Parliament other than the above-mentioned Acts, whether general or local, or any bye-laws or regulations made thereunder. They are, in effect, a supplement to the Acts. Before, however, they can have any force they must be laid before both Houses of Parliament. Certain Acts, known as The Locomotive Acts, are declared not to apply (except as to tolls) to the light locomotives the subject of this article, and in creating this exemption the Act of 1896 incidentally gives a definition of the term "light locomotive." The relevant section runs as follows: ". . . shall not apply to any vehicle propelled by mechanical power if it is under three tons in weight unladen, and is not used for the purpose of drawing more than one vehicle (such vehicle with its locomotive not to exceed in weight unladen four tons), and is so constructed that no smoke or visible vapour is emitted therefrom except from any temporary or accidental cause." The expression "motor car" has, by the Act of 1903, the same meaning as the expression "light locomotive," except that it does not include a vehicle drawn by a motor car. In calculating for the purposes of the Acts the weight of a vehicle unladen, the weight of any water, fuel, or accumulators used for the purpose of propulsion is not to be included. The local authorities entitled to make bye-laws under the Acts are the Councils of county and county boroughs; but these bye-laws are allowed to relate to only "preventing or restricting the use of such locomotives upon any bridge within their area, where such Councils are satisfied that such use would be attended with damage to the bridge or danger to the public." A light locomotive is expressly declared to be a "carriage" within the meaning of any Act of Parliament, whether public, general, or local, and of any rule, regulation, or bye-law made under any Act of Parliament; and if it is used as a carriage of a particular class it is regarded as a carriage of that class, and the law relating to carriages of that class applies to it accordingly. A light locomotive must carry a bell or other instrument capable of giving audible and sufficient warning of its approach or position; during the period between one hour after sunset and one hour before sunrise, the person in charge of it must carry attached thereto a lamp so constructed and placed as to exhibit a light in accordance with the regulations of the Local Government Board; and the keeping and use of petroleum or of any other inflammable liquid or fuel for it is subject to special regulations. No light locomotive can travel along a public highway at a greater speed than fourteen miles an hour, or than any *less* speed

that may be prescribed by the regulations. A breach of a bye-law or regulation made under the Act, or of any provision of the Act itself, may, on summary conviction, be punished by a fine not exceeding £10. The duties payable on vehicles of this class will be found in the article on EXCISE. The remaining statutory provisions, particularly with regard to *Speed-Limit*, will be found in the Appendix under the title MOTOR CAR.

THE MOTOR CARS (USE AND CONSTRUCTION) ORDER, 1904.

DATED MARCH 9, 1904.

To the County Councils . . . and to all others whom it may concern.

Now therefore, in pursuance of the powers given to us by the Act of 1896 and the Act of 1903, and by any other statutes in that behalf, we, the Local Government Board, do hereby rescind the said regulations made by our Order dated the ninth day of November, one thousand eight hundred and ninety-six, and do by this our Order make the following regulations with respect to the use of motor cars on highways, and their construction, and the conditions under which they may be used:—

ARTICLE I.—In this Order the expression "carriage" includes a waggon, cart, or other vehicle. The expression "horse" includes a mule or other beast of draught or burden, and the expression "cattle" includes sheep. The expression "motor car" means a vehicle propelled by mechanical power which is under three tons in weight unladen, and is not used for the purpose of drawing more than one vehicle (such vehicle with its locomotive not exceeding in weight unladen four tons), and is so constructed that no smoke or visible vapour is emitted therefrom except from any temporary or accidental cause. In calculating for the purposes of this Order the weight of a vehicle unladen, the weight of any water, fuel, or accumulators used for the purpose of propulsion shall not be included. The expression "highway" includes any roadway to which the public are granted access.

ARTICLE II.—No person shall cause or permit a motor car to be used on any highway, or shall drive or have charge of a motor car when so used, unless the conditions hereinafter set forth are satisfied, namely—(1) The motor car, if it exceeds in weight unladen five hundredweight, shall be capable of being so worked that it may travel either forwards or backwards. (2) The motor car shall not exceed seven feet two inches in width, such width to be measured between its extreme projecting points. (3) The tire of each wheel of the motor car shall be smooth and shall, where the same touches the ground, be flat and of the width following, namely—(*a*) if the weight of the motor car unladen exceeds fifteen hundredweight, but does not exceed one ton, not less than two and a half inches; (*b*) if such weight exceeds one ton, but does not exceed two tons, not less than three inches; (*c*) if such weight exceeds two tons, but does not exceed three tons, not less than four inches. Provided that where a pneumatic tire or other tire of a soft or elastic material is used the conditions hereinbefore set forth with respect to tires shall not apply. (4) The motor car shall have two independent brakes in good working order, and of such efficiency that the application of either to the motor car shall cause two of its wheels on the same axle to be so held that the wheels shall be effectually prevented from revolving, or shall have the same effect in stopping the motor car as if such wheels were so held. Provided that

in the case of a motor car having less than four wheels this condition shall apply as if, instead of two wheels on the same axle, one wheel was therein referred to. (5) Where the weight of a motor car unladen exceeds fifteen hundredweight and the motor car is fitted with tires other than pneumatic tires or tires of a soft or elastic material, the weight of the motor car unladen shall be painted in one or more straight lines upon some conspicuous part of the right or off side of the motor car in large legible letters in white upon black or black upon white, not less than one inch in height. (6) The motor car and all the fittings thereof shall be in such a condition as not to cause, or to be likely to cause, danger to any person on the motor car or on any highway. (7)—(i.) The lamp to be carried attached to the motor car in pursuance of Section 2 of the Act of 1896 shall be so constructed and placed as to exhibit, during the period between one hour after sunset and one hour before sunrise, a white light visible within a reasonable distance in the direction towards which the motor car is proceeding or is intended to proceed, and to exhibit a red light so visible in the reverse direction. The lamp shall be placed on the extreme right or off side of the motor car in such a position as to be free from all obstruction to the light. Provided that where a lamp, which exhibits a red light in the direction contrary to that towards which the motor car is proceeding, is carried attached at the back of the motor car, the condition requiring the lamp attached in pursuance of Section 2 of the Act of 1896 to exhibit a red light shall not apply or have effect with regard to the motor car. Provided also that the first paragraph of this condition shall not extend to any bicycle, tricycle, or other machine to which Section 85 of the Local Government Act, 1888, applies. (ii.) Every lamp carried by the motor car when in use on a highway at any time during the period mentioned in this condition shall be so constructed, fitted, and attached as to prevent the movement or the use as a searchlight of the light exhibited by any such lamp.

Article III.—No person shall cause or permit a motor car to be used on any highway for the purpose of drawing any vehicle, or shall drive or have charge of a motor car when used for such purpose unless the conditions hereinafter set forth are satisfied, namely—(1) Conditions (2), (3), (5), and (6) of Article II. of this Order shall apply as if the vehicle drawn by the motor car was therein referred to instead of the motor car itself. (2) Every vehicle exceeding two hundredweight in weight unladen, drawn by a motor car, shall have a brake in good working order of such efficiency that its application to the vehicle shall cause two of the wheels of the vehicle on the same axle to be so held that the wheels shall be effectually prevented from revolving, or shall have the same effect in stopping the vehicle as if such wheels were so held. (3) The vehicle drawn by a motor car shall, when in pursuance of the condition lastly hereinbefore set forth a brake is required to be attached thereto, carry upon the vehicle a person competent to apply efficiently the brake. Provided that it shall not be necessary to comply with this condition if the brakes upon the motor car by which the vehicle is drawn are so constructed and arranged that neither of such brakes can be used without bringing into action simultaneously the brake attached to the vehicle drawn, or if the brake of the vehicle drawn can be applied from the motor car by a person upon the motor car independently of the brakes of the latter.

Article IV.—Every person driving or in charge of a motor car when used on any highway shall comply with the regulations hereinafter set forth, namely—(1) He shall not cause the motor car to travel backwards for a greater distance or time than may be requisite for the safety or convenience of the occupants of the motor car and of the passenger and other traffic on the highway. (2) He shall not, when on the motor car, be in such a position that he cannot have con-

trol over the same, or that he cannot obtain a full view of the road and traffic ahead of the motor car, or quit the motor car without having taken due precautions against its being started in his absence, or allow the motor car or a vehicle drawn thereby to stand on such highway so as to cause any unnecessary obstruction thereof. (3) He shall, when meeting any carriage, horse, or cattle, keep the motor car on the left or near side of the road, and when passing any carriage, horse, or cattle proceeding in the same direction keep the motor car on the right or off side of the same. (4) He shall not negligently or wilfully prevent, hinder, or interrupt the free passage of any person, carriage, horse, or cattle on any highway, and shall keep the motor car and any vehicle drawn thereby on the left or near side of the road for the purpose of allowing such passage. (5) He shall, whenever necessary, by sounding the bell or other instrument required by Section 3 of the Act of 1896, give audible and sufficient warning of the approach or position of the motor car. (6) He shall, on the request of any police constable in uniform, or of any person having charge of a horse, or if any such constable or person shall put up his hand as a signal for that purpose, cause the motor car to stop and to remain stationary so long as may be reasonably necessary.

ARTICLE V.—Every motor car shall be so constructed as to enable the driver when the motor car is stationary otherwise than through an enforced stoppage owing to necessities of traffic, to stop the action of any machinery attached to, or forming part of the motor car so far as may be necessary for the prevention of noise. The driver shall on every such occasion make prompt and effective use of all such means as, in pursuance of this condition, are provided for the prevention of noise as above-mentioned. Provided that this regulation shall not apply so as to prevent the examination or working of the machinery attached to, or forming part of a motor car where any such operation is rendered necessary by any failure or derangement of the said machinery.

Locomotive (Petroleum).

REGULATIONS DATED APRIL 26, 1900, AS TO THE KEEPING AND USE OF PETROLEUM FOR THE PURPOSES OF LIGHT LOCOMOTIVES.

Locomotives on Highways Act, 1896 (59 & 60 Vict. c. 36, s. 5).

In promulgating the following Regulations relating to the keeping, conveyance, and use of petroleum in connection with light locomotives, the Secretary of State for the Home Department desires to direct public attention to the dangers that may arise from the careless use of the more volatile descriptions of petroleum, commonly known as petroleum spirit. Not only is the vapour therefrom, which is given off at ordinary temperatures, capable of being easily ignited, but it is also capable, when mixed with air, of forming an explosive atmosphere. It is therefore necessary, in dealing with and handling the spirit, to take strict precautions by the employment of thoroughly sound and properly closed vessels, and by avoiding the use of naked lights in dangerous proximity, to prevent leakage of the spirit and the contact of any form of artificial light with the highly inflammable vapour which it is always evolving.

REGULATIONS.

By virtue of the powers conferred on me by the Fifth Section of the Locomotives on Highways Act, 1896, I hereby make the following Regulations for the keeping and use of petroleum for the purposes of light locomotives. Save as herein provided the Provisions of the Petroleum Acts shall apply to all petroleum kept or used or sold for the purposes of light locomotives. In these Regulations the expression "petroleum spirit" shall mean the petroleum to which the Petroleum Act, 1871, applies, provided that when any petroleum, other than that to which the Petroleum Act, 1871, applies, is on or in any light locomotive, or is being conveyed or kept in any place on or in which there is also present any petroleum spirit as above defined, the whole of such petroleum shall be deemed to be petroleum spirit. In these Regulations the expression "storehouse" shall mean any room, building, coachhouse, lean-to, or other place in which petroleum spirit for the purposes of light locomotives is kept in pursuance of these Regulations.

1. These Regulations shall apply only to petroleum spirit which is kept for the purpose of or is being used on light locomotives, and shall not apply to petroleum spirit which is kept for sale, or partly for sale and partly for the purposes of light locomotives. 2. Petroleum spirit shall not be kept, used, or conveyed except in metal vessels so substantially constructed as not to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or become defective or insecure. Every such vessel shall be so constructed and maintained that no leakage, whether of liquid or vapour, can take place therefrom. 3. Every such vessel, not forming part of a light locomotive, when used for conveying or keeping petroleum spirit shall bear the words "petroleum spirit, highly inflammable," legibly and indelibly stamped or marked thereon, or on a metallic or enamelled label attached thereto, and shall be of a capacity not exceeding two gallons. 4. Before repairs are done to any such vessel, that vessel shall, as far as practicable, be cleaned by the removal of all petroleum spirit and of all dangerous vapours derived from the same. 5. Where a storehouse forms part of, or is attached to, another building, and where the intervening floor or partition is of an unsubstantial or highly inflammable character, or has an opening therein, the whole of such building shall be deemed to be the storehouse, and no portion of such storehouse shall be used as a dwelling or as a place where persons assemble. A storehouse shall have a separate entrance from the open air distinct from that of any dwelling or building in which persons assemble. 6. Every storehouse shall be thoroughly ventilated. 7. The amount of petroleum spirit to be kept in any one storehouse, whether or not upon light locomotives, shall not exceed 60 gallons at any one time. 8. Where two or more storehouses are in the same occupation and are situated within 20 feet of one another, they shall for the purposes of these Regulations be deemed to be one and the same storehouse, and the maximum amount of petroleum spirit prescribed in the foregoing Regulation shall be the maximum to be kept in all such storehouses taken together. Where two or more storehouses in the same occupation are distant more than 20 feet from one another, the maximum amount shall apply to each storehouse. 9. Any person who keeps petroleum spirit in a storehouse which is situated within 20 feet of any other building whether or not in his occupation, or of any timber stack or other inflammable goods not owned by him, shall give notice to the local authority, under the Petroleum Acts, for the district in which he is keeping such petroleum spirit, that he is so keeping petroleum spirit, and shall renew such notice in the month of January in each

year during the continuance of such keeping, and shall permit any duly authorised officer of the local authority to inspect such petroleum spirit at any reasonable time. This Regulation shall not apply to petroleum spirit kept under licence, nor to petroleum spirit kept in a tank forming part of a light locomotive. 10. The filling or replenishing of a vessel with petroleum spirit shall not be carried on, nor shall the contents of any such vessel be exposed in the presence of fire or artificial light, except a light of such construction, position, or character as not to be liable to ignite any inflammable vapour arising from such spirit, and no artificial light shall be brought within dangerous proximity of the place where any vessel containing petroleum spirit is being kept. 11. In the case of all petroleum spirit kept or conveyed for the purpose of or in connection with any light locomotive, (*a*) all due precautions shall be taken for the prevention of accidents by fire or explosion, and for the prevention of unauthorised persons having access to any petroleum spirit kept or conveyed, and to the vessels containing or intended to contain, or having actually contained the same; and (*b*) every person managing or employed on or in connection with any light locomotive shall abstain from every act whatever which tends to cause fire or explosion, and which is not reasonably necessary, and shall prevent any other person from committing such act.

And *see* Appendix for the latest Rules and Orders.

LIGHT RAILWAYS.—For the purpose of facilitating the construction and working of light railways in Great Britain, there was established, by the Light Railways Act of 1896, a commission, consisting of three commissioners, styled the Light Railway Commissioners and appointed by the Board of Trade. It is now no longer necessary to incur the expense and delay of a private Act of Parliament in order to receive power to construct a light railway; it is sufficient for the promoters to apply to the Commissioners for their Order conferring the necessary authority. Before granting this Order the Commissioners must satisfy themselves that all reasonable steps have been taken by the promoters for consulting the local authorities through whose areas the railway is intended to pass, and the owners and occupiers of the land proposed to be taken, and for giving public notice of the application for the Order. The Commissioners must also themselves by local inquiry, and such other means as they think necessary, possess themselves of all such information as they may consider material or useful for determining the expediency of granting the Order applied for. The applicants must satisfy the Commissioners that they have—(*a*) published once at least in each of two consecutive weeks, in some newspaper circulating in the area or some part of the area through which the railway is to pass, an advertisement describing shortly the land proposed to be taken, naming a place where a plan of the proposed works and the lands to be taken, and a book of reference to the plan, may be seen at all reasonable hours, and stating the quantity of land required; and (*b*) served notice in the prescribed manner on every reputed owner, lessee, and occupier of any land intended to be taken, describing in each case the land intended to be taken, and inquiring whether the person assents to or dissents from the taking of his land, and requesting him to state any objections he may have to his land being taken. An Order usually incorporates with it the provisions of the LANDS CLAUSES ACTS (*q.v.*) in connection with the compulsory taking of land. When this is so, any matter which under those Acts may be determined by the verdict of a jury, by arbitration, or by two justices, will be referred to and determined by a single arbitrator appointed by the parties, or if the parties do not concur in his appointment then by the Board of Trade.

In determining the amount of compensation, the arbitrator should have regard to the extent to which the remaining and contiguous lands belonging to the same proprietor may be benefited by the proposed railway.

The Commissioners, before deciding on an application, give full opportunity for any objections to the application to be laid before them; and they must consider all these objections whether made formally or informally. A proper opportunity to be heard may be claimed by persons who object to the railway on the ground that it will destroy or injure a building or other object of historical interest, or will injuriously affect the natural scenery. If, after consideration, the Commissioners think that the application should be granted, they must settle any draft Order submitted to them by the applicants for authorising the railway, and see that everything needful is inserted therein for the proper construction and working of the railway. But their order is provisional only, and has no effect until confirmed by the Board of Trade. The Board of Trade before confirming the Order gives public notice of it to the persons interested, and the notice states that objections to the confirmation of the Order must be lodged with the Board and the date by which those objections must so be lodged. In considering the Order for confirmation, the Board has special regard to—(*a*) the expediency of requiring the proposals to be submitted to Parliament; and (*b*) the safety of the public; and (*c*) any objection lodged with them in accordance with the provisions of the Light Railways Act. The Board may confirm the Order with or without modifications as the case may require, and an order so confirmed has effect as if enacted by Parliament. They may of course refuse to confirm at all, as for example where the proposed undertaking is of such magnitude that the matter should be referred to Parliament. Local authorities, companies, and individuals are entitled to apply for an order; local authorities may advance money to a light railway undertaking; and loans and special advances may be obtained from the Treasury.

LIGHTS are openings in a wall which are made primarily for the purpose of admitting light into an interior. An opening made for looking-out purposes is therefore not necessarily a "light." The law of lights is discussed in the article on ANCIENT LIGHTS. The term is also applied to the lamps or lights required to be carried on ships, motors, vehicles, and bicycles, in order to prevent collisions.

LIMITATION OF ACTIONS. — Originally there was nothing in the law of England—apart from the operation of the maxim *actio personalis moritur cum persona*, and the ancient rules incident to the feudal system, and the old limitations to actions for trespass to property—to prevent a person who had a claim upon another from refraining, for as long a period as he thought proper, from attempting to enforce it through the agency of the courts. Such a state of things necessarily involved a very general hardship and inconvenience. Any one who intended to make a claim could, if he so desired and the circumstances of the case made it advantageous to him, remain quiescent and await the death of dangerous witnesses, the loss of relevant but damaging documents, and the happening of many other possible contingencies that might render it more difficult for his claim to be successfully resisted. Titles to property were thus rendered insecure, and speculative and vexatious litigation was fostered. In the reign of James I.,

however, there was passed that "noble beneficial Act," well known as the Statute of Limitations. This Act proceeded to limit the time within which actions could be brought, but being limited in its application to certain personal actions it required a number of subsequent statutes, such as the Mercantile Law Amendment Act of 1857, and the Real Property Limitation Acts of 1833, 1837 and 1874, to extend the benefit of the principle of limitation to other forms of action, such as those upon merchants' accounts and those relating to land and its recovery. The term "limitation" thus denoting the time prescribed by the law at the end of which a particular action can no longer be maintained, or during which a title to certain property may be acquired merely by adverse possession or enjoyment, it follows that this limitation of actions becomes, according to the point of view, either a means of exemption from liability to legal process, or a mode of acquisition of a title to property. The following table will afford a fairly comprehensive view of the operation of the statutes of limitation, the first column containing an enumeration of particular causes of action, and the second the respective periods of time during which actions thereon can be brought. As against persons who are lunatics or infants at the time when a cause of action accrues, the prescribed period does not generally begin to run until the end of their condition as such. The Public Authorities Protection Act, 1893, should also be noted in this connection.

ACCOUNT, for an	Six years.
ACCOUNTS, merchants'	Six years.
ARREST, for damages for malicious	Four years.
ASSAULT, for damages for an	Four years.
ASSAULT, for proceeding in a court of summary jurisdiction for	Six months.
AWARD, for an action on an	Six years.
AWARD, for an action on an, if submission by deed	Twenty years.
BALANCE OF ACCOUNT, to recover	Six years.
BILL OF EXCHANGE, upon a	Six years after it falls due; if payable at sight or on demand, then six years from its date.
BOND, upon a	Twenty years.
CHEQUE, for non-payment of	Six years from refusal to pay.
CHEQUE, upon a dishonoured	Six years from date of dishonour.
CLERGY Discipline Act, offences under	Five years.
COMMON, claims to	Within thirty years from last use of common by claimant.
CONTRACT by specialty, upon a	Twenty years.
CONTRACT, upon a simple	Six years.
CONVERSION of goods, for	Six years.
COPYHOLD fine	Six years.
COPYRIGHT, for infringement of	Twelve calendar months after accrual of cause of action.
CORPORATE offices, information for usurping	Six years.

CORRUPT PRACTICES, in respect of	One year.
COVENANT, upon a	Twenty years.
CREDIT, for price of goods sold on	Six years.
CRIME, prosecution for	None; unless (with some other special statutory exceptions) punishable on summary conviction, in which case six months.
CROWN, actions by, relating to land	Sixty years next before uit or claim.
CROWN, other actions	None.
CUSTOMS, for penalties and forfeitures in respect of	Three years.
DAMAGES, for	Varies according to whether action arises out of breach of contract, or trespass to the person or property, or otherwise.
DEBT, to recover a:	
founded on simple contract	Six years.
speciality	Twenty years.
DECEASED PERSONS:	
for injury to real estate of	One year after death, provided injury committed within six months before.
for injury to chattels real of	One year after death, provided injury committed within six months before.
for wrongs committed by, upon property of claimants	Within six months after probate of letters of administration, provided wrong committed within six months before death.
DEED, on	Twenty years.
DETINUE, for	Six years.
DISTRESS (wrongful), damages for	Six years.
DISTRESS:	
for rent	Six years.
rent charge	Twelve years.
ECCLESIASTICAL, for brawling	Eight calendar months.
EJECTMENT, for	Twelve years.
EMPLOYERS' LIABILITY Act, claims under	Six months from an accident; one year from a death.
ESCAPE, damages for allowing an	Six years.
EXECUTORS or ADMINISTRATORS	Within one year after death of deceased.

EXECUTION	Six years from judgment, or more with leave of court.
FALSE IMPRISONMENT, for	Four years.
FI-FA, for money obtained by execution	Six years.
FRANCHISE, claims to [*see* COMMON].	
FRAUD	None until discovery.
HUNDRED, against, for damages caused by riot	Three calendar months.
INDEMNITY, upon	Six years from happening of the event indemnified against.
INDENTURE, upon an [*see* COVENANT].	
INDICTMENT [*see* CRIME].	
INFORMATION [*see* CRIME].	
INFORMER, for recovery of penalties by [*see* PENALTIES].	
INTEREST of money charged on land, for	Six years.
JUDGMENT, charged on land, money due on	Twelve years.
JUDGMENT, for revival of	Every six years.
JUSTICES, against	Six calendar months and one month's notice of action.
LAND, entry on	Twenty years.
recovery of	Twelve years.
recovery of by Crown	Sixty years.
LEGACY, recovery of	Twenty years.
LIBEL, damages for	Six years.
LIGHT and AIR, for	Within twenty years after interruption.
MALICIOUS PROSECUTION, damages for	Four years.
MANDAMUS	Within a reasonable time.
MISTAKE, for relief from	Six years after its discovery.
MORTGAGEE, by, for money secured by the mortgagee	Twelve years.
MORTGAGOR, by, to recover lands mortgaged	Within twelve years after last payment of any principal or interest.
MORTGAGOR, to redeem a mortgage	Within twelve years from mortgagee taking possession, or from the last written acknowledgment, or part payment of principal or interest.
NUISANCE, damages for	Six years.
PEERAGE, claim to	None.
PENALTIES, to recover when payable to the person grieved	Two years.
PENALTIES, to recover (generally)	One year when payable to Crown and private prosecutor; two years when to Crown; two years by Crown if private prosecutor does not proceed within his year.

PERSONAL ESTATE OF INTESTATE, to recover from administrator . . .	Twenty years after right accrued, or after last accounting, payment, or written acknowledgment
POLICE [*see* JUSTICES].	
PROMISSORY NOTE, upon	Six years after it falls due [*see* BILL OF EXCHANGE].
PUBLIC AUTHORITIES, against . . .	*See* article under that title.
PUBLIC HEALTH ACT, proceedings against authorities under	Six months.
PUBLIC, LOCAL, AND PERSONAL STATUTES, for acts done thereunder . .	Two years, or one year after damage ceased.
QUIT RENT, for	Six years.
QUO WARRANTO	One year.
REAL PROPERTY, actions relating to . .	Twelve years after accrual of right.
RECOGNISANCE, proceedings, including *scire facias*, upon a	Twenty years.
RENT, for	
due under lease under seal . . .	Twenty years.
„ „ agreement or verbally . .	Six years.
arrears of, in respect of money charged on land	Six years.
REPLEVIN, for	Six years.
SCIRE FACIAS on RECOGNISANCE (*q.v.* above)	
SEAMEN'S WAGES, for, in Admiralty . .	Six years.
SEDUCTION, damages for	Six years.
SLANDER, damages for	
„ where special damage . . .	Six years.
„ otherwise	Two years.
TITHES, recovery of	Six years.
TREASON, prosecution for	Within three years
TRESPASS to property	Six years.
TROVER	Six years.
TRUSTEES, against	As against other persons; unless the claim is founded on a fraud, or a fraudulent breach of trust to which the trustee was party or privy, or to recover property, or proceeds thereof, retained by trustee, or wrongfully converted to his use—then, none.
WAY or WATERCOURSE	Twenty or forty years.
WORKMEN'S COMPENSATION . . .	Six months from accident.
WOUNDING, damages for	Four years.

LIMITATION OF SHIPOWNERS' LIABILITY.—The owner of a British sea-going ship, or of any share therein, is not liable at all for any loss or damage happening without his actual fault or privity in the following cases:—(i) Where any goods, merchandise, or other things whatsoever taken in or put on board his ship are lost or damaged by reason of fire on board the ship; or (ii) where any gold, silver, diamonds, watches, jewels, or precious stones taken in or put on board his ship, the true nature and value of which have not at the time of shipment been declared by the owner or shipper thereof to the owner or the master of the ship in the bills of lading or otherwise in writing, are lost or damaged by reason of any robbery, embezzlement, making away with, or secreting thereof. And the Merchant Shipping Act, 1894, also provides that the owners of a ship, British or foreign, are only liable to a limited extent in the event of any of the following occurrences taking place without their actual fault or privity:—(*a*) Where any loss of life or personal injury is caused to any person being carried in the ship; (*b*) where any damage or loss is caused to any goods, merchandise, or other things whatsoever on board the ship; (*c*) where any loss of life or personal injury is caused by any person carried in any other vessel by reason of the improper navigation of the ship; (*d*) where any loss or damage is caused to any other vessel, or to any goods, merchandise, or other things whatsoever on board any other vessel, by reason of the improper navigation of the ship. The extent of their liability in these cases is thus limited:—(i) In respect of loss of life or personal injury, either alone or together with loss of or damage to vessels, goods, merchandise, or other things, to an aggregate amount not exceeding £15 for each ton of their ship's tonnage; and (ii) In respect of loss of or damage to vessels, goods, merchandise, or other things, whether there is in addition loss of life or personal injury or not, to an aggregate amount not exceeding £8 for each ton of their ship's tonnage. For the purpose of calculating this tonnage, the tonnage of a steamship will be her gross tonnage without deduction on account of engine-room, and the tonnage of a sailing ship will be her registered tonnage. But there is never included in the tonnage any space occupied by seamen or apprentices and appropriated to their use which is duly certified under the regulations contained in the Merchant Shipping Act. Where a foreign ship has been, or can be, measured according to British law, her tonnage, as ascertained by that measurement will be her tonnage for the above purpose. And where a foreign ship has not been, and cannot be measured according to British law, the court will order a measurement to be made by British officials. It should be noted that the owner of every sea-going ship, or of a share therein, is liable for every such loss of life, personal injury, loss of or damage to vessels, goods, merchandise, arising on distinct occasions to the same extent as if no other loss, injury, or damage had arisen. Where several claims for damages are made, or expected to be made, against one owner, the court will determine the amount of the owner's liability and distribute it rateably among the different claimants. Part owners of a ship are entitled to an account one with the other in respect of any payments made under their liability as owners. An insurance effected against the happening, without the owner's actual fault or privity, of any or all of the events in respect of which the owner's liability is limited as above, will not be invalid by reason of the nature of the risk. The passengers list is the proper

evidence that a particular person was on board the ship at the time of his death. The remedy by action for damages for personal injuries caused by the negligence of a shipowner has now, by the Shipowners' Negligence (Remedies) Act, 1905, been enlarged so as to permit, under certain circumstances, the detention of the ship in port, as security for damages.

LIQUIDATION—LIQUIDATOR.—When a company incorporated under the Companies Acts is in course of dissolution, or being wound up, it is said to be in liquidation. It does not necessarily follow, however, that a liquidation is an indication of a company's insolvency. The company may go into liquidation for other reasons; it may be, for example, for the purpose of a reconstruction or an amalgamation, or because the objects for which the company was formed have been attained. The liquidator is the person appointed to wind up the company, to collect and distribute its assets, and to bring its career to a termination. There are three modes of liquidation, and these were the subject of several now repealed statutes, but are now dealt with by the Companies (Consolidation) Act, 1908. The liquidation may be —(*a*) voluntary; (*b*) voluntary, but under the supervision of the Court; or (*c*) by the Court. A detailed account of the whole subject of liquidation being impossible within the limits of this article, it is proposed to give as useful an outline as possible.

Voluntary.—*Circumstances under which it is possible.*—A company may be wound up voluntarily—(1) Whenever the period, if any, fixed for its duration by the articles of association expires; or whenever the event, if any, occurs upon 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) whenever the company has passed a special resolution requiring the company to be wound up voluntarily; (3) whenever the company has passed an extraordinary resolution to the effect that it has been proved to its satisfaction that it cannot by reason of its liabilities continue its business, and that it is advisable to wind it up. For the purposes of the Acts a resolution is "extraordinary" if passed in such a manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution. The winding-up commences at the time of the passing of the resolution which authorises it. The company then ceases to carry on business, except so far as required for its beneficial winding-up; and all subsequent transfers of shares, except to or with the sanction of the liquidator, and alterations in the status of the shareholders, are void; but the corporate state and powers of the company continue until it is wound up. Notices of the winding-up resolutions should be advertised in the *London Gazette*, or the *Edinburgh Gazette*, or the *Dublin Gazette*. *Consequences of winding-up.*—Certain important and necessary consequences ensue upon the winding-up. The property of the company must be applied in satisfaction of its liabilities *pari passu*. Subject thereto, the property is distributed amongst the members of the company according to their rights and interests therein, or otherwise, according to the regulations of the company. A liquidator must be appointed for the purpose of winding-up and distributing the property. He is appointed by the company in general meeting, the latter being able to appoint any person it thinks fit, and to fix his remuneration.

The statutory provisions apply as well to a case where several liquidators are appointed as where there is only one. Upon his appointment, all the powers of the directors cease, except so far as the company in general meeting or the liquidator may sanction the continuance of those powers. And where several liquidators are appointed, every statutory power can be exercised by any 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. A liquidator has all the powers of an official liquidator, that is an official receiver, in a compulsory winding-up; and he has full power to settle the list of contributories of the company, and any list so settled is *primâ facie* evidence of the liability of the persons named therein to be contributories. At any time after the passing of the resolution for winding-up, even before the sufficiency of the assets of the company has been ascertained, a liquidator is entitled to make a call on all or any of the contributories for the time being settled on the list. This call is limited to the extent of their liability. Its object may be to pay with its proceeds all or any sum the liquidator considers necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories as between themselves. In making a call a liquidator can take into consideration the probability that some of the contributories upon which it is made may partly or wholly fail to pay their respective portions of it. A liquidator has the fullest right, and is even under a legal obligation, to pay all the debts of the company and adjust the rights of the contributories as between themselves. There is also a means by which the creditors of the company can obtain control of the liquidation. Thus a company about to be voluntarily wound up, or in the course of the winding-up, can, by an extraordinary resolution, delegate to its creditors, or to a committee of them, the power of appointing liquidators or supplying vacancies in that office. Or the company, by a like resolution, may enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised. Any act done by the creditors in pursuance of such a delegated power has the same effect as if it had been done by the company itself. And an arrangement can be come to between a company about to be wound up voluntarily, or in the course of winding-up, and its creditors. But such an arrangement, to be binding on the company, must be sanctioned by an extraordinary resolution, and, to be binding on the creditors, must be acceded to by three-fourths in their number and value. An arrangement so made can be amended, varied, or confirmed by the Court, at its discretion, upon application by a creditor or contributory, provided the application is made within three weeks from the date of the completion of the arrangement. And this is not by any means the only occasion upon which the Court will interfere in the course of a voluntary winding-up. Application can always be made to the Court, by the liquidators or any contributory, or by a creditor, where there is appropriate occasion for its interference. An application may thus be made to determine any question arising in the winding-up, or to exercise, as respects the enforcing of calls, or in respect of any other matter, all or any of

the powers which the Court might exercise if the company were being wound up by the Court. This right of a liquidator to apply to the Court for advice and assistance is a very valuable one and is extensively exercised. During the continuance of a winding-up, liquidators have power to summon general meetings of the company for the purpose of obtaining a sanction by special or extraordinary resolution, or for any other purpose they think fit. If a winding-up continues for more than a year, they must summon a general meeting at the end of the first year, and of each succeeding year from the commencement of the winding-up, or as soon after as convenient. At such a meeting they must present an account of their acts and dealings, and the manner in which the winding-up has been conducted during the preceding year. Two special provisions for the filling up of vacancies in liquidators should be noted:—(1) If a vacancy occurs in the office of liquidators appointed by the company, by death, resignation, or otherwise, the company in general meeting, subject to any arrangement they may have entered into with their creditors, may fill it up; and that general meeting may be convened by the liquidators, if any, or by a contributory of the company; and the meeting will be duly held if held in the manner prescribed by the regulations of the company, or in such other manner as, on application by the continuing liquidator, if any, or by a contributory, may be ordered by the Court. (2) If from any cause whatever there is no liquidator in the case of a voluntary winding-up, the Court, upon the application of a contributory, can appoint a liquidator or liquidators. The Court may also, on due cause shown, remove a liquidator and appoint another to act in his stead.

Conclusion of winding-up.—As soon as the affairs of a company are fully wound up, the liquidators must make up an account showing the manner in which the winding-up has been conducted, and the property of the company disposed of. Thereupon they call a general meeting of the company for the purpose of having the account laid before it, and giving any explanations that may be required. This meeting must be called by an advertisement specifying its time, place, and object. The advertisement should be published one month before the date of the meeting, in the appropriate Gazette. After the meeting they must send a return thereof to the registrar of joint-stock companies. The return should give the date upon which the meeting was held, and on the expiration of three months from the date of the registration of the return the company will be considered to be dissolved. If a liquidator makes default in sending in this return, he will incur a penalty of £5 for every day during which the default continues. All costs, charges, and expenses, properly incurred in a voluntary winding-up, including the remuneration of the liquidators, are payable out of the assets of the company in priority to all other claims. But a voluntary winding-up is no bar to the right of a creditor to have the company wound up by the Court, provided, and this proviso is very important, the Court is of opinion that his rights will be prejudiced by the voluntary winding-up. And where a company is in course of being wound up voluntarily, and proceedings are taken for the purpose of having it wound up by the Court, then, though the company is ordered to be wound up by the Court, the proceedings of the voluntary winding-up may be adopted.

Subject to supervision.—When a resolution has been passed by a company to wind-up voluntarily, the Court may order the voluntary winding-up to continue, but subject to the supervision of the Court. To obtain such an order the Court must be duly petitioned therefor. Before, however, deciding to grant or deny the petition the Court will regard the general wishes of the creditors or contributories. With a view to ascertaining these wishes the Court can direct meetings to be summoned and held, and appoint a chairman of any such meeting. In the case of creditors regard is specially had to the value of the debts due to each, and in the case of contributories to the number of votes conferred upon each by the regulations of the company. Additional liquidators may be appointed in a winding-up subject to supervision. The following is the effect of an order for winding-up subject to supervision:—The liquidators, subject to any restrictions specially imposed upon them, may exercise all their powers without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily; "but, save as aforesaid"—and this proviso is of very great importance, for it makes a supervisory winding-up more effective, as against creditors, than an altogether voluntary winding-up, inasmuch as, in effect, it stays all actions and proceedings against a company unless the Court gives liberty to proceed—"any order made by the Court for a winding-up subject to the supervision of the Court, shall for all purposes, including the staying of actions, suits, and other proceedings, be deemed to be an order of the Court for winding-up the company by the Court, and shall confer full authority on the Court to make calls, or to enforce calls made by the official liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding-up the company altogether by the Court," and for the purposes of the proviso the expression "official liquidators" includes liquidators conducting a winding-up under supervision.

Compulsory.—*Grounds for a winding-up.*—A registered company may be wound up by the Court under any of the following circumstances:—(1) Whenever the company has passed a special resolution requiring the company to be wound up by the Court; (2) Whenever the company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year; (3) Whenever the members are reduced, in the case of a private company, to less than two, or, in the case of any other company, below seven; (4) Whenever the company is unable to pay its debts; (5) Whenever the Court is of opinion that it is just and equitable that the company should be wound up; (6) If default is made in filing the statutory report or in holding the statutory meeting. It is often a very difficult question to decide whether or no a company can be said to be "unable to pay its debts." But fortunately the statute (s. 130) considerably reduces this difficulty by enumerating certain sets of circumstances under which a company will be considered by the law to be in such a state. These circumstances are: (1) Whenever a creditor, by assignment or otherwise, to whom the company is indebted at law or in equity in a sum exceeding £50 then due, has served on the company, by leaving the same at its registered office, a demand under his hand requiring it to pay the sum so due, and the company has for the space of three weeks succeeding the service of the demand neglected to pay the money, or to secure or compound

for it to the reasonable satisfaction of the creditor; (2) Whenever, in England and Ireland, execution or other process issued on a judgment, decree, or order obtained in any court in favour of any creditor, at law or in equity, in any proceeding instituted by the creditor against the company, is returned unsatisfied in whole or in part; (3) Whenever, in Scotland, the *inducix* of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest have expired without payment being made; (4) Whenever it is proved to the satisfaction of the Court that the company is unable to satisfy its present contingent and prospective liabilities. But even if a creditor can prove the inability of a company to pay its debts, he may yet fail to obtain a winding-up order if the majority in value of the creditors of the company for some good reason oppose him. The Court, in its discretion, could refuse to make the order. A contributory may obtain a compulsory winding-up order if he can prove to the Court that the company has nothing whereupon to base its operations—that its foundation is gone, or its objects have become impossible or impracticable. But, generally speaking, a contributory's rights in this respect are narrowly limited by the Act of 1908, section 137 of which enacts that no contributory shall be entitled to present a petition for winding-up a company unless (i) either the number of members are reduced below the statutory minimum; or (ii) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for a period of at least six months during the eighteen months previously to the commencement of the winding-up, or have devolved upon him through the death of a former holder. Where a share has during a whole or any part of the six months been held by or registered in the name of the wife of a contributory either before or after her marriage, or by or in the name of any trustee or trustees for such wife or for the contributory, such share shall, for the purpose of this section, be deemed to have been held by or registered in the name of the contributory. Only a shareholder can petition on the ground of default in filing the statutory notice. A petitioning contingent or prospective creditor must give security for costs.

Petition.—The application to the Court for the compulsory winding-up of a company must be made by a petition. It may be presented by the company, or by any one or more of the creditors or (subject to the above) contributories, or by all or any of these parties, together or separately. It must be drawn up according to the prescribed form, verified by an affidavit, advertised in certain papers, served according to the rules, and duly filed. Every contributory or creditor of the company is entitled to be furnished, by the solicitor of the petitioner, with a copy of the petition within twenty-four hours after demand, on paying the rate of 4d. per folio of seventy-two words for such copy. The order made upon a petition will operate in favour of all the creditors and all the contributories of the company in the same manner as if it had been made upon the joint petition of a creditor and a contributory. The winding-up will be deemed to commence at the time of the presentation of the petition. Upon hearing the petition the Court can dismiss it with or without costs, adjourn the hearing conditionally or unconditionally, and make any interim order, or any other order it considers just. When the petition is granted the petitioner and company are usually given their costs out of the estate, and one set of costs is given to the

creditors and one to the contributories who support the petition. Where the amount of the capital of a company paid up or credited as paid up does not exceed £10,000, and the registered office of the company is within the district of a county Court having a winding-up jurisdiction, the proceedings must be taken in that court.

The liquidato :.—If no liquidator is specially appointed by the Court, the official receiver in bankruptcy becomes the liquidator. A liquidator appointed by the Court is entitled to exercise as such certain very extensive powers. Subject to the provisions of the Companies Acts, he must use his own discretion in the management of the estate and its distribution among the creditors, but the Act of 1908 expressly reserves to him the right to apply to the Court in relation to any particular matter arising under the winding-up. He may sell all the real and personal and heritable and movable property of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell it in parcels. He has power to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal. And also to prove, rank, claim, and draw a dividend, in the matter of the bankruptcy or insolvency or sequestration of a contributory, for any balance against the estate of the latter, and to take dividends in respect of that balance. Moreover, he may draw, accept, make and indorse any bill of exchange or promissory note in the name and behalf of the company; also raise upon the security of the assets of the company from time to time any requisite sum of money. A bill of exchange or note so dealt with by a liquidator has the same effect as if it had been so dealt with by the company in the course of its business. And a liquidator may take out letters of administration to a deceased contributory in order to obtain payment of money due from that contributory; and, generally, he may do all such other things as may be necessary for winding-up the affairs of the company and distributing its assets. The powers just enumerated may be exercised by a liquidator without either the express sanction of the Court or of a committee of inspection. But his exercise thereof may nevertheless become subject to the control of the Court, for any creditor or contributory may apply to the Court with respect to the exercise or proposed exercise of any such powers. He requires, however, the sanction of the Court or committee in order to employ a solicitor or other agent to take any proceedings or do any business which he is unable to take or do himself. And this sanction must be obtained before the employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction. And also for the exercise of certain of his powers a liquidator must always obtain the sanction of either the Court or the committee. Such powers include the carrying on of the business of the company; bringing or defending any legal proceeding in the name and on behalf of the company; and carrying through any general statutory scheme of liquidation or compromise. Moreover, certain of the powers vested in the Court may be delegated to the liquidator, except, in particular, a power to rectify the register or make calls without the sanction of the Court. On this and other topics reference should be made to the Companies Winding-up Rules. When a person other than an

official receiver is appointed a liquidator, he is styled a liquidator as distinguished from an "official liquidator," who is an official receiver. A liquidator cannot act as such until he has notified his appointment to the registrar of joint-stock companies and given security to the Board of Trade. And he continues to hold his office subject to the supervision of the Board, which may inquire into the manner in which he fulfils his duties and take steps accordingly. It is to the Board of Trade that a creditor or contributory should address any complaints. In the administration and distribution of the company's property the liquidator should have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection. Any such directions of creditors or contributories will override those of the committee of inspection, in case there is any conflict. The liquidator can at any time summon general meetings of the creditors or contributories in order to ascertain their wishes. And it is his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct; or whenever requested in writing to do so by one-tenth in value of the creditors or contributories as the case may be.

Meetings of creditors.—When a winding-up order has been made, and no liquidator specially appointed, the official receiver calls together separate meetings of the creditors and contributories. The purpose of these meetings is to determine whether or not an application is to be made to the Court for appointing a liquidator in the place of the official receiver; and whether a like application is to be made for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of the committee if appointed. If there is a difference upon these matters between two meetings, the Court will decide it.

Statement of affairs.—A statement of the affairs of the company must be made out and presented to the official receiver. A special form is prescribed, and this, verified by affidavit, should show the particulars of the assets, debts, and liabilities of the company, the names, residences, and occupations of the creditors, the securities held by them, the dates when the securities were given, and such other information as the official receiver may require. The directors and secretary are primarily the persons liable to make and verify this statement, and it must be submitted within fourteen days from the date of the order. The statute requires this statement to be submitted and verified by one or more of the persons who are at the time of the winding-up order the directors and by the person who is at that time the secretary or other chief officer of the company, or by such of the persons being or having been directors or officers of the company, or having taken part in the formation of the company at any time within one year before the order for winding-up the company, as the official receiver, subject to the direction of the Court, may require to submit and verify the same. £10 per day is the penalty for non-compliance with the requirements of the law relating to the preparation and submission of the statement; but any one concerned in its preparation can receive his costs and expenses out of the assets of the company at the discretion of the official receiver.

Any person who states himself in writing to be a creditor or contributory is entitled to inspection of the statement and to a copy or extract.

Report.—A preliminary report by the official receiver is submitted to the Court as soon as practicable after the statement of affairs has been brought in. This report deals—(*a*) with the amount of the capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities; and (*b*) if the company has failed, with the causes of the failure; and (*c*) with the question whether, in the opinion of the official receiver, further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof. The official receiver may also present further reports. In these he can state the manner in which the company was formed, and whether, in his opinion, any fraud has been committed by any person in the formation or promotion, or by any director or other officer in relation to the company since its formation, and any other matters he thinks it desirable to bring to the notice of the Court. After considering such a report the Court may order the examination of any one referred to therein. In this examination the official receiver is entitled to take part; so also is the liquidator, if any. The person examined is examined on oath, and it is his duty to answer all questions that the Court may put or allow to be put to him. Prior to his examination he is entitled, at his own cost, to a copy of the official receiver's report, and to be represented by solicitor or counsel; and the latter may put such questions to him as the Court consider just for the purpose of enabling him to explain or qualify any answers he may have given. But if the Court considers he has exculpated himself from any charges made or suggested against him, he may be allowed such costs as the Court considers fit. Notes of his examination are taken down in writing, and read over to or by, and signed by, him. They may thereafter be used as evidence against him. And they are also open to the inspection of any creditor or contributory of the company at all reasonable times.

Committee of inspection.—This committee consists of creditors or contributories of the company, or persons holding general powers of attorney from creditors or contributories in such proportions as agreed upon by the meetings of creditors and contributories, or as, in case of difference, may be determined by the Court. It meets at times it appoints, and, failing any appointment, at least once a month. The liquidator or any member of the committee may call a meeting as and when he thinks necessary. The committee acts by a majority of members present at a meeting, but cannot act unless a majority of the committee is then present. Any member may resign by a signed written notice delivered to the liquidator. If a member of the committee becomes bankrupt, his office becomes vacant; and so does it if he compounds or arranges with his creditors, or is absent from five consecutive meetings without the leave of those members who together with himself represent the creditors or contributories as the case may be. A member who represents creditors may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given, stating the object of the meeting; and a member who represents contributories may be removed in like manner by a meeting of contributories. Vacancies are filled to the appointments by a meeting of creditors or con-

tributories as the case may be. The continuing members of the committee, provided there are not less than two of such, may act notwithstanding any vacancy in their body. If there is no committee, then the Board of Trade can so act, as occasion requires, on the application of the liquidator.

Audit.—At least twice a year, and at the prescribed times, the liquidator must send to the Board of Trade an account of his receipts and payments as such liquidator. This account must be in the prescribed form, in duplicate, and verified by a statutory declaration. These accounts are then audited by the Board of Trade, and for this purpose the liquidator must furnish the Board with all the information and vouchers it may require. And the Board can require production and inspection of any books and accounts kept by the liquidator. When audited, one copy of the account is filed and kept by the Board, and the other copy filed in Court, and each of these copies is open to the inspection of any creditor, or of any other interested person. The audited account, or a summary thereof, is printed by the Board of Trade and a copy posted to every creditor and contributory. A liquidator is bound to keep his books according to the prescribed form, and therein he must make proper entries or minutes of proceedings at meetings, and of any other prescribed matters, and any creditor or contributory may personally or by his agent inspect them, subject to the control of the Court.

Release of liquidator.—Section 157 (1) of the Act of 1908 runs as follows:—"When the liquidator of a company which is being wound up by order of the Court has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories between themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Board of Trade shall, on his application, cause a report on his accounts to be prepared, and on his complying with all the requirements of the Board, shall take into consideration the report, and any objection which may be urged by any creditor, or contributory, or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the High Court." Where the release is withheld the Court, on the application of a creditor or contributory or interested person, may, if it thinks just, charge the liquidator with the consequences of any act or default he may have done or made contrary to his duty. An order of release by the Board of Trade discharges a liquidator from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator. But such an order can be revoked on proof that it was obtained by fraud, or by suppression or concealment of any material fact. Where the liquidator has not previously resigned or been removed, his release operates as a removal of him from his office.

Dissolution of the company.—When the affairs of a company have been completely wound up, the Court will make an order that the company be dissolved from the date of the order; the company will be dissolved accordingly. A minute of this order is then to be made in the books of the registrar. The liquidator should therefore report the order to that official; should he fail to do so he will incur a heavy penalty.

LIVERY STABLE KEEPER — JOBMASTER — Taxes.—A livery stable is a place, not part of the business of an inn, where horses are groomed, fed, and let on hire, and where also vehicles are generally let. A livery stable keeper does not require any licence to carry on business as such, but he must have some regard to the EXCISE (*q.v.*) law which requires, as a rule, that employers of men servants and the owners of carriages shall take out certain licences and pay certain duties. Section 19 (5) of the Revenue Act, 1869, affords the proprietor of a livery stable the following exemption from these licences and duties:—"It shall not be necessary for licences to be taken out in the following cases, viz.: By any person who shall have made entry of his premises in accordance with section 28 of this Act for any servant employed by him at such premises in the course of his trade, other than a servant employed to drive a carriage with any horse let to hire for any period exceeding twenty-eight days; provided that such person shall have complied with all the provisions contained in the said section." Notice should be taken of the disallowance of the exemption in the case of a twenty-eight day hiring. And it should be remembered that compliance with the provisions of another section of the Act is a condition precedent to the exemption; and that section, the twenty-eighth, includes in the term livery stable keeper any other person "who lets any horse for hire, or who keeps any horse to be used for drawing any public stage or hackney carriage." The provisions of the section that the livery stable keeper must comply with in order to obtain the exemption are:—(i) He must deliver to an inland revenue officer acting in the parish or place in which his premises are situated an entry in writing signed by himself; (ii) This entry must contain a description of the premises and of the purpose for which he uses or intends to use them; (iii) He must then legibly paint upon a conspicuous part of his premises, or upon a board affixed thereto, his christian name and surname, with the addition of other words denoting the particular trade or business, or trades or businesses (if more than one), carried on by him; (iv) Thereafter he must allow an inland revenue officer to inspect his premises at any reasonable time. Should he neglect to comply with any of the foregoing provisions he will incur a penalty of £20. And any livery stable keeper incurs a like penalty, under section 29, if he does not from time to time enter in a book an account of every carriage standing at livery or otherwise on his premises, with the christian and surnames and place of abode of the person to whom it belongs. And a penalty of like amount is imposed in the event of contravention of any of the following additional provisions of the same section:—"And every person who shall furnish any servant on hire, or let any carriage for hire to be kept away from his premises, shall from time to time enter in a book an account of every such servant or carriage, with the name of such servant, the number of wheels of such carriage, and the name and address of the person hiring such servant or carriage; and all such books shall at all reasonable times in the daytime be open to the inspection of any officer of inland revenue, who shall have power to make any extract therefrom." The officer must not be prevented or obstructed in the execution of his duty.

A **Livery Stable Keeper** has no privileges implied by the law in his favour, by reason of his particular trade, as has an innkeeper, so that if he desires to limit any of his general obligations, he must do so by special

agreement (*Chapman* v. *Allen; Yorke* v. *Greenaugh*). He has, however, an advantage over an innkeeper in not being under an obligation to take in any horse which may be brought to him, and in not being bound to have soldiers billetted upon him (*Parkhurst* v. *Foster; Barnard* v. *How*). If, however, a horse in his keeping is lost or stolen he is answerable for it (*Yorke* v. *Greenaugh; Francis* v. *Wyatt*). And, according to *Searle* v. *Laverich*, he is bound to take reasonable care of every horse and carriage he may take in, and also that the property will be reasonably safe when on his premises. He is not considered, however, to impliedly warrant that his premises are absolutely safe. Subject to the provisions of the Law of Distress Amendment Act, 1908, a horse standing at livery can be distrained upon by the landlord of the livery stable keeper for rent (*Yorke* v. *Greenaugh*), but not if it is left merely to be cleaned and fed. As Chief-Justice Wilde said in the case of *Parsons* v. *Gingell*, "If the goods are sent to the premises for the purpose of being dealt with in the way of the party's trade, and are to remain upon the premises until that purpose is answered, and no longer, the case falls within one class; but if they are sent for the purpose of remaining there merely at the will of the owner, there being no work to be done on them, it falls within a totally different consideration." A livery stable keeper, according to *Barnard* v. *How* and *Parsons* v. *Gingell*, has not an innkeeper's right of detaining a horse for his keep. Such a lien can only be acquired by him by express agreement, as in the case of *Donatty* v. *Crowder*, where a mare was placed with a livery stable keeper, who advanced money to her owner, it being agreed that the mare should stand as security for repayment of the loan, and for the expenses of her keep. Once the livery stable keeper has acquired such a lien, the owner of the horse cannot deprive him of it by fraudulently taking it out of his possession; should this be done the livery stable keeper can retake it so long as he does not use force, for, as decided in *Wallace* v. *Woodgate*, the lien will not be defeated by possession being lost under such circumstances.

Hiring horses.—By letting on hire a horse or carriage, the owner thereby impliedly warrants it to be fit, proper, and competent for the contemplated journey (*Chew* v. *Jones*). The hirer, on his part, must treat the horse or carriage as a prudent man treats his own property; consequently he is only liable for damage caused by his "ordinary negligence." It lies upon the owner to prove this negligence positively; it is not sufficient to merely prove that the horse was usually a good and reliable one (*Cooper* v. *Burton*). [*See* BAILMENTS.] If, however, he keeps it for a longer time than it was hired for, or uses it in a manner different from that contemplated on the hiring, then he is liable for any damage however caused. Accordingly, as in *Davis* v. *Garrett*, if a man hires a horse to go from A to B, and instead of going by the usual road proceeds there by some unusual route, he will be liable for any damage however caused. If the horse falls lame on the journey, the hirer can abandon him at the place where he turns out unfit; but he must give notice to the owner, for it is the duty of the latter, under such circumstances, to send for the animal. The expense of curing a horse which has fallen sick without any fault of the hirer is to be borne by the owner. And if the horse becomes exhausted and refuses its food during the course of the hiring, the hirer is then under an obligation, according to *Braye* v. *Maine*, to put it up and communicate with the owner, for should he pursue the journey so that the horse becomes worse, he will then become liable to the

owner in damages. A hirer who himself undertakes the curing of a horse which has fallen sick during the hiring must, under any circumstances, obtain the best professional assistance available at the place (*Dean* v. *Keate*), otherwise he will be responsible for the result of the cure.

It is laid down in *Oliphant on Horses*, that, apart from any special agreement, the hirer pays for the shoeing of a horse he hires, but the owner pays for the shoeing when a carriage and a servant are let with the horse for a special journey.

Generally speaking the hirer of a horse is liable for any damage it may cause whilst under his control or that of his servants. He is therefore not generally liable when the horse is let to him together with a servant of the owner, and the servant has the control of the horse at the time when the accident causing the damage occurs. It is hardly an exception to this rule that if the hirer is at the time assuming the general management of the drive, or the accident has occurred as the direct result of his interference with the servant, he will be personally liable for the damage. The exception to the rule arises in cases where the hirer is in a position to control the servant, but does not do so; as where, for example, he is a competent driver and is sitting on the box beside the servant and allows an accident to occur without attempting to interfere. The following adapted excerpts from the judgment of Chief-Justice Tindal, in the case of *M'Laughlin* v. *Pryor* are of interest in this connection. The judgment is also of great value as an exposition of the doctrine under which a man may be liable for a wrong committed by a stranger, provided it was committed for the use or benefit of the former, who at the time, or subsequently, by conduct or acts, approved thereof or adopted it.

The cases in which the hirer of a carriage has been held not to be responsible for the act of the driver, depend upon certain special grounds. They depend upon the assumption that the hirer of the carriage, having no power of selection, no foreknowledge of the character of the driver, is not responsible for any negligence or want of skill or experience on his part; for it is the duty of the party who lets to exercise care and caution in the selection of those to whom he entrusts the government and direction of his horses and his carriage. But here the question is whether a particular hirer has so conducted himself as to be liable as *co-trespassers* with the servants, in this case postillions, whose conduct has given rise to this inquiry. The general rule is, that all who are present, and who from the circumstances may be presumed to be assenting to the wrongful act are trespassers. In trespass all are principals. I think that there was abundant evidence in this case that the hirer was so assenting. In the first place he was present, sitting on the box of the carriage; and when he saw the carriage was out of the line of vehicles, he must have known that the postboys intended to get into it again whenever they found an opportunity, so as to be enabled to pass through the toll-gate. *Had the hirer at that time expostulated, I hesitate not to say that he would not have been a trespasser, whatever might have ensued; for no servant can against his master's will make him a trespasser by any wrongful act of his.* Had he expressed any, the slightest, disapprobation of the course the postboys were evidently pursuing, he would have escaped all liability; or if the hirer and his friends had all been inside the carriage, so that they could not be supposed to be well aware of what was going on, the person injured must have sought his remedy elsewhere. But being, or some of them being, on the outside, and seeing the improper manner in which the postboys

were endeavouring to get on, and, though not actually encouraging them in their unlawful course, yet abstaining from all interposition to restrain them, this, though not very strong, certainly was some evidence that the hirer assented to that course. But the evidence does not stop there; for the hirer, sometime after the accident, in a conversation with one of the witnesses, said that he intended to have stopped when the carriage had established itself in the line and allowed the gig to regain its place. Now that remark showed pretty strongly that the hirer was exercising control over the motions of the postboys, and was an assenting party to their act. I therefore think the hirer, being the master for the time being, being present and seeing what was going on, and not interfering to prevent the mischief, must be taken to have been an assenting party. This case therefore falls within the principle laid down in *Gregory* v. *Piper* and *Chandler* v. *Broughton*, in which latter case it was held that where a master and servant are together in a vehicle, and an accident occurs, from which an immediate injury ensues, the master is liable although the servant was driving.

LLOYD'S, the centre of the marine insurance world, is the name of a society incorporated by special Act of Parliament in 1871, with the object of carrying on, by its members, the business of marine insurance. Incidentally to this object it undertakes the protection of the interests of its members in respect of shipping, and cargoes and freight; and the collection, publication, and diffusion of intelligence and information with respect to shipping generally. The name is derived from an old London coffee-house, called Lloyd's Coffee-House, whereat, in the seventeenth century, a society of underwriters originally had its headquarters. That society was practically the same as the one now in existence, and it progressed to its present statutory incorporation by way of a deed of association in 1811. Its place of business was finally removed in 1773 to the upper part of the Royal Exchange, in Cornhill, the rooms being private to its members. The affairs of Lloyd's are managed by a committee, with an annually elected chairman, and the members of the society are divided into underwriting, non-underwriting, and subscribing. Applicants for admission to membership must be recommended by six members, and they are elected after ballot in committee. The underwriting members are those who "underwrite" the policies of insurance, and are consequently the marine insurers. They undertake, however, other insurance business—for example, life, fire, and accident; but in respect to such business the provisions of the Assurance Companies Act, 1909, must be complied with. Members of the underwriting class carrying on marine insurance business not only pay a higher subscription than the other members of the society, but are also required to deposit with the committee securities of the highest class, to the value of at least £5000. Such a security is available in case the underwriter who has deposited it should fail to meet his liabilities. The committee have also a discretion to accept a guarantee policy of £5000 in lieu of the deposit. The other members of the society are either brokers or merchants. There is no one, in fact, engaged to any extent in the shipping business in London who is not either a member or subscriber, and thus the collective body represents the greater part of the mercantile wealth of this country. Apart from underwriting, the society has very important public functions to fulfil. It may be called upon to contribute towards the membership of a committee to assist the Board of Trade in making rules for LIFE-SAVING APPLIANCES (*q.v.*). It has its authorised agents in all the principal ports in the world, who

forward regular accounts of the departure from, and arrivals at, their respective ports, as well as of losses and other casualties, and any other information likely to be of importance to the body of subscribers. This intelligence is supplied to the general news agencies, and is also, after being entered and indexed in *Lloyd's List* for the private use of members, again published for public use in the *Shipping and Mercantile Gazette*. In order that Lloyd's shall receive all necessary intelligence, the Merchant Shipping Act particularly provides that information shall be promptly forwarded there of certain marine losses and wrecks. The principal shipping arrivals and losses are also conspicuously posted in certain books in the chief room, and the statements contained therein are sufficient notice to the underwriters and other frequenters of Lloyd's of the matters referred to. In the captain's room, which is separated from the principal rooms of the society, the masters of vessels, shipbrokers, and others interested in shipping, meet, in order to obtain and receive information, and negotiate the terms of freight and sale or hire of vessels, &c. The Assurance Companies Act, 1909, does not apply to a member of Lloyd's, or of any other association of underwriters approved by the Board of Trade, who carry on assurance business of any class, provided that he complies with the requirements set forth in the Eighth Schedule to that Act, and applicable to business of that class. The substance of this Schedule is set out in the article on LLOYD'S, in continuation of this article, in the Appendix to this volume.

Marine Insurance.—The following is the mode in which an insurance of this class is effected at Lloyd's. The merchant or shipowner who desires to effect an insurance, writes on a piece of paper called a slip (*q.v.*) the name of the ship, the particulars of the voyage entered or about to be entered upon, the nature of the cargo, and the amount to be insured; he should also state the conditions on which the insurance is to be done, that is to say, whether it is to cover all risks, or to be free of particular average, &c.; he would also, if used to insuring, add the rate of premium he thinks it should be done at. This slip, according to the directions in Pearce's *Merchant's Clerk*, he takes upstairs to the underwriters' room at the Royal Exchange and shows it to one of the members with whom he is in the habit of insuring, who thereupon writes on the slip his initials, the proportion of the risk he will be contented to bear, and the premium he will charge, if not satisfied with the rate the clerk has filled in. He then goes through the same process with another member, and so on till he has completed the amount he wants to insure. The insurance is then considered as done and in full effect, although the signed and stamped policy will not be ready till some days after. The merchant or shipowner will find by experience that there are certain leading underwriters at Lloyd's, and that when he has got one of them to initial a slip and fix a rate of premium, he has no difficulty in getting others to follow him. The blank forms of policies are to be procured at Lloyd's, and he must fill them up himself and get them signed by all the underwriters who have initialled his slip. It generally happens that the underwriters signing a policy divide their portion of the risk with others who do not appear as signatories, but who have given powers to write for them. Thus, if John Brown has initialled a slip for £300, and he is a member of a partnership of Brown, Smith & Jones, he will probably sign the policy as follows:—

John Brown, £100.
James Smith, £100.
Thomas Jones, £100.
} per John Brown
Three hundred pounds.

A partnership firm of underwriters would never collectively subscribe a policy as such, because Lloyd's underwriting must be done individually.

The premiums on policies are not paid at once, but carried to account with the merchant.

But marine underwriting is not the monopoly of Lloyd's, for there are various powerful companies which undertake marine insurance, and obtain a very fair share of the business. The mode of effecting an insurance with a company is very much the same as that in vogue with underwriters at Lloyd's. The slip is taken to an officer of the company, and he, if he accepts the risk, initials it. Thereupon the merchant's clerk will fill in the company's form or slip, which is returned, and from which the policy is made out, also on the company's own form. The form of a company's policy does not differ to any practical extent from a Lloyd's policy. A company, however, usually hands over a "covering note" as an interim policy instead of a slip. *See* MARINE INSURANCE. The requirements of the law in regard to insurance at Lloyd's in classes other than marine will be found in an article in the Appendix in continuation of this.

LLOYD'S BONDS.—These securities are not now so frequently issued as formerly. They are still, however, occasionally met with, and it is therefore desirable that some notice should here be taken of their form and effect. It is by railway and other corporations, whose borrowing powers are limited by the Companies Acts, the Companies Clauses Act, and by special statute, that these bonds are generally issued, and their form, subject to special appropriate variations, is generally as follows:—

The Railway Company hereby acknowledge themselves to owe to A. B. of Contractor for Public Works, the sum of for works executed and materials supplied by the said A. B. to the said Company for the purposes of their undertaking; and the said Company, in consideration of the premises and of the agreement of the said A. B. to forbear and give time for payment of the said sum of until the day and year hereinafter mentioned, hereby undertake to pay to the said A. B., his executors or administrators, the said sum of , on the day of 19 , with interest in the meantime at the rate of per cent. per annum by equal half-yearly payments.

Given under the Common Seal of the Company, this day of 19 .

(L.S.)

It will be noticed that such a bond is a security in respect of a debt already incurred by the company. Therein it differs from a debenture or other security issued by the company under its statutory powers in respect of money borrowed or to be borrowed. The latter class of security always has a priority over a Lloyd's Bond, that priority being specifically secured by sec. 23 of the Railway Companies Clauses Act, 1867. The relevant part of the section runs as follows:—"All money borrowed, or to be borrowed, by a company on mortgage, or bond, or debenture stock, under the provisions of any Act authorising the borrowing thereof, shall have priority against the Company and the property from time to time of the Company over all other claims on account of any debts incurred or engagements entered into by them after the passing of this Act." It is the custom of Parliament when granting to railway companies the powers necessary for carrying out their undertakings to limit the amount of money they should be permitted to

borrow, and to prescribe the conditions under which such borrowing powers should be exercised. And, quite apart from the above recited section, it is evidently the intention of the legislature that no bonds or other negotiable securities other than those created under statutory powers should be issued by directors. Until the passing of the above Act, however, that intention was easily and commonly defeated by the issue of obligations (purporting to be for work done or for materials supplied for the purposes of the undertaking), commonly called "Lloyd's Bonds." They have been so called because they are the invention of a well-known counsel, Mr. J. H. Lloyd. And even since that Act a Lloyd's bond may be lawfully issued to secure payment of an existing debt other than for money advanced, or even to secure a debt for a past advance which has been *bonâ fide* made and subsequently applied for the use of the borrowing company. And, consequently, subject to the operation of the above section, the holders of these bonds, even though they have come into their hands as negotiable securities, can sue upon them. And if they have been *bonâ fide* given as a security, valid as above-mentioned, there would be no ground of defence to the action, and the holders would have a valid, but perhaps postponed, claim to the assets of the company. In any conflict between the holders of these bonds and the holders of statutory debentures, the latter have priority. The directors of a company do not incur any personal liability by issuing Lloyd's Bonds. "The only question which could arise," in the joint opinion of the late Lord Cairns and Mr. Lloyd, "would be this: it would be competent for any one or more of the shareholders to apply for an injunction to restrain the directors from entering into a contract for the execution of works on the terms of payment by Lloyd's Bonds, on an allegation that it would be an improper and unauthorised mode of carrying out the undertaking, and likely to be onerous to the shareholders in respect of the price to be paid for the works, &c. But, practically, we presume there is no reason to apprehend any objection from the shareholders, and if no such application be made by them, the only risk [apart from postponement to statutory debenture holders] is removed, because the bonds, when given, would be impeachable." Before deciding finally, therefore, whether an issue of Lloyd's bonds is valid or invalid, it will be necessary for the company concerned to consider the powers conferred upon it by its special Act, and also, if any, the appropriate Clauses Consolidation Act, and also the nature of the indebtedness the bonds are intended to secure. On section 38 of the Companies Clauses Act, 1845, for example, the learned authors of *Rawlin's and Macnaghten's Company Law* make the following comment: "The opening words of this section—'If the company be authorised by the special Act to borrow,' &c.—indicate that, to enable a company governed by this Act to borrow at all, it must by its special Act be expressly given power to do so—a power which it would not otherwise have possessed; and the giving of a power to borrow on mortgage or bond, without more, impliedly prohibits any other mode of borrowing (*e.g.* on Lloyd's bonds, or by overdrawing a banking account)." At the same time the essential characteristic of a valid Lloyd's bond should be considered, that it is not an instrument to enable a company to borrow money or to secure money already borrowed, but rather a form of satisfaction, or temporary satisfaction, for a debt already incurred in respect of an advance made or work done or material supplied for the furtherance of the legitimate undertaking of the company.

LLOYD'S POLICY.—It is proposed in this article to set out in full the form of policy of marine insurance as issued at Lloyd's, to explain it from the provisions of the Stamp Act, 1891, and the Marine Insurance Act of 1906, and to append the rules for its construction as scheduled to the Act. Policies of insurance of their own, slightly varying in form from Lloyd's, are issued by the various marine insurance companies, but the form here given is particularly useful as being both the original and the one most widely used and followed. Lloyd's policy cannot be subscribed by any person who is not an underwriting member of Lloyd's, and any one who issues one so improperly subscribed may be proceeded against under sec. 21 of Lloyd's Act. Before, however, setting out the policy it will be convenient to notice some provisions of the law relating to marine policies generally and to their stamping.

Marine Policies.—Generally speaking, a contract of marine or sea insurance is inadmissible in evidence unless it is embodied in a marine policy in accordance with the Act, though the policy may be executed and issued either at the time when the contract is concluded or afterwards. The expression "policy of sea insurance" has been defined by the Stamp Act, 1891, for the purposes of that Act, as meaning "any insurance (including reinsurance) made upon any ship or vessel, or upon the machinery, tackle, or furniture of any ship or vessel, or upon any goods, merchandise, or property of any description whatever on board of any ship or vessel, or upon the freight of, or any other interest which may be lawfully insured in or relating to, any ship or vessel, and includes any insurance of goods, merchandise, or property for any transit which includes not only a sea risk, but also any other risk incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance." And there is a contract for sea insurance "where any person in consideration of any sum of money paid or to be paid for additional freight or otherwise, agrees to take upon himself any risk attending goods, merchandise, or property of any description whatever while on board of any ship or vessel, or engages to indemnify the owner of any such goods, merchandise, or property from any risk, loss, or damage." A marine policy is bound to specify—(1) The name of the assured, or of some person who effects the insurance on his behalf; (2) the subject-matter insured and the risk insured against; (3) the voyage, or period of time, or both, as the case may be, covered by the insurance; (4) the sum or sums insured; (5) the name or names of the insurers. It must be signed by or on behalf of the insurer, even though the insurer is a corporation. In the latter case, however, the corporation is not bound to subscribe the policy under its seal. A policy subscribed by two or more insurers creates, unless the contrary is expressed, a distinct contract with the assured in respect of each subscription.

Five classes of policies may be distinguished, namely, Voyage, Time, Valued, Unvalued, and Floating policies. It is a "voyage policy" where the contract is to insure the subject-matter "at and from," or from one specified place to another; and a "time policy" where the contract is to insure the subject-matter for a definite period of time. A contract for both voyage and time may be included in the same policy. No time policy will be valid if made for a period exceeding twelve months. And the Stamp Act provides

that no policy shall be valid unless it "is made for a period not exceeding twelve months." A "valued policy" is one which specifies the agreed value of the subject-matter insured; and generally speaking, apart from fraud, the value specified is as between the insurer and assured, conclusive for the purposes of the particular policy, whether the loss is total or partial. But unless the policy otherwise provides, the value specified is not conclusive for the purpose of determining whether there has been a constructive total loss. An "unvalued policy" is one which does not specify the value of the subject-matter insured, but subject to the limit of the sum insured, leaves the insurable value to be subsequently ascertained. When the policy describes the insurance in general terms, and leaves the name of the ship and other particulars to be defined by subsequent declaration, it is a "floating policy Such a subsequent declaration can be made by indorsement on the policy, or in other customary manner, but unless the policy otherwise provides, all declarations must be made in the order of despatch or shipment. In the case of goods these declarations should comprise all consignments within the terms of the policy, and the value of the goods or other property should be honestly stated; an omission or erroneous declaration, made in good faith, can be rectified, even after an arrival or loss. But where a declaration of value is not made until after notice of loss or arrival, the policy, unless it otherwise provides, is treated as an unvalued policy as regards the subject-matter of that declaration.

A policy may be in the form appended to this article. The expressions therein have, unless the context otherwise requires, the meanings attached to them as set out at the end of the article. The subject-matter insured must be designated in the policy with reasonable certainty, though the nature and interest of the assured therein need not be specified. A policy that designates the subject-matter insured in general terms is construed so as to apply to the interest intended by the assured to be covered. In connection, however, with any questions as to the designation of the subject-matter insured regard must always be had to any usage. Where an insurance is effected at a premium to be arranged, and no arrangement is made, a reasonable premium is payable; and where the terms are that an additional premium is to be arranged in a given event, and that event happens but no arrangement is made, then also is a reasonable premium payable.

Stamps.—The following are the rates of stamp duties on policies of marine insurance:—

(1) Where the premium or consideration does not exceed the rate of 2s. 6d. per centum of the sum insured . . . £0 0 1

(2) In any other case—

(*a*) For or upon any voyage—

In respect of every full sum of £100, and also any fractional part of £100 thereby insured £0 0 3

(*b*) For time—

In respect of every full sum of £100, and also any fractional part of £100 thereby insured—

Where the insurance shall be made for any time not exceeding six months £0 0 3

Where the insurance shall be made for any time exceeding six months and not exceeding twelve months . . £0 0 6

Two duties are payable upon a policy for both voyage and time, or where the insurance extends to or covers any time beyond thirty days after the ship has arrived at her destination and been there moored at anchor. No policy can be stamped after it has been signed or underwritten by any one, except in the two cases following—that is to say, (*a*) any policy of mutual insurance having a stamp impressed thereon may, if required, be stamped with an additional stamp, provided that at the time when the additional stamp is required the policy has not been signed or underwritten to an amount exceeding the sum or sums which the duty impressed thereon extends to cover; (*b*) any policy made or executed out of, but being in any manner enforceable within, the United Kingdom, may be stamped at any time within ten days after it has been first received in the United Kingdom on payment of the duty only. But for the purpose of putting a policy in evidence in an action it may be stamped, after its execution, upon payment of a penalty of £100. A legal alteration in a policy may be made under certain restrictions. It must be made before notice of the determination of the risk originally insured; it must not prolong the time covered by the insurance thereby made beyond a period of six months in the case of a policy made for a less period than six months, or beyond the period of twelve months in the case of a policy made for a greater period than six months; the articles insured must remain the property of the same person or persons; no additional or further sum can be insured by reason or means of the insurance.

Penalties.—A fine of £100 is incurred by any person who—(*a*) becomes an assurer upon a sea insurance; or enters into a contract therefor; or directly or indirectly receives or contracts or takes credit in account for any premium or consideration for an insurance; or knowingly takes upon himself any risk; or renders himself liable to pay; or pays any money upon any loss, peril, or contingency relative to a sea insurance—unless the insurance is expressed in a policy of sea insurance duly stamped: or (*b*) makes or effects, or knowingly procures to be made or effected, a sea insurance, or directly or indirectly gives or pays, or renders himself liable to pay, any premium or consideration for any sea insurance, or enters into any contract for sea insurance—unless the insurance is expressed in a policy of sea insurance duly stamped: or (*c*) is concerned in any fraudulent contrivance or device, or is guilty of any wilful act, neglect, or omission, with intent to evade the duties payable on policies of sea insurance, or whereby the duties may be evaded. A like fine is incurred by a broker, agent, or other person who negotiates or transacts an insurance contrary to the Stamp Act, or writes a policy upon material not duly stamped. And, as a further penalty, he is debarred from having any legal claim to any charge for brokerage, commission, or agency, or for any money expended or paid by him with reference to the insurance; and any money paid to him in respect of any such charge will be deemed to be paid without consideration, and will remain the property of his employer. And a fine of £100 is imposed upon any one who makes or issues, or causes to be made or issued, any document purporting to be a copy of a policy of sea insurance, and there is not at the time of the making or issue in existence a policy duly stamped, whereof the said document is a copy.

Form of Lloyd's Policy of Marine Insurance.

S. G. **Be it known that**

as well in own Name, as for and in the Name and Names of

£ all and every other Person or Persons to whom the same doth, may, or shall appertain in part or in all, doth make assurance, and cause and them and every of them, to be insured, lost or not lost (1), at (3) and from (2)

upon any kind of Goods and Merchandises, and also upon the Body, Tackle, Apparel, Ordnance, Munition, Artillery, Boat and other Furniture, of and in the good Ship or Vessel called the whereof is Master, under God, for this present voyage, or whosoever else shall go for Master in the said Ship, or by whatsoever other Name or Names the same Ship, or the Master thereof is or shall be named or called, beginning the Adventure upon the said Goods and Merchandises from the loading thereof (4) aboard the said Ship upon the said Ship, &c.

and shall so continue and endure, during her Abode there, upon the said Ship, &c.; and further, until the said Ship, with all her Ordnance, Tackle, Apparel, &c., and Goods and Merchandises whatsoever, shall be arrived at

upon the said Ship, &c., until she hath moored at Anchor Twenty-four Hours in good Safety, and upon the Goods and Merchandises, until the same be there discharged and safely landed (5); and it shall be lawful for the said Ship, &c., in this Voyage to proceed and sail to and touch and stay (6) at any Ports or Places whatsoever

without Prejudice to this Insurance. The said Ship, &c., Goods and Merchandises, &c., for so much as concerns the Assured, by Agreement between the Assured and Assurers in this Policy, are and shall be valued at

Touching the Adventures and Perils which we the Assurers are contented to bear and to take upon us in this Voyage, they are, of the Seas (7), Men-of-War, Fire (8), Enemies, Pirates (9), Rovers, Thieves (10), Jettisons, Letters of Mart and Countermart, Surprisals, Takings at Sea, Arrests (11), Restraints and Detainments of all Kings, Princes, and People, of what Nation, Condition, or Quality soever, Barratry (12) of the Master and Mariners, and of all other (13) Perils, Losses, Misfortunes that have or shall come to the Hurt, Detriment, or Damage of the said Goods and Merchandises and Ship, &c., or any Part thereof; and in case of any loss or Misfortune, it shall be lawful to the Assured, their Factors, Servants, and Assigns, to sue, labour and travel for, in, and about the Defence, Safeguard and Recovery of the said Goods and Merchandises, and Ship, &c., or any Part thereof, without Prejudice to this Insurance; to the Charges whereof we, the Assurers, will contribute, each one according to the Rate and Quantity of his Sum herein assured. And it is agreed by us the Insurers, that this Writing or Policy of Assurance shall be of as much Force and Effect as the surest Writing or Policy of Assurance heretofore made in Lombard Street, or in the Royal Exchange, or elsewhere in London. And so we the Assurers are contented, and do hereby promise and bind ourselves, each one for his own Part, our Heirs, Executors, and Goods, to the Assured, their Executors, Administrators, and Assigns, for the true Performance of the Premises, confessing ourselves paid the Consideration due

unto us for this Assurance by the Assured at and after the Rate of

IN WITNESS whereof, we the Assurers have subscribed our Names and Sums assured in

N.B.—Corn, Fish, Salt, Fruit, Flour, and Seed are warranted free from Average, unless general, or the Ship be stranded; Sugar, Tobacco, Hemp, Flax, Hides, and Skins are warranted free from Average under Five Pounds per Cent.; and all other Goods (18), also the Ship (16) and Freight (17), are warranted free from Average under Three Pounds per Cent.; unless general (14), or the Ship be stranded (15).

Rules for the construction of a Policy in the above or other like form, where the context does not otherwise require.

1. *Lost or not lost.*—Where the subject-matter is insured "lost or not lost," and the loss has occurred before the contract is concluded, the risk attaches unless, at such time, the assured was aware of the loss, and the insured was not. 2. *From.*—Where the subject-matter is insured "from" a particular place, the risk does not attach until the ship starts on the voyage insured. 3. *At and from.*—(*a*) Where a **ship** is insured "at and from" a particular place and she is at that place in good safety when the contract is concluded, the risk attaches immediately. (*b*) If she is not at that place when the contract is concluded the risk attaches as soon as she arrives there in good safety, and, unless the policy otherwise provides, it is immaterial that she is covered by another policy for a specified time after arrival. (*c*) Where chartered **freight** is insured "at and from" a particular place, and the ship is at that place in good safety when the contract is concluded the risk attaches immediately. If she is not there when the contract is concluded, the risk attaches as soon as she arrives there in good safety. (*d*) Where freight, other than chartered freight, is payable without special conditions and is insured "at and from" a particular place, the risk attaches *pro rata* as the goods and merchandise are shipped; provided that if there is cargo in readiness which belongs to the shipowner, or which some other person has contracted with him to ship, the risk attaches as soon as the ship is ready to receive the cargo. 4. No risk attaches to goods or other movables insured "from the loading thereof" until they are actually on board; and the insurer is not liable for them while in transit from the shore to the ship. 5. Where the risk on goods or other movables continues until they are "safely landed," they must be landed in the customary manner and within a reasonable time after arrival at the port of discharge, and if they are not so landed the risk ceases. 6. The liberty to "touch and stay" *at any Ports or Places whatsoever* does not authorise the ship to depart from the course of her voyage from the port of departure to that of destination, unless there is some further licence or usage. 7. The term "perils of the seas" refers only to fortuitous accidents or casualties of the seas. It does not include the ordinary action of the winds and waves. 8. The term "fire" does not cover a loss caused by the explosion of steam, nor a fire caused by the inherent vice of the subject-matter insured, but it does cover a fire voluntarily caused

in order to avoid capture by an enemy. 9. Passengers who mutiny, and rioters who attack the ship from the shore, here come within the designation of "pirates." 10. The term "thieves" does not cover clandestine theft or a theft committed by any one of the ship's company, whether crew or passengers. 11. "Arrests, &c. of kings, princes, and people" refers to political or executive acts, and does not include a loss caused by riot or ordinary judicial process. 12. "Barratry" includes every wrongful act wilfully committed by the master or crew to the prejudice of the owner, or, as the case may be, the charterer. 13. The term "all other perils" includes only perils similar in kind to those specifically mentioned in the policy. 14. "Average unless general" means a partial loss of the subject-matter insured other than a general average loss, and does not include "particular charges." 15. The insurer is liable for the excepted losses where the ship has "stranded," even though the loss is not attributable to the stranding. But for this to be so the risk must have attached when the stranding takes place, and, if the policy is on goods, the damaged goods are on board. 16. In the term "ship" is comprised the hull, materials, and outfit stores and provisions for the officers and crew; and, in the case of vessels engaged in a special trade, the ordinary fittings requisite for the trade; and also, in the case of a steamship, the machinery, boilers, and coals. 17. "Freight" includes the profit derivable by a shipowner from the employment of his ship to carry his own goods or movables, as well as freight payable by a third party, but does not include passage money. 18. The term "goods" means goods in the nature of merchandise, and does not include personal effects or provisions and stores for use on board. In the absence of any usage to the contrary, deck cargo and living animals must be insured specifically, and not under the general denomination of goods. *See* MARINE INSURANCE.

LOAD-LINE.—Every British and Foreign foreign-going ship, sailing from a port of the United Kingdom, is required by the Merchant Shipping Acts, 1894 and 1906, to be duly marked with a load-line. The mark consists of a circle upon each of her sides, amidships or as near thereto as is practicable, in white or yellow on a dark ground or in black on a light ground, the disc of the circle being twelve inches in diameter, with a horizontal line eighteen inches in length drawn through its centre. The centre of this disc is placed below the deck-line, and indicates the maximum load-line in salt water to which it is lawful to load the ship. There are certain special regulations with regard to a ship which the owner is not required to enter outwards. A ship loaded so as to submerge in salt water the centre of the disc indicating the load-line is deemed to be an unsafe ship, and the submersion is a reasonable and probable cause for her detention. Some ships are exempt from these provisions relating to load-lines. Such are ships under eighty tons register employed solely in the coasting-trade, and ships employed solely as fishing and pleasure yachts. Foreign-going vessels must be marked before entry outwards. Upon such entry the owner must state in writing the distance in feet and inches between the centre of the disc and the upper edge of each of the deck-lines which is above that centre; and if default is made in the insertion of this statement in the form of entry the ship may be detained. And the master of a ship is required to enter a copy of the statement in the agreement with the crew before it is signed by any member of the crew, and the superintendent will not proceed with the engagement of the crew until that entry is made. The master must also enter a copy

of the same statement in the official log-book. A ship marked with the load-line should in general be kept so marked until her next return to a port of discharge in the United Kingdom, though under certain conditions the mark may be altered. A coasting-vessel which requires the load-line must also be marked before she proceeds to sea. Her owner must once in every twelve months, immediately before the ship proceeds to sea, deliver to the chief officer of customs of the port of registry of the ship a written statement of the distance between the centre of the disc and the upper edge of each of the deck-lines which is above that centre; and after a renewal or alteration of the disc another and similar statement must be so delivered. A coasting-vessel already marked with a load should be kept so marked until notice is given of an alteration. If default is made in this notice or statement the owner of the vessel will be liable for each offence to a fine of £100. A like fine is incurred by the owner of any British ship required to be marked—(*a*) who allows the load-line to be marked in a manner in any respect inaccurate so as to be likely to mislead; (*b*) who fails without reasonable cause to keep his ship marked or allows her to be so loaded as to submerge in salt water the centre of the disc indicating the load-line. The master is also liable to a penalty in respect of the last-mentioned offence. And any person is who "conceals, removes, alters, defaces, or obliterates, or suffers any person under his control to conceal remove, alter, deface, or obliterate any of the said marks, except in the event of the particulars thereby denoted being lawfully altered, or except for the purpose of escaping capture by an enemy." The **deck-lines** already referred to are lines which indicate the position of each deck which is above water, and they consist of lines of not less than twelve inches in length and one inch in breadth, painted longitudinally on each side of a ship amidships, or as near thereto as practicable. The upper edge of each of the deck-lines must be level with the upper side of the deck-plank next the waterway at the place of marking, and must be coloured white or yellow on a dark ground, or black on a light ground. The expression "amidships" means the middle of the length of the load water-line as measured from the fore side of the stem to the aft side of the stern-post. These deck-lines are required to be permanently and conspicuously marked upon every British ship except those under eighty tons register employed solely in the coasting-trade, and ships employed exclusively in trading or going from place to place in any river or inland water the whole or part of which is in a British possession. The Merchant Shipping Act also requires, under a penalty, the master of a British sea-going ship to record her draught of water and the extent of her clear side in the official log-book. By the "clear side" is meant the height from the water to the upper side of the plank of the deck from which the depth of hold as stated in the register is measured, and the measurement of the clear side is taken at the lowest part of the side.

LOAN SOCIETIES.—Where a number of persons form a society in England for establishing a fund for making loans to the "industrious" classes, and taking payment of the same by instalments, with interest thereon, they may obtain the benefit of the provisions of the Loan Societies Act, 1840, by framing rules for the management of the society, and having those rules certified, deposited, and enrolled in the manner directed by the Act. Three transcripts of the rules, signed by three members and countersigned by the clerk or secretary, must be transmitted to the barrister

appointed to certify the rules of savings banks. This official may charge a fee not exceeding a guinea; and having approved the rules he will give his certificate on each of the transcripts, keeping one for himself, returning another to the society, and sending the third to the local clerk of the peace. When so certified the rules are binding on the members and officers of the society, and the borrowers and sureties, and all other persons having interest therein. No certified rule can be altered except at a general meeting of the society, and all rules from time to time made and in force must be entered in a book kept by the officer of the society. Alterations also require certification. Trustees must be appointed, and in them all the property of the society vests. In their names the society sues and is sued. A loan society may issue debentures, which are not liable to stamp duty, and these, though signed by a trustee or other officer of the society, cannot impose a personal liability upon him unless he has given some personal undertaking. Sums under £50 lent to or deposited in a loan society are payable without letters of administration to the next-of-kin of any debenture holder, depositor, or other claimant who dies intestate. The treasurer and any other person who is entrusted with the receipt or custody of the society's money must give a security by bond with sureties. A loan society cannot lend to any one at the same time a greater sum than £15, and no second or other loan can be made to the same person until the former loan has been repaid. A special form of promissory note is prescribed by the Act, but it is not liable to stamp duty (nor is any receipt for money lent or paid), and cannot be transferred by indorsement or otherwise to any person whatsoever. The note must be made payable to the treasurer, and the society may "add to or embody in such note the statement of any allegations made by the parties to such note respecting their goods or property, and all such allegations made under the hand of any such party may be given in evidence against him on any proceeding under" the Act. If the borrower makes default in payment the society is required to give him a certain notice, and if, after such notice, the default continues, the borrower may be sued in the police court, so that the loan may be recovered as promptly as possible. There is, however, nothing to prevent the society proceeding in a county or other court. The treasurer or clerk of the society for the time being is the person who should sue for and recover the amount due under a note or other security, and this is so even if a change has taken place in the person by whom the office is filled. An applicant for a loan may be charged a fee of 1s. 6d. for the form of application and for inquiries, and the society is not bound to return this fee in the event of the loan not being granted; but the inquiry must be made within fourteen days from the time of the delivery to the society of the application form duly filled up. The society can demand and receive from a borrower, at the time of making the loan, a discount at the rate specified in the rules not exceeding "ten pounds by the hundred" for the full term of one year; it can also receive payment by instalments, but the first repayment must not be made due sooner than the eleventh day after the date of the grant of the loan. The instalments and interest must be according to one of the schemes set out below; payments must be entered in the borrower's pass-book; and no instalment can be paid in advance, nor can loans be balloted for.

No. of Scheme.	Amount of Weekly Instalment.	Day on or after which the First Instalment is payable, reckoning the day after the Loan as the First.	Sum which may be taken by way of Interest at the time of advancing the Loan.
1	Two shillings per five pounds .	Eleventh	Six shillings per five pounds
2	Sixpence per pound . .	Sixteenth	One shilling per pound
3	Eightpence per pound . .	Twenty-first	Tenpence per pound
4	Four shillings per five pounds	Thirty-eighth	Four shillings per five pounds
5	Tenpence per pound .	Twenty-first	Eightpence per pound
6	One shilling per pound . .	Thirty-fifth	Eightpence per pound
7	Two shillings per pound .	Seventieth	Eightpence per pound
8	Two shillings and sixpence per pound	Seventy-seventh	Eightpence per pound
9	Four shillings per pound .	Sixty-second	Sixpence per pound
10	Five shillings per pound .	Sixty-sixth	Sixpence per pound
11	Ten shillings per pound . .	Seventy-third	Sixpence per pound
12	Twenty shillings per pound .	Seventy-sixth	Sixpence per pound

In these schemes all instalments after the first are to be paid weekly.

Other schemes may be formed from these by advancing or postponing the day of payment of the first instalment, provided that the first payment is not made sooner than the eleventh day, and that not more than one penny per pound is added to the interest for every thirteen days of such postponement, or that not less than one penny per pound is taken of the interest for every thirteen days of such advance.

Thus: Scheme 6 may be altered by making the first instalment payable on the twenty-second day after the loan, and taking sevenpence per pound for interest, and so for the rest.

LOCAL MARINE BOARDS.—Committees, known as Local Marine Boards, are established in the principal ports of the United Kingdom for the purpose of carrying into effect, under the superintendence of the Board of Trade, the provisions of the Merchant Shipping Act, 1894. These boards are constituted in the manner provided by the Act, and though they may generally themselves regulate the mode in which their meetings are to be held and their business is to be conducted, yet they cannot fix a quorum of less than three, and the Board of Trade can prescribe the manner in which their minutes are to be kept. But none of these acts or proceedings is vitiated by reason of any irregularity in the election of any of the members, or of any error in the list of voters entitled to vote at the election, or of any irregularity in making or revising the list, or by reason of any person not duly qualified acting on the board, or of any vacancy in the board. Every local marine board must make or send to the Board of Trade such reports and returns as the Board of Trade may require; and all minutes, books, and documents of, or used or kept by, any local marine board, or by any superintendent, or by any examiner or other officer or servant under the control of any local marine board, are required to be open to the inspection of the Board of Trade and their officers. The Board of Trade has also authority to temporarily take over the functions of a local marine board in case,

through certain circumstances, it should fail to meet or to discharge its duties. And if, on complaint being made to the Board of Trade, it appears to them that at any port any appointments or arrangements made by the local marine board are not such as to meet the wants of the port, or are in any respect unsatisfactory or improper, the Board may annul, alter, or rectify them as they think expedient, having regard to the intention of the Merchant Shipping Act and to the wants of the port.

Constitution.—*Elections.*—A local marine board consists of the following members, viz.: (*a*) The mayor or provost and the stipendiary magistrate, or such of the mayors or provosts and stipendiary magistrates of the place (if more than one) as the Board of Trade appoint; (*b*) Four members appointed by the Board of Trade from among persons residing or having places of business at the port or within seven miles thereof; (*c*) Six members elected by the owners of such foreign-going ships and home trade passenger ships as are registered at the port. The election is held on the 25th January in every third year, calculated from January 1896, and the appointments are made within one month after the elections. Upon the conclusion of that month, and the constitution of a new board, the functions of the then existing board cease, and the board, consisting of the members then newly elected and appointed, takes its place. A casual vacancy happening in the intervals between the general elections and appointments, by death, resignation, disqualification, or otherwise, is filled up within one month after it happens; and every person elected or appointed to fill a casual vacancy continues a member until the next constitution of the new board. The mayor or provost fixes the place and mode of conducting elections, and also, in the case of casual vacancies, the day of election, and must give at least ten days' notice thereof. The Board of Trade may decide any question raised concerning any election.

Registry and votes of electors.—Owners of foreign-going ships and of home trade passenger ships registered at the port have votes at the election as follows, namely: Every registered owner of not less than 2.50 tons in the whole of such shipping has at every election one vote for each member for every 2.50 tons owned by him, so that his votes for any one member do not exceed ten. The qualification of electors is ascertained as follows: -(*a*) In the case of a ship registered in the name of one person that person will be deemed to be the owner; (*b*) In the case of a ship registered in distinct and several shares in the names of more persons than one the tonnage is apportioned among them as nearly as possible in proportion to their respective shares, and each of them is deemed the owner of the tonnage so apportioned to him; (*c*) In the case of a ship or shares of a ship registered jointly without severance of interest in the names of more persons than one the tonnage will, if sufficient either alone or together with other tonnage, if any, owned by the joint owners, to give a qualification to each of them, be apportioned equally between or among the joint owners, and each of them will be deemed the owner of the equal share so apportioned to him; but if it is not so sufficient the whole of the tonnage will be deemed to be owned by such one of the joint owners resident or having a place of business at the port, or within seven miles thereof as is first named on the register; (*d*) In making such an apportionment any portion of the tonnage may be struck off so as to produce a divisible amount; (*e*) The whole amount of tonnage so owned by each person, whether in ships or shares of or interests in ships, is added together, and if sufficient will constitute his qualification. The chief officer of customs in the port, with the assistance of the Registrar-General of Shipping and Seamen, makes

out an alphabetical list of the persons entitled to vote at the election. This list is made out on or before the 25th December in every third year, calculated from the year 1895. It contains the name and residence of each person, and the number of votes to which he is entitled. It is signed by the Chief Officer, and copies thereof are fixed by him on or near the doors of the custom house of the port for two entire weeks next after the list has been made; and he must himself keep two copies, and permit them to be perused by any one, without payment, at all reasonable hours during those two weeks. The mayor or provost of the port, at least twenty days before the 25th January in every third year calculated from the year 1896, must nominate two justices of the peace to fill the office of "revisors" and to revise the list. These revisors, between the 8th and 15th January both inclusive, in the year in which they are nominated, revise the list at the custom house of the port, or in some convenient place near thereto, to be hired, if necessary, by the Chief Officer; and they must give three clear days' notice of the revision by advertising it in some local newspaper, and by affixing a notice thereof on or near to the doors of the custom house. They make the revision by inserting in the list the name of every person who claims to have his name inserted therein and gives proof to their satisfaction of his right to have his name so inserted; and by striking out therefrom the name of every person to the insertion of whose name an objection is made by any other person named in the list, who gives proof satisfactory to the revisors that the name objected to ought not to have been inserted therein; their decision with respect to every such claim or objection is conclusive. Immediately after the revision they must sign their names at the foot of the list so revised. This list, so revised, is the register of voters at elections for three years from the 25th January then next ensuing inclusive to the 24th January inclusive in the third succeeding year. The revised list is then delivered to the mayor or provost, who, if necessary, has it printed, and delivers a copy to every voter who applies for one. The Chief Officer, if required, for the assistance of the revisors in revising the list, produces to them the books containing the register of ships registered at the port; and the Registrar-General of Shipping and Seamen, if required, must also produce or transmit to them such certified extracts or returns from the books in his custody as may be necessary for the same purpose. The revisors must certify the expenses properly incurred by the Chief Officer in making and printing the list and in its revision, and the Board of Trade pays them, and also all the expenses properly incurred by the mayor or provost in printing the list, or in any election; and the Board of Trade may disallow any items of any of those expenses in their opinion improperly incurred. Every person whose name appears on the revised list, and no other person, is qualified to vote at the election on the 25th January next after the revision, and at any election for a casual vacancy held at any time between that day and the next ordinary triennial election.

Qualification of members.—Every male person who, according to the revised list, is entitled to vote, is qualified to be elected a member, and no other person can be so qualified; and if any person elected ceases after election to be an owner of such quantity of tonnage as would entitle him to a vote he can no longer continue to act or be considered a member, and thereupon another member must be elected in his place.

Corporations.—A corporation owning a ship is entitled to be registered in like manner as an individual, with the substitution of the office of the corporation for the residence of the individual. The vote of such corporation is given by some person whom the corporation may appoint in that behalf, and that person is

qualified to be elected a member, and if the corporation ceases after his election to be an owner of such quantity of tonnage as entitles the corporation to be registered as a voter, that person ceases to be a member, and another member must be elected in his place.

LOCOMOTIVES ON HIGHWAYS are the subject of three statutes known as the Locomotives Acts, 1861, 1865, 1898 and also the Highways and Locomotives (Amendment) Act, 1878. The special legislation relating to motor cars and LIGHT LOCOMOTIVES is referred to in another article. Only those road locomotives which do not come within the definition of a light locomotive call for attention here. *Construction.*—It is illegal to use a locomotive on a highway unless it is constructed in accordance with the provisions contained in the Act of 1878. These provisions are to the following effect:—(1) A locomotive not drawing a carriage, and not exceeding in weight three tons, must have the tyres of its wheels not less than three inches in width, with an additional inch for every ton or fraction of a ton above the first three tons; and (2) one drawing a waggon or carriage must have the tyres of the driving-wheels thereof not less than two inches in width for every ton in weight of the locomotive, unless the diameter of the wheels exceeds five feet, when the width of the tyres may be reduced in the same proportion as the diameter of the wheels is increased, but in such case the width of the tyres is not to be less than fourteen inches; and (3) a locomotive must not exceed nine feet in width or fourteen tons in weight, except with the consent of the local borough or county authority; and (4) the driving-wheels of a locomotive should be cylindrical and smooth-soled, or shod with diagonal cross-bars of not less than three inches in width nor more than three-quarters of an inch in thickness, extending the full breadth of the tyre, and the space intervening between each cross-bar must not exceed three inches. The owner of a locomotive used contrary to the foregoing provisions is liable to a fine of £5 for each offence. But if he only uses it contrary to provision (2) he will not be guilty of the offence if he can prove that the locomotive was constructed before the 16th August 1878, and that the tyres of its wheels are not less than nine inches in width. Under a penalty of £5 a steam locomotive must be so constructed as to consume, so far as practicable, its own smoke; and, subject to another penalty, there must be conspicuously affixed to every locomotive its weight and the name and address of its owner.

Licences.—As a general rule every locomotive is required to be licensed by a county council. But agricultural locomotives are excluded from the operation of this rule; and so also are locomotives not used for haulage purposes, steam-rollers, and locomotives belonging to a road authority when used within their district. The licence is an annual one, from the date on which it is granted, and should be taken out in the county in which the locomotive is at the time ordinarily used or intended to be used. For granting a licence the council may charge a fee not exceeding £10 if the weight of the locomotive (exclusive of water and coal) is not more than ten tons, with an addition not exceeding £2 for every ton or fraction of a ton by which that weight exceeds ten tons. And on granting it the council must provide the licensee with a licence-plate, having marked on it the date and number of the licence and the name of the licensing council. This licence must be conspicuously affixed to

the locomotive and so kept whilst it remains in force. It may, with the consent of the licensing council, be transferred from one locomotive to another belonging to the same owner. An additional licence must be taken out for each county in which the locomotive is used. A fee of 2s. 6d. per day is payable to the council of a county on the highway of which is used an unlicensed locomotive. A fine of £10 is payable, on summary conviction, by any one who (*a*) uses on a highway a locomotive which is required to be, but is not, duly licensed; or (*b*) uses a locomotive on a highway in a county in which the locomotive is not licensed without payment of the above-mentioned fee; or (*c*) fails to duly affix the licence-plate to a locomotive, or removes it without the consent of the council.

Registration.—Agricultural locomotives and steam-rollers are not required to be licensed, but they must be registered. The registration should be in the county in which they are ordinarily used or intended to be used, and the registering authority is the county council. A fee not exceeding 2s. 6d. can be charged for this registration, and on registration the council must provide the registered person with a plate with the registered number upon it. This plate should be conspicuously affixed to the locomotive, and the owner is under similar obligations to the two—(*a*) and (*b*)—enumerated above with regard to licences. The fine, however, cannot exceed £5. The provisions of section 6 of the Act of 1865 are of some interest in connection with the use of agricultural locomotives. The effect of this section is that, notwithstanding any Act to the contrary, nothing shall prohibit the use of a locomotive steam-engine for the purpose of ploughing within twenty-five yards from a roadway, provided some one is stationed in the road, and employed to signal the driver when it is necessary to stop, and to assist horses, and carriages drawn by horses, passing the engine, "and provided the driver of the engine do stop in proper time."

Weight to be carried.—No waggon drawn or propelled by a locomotive and having cylindrical wheels, can carry over and above its own weight any greater weight than 1½ tons for each pair of wheels, unless the fellies, tyres, or shoes are 4 inches or more in breadth; nor a greater weight than 2 tons for each pair of wheels, unless the fellies, tyres, or shoes are 6 inches or more in breadth; nor a greater weight than 3 tons for each pair of wheels, unless the fellies, tyres, or shoes are 8 inches or more in breadth. For every single wheel there can be carried only one-half of that permitted to be carried on a pair of wheels. In no case can there be carried a greater weight than 4 tons on each pair of wheels, or 2 tons on each wheel. If, however, the waggon is built with springs upon each axle, then it may carry one-sixth more weight in addition to the above-mentioned weights upon each pair of wheels. But a borough council as regards roads in its borough, and a county council as regards roads in its county have power to permit such a waggon to carry weights in excess of those above-mentioned. The Act of 1898 imposes a fine of £10 upon any one who uses a waggon in contravention to the above regulations, and upon its owner who permits it to be so used. And it is important to notice that the same Act exempts from the operation of those regulations a waggon carrying only one block, plate, cable, roll, vessel of stone or metal, or other single article, being of greater weight than 16 tons; but the fellies, tyres, or shoes must not be less than

8 inches in breadth. The unloaded weight of every waggon drawn or propelled by a locomotive must be conspicuously and legibly affixed thereon, under a penalty of £5. For affixing an incorrect weight the penalty is £10. No locomotive can be used on a highway to draw more than three loaded waggons (exclusive of a waggon solely used for carrying water for the locomotive) unless by the consent of the local authority; any one using it in defiance of this prohibition, or its owner permitting it to be so used, is liable to a fine of £10. A road authority can require a travelling locomotive and waggons to be brought to a weighing-machine to be weighed. And it is provided that the road authority making such requirement must pay for any loss caused by the delay (to be ascertained by arbitration, under the Arbitration Act, in case of dispute) if the weight is found to be within the limits prescribed by the law; and that any person in charge of a locomotive who refuses or neglects to comply with any such requirement will be liable, for each offence, to a fine of £10. Upon such a weighing a certificate of weight must be given, and this will exempt the locomotive and waggons from being weighed during the continuance of that journey.

Regulations for locomotion.—A locomotive propelled by steam or any other than animal power on a road or public highway, is bound to be worked according to the following rules and regulations, viz.:—(1) The driver must give as much space as possible for the passing of other traffic; (2) The whistle of the locomotive is not to be sounded for any cause whatever; nor are cylinder taps to be opened within sight of any person riding, driving, leading, or in charge of a horse upon the road; nor is the steam to be allowed to attain a pressure such as to exceed the limit fixed by the safety-valve, so that no steam blows off when the locomotive is upon the road; (3) The locomotive must be instantly stopped on the person preceding it, or any other person with a horse, or carriage drawn by a horse, putting up his hand as a signal to require its stoppage; (4) Any person in charge of the locomotive must provide two efficient lights, to be fixed conspicuously, one at each side on its front; (5) When the locomotive is travelling over a highway—(*a*) two persons must be employed in driving or attending to it; and (*b*) in the case of a locomotive not a steam-roller, another person must be employed to accompany it, in such a manner as to be able to give assistance to any one with horses or carriages drawn by horses meeting or overtaking the locomotive, and must give such assistance when required; and (*c*) when the locomotive is drawing more than three waggons, another person must be employed for the purpose of attending to the waggons. It is not necessary, however, in the case of two locomotive plough engines (including their necessary gear) closely following one another, to employ more than five persons in all, but one of these persons must accompany the engines and give assistance in the above-mentioned manner; (6) So long as the fires of the locomotive are alight, or it contains in itself sufficient motive power to move, one person must remain in attendance whilst it is on a highway although it is stationary; (7) The lights required to be carried on the locomotive, whether stationary or passing on any highway, are to be carried between the hours of one hour after sunset and one hour before sunrise during the six months beginning the first day of April in any year, and between sunset and sunrise during the six months beginning the first day of October in any year, and there must be carried in addition during those hours an efficient red light on the rear of the locomotive, or if drawing waggons, on the rear of the last waggon, fixed in such a manner as to be conspicuous; (8) Every light carried on the locomotive, or on a waggon drawn by it, must be fitted

with such shutters or other contrivances as will enable the light to be temporarily obscured in an effective manner. If any of the foregoing regulations are not complied with in the case of any locomotive, its owner is liable for each offence, on summary conviction, to a fine not exceeding £10.

Generally.—The Council of a county and of a borough containing a population of 10,000 may by bye-law prohibit, restrict, or regulate the use of locomotives on their roads. But in a case of absolute prohibition they are bound to give a special authority for the use of a locomotive on a highway where it appears necessary for the delivery of goods or for any other particular purpose. The owner of a locomotive can exempt himself from a fine if the offence has been committed by his employee and the latter is convicted. Nothing in these Acts is to be taken as authorising any one to use upon a highway a locomotive which shall be so constructed or used as to cause a public or private nuisance. The owner of a locomotive is liable to the road authorities for any damage done to the roads by reason of the extraordinary nature of its traffic.

LODGER.—A lodger may be defined as one who inhabits a portion of a house of which, including the lodger's portion, another person has the general possession and custody. This definition meets the case of the lodger as generally understood by that term. He has the use of a room or rooms in the house of another, who is generally called the landlord, and the latter not only has a dominating possession and control of the house generally, and the means of ingress and egress, but he also retains a particular possession and control of the lodger's portion thereof, such possession and control being particularly noticeable in connection with the cleaning and attendance. And this possession and control by the landlord of a lodger's rooms may even exist where the lodger has his own servants and requires no attention from the landlord. And still more so may it exist where the lodger's personal portion of the house is very limited, and perhaps varies from time to time, and the lodger boards and lives with his landlord, as in a boarding-house. A lodger within the meaning of the above definition is therefore not strictly speaking a tenant, nor is his so-called landlord, strictly speaking, a landlord in the eyes of the law. A lodger is merely a licensee, and the landlord is his licensor. This is so because there is no demise or letting of the entire possession and control of the part of the premises occupied by the lodger. The lodger has simply a right to use them. It results therefore that the relationship of landlord and tenant does not really exist between the parties, and that the landlord cannot distrain upon his lodger's goods for rent in arrear; and neither party is bound to give to the other the same notice to quit as would be necessary in the case of a regular letting. As a matter of practice, however, a reasonable notice to quit should be given; in the case of a weekly lodging, at least a few days according to circumstances. The legal position of a lodger of the class just considered has been noticed by Mr. Justice Blackburn, in *Allan* v. *Liverpool*, in the following terms: "A lodger in a house, although he has the exclusive use of rooms in the house, in the sense that nobody else is to be there, and though his goods are stored there, yet he is not in exclusive occupation in that sense, because his landlord is there for the purpose of being able, as landlords commonly do in the case of lodgings, to have his own servants to look after the house and the furniture,

and has retained to himself the occupation, though he has agreed to give the exclusive enjoyment of that occupation to the lodger." Such a lodger could not therefore bring an action of ejectment or trespass, because the maintenance of such an action depends upon possession, which, strictly speaking, he has not got.

Another class of lodger is comprised of those who rent apartments. But here the lodger is usually a tenant, and the relationship of landlord and tenant is created, for there is a demise or letting to the lodger of the apartments. Yet the tenant may be merely a lodger, for the landlord may retain the dominating control of the house in which the apartments are situate; and this may be so retained even though the tenant has a key of the front door and so some control over the means of ingress and egress. And the advantage of being a lodger in such a case is that the landlord, and not the lodger, is liable to be rated to the poor rate. This rate is imposed by statute upon the occupier, and that occupier must be the exclusive occupier, a person who, if there were a trespass committed on the premises, would be the person to bring an action of trespass for it. "Where the owner of a house," said Mr. Justice Maule, in *Toms* v. *Luckett*, "takes in a person to reside in part of it, though such person has the exclusive possession of the rooms appropriated to him, and the uncontrolled right of ingress and egress, yet, if the owner retains his character of master of the house, the individual so occupying a part of the house occupies it as a lodger only, and not as a tenant, the question depending upon whether or not the owner of the house resides upon the premises, retaining his quality of master, and reserving to himself the general control and dominion over the whole."

When a person hires a furnished house the law implies a warranty on the part of the landlord that the house is fit to live in *at the time of the hiring*—a warranty which is not implied in the case of an unfurnished house. *Sarson* v. *Roberts* was an action brought by a gentleman, who took furnished lodgings of the defendant, to recover damages on the ground that the house became unfit for occupation by reason of an outbreak of scarlet fever during the tenancy. This case is of importance as recognising a like implied warranty on the letting of furnished lodgings as on the letting of furnished houses, but, consistently therewith, it decided that on the letting of furnished lodgings there is no implied agreement that the lodgings shall *continue fit* for habitation during the term. It was unsuccessfully argued, however, that supposing no such condition as the latter can be implied, still there was a duty on the part of the landlord to communicate with the lodger so as to give him an opportunity of leaving when the lodgings became unsanitary. "No doubt," said Lord-Justice Kay, "this would be a very proper thing to do, but we have to find whether there is a legal duty to do it. It is impossible to infer such a duty from the mere relation of landlord and tenant, for the former may be far away and unacquainted with what is occurring." It was also said in that case that the landlord had supplied the tenant with attendance; but the Court found it impossible to imply the duty from that fact simply. In this connection the following remarks of Lord-Justice Kay on the warranty implied on the letting of a furnished house may have some interest:—

I have no wish to add to the number of cases in which that which is not expressed in a contract is said by a court of law to be implied. The cases have

gone to this extent, that when a person hires a furnished house there is an implied condition that it shall be fit to live in at the time of the hiring. It is easy to see how that comes about, because the landlord, knowing the purpose of the tenant in hiring the house, must be taken to warrant that the house he is letting shall be reasonably fit for the purpose for which it is hired. To extend this warranty so as to make it apply to the condition of the house during the tenancy is not, to my mind, reasonable. It is no defence on the part of the landlord to an action for breach of the condition that he did not know that the premises were otherwise than fit for occupation, because he could ascertain, and ought to have known. If the condition is extended so as to apply if the premises become insanitary during the term, the landlord would be in a different position. He may be at a distance and know nothing as to the state of the house, or it may become insanitary from causes over which he has no power or control. The rule at its best is extremely artificial, because it does not extend to unfurnished lodgings.

But only under certain conditions is it lawful to let houses and lodgings which have been occupied by any one suffering from an infectious disorder; and there is also special statutory provision against a person, when letting such premises, making a false statement relating to a disorder of that class. The Public Health Act, 1875, is the authority for this, the relevant sections being 128 and 129. Under the former section a penalty of £20 is imposed upon any one who knowingly lets for hire a house, room, or part of a house in which some one has been suffering from a dangerous infectious disorder, without having previously disinfected the house, room, or part of the house, and all articles therein liable to infection. A disinfection will not be sufficient unless done to the satisfaction of a medical man, and he has testified his satisfaction by a certificate signed by him personally. A shelter, of the class of those of the Salvation Army, does not come within the scope of the section, if the inmates are merely allowed to lie down there for a certain price. In such a case there is no letting for hire. But an innkeeper does come within the section. A like penalty to the above, but with an alternative liability to one month's hard labour, is imposed by section 129 upon any one who, when letting for hire or showing for the purpose of letting for hire a house or part of a house, knowingly makes a false answer on being questioned by the party negotiating for the hire as to the fact of there being, or within six weeks having previously been, therein, a person suffering from a dangerous infectious disorder. The word "knowingly" marks the essential element in this offence.

Stealing by lodger.—The Larceny Act, 1861, has a special provision relating to larceny by tenants or lodgers. If the property stolen exceeds the value of £5, the thief is liable to penal servitude, under that amount the punishment being imprisonment. The offence is committed by "whosoever shall steal any chattel or fixture let to be used by him or her in or with any house or lodging." It is immaterial whether the contract of letting has been entered into by the person charged, or by "him or her or by her husband, or by any person on behalf of him or her or her husband." Males under sixteen years of age may be whipped.

Lodgers' Goods Protection Act.—By the first section of this statute it is provided that, if any superior landlord levies or authorises to be levied a distress

on any furniture, goods, or chattels of any lodger for arrears of rent due to that superior landlord by his immediate tenant, the lodger may serve the superior landlord, or the bailiff or other person employed by him to levy the distress, with a declaration in writing, setting forth that the immediate tenant has no right of property or beneficial interest in the furniture, goods, or chattels so distrained or threatened to be distrained upon, and that the furniture, goods, or chattels are the property or in the lawful possession of the lodger; and also setting forth whether any and what rent is due, and for what period, from the lodger to his immediate landlord; and the lodger may pay to the superior landlord, or to the bailiff or other person employed by him as foresaid, the rent, if any, so due as last aforesaid, or so much thereof as will be sufficient to discharge the claim of the superior landlord. And to this declaration must be annexed a correct inventory, signed by the lodger, of the furniture, goods, and chattels referred to in the declaration; and if any lodger makes or subscribes such a declaration and inventory, knowing the same, or either of them, to be untrue in any material particular, he will be deemed guilty of a misdemeanour. The second section provides that: If any superior landlord, or any bailiff or other person employed by him, after being served with the before-mentioned declaration and inventory, and after the lodger has paid or tendered to the superior landlord, bailiff, or other person the rent, if any, which by the last preceding section the lodger is authorised to pay, shall levy or proceed with a distress on the furniture, goods, or chattels of the lodger, the superior landlord, bailiff, or other person will be deemed guilty of an illegal distress, and the lodger may apply to a justice of the peace for an order for the restoration to him of his goods; and this application shall be heard before a stipendiary magistrate, or before two justices in places where there is no stipendiary magistrate, and the magistrate or justices must inquire into the truth of the declaration and inventory, and make such order for the recovery of the goods or otherwise as to him or them may seem just, and the superior landlord will also be liable to an action at law at the suit of the lodger, in which action the truth of the declaration and inventory may likewise be inquired into. The third section provides that: Any payment made by a lodger pursuant to the first section of the Act, shall be deemed a valid payment on account of any rent due from him to his immediate landlord.

After the passing of this Act there was for some time a considerable difficulty in determining *who is a lodger* within its meaning. In the case of *Phillips* v. *Henson* it was held that though the tenancy agreement might make the lodger an "under-tenant," he need be none the less a lodger entitled to the protection of the statute. There the lodger hired substantially the whole house, his immediate landlord only retaining possession of the housekeeper's room on the basement and of two or three empty attics and a stable. The most important object of the Act is to protect persons living in houses, not under contracts with the superior landlord, "but making," to repeat the words of Mr. Justice Grove, "subordinate bargains with those who hold under him, from having their goods seized to satisfy the claim of the [superior] landlord for rent due to him from his immediate tenant." This case was followed by *Ness* v. *Stephenson*, which laid it down that the relationship of landlord and lodger is a question of fact depending upon the circumstances of the particular case. Accordingly, if a landlord, reserving a room in a house, lets the rest of it to another person, but retains such control and dominion over it as is usually retained by masters of houses let in lodgings, the relation of landlord and "lodger" may exist between the

parties within the meaning of the Act.* And it may so exist even though the lodger has the right of exclusively occupying the greater part of the premises, and has separate and uncontrolled power of ingress and egress, and neither his immediate landlord nor the latter's agent sleeps or resides in the house, and the lodger acts as caretaker of the part reserved. If, however, the occupation of the subtenant is for business purposes only, he will not be a "lodger" within the meaning of the Act. This was decided in *Heawood* v. *Bone*, where the subtenant occupied the first floor and basement of premises at a yearly rent, carrying on the business of a publisher there, but sleeping and residing elsewhere. He had no key of the outer door, which was under the control of his immediate landlord, who admitted him every morning. In deciding the case Mr. Justice Mathew adopted the popular opinion of the word "lodger," that he is a person who lives and sleeps in a particular place. "Were the argument for the appellant adopted," said his lordship, "it is difficult to see how the definition could stop short of including barristers, stockbrokers, accountants, shopkeepers, and all persons who occupied rooms for business purposes. I think it would be an inaccurate use of language to call them lodgers." *The declaration.*—In *ex parte Harris* it was contended that a declaration under the Act made by a lodger was insufficient, because it did not state that the declarant was a lodger, and whether or no any rent was due from the lodger to his immediate landlord, though no such rent was in fact due. But the declaration was held to be sufficient, for the Act does not require the declarant to state that he is a lodger, and the fact that nothing being stated about the rent should import that none was due. The declaration must be made after the distress has been levied; it is not sufficient that one has been made under a previous and distinct distress (*Thwaites* v. *Wilding*). In the case of *Sharpe* v. *Fowle* it was held that a lodger has a right of action against the superior landlord if the latter sells his goods under a distress before the expiration of the statutory five clear days. *Votes.*—Any person who occupies an unfurnished lodging of the annual value of £10 is entitled to a parliamentary vote; and so also any one who occupies a furnished lodging of at least 5s. per week. A lodger does not lose his vote by merely changing his rooms within the same house; but he does so if he is at any time absent therefrom for a longer period than four months. A son may be a lodger in his father's house provided he is of full age and occupies a separate room. *See* BOARDING HOUSE; and DISTRESS, in the body of this work and also in Appendix.

LOG-BOOK is a book in which is entered the daily progress of a ship at sea, with notes on the weather and incidents of the voyage. One log, called the official log, must be kept in every ship, except ships employed exclusively in trading between ports on the coast of Scotland, in the appropriate form for that ship approved by the Board of Trade. Different forms are approved for different classes of ships. This official log may, at the discretion of the master or owner, be kept distinct from or united with the ordinary ship's log, but in all cases the spaces in the official log-book are bound to be properly filled up. An entry duly made in the official log is admissible in evidence in a court of law. Such an entry should be made as soon as

* Too much stress cannot be laid upon the fact that this Act must be considered as repealed wherever and so far as the Law of Distress Amendment Act, 1908 (set out in the article on DISTRESS in the Appendix to Vol. II.), applies.

possible after the occurrence to which it relates; and if not made on the same day as that occurrence it should be made and dated so as to show the date of the occurrence and of the entry respecting it; and if made in respect of an occurrence happening before the arrival of the ship at her final port of discharge it should not be made more than twenty-four hours after that arrival. Every entry must be signed by the master and by the mate, or some other of the crew, and also (*a*) if it is an entry of illness, injury, or death, should be signed by the surgeon or medical practitioner on board (if any); and (*b*) if it is an entry of wages due to, or of the sale of the effects of, a seaman or apprentice who dies, must be signed by the mate and by some member of the crew besides the master; and (*c*) if it is an entry of wages due to a seaman who enters his Majesty's naval service, should be signed by the seaman or by the officer authorised to receive the seaman into that service. The master of the ship is bound to see that entries are duly made of the following matters:—(1) Every conviction by a legal tribunal of a member of his crew, and the punishment inflicted; (2) every offence committed by a member of his crew for which it is intended to prosecute, or to enforce a forfeiture, or to exact a fine, together with such statement concerning the copy or reading over of that entry, and concerning the reply (if any) made to the charge, as is required by the Merchant Shipping Act; (3) every offence for which punishment is inflicted on board, and the punishment inflicted; (4) a statement of the conduct, character, and qualifications of each of his crew, or a statement that he declines to give an opinion on these particulars; (5) every case of illness or injury happening to a member of the crew, with the nature thereof, and the medical treatment adopted (if any); (6) every marriage taking place on board, with the names and ages of the parties; (7) the name of every seaman or apprentice who ceases to be a member of the crew, otherwise than by death, with the place, time, manner, and cause thereof; (8) the wages due to any seaman who enters his Majesty's naval service during the voyage; (9) the wages due to any seaman or apprentice who dies during the voyage, and the gross amount of all deductions to be made therefrom; (10) the sale of the effects of any seaman or apprentice who dies during the voyage, including a statement of each article sold and the sum received for it; (11) every collision with any other ship, and the circumstances under which the same occurred; and (12) any other matter directed by the Act to be entered; and boat drill and examination of life-saving appliances. The master of a ship incurs a fine of £5 for not properly keeping his official log-book, or if any entry required to be made therein is not made at the time and in the manner prescribed by the law. "If any person makes, or procures to be made, or assists in making any entry in an official log-book in respect of any occurrence happening previously to the arrival of the ship at her final port of discharge more than twenty-four hours after that arrival, he shall for each offence be liable to a fine not exceeding £30. If any person wilfully destroys or mutilates or renders illegible any entry in an official log-book, or wilfully makes or procures to be made or assists in making a false or fraudulent entry in or omission from an official log-book, he shall in respect of each offence be guilty of a misdemeanour." The master of a foreign-going ship, within forty-eight hours after the ship's arrival at her final port of destination in the United Kingdom, or upon the discharge of the crew, whichever first happens, must deliver the official log-book of the voyage to

the superintendent of the mercantile marine office where the crew is discharged. And the master or owner of a home-trade ship for which an official log is required must, within twenty-one days of the 30th June and the 31st December in every year, deliver the book for the preceding half-year to some superintendent in the United Kingdom. The official log must be sent home in the case of a transfer of the ship, and in the event of a loss.

LUGGAGE.—Passengers' BAGGAGE.—This is always the object of most careful regard by the Customs-house officers. And this is not so much to force the *bonâ fide* passenger into the payment of some small duty in respect of an article more or less innocently smuggled, as to outwit the manœuvres of the regular passenger to and from the United Kingdom whose journeys are part of a system of the evasion of Customs duties. The following sections of the Customs Consolidation Act, 1876, are important to the traveller.

66. *Forfeiture of goods concealed in packages or delivered without entry.*—If any goods or other things are found concealed in any way or packed in any package or parcel to deceive the officers, such package or parcel, and all the contents thereof shall be forfeited; and if any goods are taken or delivered out of any ship or warehouse, not having been duly entered, they will be forfeited. But no "entry" is required in respect of the baggage of passengers which can be examined, landed, and delivered under such regulations as the Commissioners of Customs may direct; if, however, any prohibited or uncustomed goods are found concealed therein, either before or after landing, the same will be forfeited, together with everything packed therewith.

67. *Penalty on fraudulent import entries and concealments.*—If any person imports, or causes to be imported, goods of one denomination concealed in packages of goods of any other denomination, or any package containing goods not corresponding with the entry thereof, or directly or indirectly imports or causes to be imported or entered any package of goods of one denomination which is afterwards discovered, either before or after delivery thereof, to contain other goods or goods subject to a higher rate or other amount of duty than those of the denomination by which such package or the goods in such package were entered, such package, and the goods therein, will be forfeited. Such person will forfeit for every offence a penalty of £100, or treble the value of the goods contained in the package, at the election of the Commissioners of Customs.

184. *Persons may be searched.*—Any officer of Customs employed in the prevention of smuggling may search any person on board any ship or boat within the limits of any port in the United Kingdom or the Channel Islands, *or any person who shall have landed from any ship or boat.* Before proceeding to a search, the officer must have good reason to suppose that such person is carrying or has any uncustomed or prohibited goods about his person.

185. *Before search.*—Before any person is searched he can require to be taken with all reasonable despatch before a justice, or before the collector or other superior officer of Customs, who, if he sees no reasonable cause for search, must discharge the person. If otherwise, he can direct the person to be searched; and if a female she is not to be searched by any other than a female. If any officer, without reasonable ground, causes any person to be searched, that officer will forfeit and pay a sum not exceeding £10. If any passenger or other person on board any such ship or boat, or who may have landed therefrom, shall, upon being questioned by any Customs officer whether he has any foreign goods upon his person or in his baggage, deny the same, and

any such goods shall after such denial be discovered to be or to have been upon his person or in his possession or in his baggage, such goods shall be forfeited, and such person shall forfeit £100, or treble the value of the goods, at the election of the Commissioners of Customs.

The Customs authorities generally exercise this right of search with great discretion, and, as far as possible, they search in co-operation with the police. It is not the duty of the Customs officers to unpack the traveller's baggage, and consequently, if they do it, it is done for the convenience of the traveller, and the Customs authorities incur no responsibility for damage. Strictly speaking the traveller should himself unpack, so far as unpacking is necessary, and place his baggage ready for inspection. Merchandise should never be carried as luggage by any person who is going in or out of the country. This is prohibited, because merchandise must be entered and reported, even though it is free from duty. A fine rising in amount from 10s., according to the value of the goods, is incurred by the traveller who contravenes this prohibition. Strictly, the merchandise is liable to forfeiture. If the whole quantity is duly produced to the officers at one time, and no part is found concealed, a passenger is allowed, in the United Kingdom, to include in his baggage, free from duty, half lb. of cigars and manufactured tobacco, half pint of ordinary drinkable spirits, and half pint of cordials or perfumed spirits. Persons coming from the Channel Islands are only allowed one-half of these quantities. *See* SAMPLES; SMUGGLING.

LUNACY.—There is no general definition of lunacy which holds equally in law and in medicine. In law the term may include temporary or permanent insanity, mental derangement, and delirium tremens, and it may even also include idiocy. So far as a general definition is possible, lunacy may be described as the condition of an individual who has departed from the states of feeling and modes of thinking general to the community to which he belongs, and usually enjoyed by the normal individual in health who is a member of that community. Shortly, a lunatic is an individual the operation of whose mind is abnormal. Insanity is perhaps the best general word to use as opposed to idiocy. In medicine, insanity has to do with a prolonged departure of the individual from his natural mental state arising from bodily disease. In law insanity covers nothing more than the relation of the person to the particular act which is the subject of judicial investigation. "The legal problem must resolve itself into the inquiry, whether there was mental capacity and moral freedom to do or abstain from doing the particular act." In England the jurisdiction over lunatics and the custody and control of their property has always been a prerogative of the crown, and it is as the administrator of that prerogative that the Lord Chancellor is the supreme authority in matters relating to lunatics. The law as to this is now contained in the Lunacy Acts, 1890 and 1891, and Rules made thereunder. These statutes and rules are exceedingly voluminous, but an attempt will be made in this article to give some idea of their nature, and afterwards to particularly notice the criminal and contractual responsibility of lunatics. Two classes of lunatics are generally distinguished, though in each class the person is said to be "of unsound mind." When he is so found by an inquiry, or inquisition, he is termed a person "of unsound mind so

found by inquisition;" and when he is one who is not so found he is termed a person "of unsound mind not so found by inquisition."

Judicial powers over person and estate of lunatics.—*The Judge in Lunacy.*—The Act of 1890 creates the office of a Judge in Lunacy. The jurisdiction of this judge is exercisable by the Lord Chancellor, acting either alone or jointly with any of the judges of the supreme court, or by any one of those judges as his deputy. He makes orders for the custody of lunatics so found by inquisition and the management of their estates. The costs of proceedings for ascertaining whether a person is lunatic can be ordered to be paid by the lunatic or alleged lunatic, or paid out of his estate. *Masters in Lunacy* are officials who execute commissions of inquiry and conduct inquiries connected with lunatics or their estates, and perform any other duties assigned to them by the judge. In each case of alleged lunacy a general commission of inquiry is directed to a Master, and he thereupon inquires into the facts of the particular case. He has power to administer oaths and summon witnesses, and every one so summoned is bound to attend as required by the summons. The *powers of the judge* are very extensive. They apply, so far as relates to management and administration, not only to lunatics so found by inquisition, but also to lunatics not so found, for the protection or administration of whose property an order was made before the commencement of the Act of 1890. They also apply to persons lawfully detained as lunatics, though not so found; and to any one not so detained and not found a lunatic by inquisition, with regard to whom it is proved to the judge that the person is, through mental infirmity arising from disease or age, incapable of managing his affairs. And the judge has a like power over a person who is proved, by affidavit or otherwise, to be of unsound mind and incapable of managing his affairs, so long as his property is not worth more than £2000, or his income exceed £100. A criminal lunatic is also subject to the jurisdiction of the judge in lunacy. These powers of the judge are exercised, according to his discretion, for the maintenance or benefit of the lunatic, or of him and his family, or where it is expedient for the management of the lunatic's property.

The *Committee* is the person appointed to be the trustee or administrator of the lunatic's estate, and to carry into effect the orders of the judge relating to the lunatic. Subject to the authority and direction of the judge a committee has very extensive powers. The judge can order—(*a*) payment of the lunatic's debts or engagements; (*b*) the discharge of any encumbrance on his property; (*c*) payment of any debt incurred for the lunatic's maintenance or otherwise for his benefit; and (*d*) payment of or provision for the expenses of his future maintenance. If the lunatic is a member of a partnership the judge can dissolve the partnership. Under the order of the judge a committee can—(*a*) sell any property belonging to the lunatic; (*b*) make exchange or effect a partition of any property belonging to the lunatic or in which he is interested, and give or receive money for equality of exchange or partition; (*c*) carry on the trade or business of the lunatic; (*d*) grant leases of the lunatic's property, for building, agricultural or other purposes; (*e*) grant leases of minerals forming part of the lunatic's property, whether the same have been already worked or not, and either with or without the surface or other land; (*f*) surrender leases and accept new ones; (*g*) accept a surrender of a lease and grant a new one; (*h*) execute any power of leasing vested in a lunatic whose estate is only a limited one; (*i*) perform any contract relating to the property of the lunatic entered into by the lunatic before his lunacy; (*j*) surrender, assign, or otherwise dispose of, with or without consideration, any onerous property belonging to the lunatic; (*k*) agree as to the patronage of augmented cures; (*l*) exercise any power or give

any consent required for the exercise of any power where the power is vested in the lunatic for his own benefit, or the power of consent is in the nature of a beneficial interest in the lunatic. A committee may also exercise any power vested in the lunatic in the character of trustee or guardian. *Temporary lunacies.*—If the unsoundness of mind of a lunatic so found by inquisition is in its nature temporary, and will probably be soon removed, the judge will order temporary provision to be made for his maintenance, and that of the members of his family dependent upon him. *Stocks and shares.*—Where a lunatic is entitled to any stock standing in his name the judge has power to transfer it to the committee, or to be otherwise dealt with. And so, where the lunatic is solely entitled to any stock or chose in action upon trust or by way of mortgage, the judge can vest it in some other person, and authorise the latter to receive the dividends or sue for the chose in action. That person may also be authorised to execute or receive a transfer. The person in whom the right to transfer or call for a transfer of any stock is vested, may execute and do all powers of attorney, assurances, and things to complete the transfer to himself or any other person according to the order of the judge. The Bank, and all other companies and their officers, and all other persons are bound to obey every such order according to its tenor. After notice in writing of such an order it is not lawful for the Bank or any other company to transfer any stock to which the order relates, or to pay any dividends thereon except in accordance with the order.

The *Commissioners in Lunacy* are a body of medical practitioners and barristers appointed by the Lord Chancellor, their principal duty being the licensing of houses for the reception of lunatics, the visitation and supervision of all lunatics in asylums, hospitals and licensed houses, and the making of regulations. At the expiration of every six months they are required to report to the Lord Chancellor the number of visits they have made and the number of patients they have seen. And in the month of June in every year they must specially report as to the condition of the institutions for lunatics, and other places visited by them, and of the care of the patients therein, with such other particulars as they think deserve notice. These reports are laid before Parliament. The *Chancery Visitors* are officials whose duty it is to visit lunatics so found by inquisition, to make inquiries and investigations as to their care and treatment and mental and bodily health and the arrangements for their maintenance and comfort. Every such lunatic must be personally visited and seen by one of the visitors twice at least in every year, and these visits should be so regulated that the interval between successive visits to each lunatic does not exceed eight months. But lunatic residents in a private house must be visited at least four times a year during the two years following the inquisition. The visitors must also visit persons alleged to be lunatics and report thereon. The *visits of the Commissioners* have certain definite objects in view. The scope of their inquiries generally is indicated by those they are required to make on their visits to lunatics in asylums. In such cases they must inquire :—(*a*) Whether the provisions of the law have been carried out; (i) As to the construction of the building; (ii) As to visitation; (iii) As to management; (iv) As to the regularity of the admission and discharge of patients: (*b*) Whether divine service is performed; (*c*) Whether any system of coercion is practised, and its result; (*d*) As to the classification of patients and the number of attendants on each class; (*e*) As to the occupation and amusements of the patients, and their effects; (*f*) As to the bodily and mental condition of the pauper patients when first admitted; (*g*) As to the dietary of pauper patients; and (*h*) As to such other matters as they think fit. *Lunatics in private families and charitable establishments.*—If it comes to the knowledge of the Commissioners that

any person is detained or treated without an order or certificates, by any person receiving no payment for the charge, they may order the latter to send periodical reports to them of the mental and bodily condition of the patient, with such other particulars as they require. They may at any time visit such a patient. Though they cannot discharge or remove him from the detention without the order of the Lord Chancellor, they can exercise all other powers over him in the same manner as if he were in an asylum.

Licensed houses.—Before granting a new licence the house must be inspected and approved by the Commissioners. The licences are granted by the Commissioners or by the local licensing justices according to their respective jurisdictions as defined by the Act of 1890. Certain conditions must be fulfilled in all cases. The licensee, or one of two or more licensees, must reside in the house; no addition or alteration can be made to the licensed house without consent; it is a misdemeanour to make an untrue statement in order to obtain a licence or its renewal; a copy of a justice's licence should be sent to the commissioners; in case of sickness, death, or incapacity of the licensee, the licence must be transferred; seven days' previous notice must be given in case of a change of house, unless the substitution is caused by fire or tempest; a penalty of £50 is incurred by a licensee who receives in his house any patients beyond the number specified in his licence, or fails to comply with the regulations of the licence as to the sex of the patients or the class of patients; detention of lunatics after expiration or revocation of a licence is a misdemeanour. Regulations are made by the Commissioners for the management of licensed houses. Plans of the house must be hung up therein; in every house licensed for one hundred patients, or more, a medical practitioner must reside there as the manager and medical officer; if licensed for less than one hundred but more than fifty patients, the house must be visited daily by a medical practitioner, unless it is kept by a medical practitioner or has one in residence: if licensed for less than fifty patients the visits of the medical practitioner need only be twice weekly. *Boarders.*—The manager of a licensed house may receive and lodge as a boarder any person who desires to voluntarily submit to treatment. But the written consent must be first obtained of the Commissioners or justices. After the expiration of the time for which the consent was given, unless extended, the patient must be discharged. With a like consent a relative or friend of the patient may be received and lodged as a boarder. The consent of the Commissioners or justices, as the case may be, is only given upon application to them by the intending boarder. A boarder may leave at any time after twenty-four hours' previous written notice to the manager; if the latter should detain the boarder after the expiration of the twenty-four hours he becomes liable to the patient for £10 damages for each day or part of the day of the wrongful detention. The total number of patients and boarders in a licensed house cannot, at any time, exceed the number of patients for which the house is licensed. If required, every boarder must be produced to the Commissioners on their visits.

Inquisition.—The Act of 1890 deals very fully with the judicial inquisition as to lunacy. The Act itself should be consulted for information as to the manner in which an inquisition is conducted. The Judge in Lunacy, upon application, can order an inquisition, whether a person is of unsound mind, and incapable of managing himself and his affairs. The person who is alleged to be of unsound mind must have due notice of the application, and he can demand that the inquiry be made before a jury. The judge must comply with this demand for a jury unless, after a personal examination, he considers that the alleged lunatic is not mentally competent to form and express a wish for a jury.

After Inquisition.—A lunatic so found by inquisition can be received in an institution for lunatics, or as a single patient upon an order signed by his committee. But the order must be accompanied by an office copy of the order appointing the committee. In cases where no committee has been appointed, the order for admission must be signed by a master.

Reception.—Generally speaking, a lunatic not so found by inquisition, unless he is a pauper, can be received and detained as a lunatic in a lunatic institution, or as a single patient, only under a reception order made by the properly constituted judicial authority. The "judicial authority" is either a magistrate specially appointed to act under the Lunacy Act, or the local County Court judge or stipendiary magistrate. No relative of the person applying for an order, or of the lunatic, or of the husband or wife of the lunatic, can make a reception order. It is obtained by making a private application by petition, accompanied by a statement of particulars and by two medical certificates on separate sheets of paper. The petition should be presented, if possible, by the husband or wife, or by a relative of the alleged lunatic. Should it not be possible to comply with this last rule, the petition should give the reason for the non-compliance; and it should also state the connection of the petitioner with the alleged lunatic, and the circumstances under which he presents it. Only a person of at least twenty-one years of age can present this petition; and he must have seen the alleged lunatic within fourteen days of the presentation. In the petition the petitioner is required to undertake that he will personally, or by special deputy, visit the patient at least once in every six months. Upon its presentation the judicial authority considers the statements therein made, and in the particulars, and the evidence of lunacy contained in the medical certificates, and whether he need personally see and examine the alleged lunatic. If he is satisfied that the order can properly be made at once, he can then make it. If he is not so satisfied, an early appointment must be made, not more than seven days after the presentation of the petition, for the consideration of the matter. Then he can make any further inquiries concerning the alleged lunatic he thinks necessary and even visit him. The proceedings on the petition are absolutely private. No one can be present on its consideration except the petitioner, the alleged lunatic (unless the judicial authority in his discretion otherwise orders), and one person appointed by the alleged lunatic for that purpose, and also the persons who have signed the certificates. By special leave, however, the judicial authority may allow others to be present. At the time appointed for the consideration of the petition the judicial authority may make an order thereon, or dismiss or adjourn it. If and when dismissed he is required to give a written statement of his reason for the dismissal, and to send a copy thereof to the Commissioners. Where a lunatic has been received as a private patient, under an order of a judicial authority, without a statement in the order that the patient has been personally seen by him, the patient can require to be taken before, or to be visited by some other independent judicial authority. The person who has charge of the lunatic must give him, within twenty-four hours of admission, a written notice of this right; and he must also ascertain whether he desires to exercise it, and, if he does, the person in charge is bound to arrange forthwith for the visit of that other judicial authority.

The manager of a lunatic institution or the person in charge of a single patient is guilty of a misdemeanour if he omits to perform any of the foregoing duties.

Urgency Orders.—In cases of urgency where it is expedient either for the welfare of a person (not a pauper) alleged to be a lunatic, or for the public safety, that the alleged lunatic shall be forthwith placed under care and treatment, he

may be received and detained in an institution for lunatics, or as a single patient, upon an urgency order made (if possible) by the husband or wife, or by a relative of the alleged lunatic, accompanied by one medical certificate. This order can be signed before or after the medical certificate. If not signed by the husband or wife, or by a relative, it should state the reason why, and should also give an account of the connection with the alleged lunatic of the person who signs it, and of the circumstances under which he signs. He must be of at least twenty-one years of age and have seen the lunatic within two days of so signing the order. An urgency order, which can be made either before or after the presentation of a petition, only remains in force for seven days from its date. But if a petition is pending, it remains in force until the petition is finally disposed of. A statement of particulars should be annexed to it.

Summary Reception Orders.—A justice who has authority in lunacy can visit any person not a pauper, and not wandering at large, upon information upon oath that he is deemed to be a lunatic, and is not under proper care and control, or is being cruelly treated or neglected by any relative or person having charge of him; and he may direct any two medical practitioners to visit and examine the alleged lunatic, and to certify their opinion as to his mental state. The lunatic, when so found, may be ordered by the justice to be received and detained in any institution for lunatics to which, if a pauper, he might be sent under the Act, and the constable or relieving officer upon whose information the order has been made, or any constable whom the justice may require so to do, must forthwith convey the lunatic to the institution named in the order. Pauper lunatics come within section 14, which provides that every medical officer of a union who has knowledge that a pauper resident within his district is, or is deemed to be, a lunatic, and a proper person to be sent to an asylum, must, within three days after obtaining such knowledge, give a written notice thereof to the district relieving officer, or if there is no such officer, then to an overseer of the parish where the pauper resides. Every such relieving officer or overseer who has knowledge, either by notice from a medical officer or otherwise, that any such pauper is deemed to be a lunatic, is required, within three days after obtaining such knowledge, to give notice thereof to a local justice, and the latter must order the relieving officer or overseer to bring the alleged lunatic before a justice within three days from the time at which he received the notice. Any one wandering at large, whether he is a pauper or not, may be apprehended by any constable, overseer, or relieving officer of the parish or district in which he is wandering, and be taken before a justice; but the officer who arrests him must first know that he is considered to be a lunatic. The justice before whom is brought a pauper alleged to be a lunatic, or an alleged wandering lunatic, is required to call in a medical practitioner and examine the alleged lunatic. If the justice considers the lunacy to be proved, and the medical practitioner gives a certificate of lunacy, the justice must direct the lunatic to be received and detained in a lunatic institution. Two or more Commissioners have power to visit a pauper, and if they consider him a lunatic to send him to an institution. *Requirements and Duration of Reception Orders.*—Sections 28 to 37 attach still further formalities to reception orders, and so tend to prevent any abuse of the lunacy law in the form of unwarranted detention and restraint of the person. For one thing, the medical certificate, upon which such a reception order is founded, must be signed by a duly qualified medical practitioner. It must also state the facts upon which he has given his certificate, distinguishing facts he has observed by himself from those communicated by others. It must also contain a statement that it is expedient for the public safety, or for the welfare of the alleged lunatic himself, that he should be placed under care and treatment,

with the reasons for such statements. A certificate so made is available for evidence as if it had been made on oath. A medical practitioner who signs any such certificate must have personally examined the alleged lunatic not more than seven clear days before the date of the presentation of the petition, or of the order if there is no petition. Where two doctors are required to certify, they must have separately examined the alleged lunatic. In the case of an urgency order the doctor must have made his personal examination not more than two clear days before the reception of the alleged lunatic. The certificate must not be signed by a doctor who is the petitioner, or the person signing the urgency order, or the husband or wife, father or father-in-law, mother or mother-in-law, son or son-in-law, daughter or daughter-in-law, brother or brother-in-law, sister or sister-in-law, partner or assistant of such petitioner or person. One of the certificates, when practicable, must be under the hand of the usual medical attendant of the alleged lunatic, and if this cannot be, the petitioner must state the reason in writing. No one may be received or detained as a lunatic or single patient in a lunatic institution when any certificate which accompanies the reception order has been signed by any of the following persons:—(*a*) the manager of the institution, or the person who is to have charge of the single patient; (*b*) any person interested in the payments or accounts of the patient; (*c*) any regular medical attendant in the institution; (*d*) any of certain near relatives, by blood or marriage, of the foregoing persons.

The persons signing the medical certificate must not be like relatives or partners or assistants one to the other. No one can be received as a lunatic in a hospital under an order made on the application of, or under a certificate by, a member of the managing committee of the hospital. Nor can a Commissioner or a visitor, who is a doctor, sign a certificate for the reception of a patient into a hospital or licensed house unless he is directed to visit the patient by a judicial authority under the Act, or by the Lord Chancellor, or a Secretary of State, or a committee appointed by the Judge in Lunacy. The orders and certificates may be amended under certain conditions; they are constituted by statute as sufficient authorities for certain acts to be done, and special provision is made for them to remain in force in certain events. The manager of a lunatic institution, and any person having charge of a single patient who detains a patient after he has knowledge that the reception order has expired, will be guilty of a misdemeanour.

The *Care and Treatment* of lunatics is the subject of Part II. of the Act. The medical officer, or medical attendant, of an institution, after the expiration of one month after reception of a private patient, must send to the Commissioners a report of his mental and bodily condition. Mechanical means of bodily restraint cannot be applied to any lunatic unless it is necessary for purposes of surgical or medical treatment, or to prevent the lunatic from injuring himself or others. When it is applied, a medical certificate must be signed, as soon as it can be obtained, describing the mechanical means used, and stating the grounds upon which the certificate is founded. In an institution the certificate is signed by the medical officer; in the case of a single patient, by his medical attendant. A full record of every case of such restraint must be kept from day to day, and a copy of the records and certificates must be sent to the Commissioners at the end of every quarter. As to the *correspondence* of lunatics it is provided that the manager of every institution, and every person having charge of a single patient, must forward unopened all letters written by any patient to the Lord Chancellor, Judge in Lunacy, Secretary of State, or to the Commissioners, or any Commissioner, or to the person who signed the reception order, or on whose petition

such order was made, or to any Chancery Visitors, or to the Visiting Committee, or any member of it. He may also at his discretion forward to its address any other letter if written by a private patient. The penalty for an offence against the foregoing is £20. Any one of the Commissioners, and any one of the visitors of a licensed house can at any time give a written order for the admission to any patient of any relation or friend, or other person who desires to see him. A manager or principal official of an institution who refuses to admit any person producing such an order is liable to a penalty of £20. An order for the examination by two medical practitioners of any one howsoever detained as a lunatic may be obtained from the Commissioners by any person, whether a relative or friend or not, who satisfies the Commissioners that it is proper for them to grant the order. The Commissioners can order the release of the alleged lunatic if the medical certificates state that after two separate examinations (at least seven days intervening between the first and second examination) the patient, in the opinion of the medical men, may be discharged without risk or injury to himself or the public.

Discharge.—A private person detained in a lunatic institution, or under care as a single patient, must be discharged if the person on whose petition the reception order was made by writing under his hand so directs. If that person is dead, or incapable by reason of insanity, absence from England, or otherwise, of signing an order for discharge, or, if a patient having been originally classified as a pauper is afterwards classified as a private patient, the person who made the last payment on account of patient, or the husband or wife, or if there is no husband or wife, or if either of the latter is incapable through insanity, the father, or if there is no father, or he is incapable, the mother of the patient, or if there is no mother, or she is incapable, then any one of the nearest of kin of the patient may give the direction for his discharge. If there is no person qualified to direct his discharge, or no person able or willing to act, the Commissioners may order his discharge. But a patient cannot be so discharged if the medical officer or attendant certifies in writing that the person is dangerous and unfit to be at large, together with the grounds upon which his certificate is founded, unless two of the visitors of the asylum, or the Commissioners visiting the hospital or house, or the visitors of the house, or in the case of a single patient, one of the Commissioners, after the certificate has been produced, consent in writing to the patient's discharge. Any two of the Commissioners, one being a medical and the other a legal commissioner, may, on their own initiative, visit a patient detained in any hospital or licensed house, or as a single patient, and within seven days after their visit order his discharge, if he appears to them to be detained without sufficient cause. And any three visitors of an asylum have also power to order the discharge of any person detained therein, whether he is recovered or not. And so also have any two of such visitors if they have the advice in writing of the medical officer. If after two visits by two visitors to a licensed house, it appears to them that a patient is detained without sufficient cause, they may then order his discharge. But one of these visitors must be a medical practitioner. This power of two visitors cannot be exercised, however, over a lunatic so found by inquisition.

Discharge of pauper on application of friend.—When application is made to the visiting committee of an asylum by a relative or friend of a pauper lunatic confined therein, requiring that he may be delivered over to the custody and care of such relative or friend, any two of the visitors may discharge the lunatic upon a satisfactory undertaking of the relative or friend that the lunatic will no longer be chargeable to any union, county, or borough, and will be

properly taken care of and prevented from doing injury to himself or others, and the guardians of the union to which a workhouse belongs may also make an order for the discharge of any lunatic detained therein. *Recovery of patient.*—The manager of every hospital and licensed house, and a person having charge of a single patient, must forthwith, upon the recovery of a patient, send notice thereof to the person on whose petition the reception order was made or by whom the last payment on account of the patient was made, and in the case of a pauper, to the guardian of his union, or, if a local authority is liable for his maintenance, to the clerk of the local authority. The notice must state that unless the patient is removed within seven days from its date he will be discharged: and so he will be. *Inquiry into cause of death.*—Every coroner upon receiving notice of the death of a lunatic within his district must hold an inquest if he considers that any reasonable suspicion attends the circumstances of the death. *Complaints of residence near hospital.*—If the patients of a lunatic establishment are permitted to go outside without a sufficient number of officers to control them, or to wander at large without any control, the neighbouring residents may prefer a complaint to the Commissioners. The latter will thereupon, if satisfied that there are *primâ facie* grounds for the complaints, inquire into the case and deal with it as they may think just. The superintendent of a lunatic establishment who disobeys any order made in consequence of those complaints will be guilty of a misdemeanour.

Criminal responsibility.—From the point of view of the criminal law a man is presumed to be sane and mentally responsible until he is proved to be the contrary. But the legal principles relating to the criminal responsibility of a person proved to be insane can hardly be said to have yet been finally established. In *Reg.* v. *Oxford* the facts were that the late Queen, whilst driving up Constitution Hill, was twice fired at by Edward Oxford, aged eighteen. Oxford was indicted for high treason. The verdict of the jury was not guilty, he being insane at the time. Thereupon Lord Denman, the Lord Chief-Justice, ruled that to acquit the prisoner on the ground of insanity, the jury must be satisfied that he was labouring under such a disease as rendered him quite unaware of the nature, character, and consequences of the act he was committing; or, in other words, that he was under the influence of a diseased mind, and was really unconscious at the time he committed the act that it was a crime. This ruling cannot, however, be taken as final. Perhaps the most authoritative pronouncement on this subject is that in *Macnaughton's* case, but even this is not accepted as altogether satisfactory. In the year 1843, Daniel Macnaughton fired at and wounded Mr. Drummond, Sir Robert Peel's private secretary. Mr. Drummond died. Macnaughton was indicted for murder. At the trial medical witnesses were called to prove the prisoner's insanity; and the Chief-Justice, finding that the Crown was not prepared with medical evidence to contradict them, stopped the case, and the jury, under his direction, found the prisoner not guilty on the ground of insanity. In consequence of this verdict the House of Lords resolved to take the opinion of the judges on the law governing such cases. It was then held by eleven of the judges—A person labouring under partial delusions only, and not otherwise insane, who did the act charged with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or wrong, or of producing some public benefit, is punishable, if he knew at the time that he was acting contrary to the law of the land. If a party labouring under

an insane delusion as to existing facts, and not otherwise insane, commits an offence, he must be considered in the same situation as if the facts in respect to which the delusion exists were real. To establish a defence on the ground of insanity it must be clearly proved that, at the time of committing the act, the party accused was labouring under such a defect of reason from disease of the mind, as not to know the nature of the act he was doing, or, if he did know it, that he did not know that what he was doing was wrong. If the accused was conscious that the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable. Where the defence of insanity is set up, a medical witness who never saw the prisoner before, but was present during the whole of the trial, cannot in strictness be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime; or whether the prisoner was conscious at the time of doing the act that he was acting contrary to the law; or whether he was labouring under any and what delusion at the time. Such questions involve the determination of the truth of the facts deposed to, which it is for the jury to decide. But where the facts are admitted or not disputed, and the question becomes one of science only, such questions may be allowed to be put in that general form, though this cannot be insisted on as a matter of right.

Contractual responsibility.—The contract of a lunatic is binding upon him unless it can be shown that at the time of making it he was absolutely incapable of understanding what he was doing and that the other party knew of his condition. It is in words to this effect that Sir William Anson states the general principle in his *Law of Contract*. Although in certain cases the crown, and in other cases persons who claimed under one who was *non compos mentis*, could set up the disability of lunacy, the old rule of law was that the lunatic himself could not. This rule, however, has been relaxed in modern times, and unsoundness of mind is now a good defence to an action upon a contract, if it can be shown that the defendant was not of a capacity to contract, "and the plaintiff knew it." The knowledge of the other party is an essential element in a defence of insanity. Lord-Justice Lopes, in *Imperial Loan Co.* v. *Stone*, thus summarises the law:—"A contract made by a person of unsound mind is not voidable at that person's option if the other party to the contract believed at the time he made the contract that the person with whom he was dealing was of sound mind. In order to avoid a fair contract on the ground of insanity, the mental incapacity of the one must be known to the other of the contracting parties. A defendant who seeks to avoid a contract on the ground of his insanity, must plead and prove, not merely his incapacity, but also the plaintiff's knowledge of that fact, and unless he proves these two things he cannot succeed."

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MACHINERY.—The provisions of the Factory and Workshop Act which, as regards machinery, ensure the safety of those who work in factories, are noticed in the article on HEALTH AND SAFETY in factories; and the law specially relating to CHAFF-CUTTERS is dealt with

under that title. *Threshing-machines* are the subject of a statute of 1878 known as the Threshing-Machine Act. For the purposes of that Act the term "threshing-machine" is defined as meaning one which is worked by steam or by any motive power other than manual labour. A machine worked by hand is therefore not within the scope of the Act. Certain regulations are enacted for the due working of threshing-machines, and any one who offends against them is liable on summary conviction to a penalty not exceeding £5. A constable, for the purpose of inspecting the machine, can at any time enter on any premises on which he has reasonable cause to believe that it is being worked contrary to the law. The regulations require, in effect, that the drum and feeding mouth of the machine must at all times during the working of the machine be kept sufficiently and securely fenced, so far as is reasonably practicable and consistent with its due and efficient working. If its owner, or the person for whose service or benefit it is being worked, allows it to be worked without being so fenced, he will thereby incur the above penalty. If in his prosecution for this offence it is shown that the machine was not in fact kept sufficiently and securely fenced during its working, he will be considered to have permitted the offence unless he can satisfy the Court that he took all reasonable precautions to ensure the observance of the Act. The offence is also committed, and the penalty incurred, by any foreman, engineer, or other person in charge of the machine, who works it or permits it to be worked without being properly fenced; and also by any one who during its working removes any guard or thing used as a fence for it. A statute of 1894 should also be noted which removed the restrictions imposed on steam threshing-engines by an old Highway Act. Such engines are now allowed to be erected and used at any distance, however short, from a turnpike road, highway, carriageway, or cartway. But in order that an erection and use within twenty-five yards from such a road shall be lawful it is necessary that "a person is stationed on the road and employed for the purpose of signalling the driver of the engine whenever it is necessary to stop the engine on account of the approach of a horse, and of rendering assistance to the person in charge of the horse, and that the driver of the engine stops the same when so signalled." Maliciously *damaging and destroying* machinery is a felony, and is severely punished as such. The offence consists of unlawfully and maliciously cutting, breaking, or destroying, or damaging with intent to destroy or to render the machinery useless. Section 15 of the Malicious Damage Act, 1861, provides for an offence of this character when it is committed against a machine or engine, whether fixed or movable, used, or intended to be used, for sowing, reaping, mowing, threshing, ploughing or draining, or for performing any other agricultural operation, or machine or engine, or tool or implement, whether fixed or movable, prepared for or employed in any manufacture except certain manufactures therein mentioned. These excepted manufactures are the subject of section 14, and comprise the various textile manufactures; and not only does the latter section create a similar offence to that of section 15, but it also makes it a felony to enter by force into any house, shop, building, or place with intent to maliciously destroy its particular machinery, or to so damage it.

Rating of machinery.—The rule has been laid down that where things

CRIME IN ENGLAND

CRIME IN ENGLAND

THE detailed official returns of criminal statistics, England and Wales, supply interesting facts as to the diminution of crime during the last twenty-five years, for which the facts have been published up to April 1910.

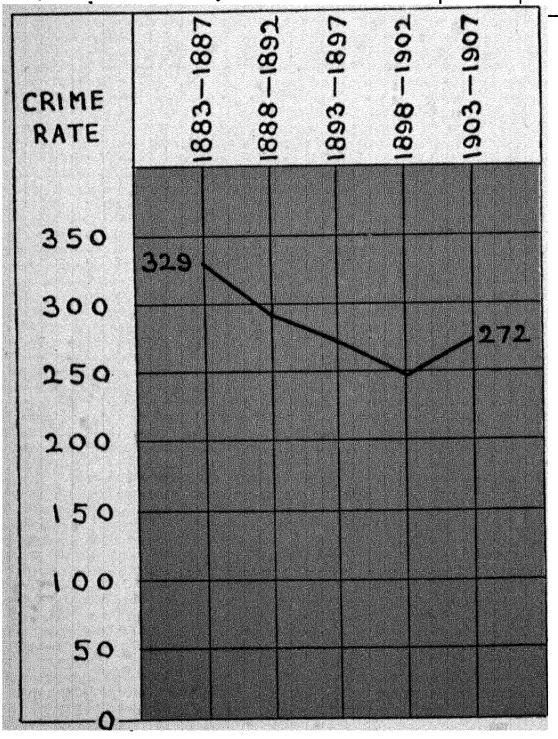
Period.	Yearly No. of Crimes (Indictable Offences) reported to the Police, per 100,000 of Population.	The Crime-rate during 1883–87 being taken at 100, the subsequent Crime rates were—
1883–87 . .	329	100
1888–92 . .	293	89
1893–97 . .	270	82
1898–02 . .	248	75
1903–07 . .	272	83

The yearly crime-rate has dropped from 329 during 1883–1887 to 272 in 1903–1907. The English crime-rate is thus less than 3 per 1000 persons living, and we see that the population is now distinctly less tainted with this social disease than in former years; in 1903–1907 the crime rate was only 83 per cent. of the yearly crime-rate of 1883–1887, which has thus lost nearly one-fifth of its force during the twenty-five years. But in recent years the crime-rate has in-

The foregoing results relate to the more serious crimes (Indictable Offences) without distinction, and the corresponding results for the various classes of crime are as follow :—

YEARLY NUMBER OF CRIMES PER 100,000 OF POPULATION. INDICTABLE OFFENCES.

Period.	Class I. Crimes against Property without Violence.	Class II. Crimes against Property with Violence.	Class III. Crimes against the Person.	Class IV. Forgery and Coining.	Class V. Malicious Injuries to Property.	Class VI. Other Crimes not included in I. to V.	Total of Classes I. to VI. making up the yearly Crime-rate previously stated.
1883–87	281.3	23.1	11.9	3.2	2.2	7.2	328.9
1888–92	248.2	22.4	12.0	1.8	1.9	6.9	293.2
1893–97	220.9	25.8	12.7	1.9	1.7	7.1	270.1
1898–02	200.5	25.9	11.3	1.7	1.5	7.5	248 4
1903–07	217.0	31.9	10.6	1.6	1 6	9.2	271.9



The Crime-rate in England. The Yearly Number of Crimes (Indictable Offences) reported to the Police, per 100,000 of Population, during 1883–1907.

By far the most numerous crimes are those against Property without Violence, such as larcenies, frauds, receiving stolen goods. In this Class (I.) the fall in the crime-rate has been great: the rate for 1903–1907 (217.0) was only 77 per cent. of the yearly rate during 1883–1887. The earlier crime-rate in this predominating class has thus lost nearly one-quarter of its effective force of twenty-five years ago.

In Class II., crimes against Property with Violence, such as house-breaking, burglary, robbery, &c., the crime has increased. For the rate in 1903–1907 was higher than the rate during 1883–1887, although there has been a slight intervening fall.

In Class III., crimes against the Person, consisting of crimes of Violence and crimes against Morals, there has been a tendency to increase until 1893–1897, since when the rate has fallen.

In Class IV., Forgery and Coining, the crime-rate has fallen to a greater relative degree than in any other class. The crime-rate of 1883–1887 (3.2) has, as we see, now lost

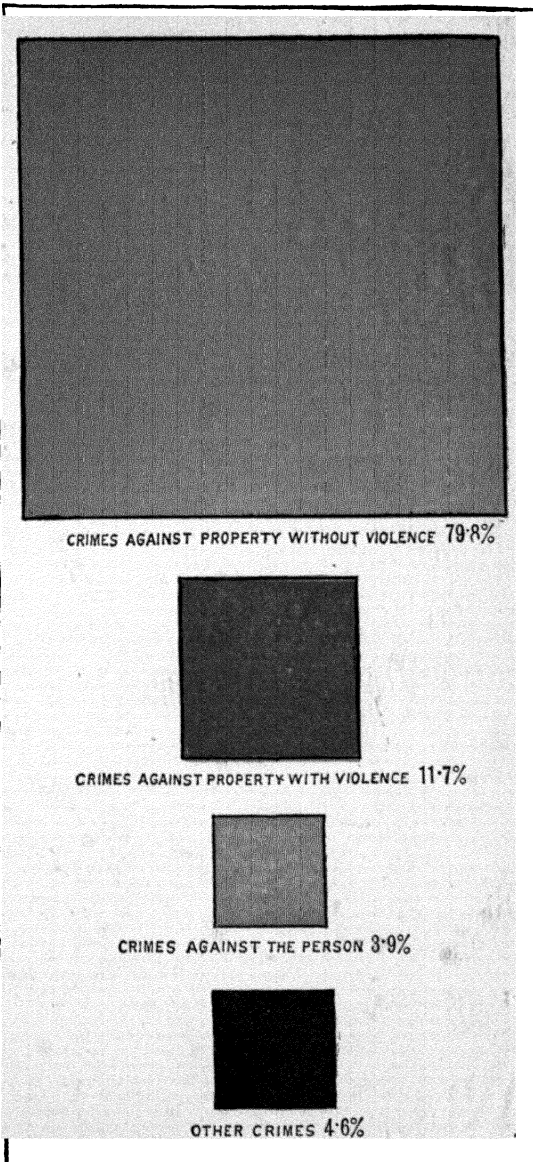
50 per cent. of its then effective force.

In Class V., Malicious Injuries to Property, such as arson, maiming cattle, &c., there has been an appreciable and nearly continuous fall.

In Class VI., Miscellaneous Crimes (not included in Classes I. to V.), which mean such offences as attempts to commit suicide, perjury, poaching, &c., there has been a slight increase in late years, due to a large increase in suicide attempts.

The preceding remarks relate to each of the six classes of indictable crime, each class being regarded as one whole. But some of the sections of this or that class should be individually mentioned.

For example, although Class I. as a whole has greatly declined, one section of it, Fraud, has considerably increased. This most detestable crime, meaning, as it too often does, the cunning swindling of honest persons by plausible scoundrels, has increased of late years. Also in Class III. (Crimes against the Person), while crimes of violence have somewhat declined, crimes against morals have increased since 1883-1887. As regards fraud, moreover, it is probable that many frauds occur which are not known to the police, as the victims are too often unable to institute criminal proceedings, and are deterred from taking civil proceedings by the cost and the uncertainty of the law. Even as regards those frauds which are reported to the police, the number of persons brought to trial is much smaller than the number of frauds reported, the facts being as follow :—



The Distribution of the Crimes (Indictable Offences) during 1903-1907 among the different classes of crime.

FRAUD. 1883–1907.

Period.	Average Yearly No. of Frauds reported to the Police.	Average Yearly No. of Persons Tried for Fraud.	Percentage of Persons tried for Fraud to No. of Frauds reported.	
			Taking the No. of Frauds reported at 100.	The No. of Persons tried for Fraud, were—
1883–87	1983	1081	100	54
1888–92	1738	966	100	56
1893–97	2628	1071	100	41
1898–02	2954	1486	100	50
1903–07	4345	2301	100	53

We see that the increase in the number of frauds reported has not been accompanied by a corresponding increase in the number of persons tried for fraud. Whereas during 1883-1887 there were 54 persons tried to every 100 frauds reported, there were, during 1903-1907, only 53 persons tried for fraud to every 100 frauds reported. And there was a large intervening fall. The rise to 53 in 1903–1907 is probably due to the increasing efforts made of late to punish fraudulent persons

The following list shows some of the detailed crimes, in the order of their numerical importance, which were committed during 1903 1907, the average yearly number of each of the principal crimes being stated. All the following are Indictable Offences, and do not include the much larger number of minor offences (non-indictable) disposed of in courts of summary jurisdiction, which have not yet been noticed. This statement shows that simple theft is the vastly predominant crime. House-breaking comes second, as distinct from Burglary (the 8th crime), which, to be burglary, must be done at night ; housebreaking is a daylight crime. Frauds hold the 3rd place, and Embezzlement the 7th. Forgery is the 15th crime, and Arson is 16th. The 20th place is held by Sacrilege, and Murder had an average number of 147 during 1903–1907.

No. of Crimes (Indictable Offences) committed. Nature of Crime.	Average Yearly No during 1903–1907.
Simple Larceny	57,774
House and Shop-breaking	8,019
Frauds	4,260
Larceny by a Servant	3,695
Larceny from the Person	3,585
Attempts to commit Suicide	2,443
Embezzlement	1,944
Burglary	1,545
Receiving Stolen Goods	1,283
Malicious Wounding	954
Larceny in House	915
Indecent Assaults on Females	745
Larceny of Horses and Cattle	452
Habitual Drunkenness	441
Forgery	383
Arson	276
Felonious Wounding	245
Robbery with Violence	238
Rape	193
Sacrilege	190
Murder	147
Manslaughter	143

Hitherto only the more serious crimes have been dealt with– Indictable Offences, and, as stated, this crime-rate shows a marked decline during the last twenty years The minor offences, non-indictable, were much more numerous than the crimes, and they have increased of late years. Of these offences, the most numerous are Drunkenness, offences against the Education Acts, common Assaults, Vagrancy, &c The increase is mainly due to Drunkenness and Vagrancy.

J. HOLT SCHOOLING.

are attached to premises so as to become part of them, then, although there may be a right to remove them, they are to be looked upon as part of the premises, and they accordingly enter into the rateable value. But this rule, in its application, is a matter of fact depending upon the circumstances of each case, but principally upon two considerations; first, the mode of annexation to the soil or fabric of the house, and the extent to which it is united thereto, whether it can be easily removed or not without injury to itself or the fabric of the building; secondly, whether it was for the permanent and substantial improvement of the premises or merely for temporary purposes. In *Hellawell* v. *Eastwood* the Court thought that the articles there in question were only put up and fastened for their temporary use and enjoyment as chattels; but the Court "clearly and distinctly pointed out," said Mr. Justice Blackburn in *Reg.* v. *Lee*, "two important elements for consideration: first, the degree of annexation; and, secondly, the object of the annexation. Was the article attached for the improvement of the inheritance or for the enjoyment only of the article itself?" For the purpose of rating, premises are to be taken as they are, with all the fittings and appliances by which the owner has adapted them to a particular use, and which would pass as part of the premises if they were demised to a tenant. "The question," said Mr. Justice Lush, "is not what a tenant might remove, not what might be taken in execution under a writ against the owner, but what, as between the landlord and tenant, would pass as part of the premises." In the case of a shipbuilding yard, *Laing* v. *Bishopwearmouth*, Chief-Justice Cockburn applied these principles in the following manner: "After carefully considering the character of the machinery in question, that the whole of it, though some of it may be capable of being removed without injury to itself or the freehold, is essentially necessary to the shipbuilding business to which the appellant's premises are devoted, and must be taken to be intended to remain permanently attached to them so long as those premises are applied to their present purpose."

A bill, now before Parliament, has been introduced in order to amend the law on this subject. It is improbable, in view of the present state of public business, that it will yet pass into law, even if the legislative sentiment were in its favour, but a perusal of its terms will give a good idea of the law as it now stands. The bill proposes to enact that in estimating for the purpose of any valuation list, or poor or other local rate, the gross estimated rental and rateable value of any hereditament occupied for any trade, business, or manufacturing purposes, any increased value arising from machines, tools, or appliances which are not fixed or are only so fixed that they can be removed from their place without necessitating the removal of any part of the said hereditament shall be excluded. There then follows a proviso that the gross estimated rental of any such hereditament shall be estimated at not less than the sum at which it might reasonably be expected to let for the purpose for which it is used on a tenancy from year to year void of the machines, tools, and appliances which it might reasonably be expected would be supplied by the tenant, if the tenant paid all the usual tenant's rates and taxes, and if the landlord undertook to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the said hereditament in a state to command such rent. And there is also a proviso that the terms machines, tools, and appliances for the foregoing purposes shall not apply to any machinery, machine, or plant used in or on the hereditament for

producing or transmitting first motive power, or for heating or lighting the said hereditament. And *see* BILL OF SALE; FIXTURES.

MALICIOUS PROSECUTION.—An action lies against any person who maliciously, and without reasonable and probable cause, prosecutes another, whereby the party prosecuted sustains an injury, involving damage either in person, property, or reputation. This definition is perhaps, strictly, not wide enough. There are other legal proceedings besides abortive criminal prosecutions which necessarily involve damage, such as the presentation of a bankruptcy petition against a trader, or of a winding-up petition against a company (*Quartz Hill Mining Co.* v. *Hill*). In the past, when the trader's property was touched by making him a bankrupt in the first instance, and he was left to get rid of the misfortune as best he could, of course he suffered a direct injury as to his property. But a trader's credit is as valuable as his property, and modern proceedings in bankruptcy, although they are dissimilar to the old proceedings, resemble them in the very important respect that they strike directly at a man's credit. On the other hand, the bringing of an ordinary action does not as a natural or necessary consequence involve any actionable injury to a man's property or reputation, because the law compensates with an order for payment by the unsuccessful party of the successful party's costs properly incurred in the action. Malice is of the essence of this wrong, and therefore a prosecutor who has set the law in motion with a *bonâ fide* desire to effect the punishment of an offender, need have no fear, in the event of the failure of the prosecution, of being adjudged by a court of law to pay damages to the person he has prosecuted. "From motives of public policy," said Lord Davey in *Allen* v. *Flood*, "the law gives protection to persons prosecuting, even where there is no reasonable and probable cause for the prosecution. But if the person abuses his privilege for the indulgence of his personal spite, he loses the protection, and is liable to an action, not for the malice but for the wrong done in subjecting another to the annoyance, expense, and possible loss of reputation of a causeless prosecution." In order that any one unsuccessfully prosecuted may obtain damages from his prosecutor he must prove three things. His position in this respect is thus summed up by Lord-Justice Bowen in *Abrath* v. *North-Eastern Railway Co.*: "The plaintiff has to prove, first, that he was innocent, and that his innocence was pronounced by the tribunal before which the accusation was made; secondly, that there was a want of reasonable and probable cause for the prosecution, or, as it might be otherwise stated, that the circumstances of the case were such as to be in the eyes of the judge inconsistent with the existence of reasonable and probable cause; and, lastly, that the proceedings of which he complains were initiated in a malicious spirit, that is, from an indirect and improper motive, and not in furtherance of justice. All those three propositions the plaintiff has to make out, and if any step is necessary to make out any one of those three propositions, the burden of making good that step rests upon the plaintiff."

The proof of the first point is mainly formal. But the proof of the second point, the want of reasonable and probable cause, presents some difficulty; at least it seems that the plaintiff is required to prove a negative. It does not, however, mean that the jury trying the case are to keep their minds in a particular attitude of distrust towards the plaintiff, until he has

proved that there was not in fact any actual reasonable and probable cause in existence at all which could operate upon the defendant's mind when determining the advisability of the prosecution. It means that the plaintiff must exhibit to the Court, as far as he can, all the circumstances surrounding the commission of the offence or alleged offence leading to the prosecution, and his relation to them and to the defendant. It then remains to be determined whether these circumstances were or were not properly and reasonably considered by the defendant before he initiated the prosecution. "In order to justify a defendant there must be a reasonable cause, such as would operate on the mind of a discreet man; there must also be a probable cause, such as would operate on the mind of a reasonable man; at all events such as would operate on the mind of the party making the charge, otherwise there is no probable cause for him." As to malice, proof of enmity or bad feeling by the defendant towards the plaintiff is sufficient; and so, indeed, is the proof of any indirect motive, or any reason for the prosecution other than a desire to aid in the administration of the law. Malice, according to Sir Frederick Pollock, is "a wish to injure the party rather than to vindicate the law"; or, according to an American dictum, "a malevolent motive for action without reference to any hope of a remoter benefit to oneself to be accomplished by the intended harm to another"; or it may be said to consist in "one's wilful doing of an act or wilful neglect of an obligation which he knows is liable to injure another regardless of the consequences, and a malignant spirit or a specific intention to hurt an individual is not an essential element." *See* FALSE IMPRISONMENT.

MANIFEST.—The name given to a document used upon the exportation of goods for which no bond is required. It is a list of all goods shipped in the particular ship, and it should set forth the marks, numbers, and descriptions of the packages, and the names of the consignors thereof according to the bills of lading. The master or owner of the ship, or his agent, must deliver the manifest to the proper Customs officer within six months after the final clearance of the ship; and at the same time a declaration must be made that the manifest contains a true account of all the cargo of the ship. And the owner or master of a steamship trading to a foreign port, or his agent, is required also to deliver to the same officer a certificate of the quantity of coals or fuel shipped for use on the voyage. An omission in any of these respects involves liability to a fine of £5. A manifest may not be required, however, where specifications are delivered—as to which see the article on IMPORTATION AND EXPORTATION. But a specification, in order to avoid the necessity for a manifest, must be accompanied by a declaration that it contains a true account of all the shipped goods for which no bond is required. This declaration can be made by either the owner or master of the ship or his agent. The Customs officers have power, notwithstanding the delivery of a specification and declaration, to still order a full and complete manifest to be delivered. This order can only be made by a written notice addressed to the master or owner, and delivered at the last known place of abode or business of the owner or his agent, and it must be complied with within forty-eight hours. Non-compliance will incur the above penalty.

MARGARINE is defined by the Margarine Act, 1907, as meaning "any article of food, whether mixed with butter or not, which resembles butter and is not milk-blended butter." No such substance can be lawfully sold except under the name of margarine, and under the conditions set forth in that Act. The word "butter" is defined in the same Act of 1887 as the substance usually known as butter, made exclusively from milk or cream, or both, with or without salt or other preservative, and with or without the addition of colouring matter. The Board of Agriculture issued, under the Act of 1887, a regulation that where the proportion of water in a sample of butter exceeds 16 per cent. it should be presumed that the butter was not genuine. This article is based mainly on the Act of 1887. That of 1907 is the subject of the article on MARGARINE in the Appendix. *Penalty.*—"Every person dealing in margarine, whether wholesale or retail, whether a manufacturer, importer, or as consignor or consignee, or as commission agent or otherwise, who is found guilty of an offence under this Act, shall be liable on summary conviction for the first offence to a fine not exceeding £20, and for the second offence to a fine not exceeding £50, and for a third or any subsequent offence to a fine not exceeding £100." But "where an employer is charged with an offence against this Act he shall be entitled, upon information duly laid by him, to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge, and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the Court that he had used due diligence to enforce the execution of this Act, and that the said other person had committed the offence in question without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the employer shall be exempt from any penalty." A penalty is incurred by non-compliance with the regulations contained in the Margarine Act. *Marking of cases.*—These regulations provide that every package, whether open or closed, and containing margarine, must be branded or durably marked "Margarine" on the top, bottom, and sides, in printed capital letters not less than three-quarters of an inch square. If such margarine is exposed for sale by retail, then there must be attached to each parcel so exposed, and in a manner clearly visible to the purchaser, a label marked in printed capital letters, not less than one and a half inches square, "Margarine." And the same mark, printed in capital letters, not less than a quarter of an inch square, must be branded or durably marked on a paper wrapper containing the article and so delivered to the purchaser, whenever margarine is sold by retail. Every one who deals, sells, exposes, or offers for sale, or has in his possession for the purpose of sale, any quantity of margarine contrary to the provisions of the Act is liable to conviction therefor. But he will be discharged from the prosecution if he can show that he purchased the article in question as butter, and with a written warranty or invoice to that effect; that he had no reason to believe at the time when he sold it that the article was other than butter; and that he sold it in the same state as when he purchased it. Even though so discharged he will be liable to pay the costs incurred by the prosecutor unless he has given due notice to him that he will rely upon that defence. Margarine imported into the United Kingdom, or manufactured here, must

always be consigned under the designation of margarine whenever forwarded by a public conveyance. *Taking samples.*—With regard to margarine in course of consignment authority is vested in any Customs officer, medical officer of health, inspector of nuisances, or police constable authorised under the Sale of Food and Drugs Acts, to procure samples for analysis if he has reason to believe that the provisions of the Margarine Act are infringed; and also to examine and take samples from any package, and ascertain, if necessary by analysis, whether an offence against the Act has been committed. And an inspector under the Sale of Food and Drugs Acts has power to take samples anywhere, without going through the form of purchase provided by that Act, but otherwise acting in accordance with its provisions. These samples may be of butter, or of substances purporting to be butter, provided they are exposed for sale, and are not properly marked Margarine. Any such substance not so marked is presumed to be exposed for sale as butter. *Manufacturers and wholesale dealers.*—The owner or occupier of a manufactory of margarine or margarine-cheese, or a wholesale dealer therein, must obtain from the local authorities a Certificate of Registration. In the application therefor it is necessary to state—(*a*) the name and address of the owner or occupier or wholesale dealer making the application; (*b*) the situation of the manufactory, or of the premises wherein the business of the wholesale dealer is carried on; and (*c*) the name and address, or names and addresses, of the owner or owners, or occupier or occupiers, or wholesale dealer or wholesale dealers, carrying on the manufacture or business. Notice must be given in the case of a change of persons in the manufacture or business. *See* ADULTERATION; and the article in the Appendix.

MARGINAL CREDIT.—By this name, or by the more exact term, "Marginal Letter of Credit," is known one of the means at the disposal of an importer for the payment of goods he has bought from abroad. The buyer, say in London, first opens a credit with his bankers here, that is to say he makes an arrangement with them that they will accept on his behalf certain bills drawn on them by the foreign seller, and will issue a letter directed to the seller intimating their intention so to accept. These bills or drafts will represent the purchase price of the goods, and the credit, which is known as a marginal credit, will be either a "documentary" or an "open" one, according to whether or no there are any documentary conditions in the letter. In any case the bill appears in the margin of, or attached to the letter—whence the name. These credits are also frequently opened with private firms of merchants, and are not confined to the business of bankers. And, moreover, credits of this class are not used only in cases of the importation of goods into this country, or of consignments from and to countries abroad to the order of English firms. The financial centre of the world being London, it is a very usual practice for goods sold in one foreign country to a purchaser in another to be paid for with bills drawn on London. Foreign merchants, therefore, in respect of even foreign transactions, make a very extensive use of English marginal credits. A first-class English bill is in many respects a more valuable international monetary medium than any currency. *Open Credits*, on the face of them, are unconditional undertakings by the party granting them to accept the drafts drawn thereunder, provided, usually, that the drafts are drawn or presented within a given

time. *Documentary Credits* undertake that the drafts shall be accepted only on condition that certain bills of lading and other shipping documents of title to goods are delivered to the intending acceptors when the drafts are presented for acceptance. The essential difference between an ordinary Letter of Credit and a Marginal Credit is that the former absolutely authorises the person indicated to draw money against it, while the latter authorises him to draw only bills of exchange as indicated in the margin and in accordance with the particulars, and subject to the conditions set out in the letter. The following specimen of a Marginal Credit—an Open Credit—is taken from that in the case of *Maitland* v. *The Chartered Mercantile Bank of India*:—

No. 39.

Credit for £2000 *stg. in duplicate.* 4907.

National Bank of Scotland, Edinburgh.

24th June 1864.

11824

To Messrs. Fletcher & Co., China.

I hereby, for the National Bank of Scotland, authorise you to draw the annexed Bill of Exchange at six months' sight for Two thousand pounds sterling on Messrs. Glyn & Co., bankers, in London, who will honour the same in conformity with its tenor, if presented along with this letter of credit within one year from this date.

THOS. ANDERSON, Secretary.
JNO. J. SHEARER, P. Manager.

First of Exchange for £2000 sterling, No. $\frac{39}{4907}$ F.

Place and Date of Drawing, *Shanghai, 5th April* 1865.

Six months after sight pay this first of Exchange (second of the same tenor and date not being accepted or paid) to our order, the sum of *Two thousand pounds sterling*, which charge to the National Bank of Scotland as per annexed Letter of Credit.

To Messrs. Glyn & Co.,
Bankers, London.

Drawer signs here, *Fletcher & Co.*

From the facts in the above case it would seem that the course of dealing and practice relative to the issue and user of marginal credits differs considerably in different parts of the mercantile world, and the terms of the issue and user depend upon the actual agreement between the parties, and upon the terms apparent on the face of the credits. It is a common, but by no means an invariable practice, that when such a marginal credit as the above is granted by a bank in this country, in favour of a firm carrying on business abroad, and not upon the instructions and security of an English customer of the bank, the latter requires the express security of some firm carrying on business in England for the repayment of any money which may be paid in respect of any draft drawn under the credit. If, however, the credit of the foreign firm is good, such a security would not in all cases be considered necessary; and, accordingly, whether such a security is given or not depends on the credit and standing of the firm in whose favour the credits are granted. Marginal credits which are issued in this country, according to the usual practice, are sent to the foreign firm, not merely to

enable it to raise funds for buying produce to be consigned to England, but as a guarantee to the purchasers of the bills of the foreign firm that such bills will on presentation be accepted, and also to give more complete facilities for raising money to the foreign firm in whose favour the marginal letters of credit are issued. And in the same case it was stated that it is a common but by no means uniform practice for a firm carrying on business, say at Shanghai, and which may hold an open credit, to draw thereunder, one or two days before the mail leaves for England, drafts for an amount sufficient to raise the sum required to pay for any produce which it may be about to consign to England, and to sell or discount those drafts. But open credits are also frequently used by the firms in whose favour they are granted for other purposes than raising money for the purchase of produce, and, in fact, to enable such firms to raise money for their general purposes as upon any other security. It is not the custom or practice for the banks or other persons who discount or purchase the drafts drawn under open credits, nor does the law expect them, to inquire into the authority under which the drafts are drawn. It does not matter, therefore, what private arrangement there may be between the London bankers granting the credit and the English firm who guarantees it to them, the parties who *bonâ fide* discount the bills drawn under an open credit, or indeed any letter of credit, are only affected or prejudiced by the terms actually contained in the letter itself. Accordingly, if it is desired to make the presentation of the bills of lading and shipping documents a condition precedent to the acceptance of the bills, the credit should take the form of a documentary one. In a documentary credit there is no credit actually granted until the specified documents are duly presented. *See* BILLS OF EXCHANGE; LETTER OF CREDIT.

MARGINAL NOTES should be distinguished from MARGINAL CREDITS (*q.v.*). They are used under such circumstances as the following: F. & Co., a London firm of exporters for instance, having exported goods to India, may desire to sell or discount the bills of exchange they have drawn upon the consignees in India against the consignments. For this purpose they attach the bills of lading to the bills of exchange as a security, and offer the documents to their London bankers. But the latter are not accustomed to always advance in cash the whole of the price of the bills of exchange. Accordingly they will only pay to F. & Co. a part of that price, say 70 per cent. or upwards in cash, and for the rest of the price will give what mercantile men know as "marginal notes." The marginal notes given by different bankers are not always exactly identical in form, though they are substantially to the same effect. They are not meant to be transferable, but, as will be seen presently, they are in practice negotiated as securities. In some cases the words "not transferable" are written across the face of the document. The general effect of the notes is merely that the bankers giving them have contracted to hold the residue of the price of the bills of exchange on deposit, bearing interest, by way of security for the payment of the bills, and that the amount so deposited is not to be paid to F. & Co. until advice has been received of the due payment of the bills, and is then to be subject to any other claims which the bankers might have against F. & Co. In *Jeffryes* v. *Agra and Masterman's Bank*, Vice-Chancellor Wood thus described the legal effect of marginal notes: "These documents, in truth,

represent a debt due from the bank, with an engagement to pay that debt to the person to whom they give the receipt note upon a certain condition and at a certain time, as far as that time is defined by the condition, namely, whenever they receive intelligence that the bills, in respect of the discount of which they reserved this right of retainer, have been duly paid and satisfied. It is, in other words, a debt which will accrue from the bank on that event happening." The last part of this description has great importance from the point of view of the bankruptcy law—an importance emphasised in the decision in *ex parte Kemp, in re Fastnedge.* In that case the marginal note was in the following form :—

Chartered Bank of India, Australia, and China.

London, 21 Feb. 1873.

Bills, Nos. 426, 427, for Rs.839.13.0 purchased at 1s. 11⅛d.	£79	3	5
Paid this day.	59	3	5
Leaving a margin of Twenty pounds . .	£20	0	0

to be accounted for to Messrs. *Fastnedge & Co.* on receipt of advice of the due payment of the above bills, and after providing for any deficiency on other liabilities of the said parties to the bank. Interest to be allowed at Bank of England minimum rates, but not to exceed 5 per cent. per annum.

J. H. SMYTHE, Manager.

Fastnedge & Co., the holders of this marginal note, requiring accommodation, had indorsed it over to a creditor and deposited it as a security for the debt. Subsequently Fastnedge & Co. became bankrupt, the bills of exchange in respect of which the marginal note had been issued were duly honoured, and the bankers were willing to pay the money represented by the marginal note to whoever was legally entitled to receive it. At the time of the bankruptcy the bankers had not received notice of the negotiation of the marginal note. The trustee in bankruptcy thereupon claimed the sum represented by the marginal note as having been within the ORDER AND DISPOSITION (*q.v.*) of Messrs. Fastnedge & Co. at the commencement of the bankruptcy. He failed in this claim, however, on the ground that monies payable under a marginal note are only contingent claims which may or may not end in becoming debts. Wherefore "an instrument of this description, although not negotiable, may be pledged or mortgaged so as to confer on the transferee the rights of an assignee of CHOSE IN ACTION (*q.v.*), and the title of such transferee will in England prevail over the subsequent title of the transferer's trustee in bankruptcy, notwithstanding notice of the transfer has not been given to the discounting banker."

MARINE INSURANCE may fairly lay claim to the premier position amongst the many different classes of insurance now in vogue. Upon at least two grounds it may base this claim: its age, and the universal precision with which its principles have developed. As to its age there is no doubt whatever but that it is the original application of the principle of insurance. But this

merely relative recognition has scarcely been sufficient for the many authorities who have devoted their enthusiastic attention to this subject, and especially the writers of from one to three centuries ago. The intimate connection of marine insurance with commerce since certainly the fifteenth century would seem to have predisposed them, as a rule, to discover its origin in the beginnings of commerce itself. Assuming such a predisposition, it is not surprising to find that the practice of marine insurance has been attributed to the Romans and even to the Greeks. For this, however, there is little reason. Certainly, by straining a point, it may be contended—as did the old merchant Gerard de Malynes—that the emperor Claudius became an underwriter when, in a period of scarcity at Rome and in order to encourage the importation of corn, he took upon himself all the loss or damage it might sustain in the voyage thither by storm and tempest. But as against this there is the overwhelming fact that nowhere in the legal or general literature of Rome is any direct reference made to marine insurance. And if it had, in fact, been in vogue in connection with the maritime commerce of the Levant at the period of the Rhodian laws, there is again no direct evidence of the fact. For a long time it was assumed that Bruges, in the thirteenth century, was the scene of the introduction of marine insurance. But this, too, was an assumption of doubtful value, especially when it is remembered that the earliest known Flemish policy expressly stated that it was based upon the form used in London. The claim of the latter city may also be dismissed, though there is good reason to believe that London was associated with the early days of marine insurance from the time of the Lombard incursion. The oldest London policy now in existence is, curiously enough, one effected upon "the good Shipp called the *Tiger*" in 1613, a ship believed to be identical with that one referred to by Shakespeare in *Macbeth* and *Twelfth Night*. In a statute of Elizabeth, marine insurance is declared to have existed "time out of mind." This statute created a special Court of Policies of Insurance, but, after a precarious existence of about a century, it disappeared as a consequence of the Common law Courts refusing to recognise the finality of its judgments. The Common law Courts, especially under the régime of Lord Mansfield, then most effectually began to carry out the principle of the old statute. No longer were the Common law rules and forms adhered to and applied with the old obstinacy and rigidity. The peculiar characteristics and usages of commercial practice gradually became embodied in the general law, and in aid of them were introduced the best and most *apropos* features of the Roman, French, and general maritime laws and customs. And in these latter will probably be found the surest indication of the country most entitled to the original credit of marine insurance. Spain is certainly so entitled. In the fifteenth century there were settled and developed in that country the oldest codes or collections of laws and customs relating to marine insurance. These codes are the four Ordinances of Barcelona, 1434 to 1484. Following Barcelona, but in the sixteenth century, are the Ordinances of Florence, Burgos, and Bilbao, and *Le Guidon de la Mer* of Rouen. And in the seventeenth century are the Ordinances of Middleburg and Rotterdam, the *Us et Coutoumes de la Mer*, and "one of the most perfect achievements in codification ever accomplished, the production of a genius whose name has been utterly forgotten, the great *Ordinance de la Marine*." After these come the modern codes, such as Napoleon's *Code de Commerce* of 1807, and the German *General Mercantile Code*. But England has promulgated a code only now, in 1907, one century after that of France. It is embodied in the Marine Insurance Act, 1906, a statute founded upon a draft prepared by Mr. M. D. Chalmers. This codifying statute is the substantial basis of this article.

Definitions.—A contract of marine insurance, though based upon the principle of indemnity, is not in practice a perfect contract of indemnity. It may be defined as a contract whereby the insurer, who is usually called an "underwriter," undertakes to indemnify the assured in the manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure. Such a contract by its express terms or by the usage of trade, can be extended so as to protect the assured against losses on inland waters or on any land risk which may be incidental to a sea voyage. A ship in course of building, or the launch of a ship, or the conveyance abroad by post of securities, or any adventure analogous to a marine adventure, is capable of being covered by a policy in the form of a marine policy; where this is the case the law specially relating to marine insurance is generally applicable thereto. Every lawful marine adventure may be the subject of a contract of marine insurance. There can, therefore, be no valid insurance of an adventure of an illegal character, such for example as slave trading, traffic with an enemy with which England is at war, home contraband trading or smuggling, or blockade running when this country is not neutral. Nor can there be a valid insurance of seamen's wages, or of an enemy's property against capture by English ships. In the words of Chief-Justice Tindal, "a policy on an illegal voyage cannot be enforced, for it would be singular if the original contract being invalid and therefore incapable to be enforced, a collateral contract founded upon it could be enforced." The following are instances of marine adventures:—(*a*) Where a ship, goods, or other movables are exposed to maritime perils, such property being referred to in this article as "insurable property"; (*b*) where the earning or acquisition of freight, passage money, commission, profit, or other pecuniary benefit, or the security for a loan, advances, or disbursements is endangered by the exposure of insurable property to maritime perils; (*c*) where a liability to a third party may be incurred by the owner of, or other person interested in or responsible for insurable property, by reason of its exposure to maritime perils. The term "movables" is here used as meaning any movable tangible property other than the ship, but including money, valuable securities, and other documents; and "freight" may be understood as including the profit derivable by a shipowner from the employment of his ship to carry his own goods or movables, as well as freight payable by a third party, but not including passage money.

By "maritime perils" is meant the perils consequent on, or incidental to, the navigation of the sea; that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints, and detainments of princes and peoples, jettisons, barratry, and any other perils either of the like kind, or which may be designated by the policy. Of this catalogue some notice may be usefully taken of certain of the perils enumerated therein. The term *perils of the seas* does not, in the opinion of Lord Herschell, cover every accident or casualty which may happen to the subject-matter of the insurance on the sea. It must be a peril "of" the sea. "It is well settled, that it is not every loss or damage of which the sea is the immediate cause which is covered by these words. They do not protect, for example, against that natural and inevitable action which results in what may

be described as wear and tear. There must be some casualty, something which could not be foreseen as one of the necessary incidents of the adventure. The purpose of the policy is to secure an indemnity against accidents which *may* happen, not against events which *must* happen." *Fire* is always found in a policy as one of the perils against which the underwriters undertake to indemnify the assured. "If the ship be destroyed by fire," said Lord Ellenborough, "it is of no consequence whether this is occasioned by a common accident, or by lightning, or by an act done in duty to the state." But underwriters on goods are not liable for any damage done to them by their spontaneous combustion; though underwriters on a ship would probably be liable for damage to the ship resulting from this cause. De Courcy says that *spontaneous combustion* is "a form of words employed to indicate a production of internal facts without known external agents. It is never certain that the combustion has been spontaneous." And on this Mr. Gow, in his admirable handbook on *Marine Insurance*, remarks that "as a matter of fact 'spontaneous' combustion is the cause which is assumed to have occasioned a fire when no other real cause can be proved to have existed."

Insurable interest.—A contract of marine insurance by way of gaming or wagering is void. It will be a gaming or wagering contract where—(*a*) the assured has no insurable interest, and the contract is entered into with no expectation of acquiring such an interest; or (*b*) the policy is made "interest or no interest," or "without further proof of interest than the policy itself," or "without benefit of salvage to the insurer," or subject to any other like term. But many policies which offended against the foregoing were effected before the Marine Insurance (Gambling Policies) Act, 1909 (for the provisions of which see the article GAMBLING POLICIES in the Appendix), though they were consequently null and void. They were known as "Honour" policies, and were always duly "honoured" by members of Lloyd's. Generally speaking, any one who is interested in a marine adventure has an insurable interest. A person is interested in such an adventure where he stands in a legal or equitable relation thereto, or to any insurable property or risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss or by damage to it, or by its detention, or may incur liability in respect thereof. But it must be observed that a mere prospect or possibility of loss or gain, which is not founded on any right or liability in, or in respect of the subject-matter insured, is not insurable. The owner of a ship chartered to another has an insurable interest in the whole value of the ship, notwithstanding that the charterer has also, at the same time, a like insurable interest. The reason for this is that the charterer is responsible for the ship to the owner, and the latter is not bound to rely exclusively upon the financial responsibility of the charterer. Mr. Justice Lawrence, in *Lucena* v. *Crawford*, explained the nature of an insurable interest in the following words: "A man is interested in a thing to whom advantage may arise or prejudice happen from the circumstances which may attend it, and whom it importeth that its condition as to safety or other quality should continue. Interest does not necessarily imply a right to the whole or part of the thing, nor necessarily and exclusively that which may be the subject of privation, but the having some

relation to, or concern in, the subject of the insurance, which relation or concern by the happening of the perils insured against may be so effected as to produce the damage, detriment, or prejudice to the person insuring. . . . To be interested in the preservation of a thing is to be so circumstanced with respect to it as to have benefit from its existence, prejudice from its destruction. The property of the thing and the interest derived from it may be very different. Of the first the price is generally the measure, but by interest in a thing every benefit and advantage arising out of or depending on such thing may be considered as being comprehended."

As a rule the assured must be interested in the subject-matter insured at the time of the loss, though he need not be interested when the insurance is effected; but where the subject-matter is insured "lost or not lost," it is immaterial that the assured may not have acquired his interest until after his loss, if at the time of effecting the contract of insurance he was not aware of the loss. And if he has no interest at the time of the loss, he cannot acquire interest by any act or election after he is aware of the loss. It is a general practice to insure "lost or not lost," both underwriter and insurer thereby expressing indifference as to whether the subject-matter is then in existence or not. The practice is certainly very hazardous, because even if the ship or goods are lost at the time of the insurance the underwriter is liable, provided there is no fraud on the part of the assured. The premium, however, proportionately depends upon the circumstances stated at the time to show the probability or otherwise of the ship's safety. And as there must be no fraud on the part of the assured, so there must be none on the part of the underwriter. The policy will be void as against the latter if he concealed as having insured a ship which he privately knew had arrived, and an action will lie to recover the premium. It is not an absolutely infrequent practice for insurances to be effected "lost or not lost" when both underwriter and assured are aware that the ship is at the time actually lost; and this practice is perfectly legal.

A defeasible interest is insurable, and so also is a contingent interest. Accordingly, where the buyer of goods has insured them, he has an insurable interest; and this would be so even though he might, at his election, have rejected the goods, or have treated them as at the seller's risk, because of the latter's delay in making delivery or otherwise. A partial interest of any nature is insurable; consequently the owners of shares in ships may insure them. An underwriter has a reinsurable interest in his risk, and, unless the policy otherwise provides, the original assured has no right or interest in respect of such reinsurance. In like manner the assured has an insurable interest in his underwriter, but the system of double insurance renders this interest of little practical value. The lender of money on bottomry or respondentia has an insurable interest in respect of the loan; so has the master or a member of the crew in respect of wages; and in the case of advance freight, the person advancing it, so far as the freight is not repayable in case of loss; and so also has the assured himself in respect of the charges of any insurance which he may effect. Where the subject-matter insured is mortgaged, the mortgagor has an insurable interest in the full value thereof, and the mortgagee has a like interest in respect of any sum due or to become

due under the mortgage. But where a mortgagee insures for the benefit of the mortgagor as well as for himself, he has an insurable interest in respect of the full value. A consignee having an interest in the consignment, who insures for the benefit and with the authority of other persons interested as well as for himself, has an insurable interest in respect of the full value of his and their interests in the consignment. In order to have an interest in a consignment the consignee must have made advances or accepted bills against it, or have been instructed to sell it on commission, or have a general balance against the consignor. A pledgee of the bill of lading from the consignor as security for advances has an insurable interest, and may sue in his own name on a policy made under his instructions, "for account of whom it may concern," and deposited with him as an additional security. The owner of insurable property has an insurable interest in respect of its full value, notwithstanding that some third person may have agreed, or be liable, to indemnify him in case of loss. In the case of a transmission of interest by operation of law, as in the event of a death, there is a consequent transfer of the rights under the contract of insurance. But there must be an express or implied agreement between the assignor and the assignee to transfer those rights in the case of any other transmission of interest in an insurance.

Insurable value.—A policy may contain an express provision regulating the ascertainment of the insurable value of the subject-matter insured; or it may even contain an actual valuation. The courts recognise the many conveniences attached to valued policies, but where such a policy is used merely as a cover to a wager it will be considered as an evasion and treated accordingly. As Lord Mansfield said, in *Lewis* v. *Rucker*, "If it should come out in proof that a man had insured £2000 and had interest on board to the value of a cable only, there never has been, and I believe there never will be, a determination that by such an evasion" the law against gaming policies may be defeated. When the over-valuation is so exaggerated as to show to the satisfaction of a jury that it must have been designed in order to obtain more than a just and complete indemnity, then the insurance is void. But otherwise, and in the absence of a fraudulent intention to cheat the underwriter, the latter is bound in case of total loss to pay the agreed sum.

Apart, however, from a provision for valuation or an actual valuation itself, the insurable value is ascertained according to certain rules based upon the principle that the assured should be indemnified only to the extent of the actual cost and expenses of his adventure. These rules are as follows:—(1) In insurance of a ship, the insurable value is the value, at the commencement of the risk, of the ship, including her outfit, provisions and stores for the officers and crew, money advanced for seamen's wages, and other disbursements (if any) incurred to make the ship fit for the voyage or adventure contemplated by the policy, plus the charges of insurance upon the whole; the insurable value, in the case of a steamship, includes also the machinery, boilers, coals, and engine stores, if owned by the assured, and in the case of a ship engaged in a special trade, the ordinary fittings requisite for that trade; (2) In insurance on freight, whether paid in advance or otherwise, the insurable value is the gross amount of the freight at the risk of the assured, plus the charges of insurance; (3) In insurance on goods or merchandise, the insurable value

is the prime cost of the property insured, plus the expenses of and incidental to shipping and the charges of insurance upon the whole; (4) In insurance on any other subject-matter the insurable value is the amount at the risk of the assured when the policy attaches, plus the charges of insurance.

Warranties, &c.—A warranty, in marine insurance, is a promise or undertaking by the assured that some particular thing shall or shall not be done, or that some condition shall be fulfilled; or it is an affirmation or denial by him of the existence of a particular state of facts. It is a *condition* which renders the contract voidable in case of non-compliance; not a stipulation for the breach of which an action would lie. It creates exceptions to the general terms of the policy, and so exempts the underwriter from certain risks. In no other class of contract does a breach of warranty entitle the party prejudiced to avoid or rescind the contract, his rights under such circumstances being only an action for damages for the breach, or a set-off in respect thereof. And a warranty in marine insurance is always a condition which must be precisely complied with, whether it is material to the risk or not. If it is not so complied with, then, subject to any express provision in the policy, the underwriter is discharged from liability as from the date of the breach of warranty, but without prejudice to any liability incurred by him before that date. The validity of the contract depends entirely on the literal truth or fulfilment of the warranty, and unless it is performed there is no contract. A non-compliance with, or breach of a warranty, though it may be waived by the underwriter, cannot in general be excused, and the assured is not allowed to rely upon the fact, where it exists, that the breach has been remedied and the warranty complied with, before loss. Only when the warranty ceases to be applicable to the contract because of a change of circumstances, or when compliance is rendered unlawful by reason of subsequent legislation, can a non-compliance or breach be excused. The following are examples of warranties in use:—

Liverpool Slip Warranties.

Warranted not to enter or sail from any port in British North America between 1st September and 31st March, both days inclusive.

Warranted not to be in the Baltic or White Sea between 1st October and 31st March, both days inclusive.

Warranted not to sail with over net register tonnage of grain from any port in North America between 1st October and 31st March, both days inclusive.

Warranted not to sail with over net register tonnage of ore, iron, or phosphate, to or from any port in North America between 1st September and 31st March, both days inclusive.

Warranted no East of Singapore (Java excepted).

Warranted no Bilbao.

Warranted no Straits of Magellan.

A warranty may be express or implied, the latter being those that the "English law insists on finding present in every marine venture before it will enforce insurances made." No special form of words is necessary to constitute an express warranty, or to afford material from which an intention to warrant may be inferred; the word "warrant" need not appear for example. But the warranty must be included in, or written upon the face

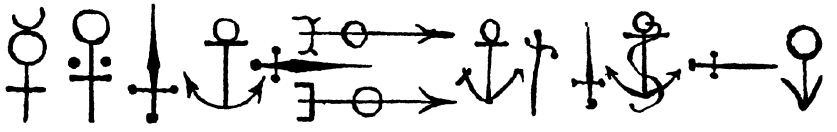
of the policy, whether in its body or margin or at the foot, or contained in some document incorporated with the policy by explicit reference. An express warranty does not exclude an implied warranty, unless inconsistent with it. Where insurable property, whether ship or goods, is expressly warranted "neutral," there is an implied condition that the property will have a neutral character at the commencement of the risk, and that, so far as the assured can control the matter, its neutral character is to be preserved during the risk. And if a ship is expressly warranted neutral there is also an implied condition that, so far as the assured can control the matter, she shall be properly documented, that is to say, that she shall carry the necessary papers to establish her neutrality, and not falsify or suppress her papers, or use simulated papers. If a loss occurs through the breach of this condition the underwriter has the right to avoid the contract. There is never an implied warranty as to the nationality of a ship, or that her nationality shall not be changed during the risk. Consequently, unless there is an express warranty of neutrality, and England is herself neutral, valid insurances may be effected in this country to cover such ventures as blockade running and smuggling contraband of war. Where the subject matter insured is warranted "well" or "in good safety" on a particular day, it is sufficient if it is safe at any time during that day.

A warranty that at the commencement of the voyage the ship is seaworthy for the purpose of the particular adventure insured is naturally one of the most important that the law always implies. This warranty is only implied, however, in voyage policies, and not in time policies. If the policy attaches while the ship is in port the warranty extends to her being reasonably fit to encounter the ordinary perils of the port. Where the policy contemplates a voyage in different stages, during which the subject-matter insured will be exposed to different degrees or kinds of peril of such a nature that the ship will require different kinds of preparation or equipment, the ship must be seaworthy, in respect of such preparation or equipment, at the commencement of each stage; and it is sufficient if at the commencement of each stage she is seaworthy for the purpose of that stage. To be seaworthy is to be reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured. The law presumes that every ship that proceeds on a voyage is seaworthy, and this presumption is certainly a reasonable one in view of the care now taken by the authorities that no ship shall proceed to sea unless structurally seaworthy, sufficiently provisioned, and adequately officered and manned. It has already been stated that in a time policy there is no implied warranty that the ship is seaworthy; but where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the underwriter is not liable for any loss attributable to unseaworthiness. In a policy on goods or other movables there is no implied warranty that the goods or movables are seaworthy. But in a voyage policy there is an implied warranty of seaworthiness of the ship, and that the ship is reasonably fit to carry the goods. But in every case a warranty is implied that the adventure insured is a lawful one, and that, so far as the assured can control the matter, the adventure will be carried out in a lawful manner.

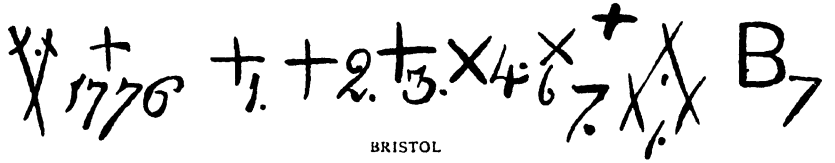
Disclosures and representations.—A contract of marine insurance is a contract based upon the utmost good faith, so that if the utmost good

faith is not observed by either party, the contract may be avoided by the other party. The assured is therefore bound to disclose to the underwriter, before the contract is concluded, every "material" circumstance which is known to him; and, moreover, the law will presume that he knew every circumstance which, in the ordinary course of business, ought to be known by him. Should he fail to make such disclosure the underwriter is entitled to avoid the contract. It may be taken as a rule that every circumstance is material which would influence the judgment of a prudent underwriter in fixing the premium, or determining whether he will take the risk, the term "circumstance" including any communication made to, or information received by, the assured. But whether any particular circumstance which is not disclosed is material or not, will, in each case, be a question of fact. In the absence of inquiry, however, the following circumstances need not be disclosed: (*a*) A circumstance which diminishes the risk; (*b*) one which is known or presumed to be known to the underwriter —the latter being always presumed to know matters of common notoriety or knowledge, and matters which an underwriter in the ordinary course of his business, as such, ought to know; (*c*) a circumstance as to which information is wanted by the underwriter; and (*d*) one which it is superfluous to disclose by reason of any express or implied warranty. In this connection Mr. Gow may profitably be quoted again. "When a merchant, shipowner, or broker offers a risk for insurance, his object, shown by the very fact of his making the offer, is to transfer from himself to the underwriter, in return for a premium to be paid and received, the risk in question. In making the offer he gives certain details, which may be classed under three categories—the unfavourable, the customary, the favourable. The unfavourable . . . he is bound to disclose; the customary he is entitled to pass over, as the underwriter is considered bound to know them; only the favourable remain. An underwriter is therefore entitled to assume that a would-be assured tells him the unfavourable facts because he dare not conceal them without imperilling his insurance, passes over the customary because he need not detail them, and expounds the favourable because he desires to do so. If that is true of the information volunteered by the intending assured, it is doubly true of the content of replies made by him to questions put by the underwriter . . . It seems, therefore, enough for general practical purposes to say that (so long as it is borne in mind that a representation is fulfilled by substantial compliance) misrepresentation occurs in any information volunteered or given in reply to inquiry, whenever any statement made is not substantially correct, provided it might fairly be held to affect an underwriter's opinion of a risk or of the proper premium for it. A man is entitled to say he has no information if he really has none: it will then be open for the other side to ask him to get the information required; but a man is not entitled to invent information if he has it not, or to colour, improve, or adorn what he has." Subject to the above-mentioned exceptions to the necessity for disclosure, where an insurance is effected for the assured by an agent, the latter must disclose to the underwriter—(*a*) every material circumstance which is within his own knowledge, an agent to insure being deemed to know every circumstance which, in the ordinary course of business ought to be known by, or to have

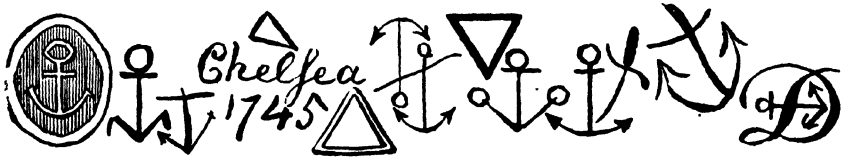
MARKS ON CHINA.—I.



BOW



BRISTOL

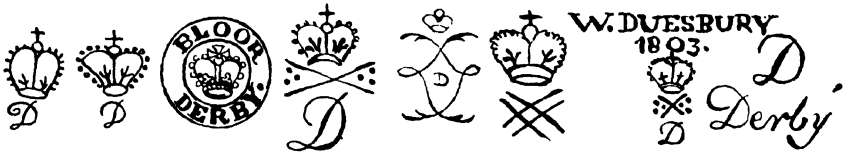


CHELSEA

CHELSEA DERBY



COALPORT OR COLEBROOKDALE



DERBY AND CROWN DERBY



LAMBETH



LEEDS



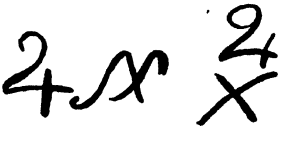
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MINTON

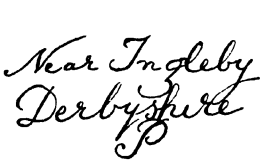


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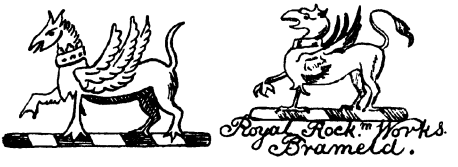


PLYMOUTH PLYMOUTH BRISTOL

MARKS ON CHINA.—II.



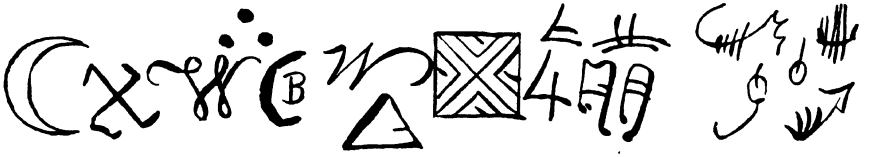
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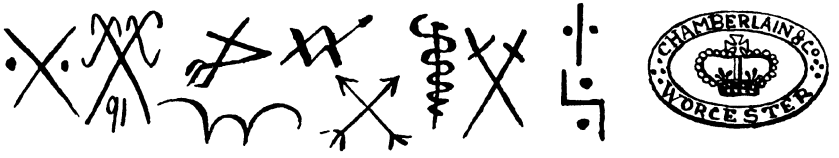
ROCKINGHAM



CAUGHLEY



WORCESTER



WORCESTER







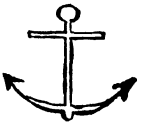
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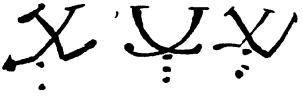
COPELAND



SWANSEA



DAVENPORT



LONGTON HALL



WEDGWOOD

been communicated to him; and (*b*) every material circumstance which the assured is bound to disclose, unless it comes to his knowledge too late to communicate it to the agent. And, moreover, every material representation must be true when made to the underwriter, during the negotiations for the contract before the contract is concluded, and whether made by the assured himself or by his agent. If it is untrue the underwriter may avoid the contract. It will be a "material" representation if it is calculated to influence the judgment of a prudent underwriter in fixing the premium or determining whether he will take the risk. It will be a representation equally whether it goes to a matter of expectation or belief as to a matter of fact; but it can always be withdrawn or corrected before the contract is concluded. A representation of fact will be true if substantially correct, that is to say, if the difference between what is represented and what is actually correct would not be considered material by a prudent underwriter. And in this connection it is useful to note the distinction between a warranty and a representation as made in *De Hahne* v. *Hartley*. In that case Lord Mansfield said, "A representation may be equitably and substantially answered, but a warranty must be strictly complied with." The assured or his agent is not bound to give his opinion to the underwriter on any matter relating to the adventure. A contract of marine insurance is considered to be concluded when the proposal of the assured is accepted by the underwriter, whether the policy is then issued or not; and in order to show whether the proposal was accepted, reference can be made to the slip or covering note or other customary memorandum of the contract, even though it is unstamped.

Double and multiple insurance. — An assured is said to be over-insured by double insurance where two or more policies are effected on his behalf on the same adventure and interest or any part thereof, and the sums insured exceed a lawful indemnity. Under such circumstances, unless the policy otherwise provides, he can claim payment from the underwriters in such order as he may choose, but he cannot recover any sum in excess of the lawful indemnity. Thus, in *Davis* v. *Gildart*, where a merchant insured his interest of the value of £2200, first with a Liverpool underwriter for £1700, and afterwards in London for £2200, the Court held that the London underwriter was liable to the merchant for the whole of the £2200; but the London underwriter had a right of contribution against the one in Liverpool. And where the policy under which an assured claims is a valued policy, he must give credit as against the valuation for any sum received by him under any other policy without regard to the actual value of the subject-matter insured. If his claim is upon an unvalued policy, then he must give credit, as against the full insurable value, for any sum received by him under any other policy. Any sum received by him in excess of the lawful indemnity is to be held by him in trust for the underwriters, according to their right of contribution among themselves. "The cases of multiple insurance that most generally occur," writes Mr. Gow, "are those in which buyer and seller, shipper and consignee, or others in similar relationship, have each insured the same goods or interest without knowing that the other has done the same. If the fact of double insurance becomes known before the lapse of the risk insured, the best course to adopt is to advise both sets of underwriters of the fact, to ask each of them to reduce his amount insured by one-half and to return one-

half of the premium. If, on the other hand, both insurances are effected by the same person, and without fraudulent intention and not in sheer forgetfulness, it is only fair to assume that he had some reason for effecting the additional policy (such as dissatisfaction with the security of his first policy), and there does not appear to be any fair ground for claiming return of premium, although the final incidence of the claim is the same."

The voyage.—Where the subject-matter is insured by a voyage policy "at and from" or "from" a particular place, it is not necessary that the ship should be at that place when the contract is concluded. There is, however, an implied condition that the adventure shall be commenced within a reasonable time after the conclusion of the contract, and that if the adventure is not so commenced the underwriter may avoid the contract. But this implied condition can be negatived by showing that the delay was not an idle one, but caused by circumstances such as loading, known to the underwriter before the contract was concluded, or by showing that he waived the condition. Undue delay is practically a deviation. Where the place of departure is specified by the policy, and the ship instead of sailing from that place sails from any other place, the risk does not attach. So, too, where, before the commencement of the risk, the destination of the ship is changed from the destination contemplated by the policy. There is said to be a "change of voyage" when, after the commencement of the risk, the destination of the ship is voluntarily changed from the destination contemplated by the policy. The consequence of a change of voyage, unless the policy otherwise provides, is to discharge the insurer from liability as from the time of change, that is to say, from the time when the determination to change it is manifested. It is immaterial that the ship may not in fact have left the course of voyage contemplated by the policy when the loss occurs. Upon a ship deviating, without lawful excuse, from the voyage contemplated by the policy, the underwriter is discharged from liability as from the time of deviation, and it is immaterial that the ship may have regained her route before any loss occurs. The result is that the continued validity of a cargo-owner's insurance is absolutely at the mercy of the master of the ship, and consequently in insurances of cargo it is usual to provide that the policy shall remain in force notwithstanding a change of voyage or deviation, subject to arrangement as to a further premium. A deviation may occur either—(*a*) where the course of the voyage is specifically designated by the policy, and that course is departed from; or (*b*) where the course of the voyage is not specifically designated by the policy, but the usual and customary course is departed from. In deciding whether or no there has been a deviation it should be borne in mind that geographical terms, in this connection, are understood in their mercantile and broader meaning, and not in their exact and scientific meaning. Thus Mauritius has been included among the Indian Isles, and the Gulf of Finland has been taken to be within the Baltic Sea. Mercantile and maritime usage is the test, though, as a principle, a voyage should proceed "in a mathematical line" if possible. The intention to deviate is immaterial; there must be a deviation in fact to enable the insurer to avoid the contract. Where several ports of discharge are specified by the policy, the ship may proceed to all or any of them, but, in the absence of any usage or sufficient cause to the contrary, she must proceed to them, or such of them as

she goes to, in the order designated by the policy. If she does not there is a deviation. So also is there where the policy is to "ports of discharge," within a given area, which are not named, and the ship, without the sanction of usage or sufficient cause, proceeds to them, or such of them as she goes to, without regard to their geographical order. In the case of a voyage policy the adventure insured must be prosecuted, throughout its course, with reasonable despatch; and if without lawful excuse it is not so prosecuted, the insurer may avoid the contract as from the time when the delay became unreasonable. Either of the following sets of circumstances is an excuse for deviation or delay:—(*a*) Where it is authorised by any special term in the policy; (*b*) where it is caused by circumstances beyond the control of the master and his employer; (*c*) where it is reasonably necessary in order to comply with an express or implied warranty; (*d*) where it is necessary for the safety of the ship or subject-matter insured; (*e*) if it is to save human life, or aid a ship in distress where human life may be in danger; (*f*) where reasonably necessary for the purpose of obtaining medical or surgical aid for any person on board the ship; or (*g*) where it is caused by the barratrous conduct of the master or crew, if barratry is one of the perils insured against. When, however, the cause excusing the deviation or delay ceases to operate, the ship must resume her course and prosecute her voyage with reasonable despatch.

Assignment of policy.—A marine policy is assignable unless it contains terms expressly prohibiting assignment; and it is immaterial whether or no the underwriter assents to the assignment. Where a policy has been assigned so as to pass the beneficial interest in it, the assignee may sue thereon in his own name or in that of the assignor; and the defendant is entitled to make any defence arising out of the contract which he would have been entitled to make if the action had been brought in the name of the person by or on whose behalf the policy was effected. The underwriter cannot therefore be prejudiced merely by the assignment. A policy may be assigned by indorsement or in any other customary manner. Notice of the assignment need not be given to the person liable thereunder, unless the assignment has been made under the Judicature Act as of a chose in action. An assured who has parted with or lost his interest in the subject-matter insured, and has not before or at the time of so doing expressly or impliedly agreed to assign the policy, cannot afterwards validly assign the policy, which will be deemed to have lapsed. But the foregoing must not be understood as affecting the general principle that a policy can be assigned as well after as before a loss, provided of course that the assured's interest in the policy had not been parted with before the loss.

The premium.—Unless otherwise agreed, the duty of the assured or his agent to pay the premium, and the duty of the underwriter to issue the policy to the assured or his agent, are concurrent conditions, and the underwriter is not bound to issue the policy until payment or tender of the premium. Where a marine policy is effected on behalf of the assured by a broker, the latter, subject to any special agreement between the parties, is directly responsible to the underwriter for the premium, and the latter is directly responsible to the assured for the amount which may be payable in respect of losses or in respect of returnable premium. And the broker also, unless otherwise agreed, has, as against the assured, a lien upon the policy for the amount of the premium and his charges in respect of effecting the

policy; and where he has dealt with the person who employs him as a principal he has also a lien on the policy in respect of any balance on any insurance account which may be due to him from such person, unless when the debt was incurred he had reason to believe that such person was only an agent. A policy effected on behalf of an assured by a broker, which contains an acknowledgment of the receipt of the premium, is a conclusive receipt for the premium, in the absence of fraud, as between the underwriter and the assured; but not as between the underwriter and broker.

Loss.—Generally speaking, and apart from any special provisions in a policy, the underwriter is liable for any loss proximately caused by a peril insured against, but not for any loss which is not so caused. An insurance against loss by wreck would cover a case where the cargo is seized by the savage inhabitants of a coast whereon the ship has been wrecked; the wreck of the ship would be the proximate cause of the loss of cargo. In particular —(*a*) the insurer is not liable for any loss attributable to the misconduct of the assured, but, unless the policy otherwise provides, he is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the mistaken judgment, misconduct, or negligence of the master or crew; (*b*) unless the policy otherwise provides, the insurer on ship or goods is not liable for any loss proximately caused by delay although the delay is caused by a peril insured against; (*c*) unless the policy otherwise provides, the insurer is not liable for any loss caused by ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or any other ordinary and normal operation of natural causes, or for any loss caused by rats or vermin, or for any injury to machinery not caused by maritime perils. A loss may be either total or partial. Any loss other than a total loss, as defined below, is a partial loss. And a total loss in its turn may be either an actual total loss or a constructive total loss. Unless a different intention appears from the terms of the policy, an insurance against total loss includes a constructive, as well as an actual, total loss. Where the assured brings an action for a total loss, and the evidence proves only a partial loss, he may, unless the policy otherwise provides, recover for a partial loss This gives the assured an opportunity to correct any erroneous estimate he may have made as to the extent of the loss he has suffered. An actual total loss occurs where the subject-matter insured is destroyed, or irreparably damaged, or where the assured is irretrievably deprived thereof. And, in particular, goods are considered to be irreparably damaged where they are so damaged as to cease to exist in specie, or that they cannot be rendered capable of arriving at their destination in specie. They cease to exist in specie when they no longer answer to the denomination under which they were insured. A wrecked ship is thus not a ship as insured, decomposed wheat is not wheat, and rotten fruit is not fruit. No notice of abandonment need be given in the case of an actual total loss. Where the ship concerned in an adventure is missing, and after the lapse of a reasonable time no news of her has been received, an actual total loss may be presumed. What is a reasonable time depends upon the circumstances of the particular case. The liability of the underwriter will continue, notwithstanding the landing or transhipment, if a voyage is interrupted at an intermediate port or place by a peril insured against, under such

circumstances as, apart from any special stipulation in the contract of affreightment, justifies the master in landing and reshipping the goods or other movables, or in transhipping them and sending them on to their destination.

There is a constructive total loss where the subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure which would exceed its value when the expenditure had been incurred. For the purpose of determining what is reasonable, regard must be had to the course which would be pursued by a prudent uninsured owner under the circumstances of the case. In particular, there is a constructive total loss—(i) where the assured is deprived of the possession of his ship or goods by a peril insured against, and (*a*) it is uncertain whether he can recover the ship or goods, as the case may be, or (*b*) the cost of recovering the ship or goods, as the case may be, would exceed their value when recovered; or (ii) in the case of damage to a ship, where she is so damaged by a peril insured against, that the cost of repairing the damage will exceed the value of the ship when repaired. In estimating the cost of repairs, the expense of future salvage operations, and any future general average contribution to which the ship would be liable (if repaired) must be taken into account; or (iii) in the case of damage to goods, where the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival. Where there is a constructive total loss the assured may either treat the loss as a partial loss, or abandon [*see* ABANDONMENT] the subject-matter insured to the insurer, and treat the loss as if it were an actual total loss. Where the assured elects to abandon the subject-matter insured to the underwriter, he must give notice of abandonment. A consequence of failure to give such notice is that the loss can be treated only as a partial loss. This notice, however, may be waived by the underwriter, and where the latter has reinsured he is not entitled to notice.

Rights of underwriter on payment.—An underwriter upon paying for a total loss thereby becomes entitled to whatever remains of the subject-matter insured; and he is thereby "subrogated" to all the rights and remedies of the assured in and in respect of the subject-matter as from the time of the casualty causing the loss. Consequently, if the loss is occasioned by a collision, the underwriter is entitled to the damages; though, of course, he could not obtain these damages if the ship in fault in the collision were also the property of the assured. As a general rule convenience requires an instant sale, at or near the scene of the loss, of what remains of the subject-matter; such a sale is made on the account of the underwriter, who receives the proceeds. In the case of a total loss the underwriter's right to the subject-matter is not limited to the amount he has paid under the policy; it is therefore possible, though unlikely, that he may recover more than he has himself paid. Where the underwriter pays for a partial loss, he does not acquire any title to the subject-matter, or such part of it as remains; but he is only subrogated to the rights and remedies of the assured in and in respect of the subject-matter as from the time of the casualty causing the loss, in so far as the assured has been indemnified by such payment for the loss. In a case where the assured is over-insured by double insurance, each underwriter is bound, as between himself and the other underwriters, to contribute rateably

to the loss in proportion to the amount for which he is liable under his contract. And if an underwriter pays more than his proportion of the loss, he is entitled to maintain an action for contribution against the other underwriters, and is entitled to the like remedies as a surety who has paid more than his proportion of the debt. An assured who is insured for an amount less than the insurable value, or, in the case of a valued policy, for an amount less than the valuation, is deemed to be his own insurer in respect of the uninsured balance.

Return of premium.—Where a policy contains a stipulation for the return of the premium, or a proportionate part of it, on the happening of a certain event, and that event happens, the premium, or part thereof, is thereupon returnable to the assured. And also if the consideration for the payment of the premium totally fails, and there has been no fraud or illegality on the part of the assured or his agents, the premium is thereupon returnable to the assured. A proportionate part of the premium may be so returnable if the consideration therefor is apportionable, and an apportionable part of the consideration has totally failed. Accordingly (*a*) Where the policy is void, or is avoided by the insurer as from the commencement of the risk, the premium is returnable, provided that there has been no fraud or illegality on the part of the assured; but if the risk is not apportionable, and has once attached, the premium is not returnable: (*b*) Where the subject-matter insured, or part of it, has never been imperilled, the premium, or, as the case may be, a proportionate part thereof, is returnable; but if the subject-matter has been insured "lost or not lost," and has arrived in safety at the time when the contract is concluded, the premium is not returnable unless at such time the insurer knew of the safe arrival: (*c*) The premium is returnable in a case where the insured has no insurable interest throughout the currency of the risk; but this rule does not apply to a policy effected by way of gaming or wagering: (*d*) It is not returnable, however, where the assured has a defeasible interest which is terminated during the currency of the risk: (*e*) Where the assured has over-insured under an unvalued policy, a proportionate part of the premium is returnable: (*f*) Subject to the foregoing, where the assured has over-insured by a double insurance, a proportionate part of the several premiums is returnable; but if the policies are effected at different times, and any earlier policy has at any time borne the entire risk, no premium is returnable in respect of that policy. A premium which is so returnable may be recovered from the insurer if already paid, or may be retained by the assured or his agent if unpaid. *See* LLOYD'S POLICY; AVERAGE.

MARINE STORE DEALERS are interested, in particular, in certain sections of the Merchant Shipping Act, 1894, the Old Metal Dealers' Act, 1861, the Public Health Acts Amendment Act, 1907, and certain sections of the Prevention of Crimes Act, 1871. Section 538 of the Merchant Shipping Act defines a marine store dealer as a person "dealing in, buying, or selling any of the articles following, that is to say, anchors, cables, sails, old junk, or old iron, or other marine stores of any kind." Such a person must have his name, together with the words "dealer in marine stores," distinctly painted in letters not less than six inches in length, on every warehouse and place of deposit belonging to him. If he fails to do so, he becomes liable to

a fine not exceeding £20. He must also, under a penalty of £5, register his name and place of abode with the local authority. *To keep proper books.*—Every marine store dealer must keep proper books. He must enter therein an account of all articles of which he becomes possessed, stating in respect of each the time at which, and the person from whom, he purchased or received them, and also a description of the business and place of abode of that person. For default in this respect he will incur a fine. An inspector of the local authority is entitled to enter his premises at all reasonable times. *Not to purchase from person under sixteen.*—No marine store dealer or his agent is allowed to purchase marine stores of any description from a person apparently under the age of sixteen years. If he does so he is liable to a fine for the first offence not exceeding £5, and every subsequent offence not exceeding £20. *Not to cut up cable, &c.*—A marine store dealer must not on any pretence cut up any cable or other like article exceeding five fathoms in length, or unlay it into twine or paper stuff without obtaining a written permit. In order to obtain this permit he should make a declaration before some justice of the peace having jurisdiction where the dealer resides, stating—(*a*) the quality and description of the cable or other like article about to be cut up or unlaid; (*b*) the name and description of the person from whom he purchased or received the same; and (*c*) that he has purchased or otherwise acquired the same without fraud, and without any knowledge or suspicion that it has been come by dishonestly. Thereupon, either that justice, or the receiver of the district, upon the production of the declaration, may grant a permit authorising the dealer to cut up or unlay the cable or other article. If a dealer cuts up or unlays any cable or other article without complying with the foregoing requirements, he will be liable to a fine for the first offence not exceeding £20, and for every subsequent offence not exceeding £50. *Permit to be advertised.*—A dealer who has obtained a permit cannot begin to cut up or unlay any cable or other article until, for the space of one week at the least, he has published in some newspaper circulating in the place where he resides one or more advertisements, notifying the fact of his having obtained the permit, and specifying the nature of the cable or article mentioned in the permit, and the place where it is deposited, and the time at which it is intended to be cut up or unlaid. If any person suspects or believes that the cable or other article is his property, he may obtain a warrant from a justice which will enable him to require the dealer to produce for his inspection and examination the cable or article mentioned in the permit, and also the books kept by the dealer. If a dealer fails without reasonable cause to comply with any of the foregoing requirements, he will incur, for the first offence, a fine not exceeding £20, and for every subsequent offence a fine not exceeding £50.

Old Metal Dealers.—A "dealer in old metals" means any person dealing in, buying, and selling old metal, scrap metal, broken metal, or partly manufactured metal goods, or defaced or old metal goods, and whether such person deals in such articles only, or together with second-hand goods or marine stores. The term "old metals" means the above-mentioned articles. *Search for old metals stolen or unlawfully obtained.*—A justice of the peace may issue a special warrant upon complaint being made upon oath, that the complainant has reason to believe and does believe that any old

metal stolen or unlawfully obtained is kept in any house, shop, room, or place, by any dealer in old metals within the limits of the jurisdiction of the justice. This warrant authorises the police to enter in the daytime such house, shop, room, or other place, and to search for and seize all such old metals there found. The articles so seized are then carried before the justice, who will issue a summons requiring the dealer to appear and satisfactorily account for his possession of the articles. Should he be unable to so account for the articles, or if he is found in possession of any old metal which has been stolen or unlawfully obtained, and on his being summoned it is proved that at the time when he received it he had reasonable cause to believe it to have been stolen or unlawfully obtained, then in either of such cases he will be liable to a penalty not exceeding £5, and for any subsequent offence to a penalty not exceeding £20 or three months' hard labour. But this special provision does not interfere with or affect any proceeding by indictment to which the dealer may be liable for feloniously and knowingly receiving stolen goods, except that no dealer can be both prosecuted by indictment and proceeded against as above for the same offence. *Convictions to be registered.*—When a dealer is convicted of either of the foregoing offences, the conviction can be registered at the local police office. After such registration the dealer is subject to and must conform to the several regulations hereinafter set out, for a period not exceeding three years. If during that period he is convicted of any offence under the Old Metal Dealers' Act, the period may be extended for another three years from the time when the period would otherwise expire, and the period can be so extended continuously if the offences are repeated within the duration of a period. But where an old metal dealer who is also a marine store dealer within the meaning of the Merchant Shipping Act, 1894, is so registered, he continues to be liable to the penalties imposed by the Merchant Shipping Act. *Change of business place.*—An old metal dealer, upon removing to another place of business, must give notice of his removal at the police office where he is registered. If after removal he continues to carry on business as a dealer in old metal without having given this notice, he incurs a penalty of £5, and a penalty not exceeding ten shillings for every day after the first on which he continues to carry on such business without giving the requisite notice. Where he removes to a place out of the petty sessional district in which he has been registered, the superintendent of police for that district transmits a certificate of the registration to the clerk of the justices for the district in which the dealer has taken up his residence; and any of the justices of that district may summon him to appear before them; and if it appears to them that he intends carrying on business as a dealer in old metals, they can order him to be registered in the same manner as above-mentioned; and such registration will have full effect during the current period. *Visitation of business place by police.*—The justices may order one or more inspectors or sergeants of police to visit at any time the places of business and inspect the goods and books of dealers in old metals who are subject to the regulations of, and who carry on business within their district. Every such inspector or sergeant must record in the appropriate book kept by a dealer in old metals the day and hour of his visit, and place opposite the entry of every article examined by him his initials or name in attestation of the same.

Regulations to be observed by registered dealers.—Every dealer in old metals who is registered as aforesaid must, during the period which the justices order as above provided, conform to the following regulations:—(1) He shall keep a book or books fairly written, and enter therein, according to the statutory form, an account of all such old metals as he may from time to time become possessed of, stating in respect of each article the name of the person who purchased or received the same, and the time at which and the name of the person from whom he purchased or received the same, adding in the case of every such last-mentioned person a description of his business and place of abode; (2) He shall also enter in such book or books according to the statutory form an account of all such old metals as he may from time to time sell or dispose of, stating in respect of such old metals the name of the person to whom he sold or disposed of the same, adding a description of his business and place of abode; (3) Every such entry in such book or books will be deemed and taken, unless the contrary be shown, to have been made by or with the authority of the dealer in old metals to whom such book or books belong; (4) He shall not by himself or any other person purchase or receive any old metals of any description before 9 A.M. nor after 6 P.M.; (5) Nor shall he by himself or any other person purchase or receive old metals of any description from any person apparently under the age of sixteen years; (6) Nor shall he employ any servant or apprentice or any other person under the age of sixteen years to purchase or receive old metals of any description; (7) He shall produce to any inspector or sergeant of police authorised as above-mentioned, whenever thereto requested, the book or books required to be kept as aforesaid, and any old metal purchased or received by him then in his possession; (8) Such old metals shall be deemed to be in the possession of such dealer when they are placed in any house, outhouse, yard, garden, or place occupied by him, or shall have been removed with his knowledge and permission to any other place without a *bonâ fide* sale of such old metals having been made by him; (9) He shall, without delay, give notice to the officer on duty at the police station nearest to the place where he carries on business, of any articles then in his possession or which shall thereafter come into his possession answering the description of any articles which have been stolen, embezzled, or fraudulently obtained of which printed or written information, containing a description of such articles, is given to him by any officer of the police; (10) He shall keep all old metals purchased or received by him, without changing the form in which such articles were when so purchased, or disposing of the same in any way, for a period of forty-eight hours after such articles have been purchased or received; (11) For any act or default contrary to the foregoing regulations done or made by any registered dealer in old metals, during the period which the justices shall order as above provided, he shall incur a penalty of not less than twenty shillings, and not exceeding £5, and for every subsequent offence a penalty of not less than £5, and not exceeding £20.

MARKET-GARDENERS have little need, in a work like the present one, for a separate treatment of the law so far as it relates to their particular occupation. Under various statutes, such as the Public Health Act, 1875, the Agricultural Rates Act, 1896, and the Extraordinary Tithe Redemption Act, 1896, they are afforded a considerable relief in the matter of *rating* and tithing, but the provisions of these Acts are noted elsewhere, as for example in the article on the GENERAL DISTRICT RATE. In this connection it should be noted that the House of Lords case of *Smith* v. *Richmond* decided that glass houses in or on a market-garden, if buildings, must under the Agricultural Rates Act, 1896, be rated as buildings under the Agricultural

Holdings Acts, 1883 to 1900, and not as agricultural land. Their rights to compensation from their landlords on the termination of a tenancy are noted in the article on AGRICULTURAL HOLDINGS, but here it may be convenient to notice in greater detail the provisions of the Market-Gardeners Compensation Act, 1895, which extends their rights under the Act of 1883. A "market-garden" has been defined as a holding or that part of a holding which is cultivated wholly or mainly for the purpose of the trade or business of market-gardening. This definition, though generally applicable, is specially framed for the purposes of the Agricultural Holdings and Market-Gardeners Compensation Acts. By the Act of 1895 a market-gardener is entitled to compensation, as for improvements, for planting standard or other fruit-trees permanently set out, planting fruit bushes permanently set out, planting strawberry plants, planting asparagus and other vegetable crops, and erecting or enlarging buildings for the purposes of his trade or business. In order to obtain compensation from his landlord upon giving up his tenancy it is not necessary that a market-gardener tenant should have had the written consent of the landlord to himself give compensation to his predecessor for the improvements he then took over. A market-gardener tenant is entitled to remove all fruit-trees and fruit bushes planted by him on the holding and not permanently set out; but he must remove them before the termination of his tenancy, or else they will remain the property of the landlord and no compensation can be recovered in respect of them. The provisions of the Agricultural Holdings Act, 1908, apply to a market-garden where the holding is let as such by agreement in writing made on or after 1st January 1896.

MARKET OVERT has been defined as "an open, public, and legally constituted market," and to such a market is attached that most convenient old rule of the common law now adopted by the SALE OF GOODS (*q.v.*) Act, that a *bonâ fide* buyer therein of any goods and chattels other than horses, who has no notice of any defect in the vendor's title, thereby acquires a good and perfect title to his purchase. Market overt in the country is only held on the special days provided for particular towns by charter or prescription; but in London every day, except Sunday, is a market day. In the country a market overt is possible only when the market is held in the prescribed place for the sale of particular goods. But in London every shop in which goods are publicly exposed for sale is a market overt, though only for such things as the shopkeeper professes to deal in. The proper place for a sale of gold plate, for example, would not be a grocer's shop. And it is only a shop that can thus be a market overt, for where a sale took place in a show-room above a shop, access to which was obtainable only by special permission, it was held, in *Hargreave* v. *Spink*, that the transaction was not a sale in market overt. Nor is a sale at a wharf, or to a pawnbroker at his shop a sale in market overt. It would appear, too, from the old *Case of Market Overt*, that a sale in a shop must be such that any one who stands or passes by the shop can witness the transaction. "If the sale be in the shop of a goldsmith, either behind a hanging or behind a cupboard upon which the plate stands, so that one who stood or passes by the shop could not see it," there would not be a sale in market overt. Nor would there be in the case of a sale by sample, where the bulk is not exposed in the shop. Where a shop contains an outer room and an inner room, the sale in the inner room is not one in

market overt. The necessity for a clear idea as to a market overt is very obvious when it is remembered, as stated at the beginning of this article, that a *bonâ fide* purchaser in market overt obtains a good title to the goods he has bought. It follows, therefore, that if stolen or fraudulently-obtained goods are sold and *bonâ fide* bought in market overt the true owner cannot bring an action against the purchaser for their recovery. But to this rule there is the most important modification contained in the Sale of Goods Act, in cases of larceny of goods. It is that where goods have been stolen and the offender is prosecuted to conviction, then, notwithstanding any intermediate dealing with them whether by market overt or otherwise, the property in the goods so stolen revests in their owner. The latter can then proceed for their recovery; or the judge, after convicting the offender, can order the person then in possession of the goods to forthwith restore them to their owner. The person who thus has to give up the goods cannot make any claim upon the owner for their keep. Goods obtained by fraud, such as false pretences, or any other wrongful means not amounting to larceny, do not come within the above modification to the rule. Nor, indeed, does that modification extend to Scotland. It should be noted, however, that the owner of goods which have been stolen from him has no claim against any one who may have fairly purchased them in market overt, and sold them again, even after notice of the theft but before the conviction of the thief. This was decided in *Horwood* v. *Smith*, where all the judges expressly held that the notice of the theft given to the defendant between the time of his purchase and the conviction made no difference. The reason for the decision would seem to be that during the interval between the theft and the conviction, the ownership of the goods remained in doubt. If the goods had remained in the defendant's possession at the time of the conviction, that would have altered the case. "But," said Lord Kenyon, "he had the good fortune to get rid of them before that time, and another person was substituted in his room. . . . The plaintiff has a right to the restitution of the goods in specie, and perhaps would be entitled to recover damages in trover against any person who is fixed with the goods after conviction and refuses to deliver them; for then the goods are converted to the prejudice of the owner."

MARKETS AND FAIRS.—No one can establish a market or fair unless he has an authority so to do derived from a charter or an Act of Parliament. It is now usual to obtain a special Act; and such an Act generally has incorporated with it the provisions of the Markets and Fairs Clauses Act, 1847. As a rule, all markets established since the enactment of the statute of 1847 are regulated by the latter statute and also by their special Act. Urban and Rural District Councils have power to establish markets in certain cases. The old established markets gained their right to existence either by immemorial enjoyment, prescription, charter, or special Act of Parliament. Apart from statutory authority, they could only be set up by virtue of the King's grant or charter, or by long and immemorial usage and prescription which presupposes such a grant. Originally they depended for their authority upon the royal pleasure. A fair is a greater sort of market, usually held once or twice a year; it may be abolished under the provisions of the Fairs Act, 1871. A market is less than a fair, and is usually held once or twice a week. Every fair is a market, according to Coke, but every market is not a fair. Once a man has acquired and exercises

a right to hold a market, no one will be allowed to set up another market or to do any act which may prejudice it as a market. No one can "disturb" a lawful market, and the courts will restrain any one who attempts to do so. Such a disturbance is a nuisance to the freehold which the owner of the market has therein. In order to make out such a nuisance it is necessary that the market disturbed should be the older, and that the disturbing market be erected within a third part of twenty miles from the original one. This latter condition is a part of the old law which considered it "reasonable that every man should have a market within one-third of a day's journey from his own home; that the day may be divided into three parts, he may spend one part in going, another in returning, and the third in transacting his necessary business there." A reasonable day's journey was taken as being twenty miles. Holding a new market on the same day as the old was considered to be a *primâ facie* disturbance of the old market. In a case where a man brought a number of sheep to a public-house within forty yards of a market and then went into the market to search for customers whom he took out to the public-house, it was held that he had disturbed the market. And the principle of the thing was maintained in *Elwes* v. *Payne*. There the plaintiffs were owners of the tolls of an ancient cattle market held weekly on Thursdays. The defendants, who were auctioneers, fitted up with stalls and pens a neighbouring piece of ground, and issued circulars stating that weekly sales of cattle by auction would be held there on Mondays. The plaintiffs thereupon commenced an action for an injunction restraining the auctioneers from so doing business, and applied to the Court for an interlocutory injunction until the trial of the action. The auctioneers, on appeal, were ordered to keep an account until the trial, and the interlocutory injunction was refused on the general question of convenience and necessity. But it had been held, by the Master of the Rolls from whom the defendants had appealed, that, having regard to modern facilities for traffic, a market on Monday was *primâ facie* an injury to a market on Thursday, and that what the auctioneers were doing was in fact the establishment of a rival market. On the appeal Lord-Justice James said that "by the law of England every one who has a close near a railway station has *primâ facie* a right to have sheep and beasts, and to sell those sheep and beasts on that close. Every one has a right to carry on the trade of an auctioneer if he pleases, and in carrying on that trade of an auctioneer he would have also a perfect right to sell sheep and animals on that close in the same way as a man has a right to erect a furnace on his own land if he does not interfere with his neighbour's rights. It may be that in selling the sheep and beasts he will be doing something which amounts to an invasion of another man's legal monopoly or franchise. The question to be determined at the hearing is whether what the defendants are doing amounts in point of law to such an invasion." It would seem that this action never did come to a hearing, and it may therefore be fairly assumed that the defendants, recognising the soundness of the law of the Master of the Rolls, deemed it wise to withdraw their disturbance and not proceed with their defence. There is no disturbance in the case of a sale by sample, on a market day, near to but without the limits of the market, provided the sale is not done designedly and with the intention to evade the payment of toll. It sometimes happens, however, that there is attached to a market a custom that no marketable articles shall be sold in

local shops without market dues being paid thereon. But such a custom will not be implied in the grant of the market. The Manchester Corporation once brought an action to restrain a tradesman who sold eggs and dried fish in his shop on market days. The shop was in the same street as the corporation statutory market which it adjoined. The action failed, however, for as the tradesman only sold his own goods in his shop in the ordinary course of his business, there was no disturbance of the right of market. Where a right to hold a market is granted together with a right to *toll*, the latter must be a reasonable one if no specific amount is mentioned. And where a specific toll has been granted so far back in antiquity as to make it unreasonable at some particular modern period, then its amount should, as a rule, be varied to meet the altered value of money. Tolls are not necessarily incident to a right to hold a market, they are not usually payable until sale, and then, as a rule, only by the purchaser. A sale in a market by sample does not generally carry a toll as would a sale in bulk. As a rule a re-sale is subject to a toll. And it often happens that a corporation, as owners of a borough market, are entitled to toll from persons who hawk or sell goods in the streets of the borough. In such cases the goods, in order to be subject to the toll, must be of precisely the same character as those provided for in the authority prescribing the toll. By taking a toll the owners of a market assume an obligation to keep the place in a condition proper for its purposes. If, for example, they invite dealers to come into a market with cattle, and exact a toll, then if the cattle are injured as a result of the market not being in a safe condition, they are liable to the dealers for any loss sustained by those injuries. *Stallage* is the payment made to the owner of the soil, when he is a different person from the owner of the market, for the exclusive occupation of some portion of his land. The owner of the market gives the licence to erect the stall and the owner of the land takes the stallage. Should any person have an occupation of any part of the land then he becomes liable for stallage; if he makes holes in the ground for the posts of his stall he may also be liable to a payment called *piccage*. What constitutes a stall is a question of fact for a jury; but merely temporarily occupying some part of the ground for exposing goods or depositing baskets does not constitute a stall. Stallage can be recovered from an occupier even though the owner of land is unable to show any contract in fact between him and the person in occupation. It may be, however, that a local custom exempts certain persons, such as the inhabitants of a particular town, from payment of any stallage in their local market.

The **Statutory Provisions** contained in certain Acts of 1847 and of 1887, the first of which is referred to at the beginning of this article, will now be noticed. *Holding of markets.*—Before a market fair is first opened for public use, ten days' notice of the time when it will be opened is required to be given in some local newspaper, and by printed handbills conspicuously posted in the district. After the market-place has been opened for public use every person (other than a licensed hawker) who sells or exposes for sale any tollable articles will be liable to a penalty of forty shillings, if he does so within the prescribed limits, unless it is within his dwelling-house or shop. The markets and fairs must be held regularly on the appointed market days; and special penalties are imposed for obstructing a market keeper or

selling or exposing for sale in the market any unwholesome meat or provisions. SLAUGHTER-HOUSES are also the subject of special provision. *Weighing.*—The weighing of CATTLE (*q.v.*) is provided for in the Act of 1887. The older Act is confined to goods and carts. The authorities must provide sufficient weights and measures for weighing and measuring commodities sold in their market or fair, and also proper persons to attend thereto. A seller of goods in a market who refuses to have them weighed, when so requested by the buyer, incurs a penalty. And in like manner the authorities must provide sufficient means and accommodation for weighing carts, and a driver is bound to take his cart to be weighed, with or without its load, upon the request of the buyer of the goods it carries. A penalty of £5 is incurred by a driver who commits any of the following offences—(*a*) If he at the time of weighing the cart knowingly has anything in or about it other than its proper load; (*b*) if he alter any ticket denoting the weight of the cart or its loading; (*c*) if he makes or uses, or is privy to making or using, any ticket falsely stating the weight of the cart or its loading; (*d*) if, after the weighing of the cart with its load, he removes or attempts to remove any part of the load with a view to disposing of or representing the residue of the load to be the full load denoted by the ticket; (*e*) if, between the weighing of the cart and load and the weighing of the cart alone, he changes the wheels of the cart or makes any other change; and (*f*) if he is guilty of any other fraudulent contrivance to misrepresent the weight of the cart or its load. Penalties are also imposed upon buyers and sellers, and others, for committing frauds in weighing. *Tolls.*—A list of stallages, rents, and tolls must be painted on boards, or printed and attached to boards in legible characters. These boards are to be continuously and conspicuously set up in the market, and the weighing-house and slaughter-houses attached thereto. No stallage, rent, or toll is payable during the time the list is not so published; nor for anything not specified therein. But if the list is destroyed or injured these payments can be enforced during the time reasonably required for its restoration. They may also be varied from time to time within the amounts specified in the special Act authorising the market. A penalty is incurred by any one who demands or receives a greater toll than that authorised by the special Act. Tolls in respect of the market must be paid from time to time on demand, and those in respect of weighing before the commodities or carts are weighed or measured. In respect of cattle the tolls become due as soon as the cattle are brought into the market-place, and before they are put into any pen, or tied up anywhere. A further toll is payable in respect of cattle not removed within one hour after the closing of the market. Copies of the special Act are kept in the principal office of the market, and also by the local clerk of the peace in England or Ireland, and by the sheriff-clerk in Scotland. They can be inspected by all persons interested therein.

MARRIAGE is a contract made according to the forms prescribed by the law whereby a man and woman mutually agree to live together, in conjugal union, during their joint lives. It is "the voluntary union for life of one man and one woman to the exclusion of all others." Marriage was not originally a sacrament of the Christian Church, nor is it now recognised as such except by certain of the more sacerdotal sects. It was not until the

time of Pope Innocent III., at the commencement of the thirteenth century, that marriage was required to be celebrated in church. Before that time there was no celebration of marriage in the church, but the man went to the house inhabited by the woman and carried her back to his own house: this was practically the whole ceremony. But yet, according to English law as laid down by Lord Stowell in *Lindo* v. *Belisario*, marriage is not merely a civil or a religious contract, and is not to be considered as originally and simply one or the other. The English law of marriage is therefore so closely bound up with religion — the religion of England — that when marriages are celebrated in foreign countries, having foreign religions, it is possible that doubts may arise as to their validity in England. The general rule of law in this connection was thus stated by Lord Brougham in *Warrender* v. *Warrender*: "A marriage, good by the laws of one country, is held good in all others where the question of its validity may arise. For the question must always be: Did the parties intend to contract marriage? And if they did that which in the place they were in is deemed a marriage, they cannot reasonably, or sensibly, or safely, be considered otherwise than as intending a marriage contract." But this general rule extends "no further than to the ascertaining of the validity of the contract and the meaning of the parties, that is, the existence of the contract and its construction. If indeed there go two things under one and the same name in different countries—if that which is called marriage is of a different nature in each—there may be some room for holding that we are to consider the thing to which the parties have bound themselves, according to its legal acceptance in the country where the obligation was contracted. But marriage is one and the same thing substantially all the Christian world over. Our whole law of marriage assumes this; and it is important to observe, that we regard it as a wholly different thing, a different *status* from Turkish or other marriages among infidel nations, because we clearly never should recognise the plurality of wives, and consequent validity of second marriages, standing the first, which second marriages the laws of those countries authorise and validate." And in the words of Lord Penzance, in *Hyde* v. *Hyde & Woodmansee*, "the matrimonial law of this country is adapted to the Christian marriage, and it is wholly inapplicable to polygamy." Wherefore, *In re Bethell: Bethell* v. *Hildyard*, it was held that a man was not married, according to the law of England, who, being a resident at Mafeking, went through the form of marriage according to the custom of the Baralong tribe with a Baralong girl. In that case it was proved that the Baralongs had no religion, nor any religious customs, and that polygamy was allowed.

But such questions as these have no importance in connection with marriages in England; their importance exists because of the constant movement of Englishmen to foreign and uncivilised countries. As to FOREIGN MARRIAGES in general, see the article under that title. In order that a marriage celebrated in England may be valid it is necessary, in the first place, that neither of the parties thereto should, at the time, be bound by an already subsisting valid marriage [*see* BIGAMY]; and it is also necessary that neither of them should be within the prohibited degrees of CONSANGUINITY (*q.v.*), even though the relationship is illegitimate and not sanctioned by lawful marriage. Then, too, both of the parties must be

of the necessary age; the man must be at least fourteen years old, and the woman twelve. And lastly, the parties to the marriage must have mental and physical capacity. A lunatic or idiot, therefore, cannot contract a valid marriage unless, in the case of a lunatic, the marriage was celebrated in a lucid interval. But it was decided, in *Attorney-General* v. *Parnther*, that the burden of proof lies on the party who alleges the lucid interval; he must show sanity and competency at the period when the act was done. And his proof of lucidity must be as strong as if the nature of the proof were to establish lunacy. The requisite physical capacity is that necessary to fulfil the characteristic matrimonial function. Its absence is known as "impotence," and in order that a marriage may be invalidated on this ground it should have existed at the time of the marriage. As a rule, applications for annulling a marriage on the ground of impotence are not entertained by the courts until there has been at least a three years' cohabitation.

Marriage being a contract it is necessary, as in all contracts, that the parties thereto should be capable of consenting—and in fact consent—to the rights and obligations created by the mutual agreement. This is the reason for the foregoing essential conditions, other than that relating to consanguinity, of a valid marriage. It is also the reason for other conditions. Thus, there must be no duress or fraud. An instance of a marriage being annulled on the ground of duress is that in *Clarke* v. *Clarke*, where the wife went through the marriage ceremony under the impression that it was a ceremony of betrothal, she being influenced to do so, and in that belief, by her mother, who was conspiring to that end with the man to whom she was married. Another is found in the case of *Bartlett* v. *Rice*, where the woman went through the marriage ceremony in a fainting condition, because the man had previously produced a pistol and threatened to shoot her if she would not consent to marry him; immediately after the ceremony she left him, the marriage was never consummated, and the man never insisted upon his marital rights. Generally speaking, it is not necessary, in order to avoid a marriage entered into through fear, that the fear should be such that a person of ordinary courage and resolution would yield to it; it is sufficient if either party is mentally incompetent to resist pressure improperly brought to bear upon him or her (*Scott* v. *Sebright*). As an instance of a marriage annulled on the ground of fraud may be quoted *Lord Portsmouth's case*, where the attendant circumstances were such as suggested fraud and circumvention between a person of weak mind and the daughter of his trustee and solicitor. But though duress and fraud may invalidate a marriage, yet the law will not annul one merely on the ground of misrepresentation of either of the parties as to his or her circumstances, position, or personality. The doctrine of CAVEAT EMPTOR (*q.v.*) would seem to enter as completely into the contract of marriage as the contract of sale. Neither party should consent to marriage without first using an independent judgment upon the circumstances of the particular case; the law will no more relieve from the effects of a blind credulity in connection with the contract of marriage than in connection with any other wherein each party has the opportunity of using reasonable care and caution.

Although persons of the already mentioned ages are capable of entering into the contract of marriage, yet any one who is less than twenty-one years

of age must first obtain the consent of his father. If he or she has not a father then the consent of a guardian must be obtained, or in the absence of a guardian the consent of the mother. In the case of a marriage by licence one of the parties will be required to make oath either that no consent is necessary or that it has been given, but the consents are presumed in the case of a marriage by banns.

Marriage in Church of England may be by BANNS (*q.v.*) or by licence. With regard to a marriage in a church it should be noted that it will be absolutely valid even though the parties are infants, have not at any time resided within the parish, have not obtained the necessary consents, and have even obtained a licence by an absolutely false affidavit. On the other hand a marriage by banns can be avoided if, with the consent of the other party, one of the parties to the marriage has had the banns published in a wrong name. Such a case occurred where an infant, one Bower Wood, had the banns published, with his intended wife's consent, in the name of John Wood. Where it is desired to dispense with the formality and delay of banns a marriage may be celebrated in a church *by licence*. This licence is granted by the Archbishop of Canterbury in respect of places within the ecclesiastical province of Canterbury, and, elsewhere, by the bishop of the diocese. In London, which is within the province of Canterbury, such a licence costs £2, 2s. 6d. A licence will only be granted for a marriage in the church of a parish wherein one of the parties has resided for fifteen days immediately before. If the marriage is not solemnized within three months after the grant of the licence no minister can proceed to the solemnization of the marriage until a new licence has been obtained, unless by duly published banns. By *Special Licence* of the Archbishop of Canterbury a marriage may be celebrated at any hour of the night or day, and at any place, whether consecrated or not. Such a licence may be obtained, without either of the parties having complied with any conditions as to residence, at Doctors' Commons in London, the cost being about £30. Though special licences are now granted with some liberality, it would yet seem that they are primarily intended for the convenience of persons of rank, such as "peers or peeresses in their own right, their sons and daughters, dowager peeresses, privy councillors, the judges, baronets, knights, and members of parliament."

In a Registrar's Office a marriage can now be celebrated without any religious ceremony. Notice must first be given, in the prescribed form, by one of the parties to the intended marriage if both have continuously resided in the registrar's district during the seven days immediately preceding the notice. If each of the parties has so long resided in different districts a notice must be given to each registrar. Twenty-one days after this notice the marriage can take place, and during this period the notice is publicly exhibited in the registrar's office.

In Nonconformist Churches.—Persons who desire to be married in a nonconformist church should first obtain a registrar's certificate and licence for the marriage to be solemnised in the particular church they choose. The registrar need not be present at the ceremony, but it should be solemnised in the presence of a "duly authorised person," and in a building registered for solemnising marriages. When handing over the certificate and licence the registrar must also give to one of the parties intending to contract the

marriage printed instructions for its due solemnisation. The duly authorised person already referred to as the one before whom the marriage must be contracted is defined by the Marriage Act, 1898, as a person "certified as having been duly authorised for the purpose by the trustees or other governing body of the building, or of some registered building in the same registration district." Where any one has been so authorised, the trustees or governing body must, within a certain time, certify his name and address to the Registrar-General and to the district superintendent registrar. In every marriage so solemnised each one of the parties contracting the marriage must in some part of the ceremony make the following declarations:—"I do solemnly declare that I know not of any lawful impediment why I, A. B., may not be joined in matrimony to C. D." And each of the parties must also say to the other the words following:—"I call upon these persons here present to witness that I, A. B., do take thee, C. D., to be my lawful wedded wife [or husband]," or in lieu thereof the words following:—"I, A. B., do take thee, C. D., to be my wedded wife [or husband]." These declarations are required to be made in the presence of the authorised person or two or more witnesses. In the case of the solemnisation of such a marriage, the certificate or certificate and licence required by law must be delivered to the authorised person in whose presence the marriage is solemnised. Immediately after the marriage he must register in duplicate certain prescribed particulars in the marriage register books; and every such entry is to be signed by the authorised person, and by the parties to the marriage, and by two witnesses. The contracting parties have always, notwithstanding the foregoing, a right to require the attendance at their marriage of the district registrar; and nothing in the above Act, which has thus made special provision for nonconformist marriages, is to be taken to relate or have any reference to marriages solemnised in accordance with the practice and usages of the Society of Friends or of persons professing the Jewish religion.

A penalty of £10 to £50, with hard labour, is imposed upon any authorised person who refuses or fails to comply with the enactments or regulations for the time being in force with respect to the solemnisation and registration of marriages. For particulars of these enactments and regulations reference should be made to the Act of 1898, and to the Rules made in pursuance thereof. *See* HUSBAND AND WIFE; DIVORCE.

MASTER AND SERVANT.—The relation subsisting between master and servant is one created by contract; the master agrees to hire the servant and to pay him wages, and the servant agrees to serve the master. As a general rule, every person of the full age of twenty-one years, and not under any legal disability, is capable of entering into this contract. But in order that it may be legally binding, it is necessary that, at the time the contract is entered into, the party about to be hired should be free from any other engagement incompatible with that into which he is about to enter; in other words he must, in the fullest sense of the term, be *sui juris*. The contract should be in writing if the service is intended to extend over a certain period of more than a year, and should be signed by the party intended to be charged. A formal agreement is not necessary, for the requirements of the law in this respect will be satisfied by a signed letter, note, memorandum, or other writing, provided it contains a sufficient indication of the nature and

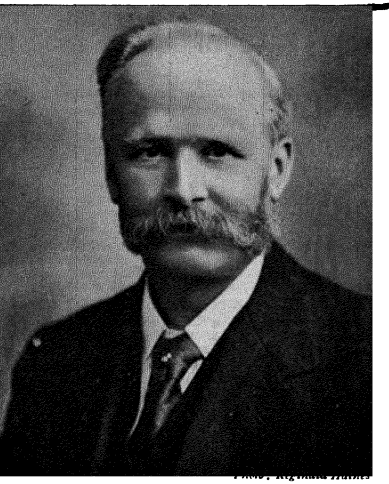
terms of the contract and of the parties thereto. Of those who are under a legal disability may be mentioned married women, infants, and lunatics; and consequently, in accordance with the above rule, these persons, as a general principle, are incapable of entering into a valid contract of service. That this should be so in the case of lunatics is only just and inevitable; but the cases of married women and infants have necessitated some modification of the rule. *Married women.*—A married woman who is living apart from her husband, whether by agreement or desertion, is entitled to enter into a contract of service, but her husband may put an end to it upon his resumption of cohabitation with her. A married woman who has obtained a judicial separation from her husband is also entitled to enter into a contract of service. And of course any married woman who has the consent of her husband is in a position to effectively contract, and such consent, if not expressly given, may be inferred from the husband's acts or his mere acquiescence. Under the Married Women's Property Acts she can sue for any monies due to her under a valid contract of service, these monies, and in fact all her personal earnings, being her separate property and beyond the control of her husband. Her receipt for her earnings is therefore a sufficient discharge. On the question whether the Married Women's Property Acts conferred upon a married woman the right to enter into a contract of service, the following extract from Mr. W. P. Eversley's *Law of the Domestic Relations* is both instructive and interesting. "The Married Women's Property Act, 1870," writes the author, "has been held not to have conferred upon her any further contractual power than she at that time possessed in equity. Though the Married Women's Property Act, 1882, is much wider in its effects than the earlier Act of 1870, which it repeals, and does confer upon the married woman enlarged contractual powers, yet it is submitted these are confined to matters involving her proprietorial relations to her separate estate, and does not confer upon her the power of entering into a binding contract of service without the assent of her husband; and for this reason, that she might put an end to the matrimonial cohabitation without his consent and for no fault of his—a power which it would never have been intended by the Legislature to confer upon her. If then the wife leaves the husband and goes into service against his wish, and the latter gives the employer notice of his dissent, who notwithstanding keeps her in his service, the husband will be able to maintain an action for harbouring his wife, and depriving him of the comfort of her society." Our own opinion, however, is that though a wife leaves her husband and goes into service against his wish, and he gives notice of his dissent to her employer, yet the latter, if the whole circumstances of the employment are *bonâ fide*, will incur no liability whatever to the husband should he continue to retain her in his employ. INFANTS, in their relation to the contract of service, are dealt with in a separate article.

Recovery of wages.—If any one employs a servant under an agreement to pay him so much by the day, month, or year, in consideration of the service to be performed, the servant, having fulfilled his part of the contract, may maintain an action against the master, or, in case of his death, against his personal representative for the amount of any wages unpaid. When a servant is hired in a general way, without mentioning the time, it is called a "general hiring," and, in point of law, is a hiring for a year. A clerk or

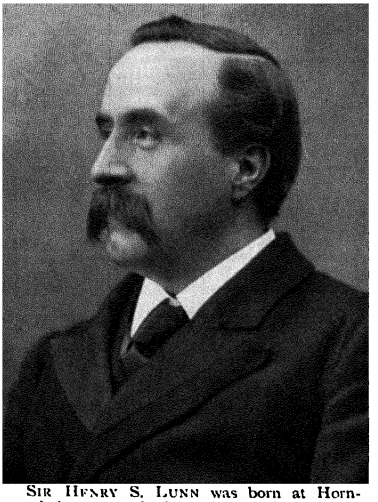
servant who is engaged at a fixed salary, payable periodically, is not entitled to a proportionate part of his salary should he resign his employment before the expiration of a period. But where there has been no misconduct on either side, it may be left as a question for the jury whether the facts of the case raise a presumption that at the time of the resignation there was an understanding that a *pro rata* payment should be made. In an old case, where the plaintiff commencing his service in a month of March served as the defendant's clerk until one December many years afterwards, the defendant, without assigning any reason, dismissed the plaintiff, who was willing to have continued in his employment: it appeared that in one year the salary had been paid quarterly, but for the last six years it had been paid monthly; it was held that there was an implied yearly hiring, and that the defendant was bound to pay the salary up to the end of the year, and that a contract in writing was not necessary. In a more recent case the contract was to serve as a reporter to a newspaper for one whole year from a certain day, and so from year to year to the end of each year commenced, so long as the parties should respectively please; it was held that this contract could only be terminated at the end of a current year. But in practice there is no hard and fast rule that a contract of service is a yearly one. Customary usage with regard to a particular class of employment will always, apart from special agreement, determine the tenure of the service. Thus, in *Vibert* v. *Eastern Telegraph Co.*, a stationery clerk employed in a telegraph office at a salary of £135 a year, which was at first paid monthly, but afterwards fortnightly, was held to be entitled to only a month's notice. The death of either master or servant puts an end to the contract, and neither party has a right of action in consequence thereof against the representatives of the deceased. So also does a dissolution of partnership caused by death, unless the contract expressly provides to the contrary, and no action can be maintained against the surviving partners. A master may discharge his servant without any notice for misconduct, *e.g.* for being improperly absent from employment when wanted, wilfully refusing to obey reasonable and lawful orders, robbing him, incompetence, permanent disability through illness, drunkenness, or gross moral misconduct; or, in the case of a mercantile clerk, for asserting that he is a partner in his master's business. Where a servant under a hiring at the rate of so much per annum, month, or other period, is summarily dismissed during such a period for misconduct, he cannot recover any of the salary wages of that period, not even for the time during which he has served. The principle of this rule is that the wages only become due at the end of the period in respect of continuous and proper service during the period considered as a whole. It is not necessary that a master, who has a good cause of dismissal, should either state it to the servant when summarily dismissing him, or even be dismissing him because of that cause; it is sufficient if the cause exist, and the servant is not entitled to object that it is not the cause for which he was dismissed. A servant who is wrongfully dismissed can maintain an action against his master for damages therefor, and the damages will be the amount of wages which he would have earned had the employment continued until the end of the period at which he could have been lawfully dismissed by notice. But the servant is not entitled to exist in idleness during this period in order to obtain full damages; he must



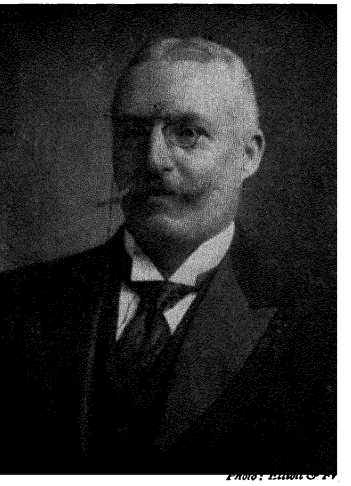
LORD SOUTHWARK is the second son of the late Sir Joseph Causton, and a Director of the firm of Sir Joseph Causton & Sons, printers. He sat in the House of Commons for Southwark and Colchester, and in the last two Liberal Governments was a popular and successful Whip, and latterly Paymaster-General.



SIR G. W. MACALPINE is a Scotsman. He received his early training in his own country, and later settled in Accrington, where he has helped to build a score of important businesses. He is the owner of the great Accrington brick-works and a colliery proprietor. He was knighted in 1910, as President of the Baptist Union.



SIR HENRY S. LUNN was born at Horncastle in 1859, and educated at the Dublin University; was a famous medical missionary; later a colleague of the Rev. Hugh Price Hughes, and of recent years has striven to promote better relations between this country and Germany. He is equally well known as the founder of a touring agency which now has branches everywhere and world-wide importance.



SIR CHARLES JOHN OWENS, the General Manager of the London & South-Western Railway Co., having become goods manager in 1888. Born in 1845, he entered the service of the Company in 1862. Author of an important paper on "Settlement of Disputes," read before the International Railway Congress, 1885. Knighted 1902.

SUCCESSFUL BUSINESS MEN

make an effort to obtain another employment, and if this is obtained its profits will go to the reduction of the damages recoverable in the action for wrongful dismissal. A dissolution of partnership by retirement operates as a wrongful dismissal (*Bruce* v. *Calder*), but only nominal damages could be obtained if the continuing partners were willing to adopt the contract of service. Sometimes it is doubtful what rate of wages the servant is entitled to. Thus in *Bryant* v. *Flight*, where A. agreed to enter into the service of B., and wrote to him a letter as follows: "I hereby agree to enter your service as weekly manager, commencing next Monday; and the amount of payment I am to receive I leave entirely to you." A. served B. in that capacity for six weeks. It was held that the contract implied that A. was to be paid something at all events for the services performed; and that the jury might ascertain what B. acting *bonâ fide* ought to have paid.

Master's liability for servant's contracts.—A contract made by a servant acting under the express authority of the master, is binding upon the master (*Archard* v. *Hornor*). And so it is where the servant acts under an implied authority. In *Hazard* v. *Treadwell* the defendant, who was a dealer in iron, sent a waterman to the plaintiff for iron on trust, and paid for it afterwards. He sent the same waterman a second time, with ready money, who received the goods but did not pay for them. It was here held by Chief-Justice Pratt that the sending the waterman on trust the first time, and the defendant paying for the goods, was giving the waterman a credit so as to make the defendant liable upon the second contract. In an action for the price of beer sold, it appeared that the defendant had dealt with the plaintiff on credit, and paid him several sums for beer; at length the defendant gave notice to the plaintiff's servant who delivered the beer that he would pay for the beer as it came in. The defence to the action was that the defendant had paid the servant. But the Court decided that the defendant was liable; for, as the change in the usual mode of dealing had been suggested by the defendant himself, and as he had personal dealings with the master, in a particular mode, notice to the servant alone of a change in that mode would not be sufficient; unless the defendant could show that the master himself had notice of it, he could have no defence to the action. In an action on a farrier's bill, it appeared that the defendant, by an agreement with his groom, allowed him five guineas a year for which he was to keep the horses properly shod. This agreement was set up as a defence to the farrier's action. The defence failed, however, for the defendant was unable to prove that the farrier knew of this agreement, and had consequently expressly trusted the groom and not his employer the defendant. If a servant buys things which are applied to his master's use, the master must take care to see them paid for; for a tradesman has nothing to do with any private agreement between the master and servant. But where an express authority is not given by the master, and from the nature of the case an authority cannot be implied, the master is not liable. This rule is illustrated by the case of *Hiscox* v. *Greenwood*, where the carriage of the master had been broken by the negligence of his servant, who had it repaired by a coachmaker who had never been employed by his master. The master refusing to pay the amount of the bill sent in by the coachmaker, the latter kept possession of the carriage as a lien. Here the Court held that the

coachmaker was not entitled to so retain the carriage, for whatever claim of that sort he might have, he must derive it from legitimate authority; and that unless the master had been in the habit of employing the tradesman in the way of his trade, it should not be in the power of the servant to bind him to contracts of which the master had not any knowledge, and to which he had not given any assent. It was the duty of the tradesman, when he was employed, to have inquired of the master whether the order was given by his authority; but having neglected to do so, the master was not liable to the demand, and the detainer of the carriage was unlawful. When the master is in the habit of paying ready money for articles furnished in certain quantities to his family, if the tradesman, as in the case of *Pearce* v. *Rogers*, delivers other goods of the same sort to the servant, upon credit, without informing the master of it, and the latter goods do not come to the master's use, the master is not liable.

Master's liability for servant's torts.—A master is liable for an injury done through the fraud, negligence, or unskilfulness of the servant whilst acting in the course of the employment. In one of the old reports is found the case where the servants of a carman ran over a boy in the street, and maimed him by negligence, and where the plaintiff recovered damages against the carman. So, where the servant of A. with his cart ran against the cart of B., which contained a pipe of wine, whereby the wine was spilled; an action was brought against A., the master, and he was held liable for the damage so done. It should be carefully noticed, however, that the injuries done by a servant for which his master is liable are only those done in the scope or course of the servant's employment. And, moreover, it is necessary that those injuries should not have been the personally wilful or malicious acts of the servant: they must have been either negligent, accidental, or reasoned acts. To these propositions it will be profitable to give special attention. In *Joel* v. *Morrison*—which is cited with approval in many other cases decided by the courts—Baron Parke says: "The master is only liable where the servant is acting in the course of his employment"; but he immediately adds: "If he was going out of his way, against his master's implied commands, when driving on his master's business he will make his master liable." According to Mr. Justice Maule, in *Mitchell* v. *Crassweller*, "where the servant, instead of doing that which he is employed to do, does something which he is not employed to do at all, the master cannot be said to do it by his servant, and therefore is not responsible for the negligence of his servant in doing it." This ruling is very important as indicating the circumstance under which a master will not be liable for his servant's wrongful acts. The case in which it was laid down was one in which the servant drove his master's cart, purely for his own personal purposes and business, out of the route of his legitimate journey, and during the deviation caused an accident: the master was held not to be liable. Similar cases are those of *Storey* v. *Ashton* and *Rayner* v. *Mitchell*. The cases of *Abrahams* v. *Deakin* and *Stevens* v. *Hinshelwood* are further illustrations of circumstances under which a master is not liable for his servant's wrongful act. For, where a servant gives a man into custody, he must do so to protect his master's property in order to bring the act within the scope of his employment—not after the alleged offence, and when protection is unnecessary. Having noticed these instances of non-liability of the master, a return can now be made to the

general proposition as laid down by Baron Parke and which is again illustrated in the judgment in *Croft* v. *Alison*. In that case it is stated that "If a servant driving a carriage, in order to effect some purpose of his own, wantonly strike the horses of another person, and produce the accident, the master will not be liable. But if, in order to perform his master's orders, he strikes out injudiciously, and in order to extricate himself from a difficulty, that will be negligent and careless conduct, for which the master will be liable, being an act done in pursuance of the servant's employment." The scope of a servant's employment would seem, therefore, to cover acts done by the servant, almost maliciously, but which are prompted by zeal for his master's interests; and acts which are even partial deviations from the course of his employment. Thus, in the well-known case of *Limpus* v. *The London General Omnibus Co.*, the driver of the defendants' omnibus drove it across the road in front of a rival omnibus belonging to the plaintiff, which was thereby overturned. In an action against the defendants, the driver of their omnibus said that he so drove it in order to prevent the plaintiff's omnibus passing him. And it also appeared from the evidence that the defendants had given instructions to their driver not to obstruct any omnibus. The judge directed the jury that a master was responsible for the reckless and improper conduct of his servant in the course of his service: that if the jury believed that the defendants' driver, being dissatisfied and irritated with the plaintiff's driver, acted recklessly, wantonly, and improperly, but in the course of the service and employment, and doing that which he believed for the interest of the defendants, then they were responsible: that if the act of the defendants' driver, although a reckless driving on his part, was nevertheless an act done by him in the course of his service, and to do that which he thought best to suit the interest of his employers, and so to interfere with the trade and business of the other omnibus, the defendants were responsible: that the instructions given to the defendants' driver were immaterial if he did not pursue them; but if the act of the defendants' servant was an act of his own, and in order to effect a purpose of his own, the defendants were not responsible. In upholding, in the Exchequer Chamber, this direction to the jury, Mr. Justice Willes said that "The proper question is whether the servant was acting at the time in the course of his master's service, and for his master's benefit; if so, his act was the act of his master, although no express command or privity of his master was proved. It seems to me that in so laying down the law he was strictly accurate; and I feel bound to say that it is for the interest of every person (for all are liable to be injured by servants) that he should not be without remedy by the law being loosely administered." And Mr. Justice Blackburn said: "It is not universally true that every act done for the interest of the master is done in the course of the employment. A footman might think it for the interest of his master to drive the coach, but no one could say that it was within the scope of the footman's employment, and that the master would be liable for damage resulting from the wilful act of the footman in taking charge of the horses. But in this case I think the direction given to the jury was a sufficient guide to enable them to say whether the particular act was done in the course of the employment." This case may be said to finally limit and establish the doctrine that the master is liable for wrongs committed by

a servant in the course of his employment. And the extract given from the judgment of Mr. Justice Blackburn indicates the lines of the limitation.

Enticing away and injuries done to servants.—An action for damages can be maintained by a master against any one who entices away his apprentice or servant from his service. And also against any one who continues to employ such a servant after notice, even though the defendant did not procure the servant to leave his master, or know, when he employed him, that he was the servant of another. In a contract of service for a specified term it is not always sufficient for the servant to simply covenant to give his whole time to the master during that term. The servant should expressly covenant as to whom he will not serve and what service he will not enter during the spare time accruing to him in his service. Should he then serve a rival master during his spare time, the master will be able to obtain an injunction (*Davis* v. *Foreman; Grimston* v. *Cunningham*). A master has also the right to maintain an action for certain injuries done to his servant. Such injuries are those which deprive the master of the services of the servant, as for example false imprisonment or an assault, or, in the case of a female servant, seduction resulting in the birth of a child.

After termination of the service the servant is bound to respect those matters relating to his late master's business, a knowledge of which he acquired confidentially in the course of his employment, for if he should make use of that knowledge against the interests of the master the latter can obtain an injunction and also damages (*Louis* v. *Smellie*). Nor can he use the trade secrets of his late master which are known to him because of his former confidential position (*Merryweather* v. *Moore*); nor lists of his late master's customers which he has improperly obtained (*Robb* v. *Green*). *See* also the articles on APPRENTICE; EMPLOYER AND WORKMEN; EMPLOYERS' LIABILITY; WORKMEN'S COMPENSATION; COMMON EMPLOYMENT; TRADE DISPUTES; TRADE BOARDS; TRUCK ACTS; MENIAL SERVANTS; COMMERCIAL TRAVELLERS; FACTORIES; HOURS OF WORK; EMBEZZLEMENT; CHARACTER; EXCISE.

MATCHES. *See* APPENDIX.

MEDALS.—*Exhibition.*—A penalty of £5 is incurred by any trader who falsely represents that he has obtained a medal or certificate for the Exhibitions of 1851 and 1862 in respect of goods or a process for which medals or certificates were awarded at those exhibitions. For a second offence the penalty is £20 or six months' imprisonment. Like penalties are imposed upon a trader who falsely represents that some other trader has obtained such a medal or certificate, or that it has been awarded in respect of goods exposed for sale, or of any process. *Imitation of current coin.*—It is a misdemeanour, punishable with a year's hard labour, to make a medal, cast, or coin of a metallic material resembling, or having a device resembling any of the current gold or silver coin of the realm. And so is it an equally grave misdemeanour to have such an article in one's possession for sale, or to offer it for sale, or to sell it. A medal, cast, or coin is the subject of this offence if only it is so formed that by gilding, silvering, colouring, washing, or other like process, it can be so dealt with as to resemble the current gold and silver coin. *Military* medals and decorations are the subject of section 156 of the Army Act, 1881. This prohibits any one, on any pretence whatever, buying, exchanging, taking in pawn, detaining, or receiving such articles

from a soldier (including an officer) or any person acting on the soldier's behalf. The penalty is a fine of £20, together with treble the value of the article dealt with; for a second offence there is an alternative of six months' hard labour. The penalty is also incurred by soliciting or enticing a soldier to sell, exchange, pawn, or give the article away; or assisting or acting for a soldier in selling, exchanging, pawning, or making away with the article. It is open, however, to a person charged with any of these offences to plead ignorance of the nature of the article; or that he did not know that the party with whom he dealt was a soldier or was acting for one; or that the article was sold by order of a Secretary of State or some competent military authority. Should the magistrate believe either of these pleas the prosecution will fail, and the charge must be dismissed. *See* PAWNBROKER.

MEDICINE STAMPS and licences are primarily imposed and regulated by four several Stamp Acts of the reign of George III., of the years 1802, 1803, 1804, and 1812 respectively. A *licence*, according to Schedule A of the Act of 1804, must be taken out "by the owner, proprietor, maker, and compounder of, and by every person uttering, vending, or exposing to sale, or keeping ready for sale, any drugs, herbs, pills, waters, essences, tinctures, powders, or other preparations or compositions whatsoever, used or applied, or to be used or applied, externally or internally, as medicines or medicaments, for the prevention, cure, or relief of any disorder or complaint incident to or in anywise affecting the human body, or any packets, boxes, bottles, pots, phials, or other enclosures, with any contents" liable to medicine duties. This licence is an annual one and subject to a duty of 5s. It continues in force until the 1st September in each year, commencing from the day of its date. A fine of £20 is incurred by any one who, in any of the above-mentioned ways, deals in medicines liable to duties without having first obtained the necessary licence. But the licence need not be taken out by a duly licensed auctioneer in respect of sales by auction; nor by a licensed victualler, confectioner, pastry-cook, fruiterer, or other shopkeeper, who only sells artificial or other waters, liable to medicine duties, for actual consumption in his shop. Though such waters are expressly required to bear the duty stamp, it is yet important to notice that mineral waters do not require a stamp, even though they are advertised and recommended as beneficial for some human ailment. *The stamp.*—Appended to the Act of 1812 is a schedule containing a list of five or six hundred medicines and medicinal preparations, and which are specified as particularly liable to stamp duty. The list begins with "Adam's solvent" and ends with "Zimmerman's stimulating fluid." At the present day, however, this catalogue has little final value, for the greater part of the articles enumerated therein have now dropped out of use, whilst, on the other hand, an immense and increasing number of dutiable articles have since been introduced to the public. Of more importance is the clause at the end of the list which indicates in general terms the class of medicine or compound liable to the duty. The form of the article is of little importance, for if it comes within the scope of the Act it may be—a pill, powder, lozenge, tincture, potion, cordial, electuary, plaister, unguent, salve, ointment, drop, lotion, oil, spirit, medicated herb or water, or any kind of chemical or officinal preparation. Nor is it material whether it is used or applied externally or internally.

To be liable to the duty certain special conditions must be satisfied. These conditions are: (1) that it is intended to be used or applied for the direct or incidental prevention, cure, or relief of some human disorder or complaint; and (2) the maker or vendor—(*a*) has or claims to have an "occult secret or art" for making or preparing it; or (*b*) has or claims to have an exclusive right or title to making or preparing it; or (*c*) has obtained letters patent for its protection; or (*d*) by public notice or advertisement, or by any written papers or handbills, or by any label or words written or printed, affixed to or delivered with any packet, box, bottle, phial, or other enclosure containing it, holds out the article, or recommends it to the public, as a nostrum or proprietary medicine, or as a specific, "or as beneficial to the prevention, cure, or relief of any distemper, malady, ailment, disorder, or complaint incident to or in anywise affecting the human body." To distribute a price list recommending a specified medicine may alone render that medicine liable to duty. The above are what are popularly, but erroneously, known generally as "patent" medicines. Even though the Act provides for cases where the article is protected by letters patent, it is yet a theoretical principle of patent law that pharmaceutical preparations are not good subject-matter for a valid patent. But notwithstanding this principle it would seem that a patent has been granted for a medicine within the last few years. In the case of a patented article the inventor is bound to disclose the secret of his invention, but as regards "patent" medicines, popularly so-called, it will be noticed that one of their essential and characteristic features is their secrecy, the mystery with which the manufacturers surround their ingredients and the methods of their preparation. And those that are not secret remedies are proprietary ones. Only a registered chemist can legally sell merely proprietary and secret remedies—so-called "patent" medicines, which contain poison; but apparently any one can deal in medicines actually protected by letters patent, even if poison is an ingredient in those medicines. As to the government giving, or assuming to give, any protection to proprietary or secret medicines, a glance at the words on the stamped label will show that the authorities are most careful to absolutely dissociate themselves from all connection with such exclusive and mysterious preparations. In fact, medicinal drugs which are sold entire and without any mixture or composition with any other drug or ingredient, and so are not secret compositions, are exempt from liability to stamp duty. But this exemption is only available in favour of a vendor who is a registered medical practitioner or chemist, or is licensed to sell dutiable medicines. The exemption also extends to known and approved medicinal mixtures and compounds prepared or sold by registered medical practitioners and chemists, so long as the facts of the preparation or sale do not come within the circumstances set out in (2) above. The rates of the medicine stamp duties appear in the article on the EXCISE. The duty must be paid by the owners or makers of the medicine, or by the original and first vendors; and so paid before the first sale or delivery thereof, whether wholesale or retail. The persons making or selling the medicine are required to apply for covers or labels to the Secretary, Stamps and Taxes, Inland Revenue, Somerset House, and to deliver a note containing their name and place of abode. These covers or labels are then impressed with marks denoting the respective duties, and

must be affixed to the medicines in the manner directed by the authorities; regulations as to this are delivered to the vendor on taking out his licence. Notice must be given of the place of making or selling medicines, and of any change of place, under a penalty of £10. And a penalty of £20 is incurred by any one who fraudulently takes off labels after the medicines are sold, or uses such labels a second time; or buys or sells labels for the purpose of using them a second time. Either buyer or seller may inform against the other, and be himself indemnified. Any one who receives unstamped dutiable medicine from the proprietors or original vendors, and does not return it or inform the authorities, is also liable to a penalty of £20. And the word "medicines" should be written on a package containing twelve or more medicines if the package is being forwarded by a public conveyance to a retail vendor, or is being exported. This is always required to be done when the package is sent by a proprietor, compounder, or original vendor of the medicine, or his agent or employee; and to the word "medicines" must be added the name of the person sending or exporting the articles. Revenue officers have power to open suspected parcels and seize unlabelled medicine. A penalty of £10 is incurred by any one who sells dutiable medicine not properly stamped, labelled, and covered, "being properly and sufficiently pasted, stuck, fastened, or affixed thereto so and in such manner as that the packet, box, bottle, pot, phial, or other enclosure cannot be opened and the contents poured out or taken therefrom without tearing the stamped cover, wrapper, or label, so as to prevent its being made use of again." Proceedings for penalties and forfeitures can be instituted only by the Inland Revenue authorities, or by the Attorney-General, and must be proceeded with in the police courts. There is an appeal to Quarter Sessions. *See* CHEMIST; POISON.

MEETINGS OF COMPANIES.—There are six distinct classes of meetings authorised and required by the Companies Acts. These are the three general meetings known as the statutory, ordinary, and EXTRAORDINARY (*q.v.*) meetings respectively, the directors' meetings, and the meetings of creditors and contributories during the winding-up of a company.

The statutory meeting is obligatory under the Companies Act, 1909, in the case of every company limited by shares and registered on or after the 1st December 1901. It is required to be composed of the members of the company, and to be held within a period of not less than one month nor more than three months from the date "at which the company is entitled to commence business." The latter phrase means the date of its incorporation, unless the company has invited subscriptions from the public, when the date upon which it is entitled to commence business will be determined by the provisions of the Act of 1909. A company limited by guarantee, or one registered on or before the 31st December 1900, is not within this provision for a statutory meeting; but it is necessary that it should comply with the terms of section 64 of the Act of 1909, that "a general meeting of every company shall be held once at least in every calendar year." At least seven days before the day on which the statutory meeting is held, the directors must, except in the case of a private company, forward a report, called "the statutory report," to every member of the company. This report is required to be certified by not less than two of the directors, or, where there are less than two, by the sole director and manager. It should state—(*a*) The total number of shares allotted, distinguishing shares allotted as fully or

partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted; (*b*) the total amount of cash received by the company in respect of such shares, distinguished as aforesaid; (*c*) an abstract of the receipts and payments of the company on capital account to the date of the report, and an account or estimate of the preliminary expenses of the company; (*d*) the names, addresses, and descriptions of the directors, auditors (if any), manager (if any), and secretary of the company; and (*e*) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification. The report must also be certified as correct by the auditors (if any) of the company, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account. And it lies upon the directors to file a certified copy thereof with the registrar directly they have sent it to the shareholders. The directors are also required to produce a certain list at the commencement of the meeting, and allow it to remain open and accessible to any shareholder during the continuance of the meeting. This list should show the names, descriptions, and addresses of the shareholders, and the number of shares held by them respectively. The shareholders 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 given. But no resolution can be passed unless notice of it has been given in accordance with the articles of association. The meeting may adjourn from time to time. The adjourned meeting has the same powers as the original meeting, and any resolution may be passed of which notice has been given in accordance with the articles of association, either before or subsequently to the former meeting. If default is made in filing the above report, or in holding the statutory meeting, then, 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 the winding-up of the company. Upon hearing this petition the Court may either direct that the company be wound up, or give directions for the report being filed or a meeting being held, or make such other order as may be just. It may order that the costs of the petition be paid by any one who, in the opinion of the Court, is responsible for the default.

Ordinary meetings, in the case of companies limited by shares, are now the annual meetings, and are regulated mainly by clauses 45 to 67 of Table A. A meeting is bound to be held at such time and place as may be prescribed by the company, but not more than fifteen months after the holding of the last preceding general meeting, at a place determined upon by the directors. Usually the place and time of these meetings is prescribed in the articles of association of the company, as also are the details of procedure and the conditions of voting. In the absence of such a special provision, however, the regulations in Table A apply, and of these we will set out the substance of the more important. *Proceedings.*—Seven days' notice at the least must be given, and this notice should specify the place, the day, and the hour of meeting; in the case of special business it must describe its general nature. But the non-receipt of the notice by a

member will not invalidate the proceedings. All business is special that is transacted at an EXTRAORDINARY MEETING (*q.v.*), and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend and the consideration of the accounts, balance-sheets, and the ordinary report of the directors. There should be a *quorum* of members present at the time when the meeting proceeds to business, otherwise no business can be transacted except the declaration of a dividend. The following is the manner in which a quorum is ascertained. If the persons who have taken shares in the company at the time of the meeting do not exceed ten in number, the quorum will be five; if they exceed ten, there will be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum can in any case exceed twenty. If within an hour from the time appointed for the meeting it should be dissolved if a quorum is not present, and it has been convened upon the requisition of shareholders. In any other case, in the absence of a quorum, the meeting stands adjourned to the same day in the next week, at the same place and hour; and if at the adjourned meeting a quorum is not present, it must be adjourned *sine die*. The chairman (if any) of the board of directors presides as chairman at every general meeting. 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, the shareholders present choose one of their number to be the chairman. *Adjournment.*—The chairman, with the consent of the meeting, may adjourn any meeting from time to time and from place to place, but no business can be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. At a general meeting, unless *a poll* is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, will be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution. If a poll is demanded by five or more members, it must be taken in the manner directed by the chairman, and the result of the poll is deemed to be the resolution of the company in general meeting. *Votes.*—In the case of an equality of votes at any general meeting, the chairman is entitled to a second or casting vote. A poll demanded on the election of a chairman or on a question of adjournment must be taken at once. On any other question the poll is taken as directed by the chairman. Every shareholder has one vote for each share of which he is a holder. But this regulation of voting power is very usually the subject of special provision in the articles of association. If a member is a lunatic or an idiot he may vote by his committee, *curator bonis*, or other legal curator. If one or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of the share or shares, and no other, is entitled to vote in respect of the same. No member is entitled to vote at a general meeting unless all calls due from him have been paid, and no member is entitled to vote in respect of any share that he has acquired by transfer at any meeting held after the expiration of three months from the registration of the company, unless he has been possessed of the

share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote. *Proxies.*—Votes may be given either personally or by proxy. The instrument appointing a proxy must be in writing, under the hand of the appointor, or if such appointor is a corporation, under their common seal, and must be attested by one or more witnesses; no person can be appointed a proxy who is not a shareholder in the company. The instrument appointing a proxy is required to be deposited at the registered office of the company not less than seventy-two hours before the time for holding the meeting at which the person named in the instrument proposes to vote. No instrument appointing a proxy is valid after the expiration of twelve months from the date of its execution. The form of the instrument should be as follows:—

Company, Limited.

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.

As witness my hand, this day of .

Signed by the said in the presence of .

An instrument of proxy requires a penny stamp if made for use at a single meeting only. An adhesive stamp is sufficient, but it should be cancelled by the person by whom the instrument is executed. A penalty of £50 is incurred by making or executing an unstamped proxy instrument, and by voting or attempting to vote thereunder; and a vote under an improperly stamped instrument is invalid. If the proxy is for use at several meetings the stamp should be 10s.; but the mere fact of there being more than one person named in the instrument will not affect the rate of stamp-duty to which it is liable.

Directors' meetings.—Subject to any special regulations contained in the articles of association, the general rule, according to Table A, is that directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business. All questions which may arise at a meeting must be determined by a majority of votes: in case of an equality of votes the chairman has a second or casting vote. A director may at any time summon a meeting of the directors. The directors can 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 at the time appointed for holding it, the directors present must choose one of their number to be chairman of that meeting. The directors may delegate any of their powers to committees consisting of any member or members of their body they think fit. Any such committee, in the exercise of the powers delegated to it, must conform to any regulations imposed on it by the directors. The proceedings at meetings of a committee are on the same lines as those at directors' meetings. All acts done by a meeting of the directors, or of a committee, or by any one acting as a director, have a

full and complete validity. And this is so even if it is afterwards discovered that there was some defect in the appointment of such directors or persons so acting, or that they or any of them were disqualified. As to the meetings of contributories and creditors *see* LIQUIDATION.

MEMORANDUM OF ASSOCIATION.—This is the name given to the deed which, in effect, operates as both the creator and the charter of a company incorporated under the Companies Acts. The memorandum is the fundamental and (except in certain specified particulars) the unalterable law of such a company; and the latter is incorporated only for the objects and purposes expressed in that memorandum. It should be subscribed by at least seven persons (or where the company is to be a private company, any two or more persons), and any of these may be a married woman, an alien, a bankrupt, and probably even an infant. An incorporated company may subscribe as such, but a partnership firm can only do so by its members individually. The subscribers should write their names in full, together with a description of their occupations, and opposite each signature must appear the number of shares in the company which the subscriber agrees to take. It is by the memorandum that the liability of the shareholders in the company is limited. Their liability may be so limited either as to the amount, if any, unpaid on the shares they hold, or to such amount as they may thereby undertake to contribute to the assets of the company in the event of its being wound up. In the former case the company is said to be "limited by shares"; in the latter it is "limited by guarantee." It may also be an "unlimited company," that is to say, without limit to the liability of its members. The statutory provisions under which the system of limited liability was inaugurated were not merely for the benefit of the shareholders for the time being in a company, but were intended also to provide for the interests of two other very important bodies; in the first place, those who might become shareholders in succession to the persons who were shareholders for the time being; and secondly, the outside public, and more particularly those who might be creditors of companies of this kind. Of the internal regulations of the company the members of it are absolute masters, and, provided they pursue the course marked out in the Companies Acts, they may alter those regulations from time to time; but everything in the way of such alteration must be done subject to the conditions contained in the memorandum. The latter overrides and overrules any provisions of the articles which may be at variance with it. The memorandum, said Lord Cairns, in *Ashbury* v. *Riche*, is "as it were the area beyond which the action of the company cannot go: inside that area the shareholders may make such regulations for their own government as they think fit."

Where a company is formed on the principle of being limited by shares, the memorandum must contain the following things:—(1) The name of the proposed company, with the addition of the word "limited" as the last word in such name; (2) the part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is proposed to be situate; (3) the objects for which the proposed company is to be established; (4) a declaration that the liability of the members is limited; (5) the amount of capital with which the company proposes to be registered divided into shares of a certain fixed amount. But no subscriber can take

less than one share. A reference to the form of memorandum set out in the article on COMPANIES will show how these requirements are satisfied in practice. In the case of a company limited by guarantee the memorandum should contain the following things:—(1) The name of the proposed company, with the addition of the word "limited" as the last word in such name; (2) the part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is proposed to be situate; (3) the objects for which the proposed company is to be established; (4) that the liability of the members is limited; (5) a declaration that each member undertakes to contribute to the assets of the company, in the event of its being wound up, during the time that he is a member, *or within one year afterwards*, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges, and expenses of winding-up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount. If the company has a share capital—(1) 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; (2) no subscriber may take less than one share; each subscriber must write opposite his name the number of shares he takes. In the case of an "unlimited" company, or one formed on the principle of having no limit placed on the liability of its members, the memorandum need only contain—(1) The name of the proposed company; (2) the part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is proposed to be situate; (3) the objects for which the proposed company is to be established. In this case, too, no subscriber may take less than one share, and each must write opposite his name the number of shares he takes. A company formed, without an intention to earn dividends, for the purpose of promoting commerce, art, science, religion, charity, or any other useful object, can obtain a licence from the Board of Trade dispensing with the necessity for it to append to its title the word "limited." A memorandum must always be stamped with a 10s. deed stamp. When registered, it binds "the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in the memorandum contained, on the part of himself, his heirs, executors, and administrators, a covenant to observe all the conditions of such memorandum, subject to the provisions" of the Companies Acts. And more than that, all persons who have dealings with a company are presumed to have read the memorandum and so have a knowledge of its powers. Shareholders can require to be supplied with a copy by the company; but any other member of the public is only entitled to inspect the memorandum and articles filed at Somerset House.

Alteration.—A company may change its name with the sanction of a special resolution approved by the Board of Trade. It may also, by order of the Court, reduce its capital, whereupon the words "and reduced" will be added to its name for a specified time. A minute of the order, when registered, is taken to be substituted for the corresponding part of the memorandum, and is of the same validity, and subject to the same altera-

tions, as if it had been originally contained therein. Subject to the provisions of the Companies Act, no shareholder, whether past or present, is liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on the share, and the amount of the share as fixed by the minute. Companies limited by shares have a certain power of alteration conferred upon them by the Act. But such a company can only change its name in the manner already described. The power of alteration is limited to such alterations as may be required to enable it—(*a*) To carry on its business more economically or 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 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. And here too, as in changing its name, the company can only exercise the power by means of special resolution, and then only after confirmation by the Court. Before confirmation the Court requires to be satisfied—(*a*) That sufficient notice has been given to every debenture holder, and to every one whose interests will be affected by the alteration; and (*b*) that, with respect to every creditor entitled to object and who has duly signified his objection, either his consent to the alteration has been obtained or his claim been discharged or satisfactorily secured. For special reasons the above notice may be dispensed with. The Court in exercising this confirming power will "have regard to the rights and interests of the members of the company, or of any class of those members, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members; and the Court may give such directions and make such orders as it may think expedient for the purpose of facilitating any such arrangement or carrying the same into effect." It is not lawful, however, for a company to expend any part of its capital in any such purchase. *See* ARTICLES OF ASSOCIATION.

MENIAL SERVANT.—The derivation of the word menial has been frequently attempted in the course of judicial proceedings, but with never a very satisfactory result. A general definition of the term "menial servant" is perhaps more easily arrived at, but an exact definition would seem to be almost impossible. On the one hand the courts have held that a huntsman, a head-gardener, and a general handy-man partly paid by perquisites, are all menial servants; but, on the other hand, neither a governess engaged at a yearly salary, nor the housekeeper of a large hotel, has been considered to be a servant of that class. It is fairly certain, however, that the term domestic servant, as generally applied and accepted, is practically interchangeable with the term menial servant. And that this should be so would naturally follow from the definition of Chief-Justice Erle, in *Nicoll* v. *Greaves*, that a menial servant is a subordinate domestic servant (not always, though generally, an indoor servant) whose service brings him into close proximity to his master, and thus renders it to the interest of both master and servant that the contract of service should be determinable before the end of the year

of service. Whether a person is a menial servant may be a question of fact for a jury to determine. Apart from express agreement between the parties to the contrary, the contract between a master and a menial servant is a contract to serve for a year, the service to be determined by a month's warning or by the payment of a month's wage; subject to the implied condition, that the servant will continue to obey all lawful orders of the master. In view of the fact that the above-mentioned head-gardener and handy-man were held to be menial servants, it will be useful to note the particular terms of their respective services. This will show how near a menial servant, strictly so-called, may approach in his actual position that of a servant who is not menial. The head-gardener was engaged on an agreement that he should have yearly wages, and a house to live in rent free. Several inferior gardeners were subject to his directions, and the house he lived in was not under the roof or a part of the master's dwelling-house. And yet (*Nowlan* v. *Ablett*) he was as much liable to be discharged on a month's notice as a kitchen-maid would be. The handy-man (*Johnson* v. *Blenkinsopp*) was even engaged with a written agreement that he was "to have 6s. a week, three bowls of wheat, to set potatoes for his family's use, to have a cow kept, house and firing, to keep the gardens and pleasure-grounds in clean and good order, to assist in the stables, and when required, at hay and corn harvest, and to make himself generally useful." That agreement was held to contain nothing which showed an intention of the parties to exclude the general rule. In the case of *Moult* v. *Halliday* a mistress endeavoured, but failed, to prove a custom that gave a right to either the master or servant to determine the service at the end of the first calendar month, by notice given at or before the expiration of the first fortnight. On this point, however, reference may be usefully made to the case of *George* v. *Davies* (*Law Times*, 29 April 1911). But a servant can be dismissed summarily when guilty of serious misconduct. When giving a month's wages in lieu of the month's notice it is not necessary to give board wages (*Gordon* v. *Potter*). An agreement for the service of a menial servant does not require a stamp. If it is desired to make the servant liable for breakages or articles lost there should be an express stipulation to that effect at the time of the engagement; otherwise, according to *Le Loir* v. *Bristow*, a negligent or careless servant will not be liable to his master therefor. And a master is liable for wages during a temporary illness of the servant (*Cuckson* v. *Stones*), unless the contract of service has been put an end to, or modified in that respect, by mutual consent. But he is not liable for medical attendance upon his servant unless he has rendered himself so liable by sending for the doctor upon his own responsibility or by personally agreeing with the doctor to pay him. This is the law according to *Dennall* v. *Adney*, so that a servant must have recourse to the parish doctor if he cannot afford to pay for other attendance, and his master declines to come to his assistance (*Simmons* v. *Wilmot*). A master can maintain an action for damages against any one who has seduced his servant, provided the seduction and birth have both occurred during the term of the service. Persons who are strictly menial or domestic servants do not come within the scope of the EMPLOYERS' LIABILITY, but do come within the protection of the WORKMEN'S COMPENSATION Act. Consequently a master has the protection of the

common law doctrine of COMMON EMPLOYMENT (*q.v.*) in the event of such a servant sustaining an injury during the course of his employment, and claiming under the Employers' Liability Act. When clothes or livery are supplied to a servant as part of his wages they become his property, as a rule, as soon as they are worn out and the master has substituted new; but if the servant is engaged upon such terms as £50 a year and a suit of clothes, for example, the clothes become his property only at the expiration of the year (*Crocker* v. *Molineaux*). *See* MASTER AND SERVANT; CHARACTER.

MERCANTILE SYSTEM.—This term is applied to that mode of regulating, or attempting to regulate, the foreign commerce of a nation upon the principle that the exports should exceed the imports. The theory is that an excess of exports over imports creates a balance favourable to the exporting nation, resulting in an influx of money and a positive contribution to the national wealth. The maintenance and increase of such a balance should therefore maintain and increase the wealth and general well-being of the nation. The system has been practised as if international commerce were a very simple condition of circumstances. The more or less natural outflow of exports from a country has been accelerated by placing premiums and bounties upon appropriate commodities, and by granting drawbacks upon the re-exportation of imports; and, on the other hand, the like influx of imports has been retarded by the imposition of prohibitive import duties, and the absolute prohibition of the importation of goods, such as wine, which may be expected to possess no positive value of their own that can be set off against the price paid for them. This system pervaded European commercial politics for centuries, eventually giving way to the policy of protection, and finally, in England, to the principle of *laissez faire* and its free trade application. But the bare principle of *laissez faire* is now no longer the accepted theoretical protagonist of mercantilism; that position is now claimed in England by the modern theory of international trade: that it is not the equivalence of imports with exports that constitutes the stable condition of trade, but the equivalence in the sum of debts due to the country, and that of debts due by it. It is at once apparent that such a theory as this is much more complex and difficult of application than the simple one of the mercantile system. So complex is it, and so improbable is it that there can be any practical application thereof, that the only conclusion as to political conduct that can be drawn therefrom is a purely negative one. "Governments in their dealings with foreign trade," writes Professor Bastable, "should be guided by the much-vilified maxim of *laissez faire*. To avoid misinterpretation, let it be remembered that the precept rests on no theory of abstract right, or vague sentiment of cosmopolitanism, but on the well-founded belief that national interests are thereby advanced, and that even if we benefit others by an enlightened policy, we are ourselves richly rewarded." *Laissez faire* is yet, therefore, the actual protagonist of mercantilism. It must, however, be understood that though the mercantile system contains all the elements of a policy of protection, yet a supporter of that policy is not by any means bound to this old well-worn system; he may readily accede to the modern theory of international trade, and most certainly he may believe in a policy of enlightened *laissez faire*. And it may at least be accepted as an undoubted fact that the principle of the system is not a wholly erroneous one. *See* PROTECTION.

MERCHANDISE MARKS are the subject of special legislation in the Merchandise Marks Acts, 1887 and 1891, which have for their object the protection of trade-marks and trade descriptions. The two latter terms have received precise definition for the purposes of the Acts. Thus the expression "trade-mark" means a trade-mark registered in the register of trade-marks kept under the Patent, Designs, and Trade-Marks Act, 1883, and includes any trade-mark which, either with or without registration, is protected by law in any British possession or foreign State to which the provisions of that Act are applicable. And the phrase "trade description" means any description, statement, or other indication, direct or indirect—(*a*) as to the number, quantity, measure, gauge, or weight of any goods; or (*b*) as to the place or country in which any goods were made or produced; or (*c*) as to the mode of manufacturing or producing any goods; or (*d*) as to the material of which any goods are composed; or (*e*) as to any goods the subject of an existing patent, privilege, or copyright. And the use of a figure, word, or mark which, according to the custom of a trade, is commonly taken to be an indication of any of the above matters, is also a "trade description." So also is a Customs Entry relating to imported goods. It will be noticed, however, that a description of quality is not included in the above definition. The following is the definition of a "false" trade description for the purposes of the Acts: "A trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, where that alteration makes the description false in a material respect, and the fact that a trade description is a trade-mark, or part of a trade-mark, shall not prevent such trade description being a false trade description within the meaning of the Act." A verbal false description is not within the Acts. In certain cases the provisions as to false trade descriptions do not apply. This is so where, on the 23rd August 1887, such a description was lawfully and generally applied to goods of a particular class, or manufactured by a particular method, to indicate their particular class or the method of their manufacture. But where such a trade description includes the name of a place or country, and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and they are not actually made or produced there, the benefit of the non-application of the Acts is only possible under certain circumstances. These are, briefly, that there is added to the trade description, immediately before or after the name of the place or country, in an equally conspicuous manner with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.

The provisions of these Acts respecting the application of a false trade description to goods extend to the application to goods of any such figures, words, or marks, or arrangement or combination thereof, whether including a trade-mark or not, as are reasonably calculated to lead business men to believe that the goods are the manufacture or merchandise of some one other than the person whose manufacture or merchandise they really are. And these statutory provisions also extend to the application to goods of any false name or initials of a business man, and to goods with the false name or

initials of such a person applied, in like manner as if the name or initials were a trade description. The expression "false name or initials" means, as applied to any goods, the name or initials of a business man which—(*a*) are not a trade-mark, or part of a trade-mark; and (*b*) are identical with, or a colourable imitation of, the name or initials of any one carrying on business in connection with goods of the same description, and not having authorised the use of his name or initials; and (*c*) are either those of a fictitious person or of some one not *bonâ fide* carrying on business in connection with such goods.

Offences.—A manufacturer, dealer, or trader is guilty of an offence under these Acts, unless he proves that he acted without intent to defraud, who—(*a*) forges a trade-mark; or (*b*) falsely applies to goods a trade-mark, or a mark so nearly resembling a trade-mark as to be calculated to deceive; or (*c*) makes a die, block, machine, or other instrument for the purpose of forging, or of being used for forging, a trade-mark; or (*d*) applies a false trade description to goods; or (*e*) disposes of or has in his possession a die, block, machine, or other instrument for the purpose of forging a trade-mark; or (*f*) causes any of the foregoing things to be done. He is also guilty of an offence who sells, or exposes for, or has in his possession for, sale, or any purpose of trade or manufacture, any goods or things to which a forged trade-mark or false trade description is applied, or to which a trade-mark or mark so nearly resembling a trade-mark as to be calculated to deceive is falsely applied, as the case may be. A mineral water dealer who refills with his own water a bottle impressed with the name of another manufacturer is guilty of a false application. But a person charged with selling or exposing, or having in his possession for sale, is entitled to be discharged if he can prove—(*a*) That having taken all reasonable precautions against committing an offence, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade-mark, mark, or other description; and (*b*) that on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained the goods or things; or (*c*) that otherwise he had acted innocently. The law thus makes every effort to reach and punish the real offender only. A person guilty of an offence is liable, if convicted on indictment, to two years' imprisonment with hard labour, or to a fine, or to both imprisonment and fine; or, if convicted summarily, to four months' imprisonment with hard labour, or to a fine of £20, and on a second conviction to six months' hard labour, or to a fine of £50. But in any case he forfeits every article or instrument by means of or in relation to which the offence has been committed. In these cases no one can be lawfully convicted summarily unless he has first, upon his own application, had the option of, and refused, a trial upon an indictment. Any one feeling aggrieved at his conviction by a court of summary conviction can appeal therefrom to a Quarter Sessions. It is also specially provided that no prosecution under these Acts can be commenced after the expiration of three years next after the commission of the offence, or one year next after the first discovery thereof by the prosecutor, whichever expiration first happens; and that on a prosecution the prosecutor may be ordered to pay the defendant's costs, or the defendant those of the prosecutor. Proceedings under

these Acts are within the Vexatious Indictments Act. A person is deemed to forge a trade-mark who either—(*a*) without the assent of its proprietor makes that trade-mark or a mark so nearly resembling it as to be calculated to deceive; or (*b*) falsifies a genuine trade-mark, whether by alteration, addition, effacement or otherwise. But in a prosecution for forging a trade-mark the burden of proving the assent of the proprietor lies, by express statutory provision, on the defendant.

Sale of marked goods.—Implied warranty.—On the sale or in the contract for the sale of any goods to which a trade-mark has been applied, the vendor is presumed by the law to warrant that the mark is a genuine trade-mark and not forged or falsely applied. There is a similar presumption with regard to other marks or a trade description. But this presumption can be rebutted by proof that the contrary was expressed in some writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to and accepted by the vendee.

Applying marks and descriptions. — Certain circumstances may be enumerated under which a manufacturer, dealer, or trader, will be considered to have applied, within the meaning of the Acts, a trade-mark or mark or trade description to goods. These circumstances exist if he—(*a*) Applies it to the goods themselves; or (*b*) applies it to a covering, label, reel, or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade, or manufacture—"covering" including any stopper, cask, bottle, vessel, box, cover, capsule, case, frame, or wrapper; and "label" any band or ticket; (*c*) places, encloses, or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade, or manufacture, in, with, or to any covering, label, reel, or other thing to which a trade-mark or trade description has been applied; or (*d*) uses a trade-mark or mark or trade description in any manner calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade-mark or mark or trade description. A false description may thus be applied within the meaning of the Acts by including it in an invoice sent with the goods. A trade-mark or mark or trade description is "applied" whether it is woven, impressed, or otherwise worked into, or annexed, or affixed to the goods, or to a covering, label, reel, or any other thing. And a business man is said to "falsely apply" a trade-mark or mark to goods if he applies it without the proprietor's assent, or so applies a copy thereof calculated to deceive. In a prosecution for falsely applying a trade-mark or mark, the burden of proving the assent of the proprietor lies on the defendant.

Exemption of employees.—In some cases under these Acts a defendant is entitled to be discharged from the prosecution if he can in his defence show certain mitigating circumstances; but even though he should be consequently discharged, he will yet be liable to pay the costs of the prosecutor unless he has given due notice to him that he will rely upon that defence. The cases in which such a discharge is possible are those where the defendant is charged with making a die, block, machine, or other instrument for the purpose of forging, or being used for forging, a trade-mark; or with falsely applying to goods a trade-mark or a mark

resembling a trade-mark; or with applying to goods a false trade description; or with causing any of the foregoing things to be done. The defence he must prove is—(*a*) That in the ordinary course of his business he is employed, on behalf of other persons, to make dies, blocks, machines, or other instruments for making, or being used in making, trade-marks, or as the case may be, to apply marks or descriptions to goods, and that in the case which is the subject of the charge he was so employed by some person resident in the United Kingdom, and was not interested in the goods by way of profit or commission dependent on the sale of the goods; and (*b*) that he took reasonable precautions against committing the offence charged; and (*c*) that he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade-mark, mark, or false description; and (*d*) that he gave to the prosecutor all the information in his power with respect to the persons on whose behalf the trade-mark, mark, or description was applied.

Watches.—Where a watch case bears any words or marks constituting, or commonly reputed to constitute, a description of the country of its manufacture, and the watch itself does not bear a description of that country, then those words or marks are *primâ facie* a description of that country within the meaning of these Acts. And accordingly the Merchandise Marks Acts apply thereto, and particularly the provisions relating to "goods to which a false trade description has been applied, and with respect to selling or exposing for, or having in possession for sale, or any purpose of trade or manufacture, goods with a false trade description." A "watch" here means all that portion of a watch which is not the watch case. For further particulars of the provisions of these Acts and the regulations made thereunder relating to WATCHES, reference should be made to the article under that title.

Importation.—There are also some very important provisions intended to prohibit the importation of goods which, if sold, would be liable to forfeiture under these Acts. These constitute the necessity of such a mark as "made in Germany," and the following is some account of their nature and extent. In the first place all such goods, and also all goods of foreign manufacture bearing a name or trade-mark being or purporting to be the name or trade-mark of a manufacturer, dealer, or trader in the United Kingdom, are specifically prohibited from importation into the United Kingdom. But this prohibition does not apply if the name or trade-mark is accompanied by a definite indication of the country in which the goods were made or produced. A name on goods which is identical with or a colourable imitation of the name of a place in the United Kingdom, unless it is accompanied by the name of the country in which the place is situate, is treated for the purposes of prohibition as if it were the name of the place in the United Kingdom. The importer, or his agent, of goods fraudulently marked may now, by the Merchandise Marks Act 1911, be required, under penalties, to give information to the authorities as to the consignor and the consignee of such goods. Regulations for carrying into effect the statutory provisions relating to importation are made from time to time by the Commissioners of Customs, and are published in the *London Gazette* and the *Board of Trade Journal*. These regulations mainly relate to the detention and forfeiture of goods, and the conditions to be fulfilled before a detention or forfeiture; they also determine the information, notices, and security to be given, the requisite evidence, and the modes of verification;

and they provide for the informant reimbursing the Customs authorities all expenses and damages incurred in respect of a detention made on his information, and of proceedings consequent on the detention. Different regulations are made respecting different classes of goods or of offences relating to those goods. The port of shipment is treated as *primâ facie* the place of origin of the goods.

Official prosecutions.—While expressly declaring that nothing therein shall affect the power of any person or authority to otherwise undertake prosecutions, the Act of 1891 makes special provision with regard to prosecutions by the Board of Trade. And the Board has power, with the concurrence of the Lord Chancellor, to make regulations for public prosecutions in cases affecting the general interests of the country, or of a section of the community, or of a trade. The Board of Agriculture also has power to prosecute. *See* also ROYAL ARMS; TRADE MARKS; HOP-TRADE.

MERCHANT'S AND OWNER'S RISK.—Merchant's risk is a term generally used in connection with contracts of carriage by sea, the term owner's risk being usually confined to contracts of carriage by rail and deposit with warehousemen. It is introduced in these contracts in order to relieve the carrier or warehouseman from responsibility for the safety of goods carried or stored. *Merchant's risk* would appear in a charter-party in some such form as a stipulation that "the steamer shall be provided with a deck-load if required at full freight, but at merchant's risk." Such a stipulation does not, however, exclude the right of the charterers to general average contribution from the shipowners in respect of deck cargo shipped by the charterers, and necessarily jettisoned to save the ship and the rest of the cargo. But if there were an improper jettison by the master and crew, this stipulation would relieve the shipowners from liability. "The stipulation is obviously in favour of the shipowners," said the Master of the Rolls in *Burton* v. *English*, "for in order to earn a larger freight they may require a part of the cargo to be deck cargo, when it would be at the merchant's risk." A similar condition is also found incorporated in bills of lading. *Owner's risk.*—The reported cases on the meaning of this phrase are generally instances where it occurs in the advice note from the railway company to the consignee, and where the company, having completed the actual carriage of the goods, is simply holding them at the disposal of the consignee. In each case the precise import of the phrase must entirely depend upon the general wording of the advice note. A typical case of this class is that of *Mitchell* v. *Lancashire and Yorkshire Railway Co.*, who sent to the plaintiff, who was the consignee, the following

ADVICE NOTE.

LANCASHIRE AND YORKSHIRE RAILWAY,
NEWCHURCH STATION,
July 26, 1873.

Advice of Goods.

To *Messrs. Mitchell & Co.*

The undermentioned goods, consigned to you, having arrived at this station, I will thank you for instruction as to their removal hence as soon as possible, as they remain here to your order, and are now held by the company,

not as carriers, but as warehousemen, at owner's sole risk, and subject to the usual warehouse charges in addition to the charges now advised. When you send for the goods please to send this note.

For the Lancashire and Yorkshire Railway Company,
J. Taylor, Agent.

Sixty bags flax, weight, freight, &c. (*carriage so much*). Total to Pay (*so much*).

First note the care of the company to emphasise the fact that they are no longer carriers, but merely warehousemen. In view of their lighter responsibility in the latter character, it is always interesting for the business man to watch the anxiety of railway companies to resolve themselves into warehousemen. It is undoubtedly their general practice, whenever even faintly possible, to meet claims made against them as carriers with the contention that the cause of the particular claim arose when they were warehousemen. It is a good practice, too, for claimants to generally regard that contention with suspicion, and only to recognise it after a careful consideration of all the facts. But to return to the above case, wherein a railway company endeavoured to escape even the liability of warehousemen. Soon after the receipt of the advice note, Mitchell went to the station and removed two tons of the flax, but left the rest at the station for more than two months. There were no warehouses at the station, and the flax remained on open ground insufficiently covered, and became damaged by wet. In the above action for damages the company contended that they charged nothing for warehousing, were not even liable as warehousemen, and held the flax at "the owner's sole risk"; but they admitted that if they were bound to take reasonable care of the flax, they had not done so. It was held, however, that, treating the advice note acquiesced in by Mitchell as a contract, the terms of it, taken altogether, did not exempt the company from liability for negligence to the extent that they would be liable as warehousemen or bailees for hire; and that they were therefore liable for the damage. The judgment included some very valuable remarks, which should be carefully studied. "The defendants," said Mr. Justice Field, "were originally under a contract to carry these goods to Newchurch station, and I take it that their duty was to do that which they did; and on the arrival of the goods at the station they gave the consignees notice of it, and then it became the consignees' duty to send for them within a reasonable time. During that reasonable time it might be a question whether the company held the goods as carriers or warehousemen. In order to prevent all doubt the company adopted the usual course, that is, they gave notice to the consignees: 'Your goods have come; you must send for them and fetch them away as soon as possible.' And then they go on to say, 'If you do not do that, we give you notice that we will no longer be liable as carriers, but we will hold them as warehousemen.' Now, if the notice had stopped there, of course there would have been no question at all about it, because, even if the defendants were not bound to hold the goods, they did, in point of fact, hold and retain them on the terms of their own notice; therefore the only question is as to what is the true construction of their own advice note. Now, undoubtedly, the words 'at owner's sole risk' do create a difficulty of

construction. I must confess, for myself, that I do not at present see what element that expression provides for looking at the exact nature and character of the warehousemen's liability; but then I am bound to look at the whole contract, and read it altogether; and I find these words, 'at owner's sole risk,' follow affirmative and positive words describing what the obligation is under which they come, and in what character they held the goods, viz., as warehousemen. . . . They became liable as warehousemen, and in that respect they are liable." And Mr. Justice Blackburn, in the same case, said that he did not think there had been any case decided to the extent that, because the owner of goods was idle and blamable for leaving them in the carriers' hands, therefore they, as trustees, held them under no responsibility whatever. "I think in this case the railway company in holding these goods could have charged warehouse rent, and that being so, I think there can be no doubt that *primâ facie* there was a liability in them as bailees for reward. The liability of an ordinary bailee is to take ordinary and reasonable care."

METRIC SYSTEM is the name given to the system of weights and measures based upon the *metre*, a French word meaning "measure." Its adoption in this country in place of the imperial system has had, for many years, the support and advocacy of the leading interested classes. The chambers of commerce, trades unions, school-boards, elementary teachers, and the Colonial premiers have all joined in its support. The system has three chief claims to adoption in this country. The first is that the metre, its unit, is a natural and unvarying standard; the ten-millionth part of the arc between the equator and one of the poles. This claim is perhaps its weakest, for the standard metre is a certain bar of metal deposited at Paris which does not actually correspond with the latest measurements of that arc. In this respect, therefore, the standard metre is as arbitrary a standard as, for example, the standard yard upon which our, or the imperial, system is based. The second claim, that the metric system is a logically decimal one, is more real than the first. The metre is divisible into 100 *centi*metres and into 1000 *milli*metres; it can be squared for superficial, and cubed for cubic measurement. The *litre* is the standard measure of capacity, and is divisible into 10 *deci*litres and 100 *centi*litres. The *kilo* is the standard measure of weight, and is divisible into 1000 grams. A kilo is the weight of one litre of cold water, and a 1000 kilos (about 1 ton) of 1 cubic metre.

The third claim is that the metric system is the modern international system, and that it behoves Great Britain, if she desires to maintain her commercial position amongst the nations of the earth, to emerge from her comparative isolation in this regard and adopt the system used by her leading competitors. It was as an attempt to introduce international standards that the metric system had its origin in 1790. Certain geodetic measurements were then carried out in Peru and elsewhere, and these led up to a measurement of the meridian passing through Paris. The result of that measurement was the appointment of a committee by the French National Assembly, and that body, by decree of 1793, made the use of metric weights and measures, based on the metre or ten-millionth part of the meridian passing through Paris, the only legal system in France. So it remained, but with some considerable interruption, until 1840, when the French finally made the use of

the metric system compulsory. Perhaps this third claim, based upon international convenience generally, and the necessity in particular for Great Britain to fall into line with modern methods, is that which has the greatest force. Our imperial system of weights and measures is in a most complicated and unsatisfactory condition. And this is not by any means a matter of academic interest only, for the present state of affairs is a distinct and serious drawback to our commerce, especially to our foreign trade. The imperial system differs from that used in every other European nation, and of these nations each one, except Russia, has adopted the metric system. And so also has the metric system been adopted by practically the majority of non-European countries with which this kingdom trades. The United States, where a system founded on the English units exists in general practice, is the most remarkable instance, apart from Great Britain, of non-adhesion to the metric system, though in 1866 an Act of Congress was passed which made the use of the metric system lawful, and defined the weights and measures in common use in terms of the units of that system. But there, in 1895, a Commission was engaged in the investigation of the subject at the same time that a Parliamentary Committee was at work here. In neither country, however, has there been any resulting comprehensive legislation of a compulsory nature; in England the only result up to the present time has been the Act of 1897 referred to below. But, for pharmaceutical purposes only, the Government of the United States has passed an Act rendering the metric system compulsory. The evidence taken by the English Committee showed clearly that not only is our foreign trade in every branch seriously handicapped, but that our home trade would be benefited if more simple and uniform standards of weights and measures than those now existing were adopted. The adoption of the metric system would have the inestimable advantage of putting us in direct relation, in our weights and measures, with most civilised nations. The British merchant and manufacturer, and especially the latter in engineering work, would be able to deal with both the foreign and home trade in one system. He would no longer have to work the two systems side by side, at an unreasonable additional expenditure of time and money, or in default lose all prospect of retaining the greater part of his foreign trade. In 1895 it was calculated that countries comprising a total population of over 445,000,000 were then using metric weights and measures; and this total now amounts to over 480,000,000. It is, moreover, a fact that in no single instance has any country given up the metric system after once adopting it; on the contrary each country desires to retain it, and tends more and more to do business only with other countries in a like position. Thus the British Diplomatic Agent in Bulgaria has recently reported that several cases have come to his knowledge "in which merchants have been deterred from buying what they wanted in England from the incomprehensibility to them of English Catalogues, giving only English weights and measures."

And the present state of affairs is also very deplorable when regarded from the point of view of education. A most serious loss of time is incurred by English school children in having to learn the complicated system of tables of existing weights and measures, and it has been authoritatively estimated that no less than one year's school time would be saved if the

metric system were taught in place of that now in use. In the primary schools on the continent there is nothing more impressive than the great simplicity of their arithmetic as compared with ours. In the first place, the scholars are taught to count by units, tens, hundreds, &c., and then to add, subtract, multiply, and divide whole numbers decimally, as in this country; for, after all, our system of notation is decimal, as it is based on counting by tens, and when we write down figures in a row we know that the farthest to the right represents so many units, the next to the left so many tens, the next hundreds, and so on. Up to this point we do the same as our foreign neighbours; but when we want to express fractional parts of a unit we generally adopt another system altogether, and use vulgar fractions. On the Continent, however, the unit is divided into tenths, hundredths, and thousandths, and a point or comma is placed between the whole numbers and the fractions. The figures are then added together, subtracted, multiplied, or divided, just as if they were all whole numbers. Not only is there a great saving of figures in the metric system, but there is more accuracy. With the imperial weights and measures there are a great many reductions and involved calculations, but with the metric system there is only a simple addition, subtraction, multiplication, or division. To add together tons, cwts., quarters, pounds, and ounces in the weights now used, it is necessary first to add up the ounces and divide by 16, then the pounds and divide by 28, then the quarters and divide by 4, then the cwts. and divide by 20, and in each case to carry forward a number resulting from the reduction. By the use of the metric system, any number of tons or kilogrammes, and any number of fractional parts can be added together by simple addition. The same is true of measures of length, surface, and capacity; in all cases the addition, subtraction, multiplication, and division, decimally can be done by simple arithmetic.

The great obstacle in the way of the introduction of compulsion is the fear of difficulty of change. And yet competent witnesses proved to the committee that a compulsory change from an old and complicated system to the metric had taken place in Germany, Norway and Sweden, Switzerland, Italy, and many other European countries without serious opposition or inconvenience. And not only was this change carried out in a comparatively short period, but as soon as the simple character of the new system was understood, it was appreciated by all classes of the population, and no attempt to use the old units or to return to the old system was made. Sweden may be taken as typical of the method of change. Previous to 1855 that country had a number of different standards, the same as in England, and no decimal parts of them. On 31st January 1855 the *skelpund* (Swedish pound) was divided into decimals, and the Swedish *fot* (foot) was also divided into decimals. On the 12th November 1878 the complete metric system was ordered to be introduced on 1st January 1881 for the Customs, Post, Railways, and Civil Service generally, and on 1st January 1889 for trade exclusively. Since then the old measures have vanished. The experience gained showed that the change to the complete metric system was easily carried through, thanks to the arrangement by which only two years' delay was given for public institutions, while ten years were granted to the general public. France could also be referred to in this connection, but as she was

the country which gave birth to the system, it would be safer to consider the experience of such a country as Germany, to which the metric system was introduced as a total stranger. It has there taken complete root in commercial life, and its utility has been fully demonstrated. It is stated in a Foreign Office Report, of the year 1900, that there is no doubt but that "the removal of the disadvantages of the countless older systems and the introduction of a uniform mode of reckoning has been of incalculable benefit to German commerce." But how far the improvement is attributable to this uniformity, or to the special features of the metric system, is a speculation incapable of material proof. The change took place simultaneously with the political change of 1871, and contributed, doubtless, to the rise in German trade and commerce which has characterised the period that has elapsed since the foundation of the Empire. Foreign trade has also "derived much benefit," says the same Report, "from Germany's adoption of the metric system, more especially the trade between Germany and those countries where the metric system was already in force."

In 1897 was passed the Weights and Measures (Metric System) Act, which legalises in the United Kingdom the use of the metric system. There is scarcely need to add, however, that the Act does not enforce the use of the system; it is merely permissive. Section 1 provides that:—"Notwithstanding anything in the Weights and Measures Act, 1878, the use in trade of a weight or measure of the metric system shall be lawful, and nothing in section nineteen of that Act shall make void any contract, bargain, sale, or dealing, by reason only of its being made or had according to weights or measures of the metric system, and a person using or having in his possession a weight or measure of the metric system shall not by reason thereof be liable to any fine." A table of metric equivalents was drawn up by an Order in Council, dated 19th May 1898, and this as set out below is the legal basis for computing and expressing in weights and measures the weights and measures of the metric system.

Equivalents of Metric Weights and Measures in Terms of Imperial Weights and Measures for use in Trade.

METRIC TO IMPERIAL.

LINEAR MEASURE.

1 Millimetre (mm.) ($\frac{1}{1000}$ m.)	=	0·03937 Inch.
1 Centimetre ($\frac{1}{100}$ m.)	=	0·3937 ,,
1 Decimetre ($\frac{1}{10}$ m.)	=	3·937 Inches.
1 Metre (m.)	=	39·370113 Inches. 3·280843 Feet. 1·0936143 Yards.
1 Decametre (10 m.)	=	10·936 Yards.
1 Hectometre (100 m.)	=	109·36 ,,
1 Kilometre (1000 m.)	=	0·62137 Mile.

SQUARE MEASURE.

1 Square Centimetre	=	0·15500 Sq. Inch.
1 Sq. Decimetre (100 Sq. Centimetres)	=	15·500 Sq. Inches.
1 Sq. Metre (100 Sq. Decimetres)	=	10·7639 Sq. Feet. 1·1960 Sq. Yards.
1 Are (100 Sq. Metres)	=	119·60 ,, ,,
1 Hectare (100 Ares or 10,000 Sq. Metres)	=	2·4711 Acres.

CUBIC MEASURE.

1 Cubic Centimetre	=	0·0610 Cubic In.
1 Cubic Decimetre (c.d.) (1000 Cubic Centimetres)	=	61·024 Cubic Ins.
1 Cubic Metre (1000 Cubic Decimetres)	=	35·3148 Cubic Feet. 1·307951 ,, Yards.

MEASURE OF CAPACITY.

1 Centilitre ($\frac{1}{100}$ Litre)	=	0·070 Gill.
1 Decilitre ($\frac{1}{10}$ Litre)	=	0·176 Pint.
1 Litre	=	1·75980 Pints.
1 Dekalitre (10 Litres)	=	2·200 Gallons.
1 Hectolitre (100 Litres)	=	2·75 Bushels.

METRIC TO IMPERIAL—*continued.*

WEIGHT.

Avoirdupois.

1 Milligram ($\frac{1}{1000}$ Grm.)	=	0·015 Grain.
1 Centigram ($\frac{1}{100}$ Grm.)	=	0·154 ,,
1 Decigram ($\frac{1}{10}$ Grm.)	=	1·543 Grains.
1 Gramme (1 Grm.)	=	15·432 ,,
1 Dekagram (10 Grm.)	=	5·644 Drams.
1 Hectogram (100 Grm.)	=	3·527 Ozs.
1 Kilogram (1000 Grm.)	=	2·2046223 Lbs. or 15432·3564 Grains
1 Myriagram (10 Kilog.)	=	22·046 Lbs.
1 Quintal (100 Kilog.)	=	1·968 Cwts.
1 Tonne (1000 Kilog.)	=	0·9842 Ton.

Troy.

1 Gramme (1 Grm.)	=	0·03215 Oz. Troy. 15·432 Grains.

Apothecaries.

1 Gramme (1 Grm.)	=	0·2572 Drachm. 0·7716 Scruple. 15·432 Grains.

Equivalents of Imperial and Metric Weights and Measures.

IMPERIAL TO METRIC.

LINEAR MEASURE.

1 Inch	=	25·400 Millimetres.
1 Foot (12 Inches)	=	0·30480 Metre.
1 Yard (3 Feet)	=	0·914399 Metre.
1 Fathom (6 Ft.)	=	1·8288 Metres.
1 Pole (5½ Yards)	=	5·0292 ,,
1 Chain (22 Yds.)	=	20·1168 ,,
1 Furlong (220 Yards)	=	201·168 ,,
1 Mile (8 Furlongs)	=	1·6093 Kilometres.

SQUARE MEASURE.

1 Square Inch	=	6·4516 Sq. Centimetres.
1 Sq. Foot (144 Sq. Inches)	=	9 2903 Sq. Decimetres.
1 Sq. Yard (9 Sq. Feet)	=	0·836126 Sq. Metre.
1 Perch (30¼ Sq. Yards)	=	25·293 Sq. Metres.
1 Rood (40 Perches)	=	10·117 Ares.
1 Acre (4840 Sq. Yards)	=	0·40458 Hectare.
1 Sq. Mile (640 Acres)	=	259·00 Hectares.

CUBIC MEASURE.

1 Cubic Inch	=	16·387 C. Centimetres.
1 Cubic Foot (1728 Cubic Inches)	=	0·028317 Cubic Metre.
1 Cubic Yard (27 Cubic Feet)	=	0·764553 Cubic Metre.

MEASURES OF CAPACITY.

1 Gill	=	1·42 Decilitres.
1 Pint (4 Gills)	=	0·568 Litre.
1 Quart (2 Pints)	=	1·136 Litres.
1 Gallon (4 Quarts)	=	4·5459631 Litres.
1 Peck (2 Gallons)	=	9·092 Litres.
1 Bushel (8 Galls.)	=	3·637 Dekalitres.
1 Quarter (8 Bushels)	=	2·909 Hectolitres.

APOTHECARIES MEASURE.

1 Minim	=	0·059 Millilitre.
1 Fluid Scruple	=	1·184 Millilitres.
1 Fluid Drachm (60 Minims)	=	3·552 ,,
1 Fluid Ounce (8 Drachms)	=	2·84123 Centilitres.
1 Pint	=	0·568 Litre.
1 Gallon (8 Pints or 160 Fluid Ounces)	=	4·5459631 Litres.

AVOIRDUPOIS WEIGHT.

1 Grain	=	0·0648 Gramme.
1 Dram	=	1·772 Grammes.
1 Oz. (16 Drams)	=	28·350 ,,
1 Pound (16 Ozs. or 7000 Grains)	=	0·45359243 Kilogram.
1 Stone (14 Lbs.)	=	6·350 Kilograms.
1 Quarter (28 Lbs.)	=	12·70 ,,
1 Hundredweight (Cwt.) (112 Lbs.)	=	50·80 ,, 0·5080 Quintal.
1 Ton (20 Cwts.)	=	1·0160 Tonnes or 1016 Kilograms.

TROY WEIGHT.

1 Grain	=	0·0648 Gramme.
1 Pennyweight (24 Grains)	=	1·5552 Grammes.
1 Troy Ounce (20 Pennyweights)	=	31·1035 ,,

APOTHECARIES WEIGHT.

1 Grain	=	0·0648 Gramme.
1 Scruple (20 Grains)	=	1·296 Grammes.
1 Drachm (3 Scruples)	=	3·888 ,,
1 Oz. (8 Drachms)	=	31·1035 ,,

NOTE.—Approximately one litre equals 1000 cubic centimetres, and one millilitre equals 1·00016 cubic centimetres.

MIDWIFERY.—Women who practise this profession are now subject to the regulation of statute law, and consequently should pay careful attention to the provisions of the Midwives Act, 1902, a statute passed with the object of securing the better training of midwives and regulating their practice. The Act does not extend to Scotland or Ireland, nor does it apply to legally qualified practitioners. It came into operation on the 1st April 1903, on which date two bodies—a central Midwives Board and a local Supervising Authority—were established for the purpose of controlling the practice of midwifery. In view of its general importance it is proposed to set the Act out in this article in some detail. *Certification.*—From and after the 1st April 1905, no woman, unless she is certified under the Act, will be able lawfully to take or use the name or title of midwife (either alone or in combination with any other word or words) or any name, title, addition or description implying that she is so certified, or is a person specially qualified to practise midwifery, or is recognised by law as a midwife. A woman who contravenes this provision will be liable, on summary conviction, to a fine not exceeding £5. And from and after the 1st April 1910, no woman will be allowed, habitually and for gain, to attend women in childbirth otherwise than under the direction of a qualified medical practitioner, unless she is duly certified. Any woman so acting without being certified will be liable, on summary conviction, to a fine not exceeding £10. But this latter prohibition will not apply to legally qualified medical practitioners, or to any one rendering assistance in a case of emergency. A woman will be certified only after she has complied with the rules and regulations to be laid down in pursuance of the Act. No certified midwife will be able to lawfully employ an uncertified person as her substitute. The certificate will not confer any right or title to be registered under the Medical Acts or to assume any name, title, or designation implying that its holder is by law recognised as a medical practitioner, or that she is authorised to grant a medical certificate, or a certificate of death or of still-birth, or to undertake the charge of cases of abnormality or disease in connection with parturition. *Provision for existing Midwives.*—Any woman who, within two years from the 1st day of April 1903, claims to be certified will be entitled to be certified provided she holds a certificate in midwifery from the Royal College of Physicians of Ireland, the Obstetrical Society of London, the Coombe Lying-in Hospital, and Guinness's Dispensary, or the Rotunda Hospital for the Relief of the Poor Lying-in Women of Dublin; or such other certificate as may be approved by the Central Midwives Board; or if she can produce evidence satisfactory to the Board that, on the 31st July 1902, she had been for at least one year in *bonâ fide* practice as a midwife, and that she bears a good character.

Constitution and duties of the Central Midwives Board.—The Lord President of the Council has now concluded the formation of a Central Midwives Board. This Board consists of—(1) Four registered medical practitioners, one appointed by the Royal College of Physicians of London, one by the Royal College of Surgeons of England, one by the Society of Apothecaries, and one by the Incorporated Midwives Institute; and (2) two persons (one of whom must be a woman) appointed for terms of three years by the Lord President of the Council; and (3) one person appointed for a term of three years by the Association of County Councils, one person

appointed for a like term by Queen Victoria's Jubilee Institute for Nurses, and one person appointed for a like term by the Royal British Nurses' Association. After two years from the 1st April 1903, the members appointed under "(1)" are required to retire, but they are eligible for reappointment annually. Any vacancy occurring by resignation or death is filled up, in case of a member appointed under "(1)" and "(3)," by the body which appointed such person, and in the case of a member appointed under "(2)" by the Lord President of the Council. Members appointed under "(2)" and "(3)" are eligible for reappointment, for the same period, on the termination of the period for which they have been appointed. The duties and powers of the Board are as follows: I. To frame rules—(*a*) regulating their own proceedings; (*b*) regulating the issue of certificates and the conditions of admission to the roll of midwives; (*c*) regulating the course of training and the conduct of examinations and the remuneration of the examiners; (*d*) regulating the admission to the roll of women already in practice as midwives at the passing of this Act; (*e*) regulating, supervising, and restricting within due limits the practice of Midwives; (*f*) deciding the conditions under which midwives may be suspended from practice; (*g*) defining the particulars required to be given in any notice under section ten of this Act. II. To appoint examiners. III. To decide upon the places where, and the times when, examinations shall be held. IV. To publish annually a roll of midwives who have been duly certified under the Act. V. To decide upon the removal from the roll of the name of any midwife for disobeying the rules and regulations from time to time laid down under the Act by the Central Midwives Board, or for other misconduct, and also to decide upon the restoration to the roll of the name of any midwife so removed. VI. To issue and cancel certificates. And generally to do any other act or duty which may be necessary for the due and proper carrying out of the provisions of the Act. Rules framed under these powers are valid only if approved by the Privy Council; and the Privy Council before approving any rules must take into consideration any representations which the General Medical Council may make with respect thereto.

Appeal from decision of Midwives Board.—A woman thinking herself aggrieved by a decision of the Board removing her name from the roll of midwives may appeal therefrom to the High Court of Justice within three months after the notification to her of the decision; but no further appeal is possible. *Fees and Expenses.*—There will be payable by every woman presenting herself for examination or certificate such fee as the Board may determine, with the approval of the Privy Council. But the fee must not exceed the sum of one guinea. All such fees paid by midwives in practice at the passing of the Act and by candidates for examinations must be paid to the Board. The Board must devote these fees to the payment of expenses connected with the examination and certificate, and to its own general expenses. And it must, as soon as practicable after the 31st day of December in each year, publish a financial statement made up to that date and showing the receipts and expenditure, including its liabilities, during the year. This statement is required to be certified as correct by either a Chartered or an Incorporated Accountant. The Board must submit a copy of the statement to the Privy Council, and if the statement shows a balance

against the Board and the balance is approved by the Privy Council, the Board may apportion it between the councils of the several counties and county boroughs, in proportion to the number of midwives who have given notice during the year of their intention to practise in those areas respectively, and may recover from the councils the sum so apportioned. *Midwives' roll.*—There will also be a roll of midwives. This roll will contain the names of those midwives who have been certified under the Act, and in each entry will indicate the conditions in virtue of which the certificate was granted. *Appointment of secretary and supplemental provisions as to certificate.*—The Board, with the previous sanction of the Privy Council, has appointed a secretary and other necessary officers. The secretary has the custody of the roll. A copy of the roll, purporting to be printed by the authority of the Board, is evidence in all courts that the women therein specified are certified under the Act. The absence of a woman's name from that copy is evidence, until the contrary is proved, that she is not certified. But in the case of a woman whose name does not appear in the copy, a certificate, under the hand of the secretary, of the entry of her name on the roll is evidence that she is duly certified.

Local supervision of midwives.—Every council of a county or county borough throughout England and Wales is a local supervising authority over midwives within the area of the county or county borough. The duty of a local supervising authority is—To exercise general supervision over all midwives practising within its area in accordance with the rules to be laid down under the Act. To investigate charges of malpractice, negligence, or misconduct on the part of any midwife practising within its area; and should a *primâ facie* case be established, to report it to the Board. To suspend any midwife from practice in accordance with the rules under the Act, if such suspension appears necessary in order to prevent the spread of infection. To report at once to the Board the name of any midwife practising in its area convicted of an offence. During the month of January of each year to supply the secretary of the Board with the names and addresses of all midwives who, during the preceding year, have notified their intention to practise within its area, and to keep a current copy of the roll of midwives accessible at all reasonable times for public inspection. To report at once to the Board the death of any midwife or any change in the name or address of any midwife in its area, so that the necessary alteration may be made in the roll. To give due notice of the effect of the Act, so far as practicable, to persons at present using the title of midwife. A local supervising authority may delegate, with or without any restrictions or conditions as they may think fit, any powers or duties conferred or imposed upon them by or in pursuance of the Act to a committee appointed by them and consisting either wholly or partly of members of the council; women are eligible to serve on such a committee. *Delegation of powers to district councils.*—A county council may delegate, with or without any restrictions or conditions as they may think fit, any powers or duties conferred or imposed upon them by or in pursuance of the Act to any district council within its area; and the powers and duties so delegated may be exercised by a committee appointed by the district council and consisting either wholly or partly of members of the district council; and women are eligible to serve

on such a committee. Any expenses incurred by a district council in the execution of any powers or duties so delegated, to an amount not exceeding such sum as may be prescribed by the county council, will be repaid to it as a debt by the county council; and any excess above the sum so prescribed must be borne by the district council as part of their ordinary expenses. These provisions apply to the administrative County of London in like manner as if each metropolitan borough were a county district and the borough council were the district council of that district. *Notification of practice.*—Every certified midwife, before holding herself out as practising or commencing to practise in any area, must give notice in writing of her intention so to do to the local supervising authority or to the body to whom, for the time being, the power and duties of the local supervising authority have been delegated. She must also give a like notice in January every year thereafter during which she continues to practise in the area. The notice must be given to the local supervising authority of the area within which the woman usually resides or carries on her practice. A like notice must also be given to every other local supervising authority or delegated body within whose area she at any time practises or acts as a midwife, within forty-eight hours at the latest after she commences so to practise or act. Every such notice must contain all particulars required by the rules to secure the identification of the person giving it; and if any woman omits to give the notices, or any of them, or knowingly or wilfully makes or causes or procures any other person to make any false statement in such a notice, then, on summary conviction, she will be liable to a fine not exceeding £5.

Other penalties.—Any woman who procures, or attempts to procure, a certificate by making or producing, or causing to be made or produced, a false and fraudulent declaration, certificate or representation, either in writing or otherwise, will be guilty of a misdemeanour, and, on conviction, will be liable to twelve months' hard labour. Any one who wilfully makes, or causes to be made, any falsification in any matter relating to the roll of midwives, will be guilty of a misdemeanour, and liable to twelve months' hard labour. Any offences under the Act which are punishable on summary conviction may be prosecuted by the local supervising authority. The expenses of such a prosecution will be defrayed by the council of the county or county borough in which the prosecution takes place. *Appeal.*—A woman who considers herself aggrieved by a determination of a court of summary jurisdiction under the Act, may appeal therefrom to the Court of Quarter Sessions. *Action by English Branch Council.*—The General Medical Council acts by the English Branch Council, which, for all purposes of the Act, occupies the place of the General Medical Council.

MILK.—The Board of Agriculture in exercise of powers conferred on them by section 4 of the Sale of Food and Drugs Act, 1899, have made certain regulations concerning the sale of milk. These are known as the Sale of Milk Regulations, 1901, and are as follows: *Milk.*—(1) Where a sample of milk (not being milk sold as skimmed, or separated, or condensed milk) contains less than 3 per cent. of milk-fat, it shall be presumed for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk-fat, or the addition thereto of water. (2) Where a sample

COAL

COAL

THE latest Board of Trade Return issued up to April 1910 contains facts as to the production and consumption of coal in the principal countries to the end of the year 1907.

PRODUCTION OF COAL IN 1907: QUANTITY AND VALUE.

Country.	Quantity.	Value.
	Millions of Tons.	Millions sterling.
1. United States	428.9	128.1
2. United Kingdom	267.8	120.5
3. Germany	140 9	68.6
4. France	35.6	19.0
5 Belgium	23 3	16.0
6 Russia	21 0	7.5
7. Austria-Hungary	14.9	5.1
8. Japan	13.7	6.1
9. Australasia	11.5	4.3
10 British India	11.1	2 6
11 Canada	9.4	5 0
12. Spain	3.6	1.9
Total	981.7	384.7

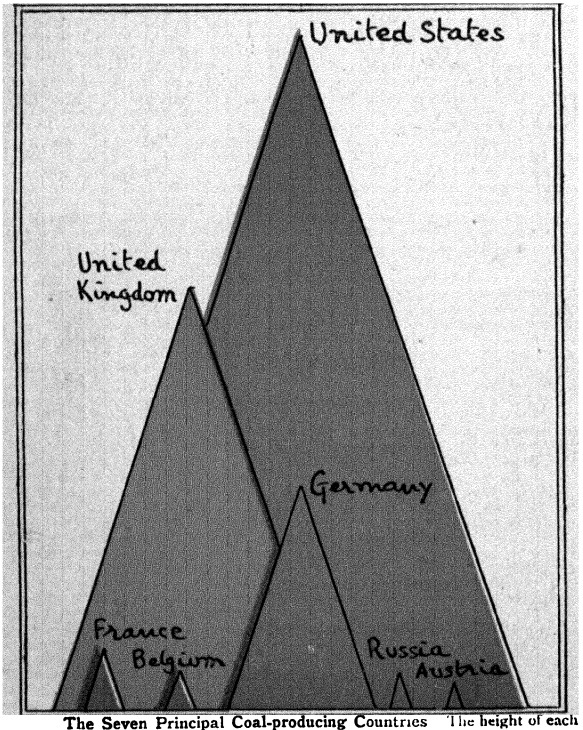
The above Table includes the twelve principal coal-producing countries. Small producers of coal, such as Sweden, the Cape, and Natal, are omitted.

We see that the United States produced much more coal than the United Kingdom. This occurred for the first time in 1899, and since then the United States have gone far ahead of the United Kingdom in coal production.

The total quantity of the year's production of coal was 981 million tons, of which the United Kingdom produced more than one-quarter. The United States produced no less than 44 per cent. of the whole quantity. The value was 384 millions sterling—a little under 8s. per ton. The value per ton fluctuates in different countries, and from year to year; but, speaking generally, and including a term of years, French, Belgian, and Canadian coal has the highest value, and the coal of the United States and of British India has the lowest value.

An idea of the meaning of this total value of 384 millions sterling of coal produced in one year is given by comparing it with the National Expenditure of the United Kingdom — 152 millions in the year 1907-08. The United Kingdom's production alone was valued at 120 millions sterling, *i.e.* over 79 per cent. of the National Expenditure of 152 millions.

The consumption of coal by the preceding twelve countries was as follows:—



The Seven Principal Coal-producing Countries The height of each peak represents the amount of coal produced stated in the Table.

CONSUMPTION OF COAL IN 1907.

Total Quantity Consumed.

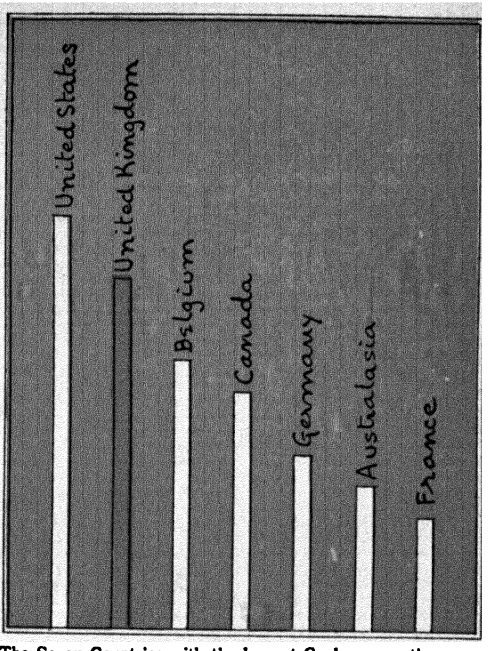
Country.	Consumption.
	Millions of Tons.
1. United States	417 9
2. United Kingdom	182.7
3. Germany	128.4
4. France	52 9
5. Russia	24 7
6. Austria-Hungary	24 3
7. Belgium	22 8
8 Canada	17 3
9. Japan	10 8
10. British India	10 7
11. Australasia	7.7
12. Spain	5.8
Total	906.0

CONSUMPTION OF COAL IN 1907.

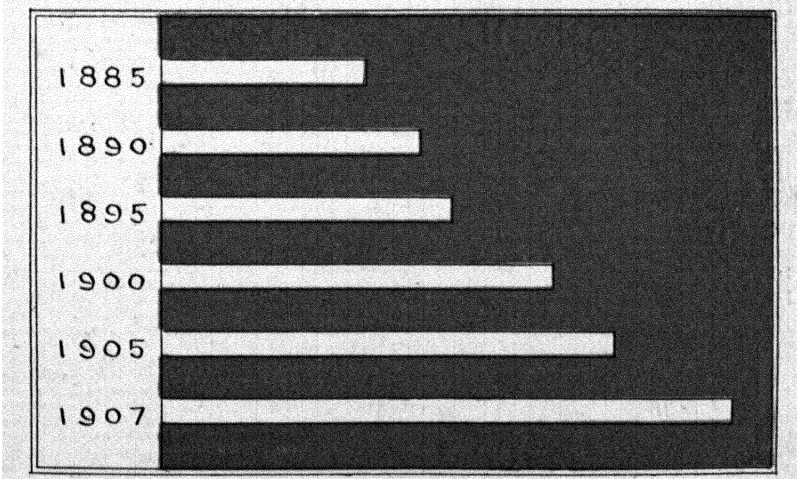
Quantity per 100 of Population.	
Country.	Consumption per 100 of Population.
	Tons.
1. United States . . .	487
2. United Kingdom . .	414
3. Belgium	318
4. Canada	281
5. Germany	206
6. Australasia	171
7. France	135
8. Austria-Hungary . .	90
9. Spain	89
10. Japan	22
11. Russia	16

We see that the total consumption of coal in the United States is considerably greater than that in any other country. And if we look at the consumption per 100 of population, we see that the United States are now leading even the United Kingdom. This important fact illustrates the great advance in manufactures made by the United States.

Germany's relatively small coal-consumption for such a busy country is partly due to the present and



The Seven Countries with the largest Coal-consumption per 100 of Population.



Exports of British Coal from the United Kingdom, 1885-1907, in Millions of Tons.
See the last Table on the following page.

increasing use in Germany of denatured spirits as fuel, which takes the place of coal. France uses a large quantity of fuel other than coal, and this fact accounts in great measure for the low place of such an advanced country in this list of coal-consumption per 100 of population.

The following Table shows, for each country in which the facts are recorded, how the consumption is made up of home-produced coal, of imported British coal, and of imported non-British coal:—

TOTAL COAL-CONSUMPTION: PERCENTAGE FROM EACH SOURCE.

Country.	Home-produced Coal.	Imported British Coal.	Imported non-British Coal.	Total Coal Consumed.
	Per cent.	Per cent.	Per cent.	Per cent.
1. United Kingdom	100.0	..	..	100.0
2. Japan	99.8	0.1	0.1	100.0
3. United States	99.5	..	0.5	100.0
4. Germany	88.6	9.2	2.2	100.0
5. Russia	84.0	10.1	5.9	100.0
6. Belgium	74.0	7.6	18.4	100.0
7. France	64.4	18.2	17.4	100.0
8. Spain	60.7	37.9	1.4	100.0
9. Austria-Hungary	55.6	4.7	39.7	100.0

Looking back over twenty-five years, I find that of the above countries, those that have declined in consumption of British coal are Japan, Russia, Spain, and the United States. The other countries show an increased consumption of British coal.

As regards economy of labour in the production of coal, the following Table shows the yearly number of tons produced per person employed in coal-mining:—

COAL PRODUCTION: NO. OF TONS ANNUALLY RAISED PER PERSON EMPLOYED.

Country.	No. of Tons per Person Employed.
	Tons.
1. United States	577
2. United Kingdom	292
3. Germany	258
4. Austria	195
5. France	188
6. Russia	166
7. Belgium	163
8. Spain	153

Finally, exports of British coal from the United Kingdom, including coke and patent fuel, and coal shipped for the use of steamers engaged in the foreign trade, have been as follows:—

EXPORTS OF BRITISH COAL FROM THE UNITED KINGDOM.

Year.	Millions of Tons.	Percentage of Increase since 1885.
		Per cent.
1885	30.8	100
1890	38.7	126
1895	42.9	139
1900	58.4	190
1905	67.2	218
1907	85.2	277

Thus, for every 100 tons exported in 1885, we exported in 1907 no less than 277 tons.

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of milk (not being milk sold as skimmed, or separated, or condensed milk) contains less than 8·5 per cent. of milk-solids other than milk-fat, it shall be presumed for the purposes of the above Acts, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk-solids other than milk-fat, or the addition thereto of water. *Skimmed or separated milk.*—(3) Where a sample of skimmed or separated milk (not being condensed milk) contains less than 9 per cent. of milk-solids, it shall be presumed, for the purposes of the above Acts, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk-solids other than milk-fat, or the addition thereto of water. And *see* ADULTERATION; DAIRIES.

MINES AND MINERALS.—Output.—In the United Kingdom during the year 1908 the total output of coal mines was 261,528,795 tons. In the year 1901 the output was 219,046,945 tons. The average output of mineral from coal mines per person employed underground tends to decrease, the main cause being found in the fact that the colliers work fewer days, and sometimes shorter hours, than they did in previous years. In some cases higher wages enable the workman to earn his livelihood though working shorter hours or taking an additional holiday every week; in other cases large numbers of men are taken into employment while trade is brisk at the beginning of the year and are afterwards kept on the books, the mine being worked for shorter hours. The quantity of coal exported, exclusive of coke and manufactured fuel and of coal shipped for the use of steamers engaged in foreign trade, was 62,547,175 tons, a decrease of more than a million tons on the exports for 1908. France received over 10⅔ million tons, Germany over 9½ million tons, Italy over 8⅔ million tons, Sweden over 4⅕ million tons, Russia over 3⅓, and the Netherlands, Spain, and Denmark, each over 2 million tons. Adding the 3,284,787 tons exported in the form of coke and manufactured fuel, and the 19,474,174 tons shipped for the use of British and foreign steamers engaged in foreign trade, the total quantity of coal which left the country was 85,306,136 tons. The amount of coal remaining for home consumption was 176,222,659 tons, or 3·956 tons per head of the population. Nearly 19 million tons of coal were used, in 1908, in blast-furnaces for the manufacture of pig iron, as against over 20 millions in the previous year. Of the metallic minerals raised in the United Kingdom, iron ore is by far the most important. During the year 1908 the output of ores of this metal was 15,031,025 tons, valued at £3,724,165. The ore yielded 4,847,448 tons of iron, or more than one-half of the total quantity of pig iron made in this country.

The *output of the world* of coal, in millions of metric tons, is as follows:—United States, 435·7; United Kingdom, 261·5; Germany, 205·7; Austria-Hungary, 47·8; France, 36·7; Belgium, 23·7; Russia, 26·2; Japan, 13·8. The like figures for iron are:—United States, 26·1; Germany, 7·2; Great Britain, 5·2 (to which may be added 473,000 tons for Newfoundland, and 100,000 tons for Canada); Spain, 4·7; France, 3·6; Russia, 2·8; Sweden, 2·7; Luxemburg, 2·6; Austria-Hungary, 1·7. *Persons employed.*—The total number of persons employed during the year 1901 in and about all the mines of the United Kingdom was 839,178, of whom 806,735 worked at 3397 coal mines, and 32,443 at 731 metalliferous mines. Compared with 1900 there was an increase of 26,683 persons at coal mines, and a decrease of 2022 persons at metalliferous mines. Of the 806,735 persons working at coal mines, 647,822, or over 80 per cent., were employed below ground. Of the 158,913 surface workers, 5195, or nearly 3·3 per cent., were females. There was an increase of 387 females compared

with 1900. At metalliferous mines, 18,804 persons, or nearly 58 per cent., worked below ground, and of 13,639 surface workers, 393, or nearly 2·9 per cent., were females. In 1908 there were 1,017,740 persons employed in coal and metalliferous mines. Of these, 972,232 were employed in coal mines, and 45,508 in metalliferous mines. Female surface workers at coal mines were 5970; at metalliferous mines, 255. At the quarries under the Quarries Act there were 94,188 persons employed, of whom 59,968 worked inside the actual pits and excavations, and 34,220 outside. Compared with 1900 there was a decrease of 663 among the inside workers, and an increase of 956 among the outside workers, making a net increase of 293 in the number of persons employed at quarries. The persons employed occasionally at quarries are included in these figures. In 1908 there were 85,475 persons employed at quarries, of whom 54,449 were inside workers and 31,026 were outside. *Fatal accidents.*—There has been a striking decrease of deaths from accidents in connection with metalliferous mining during the last thirty-five years: where formerly there would be over one hundred deaths, now there would be less than fifty. This decrease is persistent. In the coal mines, however, the decrease is comparatively slight. *Non-fatal accidents.*—No figures can be a satisfactory guide to the number of non-fatal accidents which actually occur in mines and quarries, because the standard of severity governing the notification of accidents at such places is vague, and allows much latitude to the agent in his interpretation of it. The standard at mines and quarries is totally different from that at workshops and factories. What is wanted is one definite standard for all industries. Until such a standard is fixed by statute no stress should be laid upon these figures, excepting as regards injuries caused by explosions of fire-damp, explosives, and steam-boilers; in these three cases notifications have to be sent to the inspector, no matter how slight the injuries. *Death-rates from accidents.*—The death-rate from accidents of the underground workers at coal mines is slightly higher than the death-rate of the surface workers. At metalliferous mines the death-rate of the underground workers is also higher than that of the surface workers, 0·15 per 1000. So, too, at the quarries, under the Quarries Act, the death-rate from accidents of the workers inside the actual pits or excavations is higher than that of the persons employed at factories and workshops outside the quarries, but connected with them.

The right to mines of silver and gold is vested in the Crown by virtue of the royal prerogative. Blackstone says that this right has its origin in the King's prerogative of coinage, in order to supply him with materials. Subject to this right in respect of royal mines, all mines and minerals are *primâ facie* the property of the owner of the soil, though in the case of copyholds it is the lord of the manor who is *primâ facie* entitled to them. The extent of the prerogative of the Crown has been the subject of important legislation and litigation, the occasion therefor being the fact that gold and silver are found with, or may be extracted from, other ores. By the old common law, if gold or silver was found in mines of base metal, then according to the opinion of some the whole was a royal mine, and belonged to the King; though others held that it did so only if the quantity of gold or silver was of greater value than the quantity of base metal. A statute of Henry IV. adopted the former opinion, but it had the effect of preventing in this kingdom the extraction of gold and silver out of other ores, and of causing metallurgy to be mainly practised abroad. Two remedial statutes were therefore passed in the reign of William and Mary, and these statutes

remain in force at the present day. Their net result is to provide, in the first place, that no mine of copper, tin, iron, or lead shall be taken to be a royal mine, even though gold or silver may be extracted thereout; but the King can have the ore of any such mine in any part of England and Wales, other than tin ore in the counties of Devon or Cornwall; he must, however, pay the owners therefor at certain specified rates, and do so within thirty days after the ore is laid upon the banks of the mine, and before it is removed. The specified rates are: "for all ore washt, made clean, and merchantable, wherein is copper, the rate of £16 per ton; and for all ore washt, made clean, and merchantable, wherein there is tin, the rate of 40s. per ton; and for all ore washt, made clean, and merchantable, wherein there is iron, the rate of 40s. per ton; and for all ore washt, made clean, and merchantable, wherein there is lead, the rate of £9 per ton." In default of payment of these sums the owners may sell and dispose of the ore at their absolute discretion. The concession introduced by these statutes does not apply to a mine which is worked simply as a gold mine, even though the gold is found mixed with the ores of the baser metals, if the quantity of the latter is so small as to be valueless for the purpose of working. In such a case the ancient prerogative of the Crown remains unaffected, and the mine cannot be worked by a subject, even on his own land, without the licence of the Crown. This was decided in *Attorney-General* v. *Morgan*, wherein it was also held that in cases to which the above statutes apply, the Crown cannot be called upon to exercise its statutory right of pre-emption until the ore has been washed and made clean and merchantable. It is not sufficient to offer the Crown quartz rock in the rough just as brought up from the mine.

Exception of mines and minerals.—It is not unusual to find sales and purchases of land without minerals thereunder. In such cases the minerals are said to be reserved, or, more correctly, excepted. A purchaser of land under an open contract, or one which does not except the minerals, is generally entitled to a conveyance including the minerals, or to compensation for their absence. And this is so where the minerals have been already worked out, provided the purchaser did not know of the fact. The object of the exception is to keep the minerals in the hands of parties other than those who own the soil. The owners of the minerals can then sell and work them without reference to the owners of the soil. As a rule the exception is of "mines and minerals" merely. But, according to circumstances, the exception is expressed by a more specific and extensive wording. Thus it may be of "mines, ores, minerals, coal, limestone, or slate," or of "mines or seams of coal, and other mines, metals or minerals," or of "all mines of coal, culm, iron, and all other mines and minerals whatsoever except stone quarries." The more precise the wording of the exception the less room for doubt is there as to the substances actually intended to be excepted. Generally speaking, minerals mean substances of a mineral character which can only be worked by means of mines as distinguished from quarries. Accordingly in *Darvill* v. *Roper*, where the exception was of "the mines of lead and coal and other mines and minerals," it was held that the owner of the soil could not be prevented from quarrying limestone out of the surface. But

on the other hand, in *Hext* v. *Gill* it was decided that beds of limestone are included in the definition of "mines and minerals" whether got by quarrying or surface work. It can therefore be easily understood that it is impossible to give any precise definition of mines and minerals from the point of view of their exception from a grant of land, and the relative rights of the respective owners of the soil and of the minerals. The actual wording of the particular exception must first be considered, and, as already pointed out, this differs very materially in different instances. Then when the wording is known it is necessary to read it in the light of the many decided cases. Stones got from quarries have been decided to be minerals; so also have stones used for mending roads and worked by quarrying from the surface; and so have coprolites beneath the surface of copyhold land. A bed of clay upon which a railway has been made has been held to be a mine; and brick-earth too, which could be got from underneath. And slate works have come within the definition of a mine, it being in that case laid down that the definition depended upon the mode of working, and not upon the substance obtained from the mine.

Leases of mines are incidentally referred to under the heading LEASE, and also in various other articles. A party who contracts for the lease of a mine cannot resist its performance on the ground of his ignorance of mining matters and of the mine turning out worthless. If the intending lessee of a mine takes possession of it he does not thereby accept the title. Time is of the essence of the contract in an agreement for a lease of a mine. This is so because of the fluctuating nature of the property, and an intending lessee may therefore fix a reasonable time for completion, and on the lessor's default may rescind the contract. The lessee of a mine, although entitled to rely upon the existence of the property, takes all risk of its failure, whether of quantity or value, unless either is expressly warranted. So long, therefore, as any part of the property exists he cannot abandon it, though he may perhaps be entitled to a reduction. But because a mine is merely "unworkable to profit" the lessee does not thereby acquire a right to a reduction or to throw up his lease. As to the usual covenants in a mining lease, it was decided in *Blakesley* v. *Whieldon* that whether an agreement for a lease does or does not provide that the usual covenants shall be inserted in the lease, each party is entitled to have such covenants inserted therein as are incidental to and necessary to protect the rights given to or reserved to each. Accordingly, under an agreement for a lease of minerals, the payments to be accelerated with an increase in the quantity of work, it was held that the lessor was impliedly entitled to have a right of entry and inspection secured to him by the lease.

Rent and royalties.—In 1721 one George Sparrow, who had just become the lessee of a coal mine, fraudulently delayed getting a thousand stacks of coal until after the first quarter day, in order to keep off the commencement of his rent. The terms of the lease were that he was to pay the first quarter's rent on the quarter day next after he should have dug a thousand stacks. But Sparrow, having dug nearly that amount about a week before the quarter day, employed his workmen in other works, telling some of them that he was not such a fool as to pay a quarter's rent for a few days'

work; "by which means the thousand stacks of coal were not digged till after Lady Day, whereas they might have been digged before" had not Sparrow prevented. Thereupon the lessor brought the action of *Green* v. *Sparrow*, and Sparrow was ordered to pay his rent as from the quarter day prior to which the thousand stacks would have been dug, but for his fraudulent delay. No rent was payable, in the case of *Senhouse* v. *Harris*, for coal used in working the engine of one mine when employed in bringing up the coal from another mine, such engine being at the same time used for keeping the former mine free from water. A licensee mixed coals he had gotten under the licence with those gotten from a colliery which was his own property, and sold them so mixed. He then alleged that the coals gotten under the licence were of less value than the other coals, but the Court refused to hear this, and held that as they had been mixed by the licensee's own act, he was not entitled to distinguish between the values of the coals. A more or less exhaustion of coal has been frequently pressed upon the Court as a reason for some remission in rent. But a lease of a coal mine is looked upon as a sale of the coal therein, and the rule of CAVEAT EMPTOR (*q.v.*) is always applied to the case of lessees of such mines. Every one acquainted with property of this character is aware that coal mines are liable to be interrupted by faults. Relief might be granted, however, if all the coal had been gotten by ancient workings. In *Ridgway* v. *Sneyd* the Court upheld the right of the lessor to the minimum rent reserved by the lease, although the coal was proved to be not worth the expense of working; but if the lessor, under the same circumstances, were to sue upon the lessee's covenant to work, he would not be so successful. And if the covenant to pay a minimum rent is an absolute one, that rent will continue to be payable even though the coal is nearly exhausted and the lessee is prevented from continuing to work it except at a ruinous expense. The covenant for rent should therefore have some saving qualification. In one case—*Griffiths* v. *Rigby*—the qualification was that the rent should determine if and when the coal should have been worked out "so far as the same could be fairly wrought." Here it was held that the question whether the coal could be fairly wrought did not depend upon whether it could be worked at a profit or not, or whether any such coal as that leased was worth working; but assuming that coal of the same description could be properly worked, whether, according to the usage of miners, the coal in question could be worked without extraordinary difficulty or expense. What is meant by "fairly" wrought may be a question for a jury to determine. An excess in quantity in one quarter may not, as a rule, be set off against a deficiency in the next.

Duty to work.—In *Sharp* v. *Wright*, where the only rent reserved was dependent on the quantity raised, and was payable quarterly, it was held that the lessee was bound to commence working immediately, and to proceed continuously. But this obligation must be considered in the light of what has been said above with regard to a lessee's equal right to abandon a lease, the property comprised in which has been totally destroyed or exhausted. Where the lessees of china-clay were under an obligation to "dig, work, and search" for it as speedily as possible, and in an effective and proper manner with a reasonable number of able-bodied men during the usual working time,

the lessors were allowed (*Kinsman* v. *Jackson*) to retake possession, under a power to that effect in the lease, because the lessees had got no fresh clay for some months, and were only working the old stock. The precise duty to work can only be determined, however, after reference to the actual wording of the covenant in the particular lease. And the mode of working must also be governed by the appropriate covenant. If, for example, a lease only requires that a mine shall be worked and carried on in a proper and workmanlike manner, the lessee is not bound to sink a pit if he can carry on the works from an adjoining colliery. Unless there is an express agreement to the contrary, a lessee of a mine can work the minerals by "instroke." When there is an agreement between the landlord and tenant that the latter shall restore the surface as soon as he has worked out the mine, it is the landlord only who has any right to complain if this is not done; no third party has such a right. If the owner of the mine expects the lessees to support the surface of the mine he should, as a rule, insert in the lease an express provision to that effect. Apart from such a provision the lessee, as against the lessor, is entitled, where he has a lease of all the mineral underneath, to work all the minerals in a proper and workmanlike manner without special regard to the effect of the working upon the surface. His lease is of those minerals, and he has a right to get them in a proper manner. And where a lessee covenants with his lessor to support the surface he is not liable for any subsidence caused by his predecessors. Nor is he liable to the surface owner for a subsidence merely because he happens to be in possession of a partially worked-out mine, and the subsidence has been caused by the underground workings of his predecessors before the date of his own lease.

Support.—Where the surface of the land belongs to one person and the minerals underneath to another, and there is no qualification of their mutual rights and obligations, the owner of the minerals can only remove them, if he does not thereby cause a loss of support to the surface, or if he adopts means to maintain the surface in its natural state. The right of the surface owner to support does not extend to any buildings he may erect thereon; it is confined to the surface in its natural state. But it would seem that after twenty years a house acquires a right to the lateral support of the soil around it. If the surface, while unencumbered by buildings and in its natural state, subsides and is injured by the removal of the subjacent mineral strata, although the operation may not have been conducted negligently, nor contrary to the custom of the country, the surface owner has a right of action against the owner of the minerals for the damage sustained by the subsidence (*Humfries* v. *Brogden*). And this is so though the surface owner is himself the person who grants the minerals to another person. In *Earl of Westmoreland* v. *New Sharlston Collieries Co.* the plaintiff was the surface owner, and also the grantor of the minerals to the defendants, and it was there held that the colliery company had no right to let down the surface of the lands, and the Court accordingly restrained them from so doing, even though the result might be to compel them to close their works entirely.

Statutory regulations.*—The leading statutes relating to mining are the Metalliferous Mines Regulation Act, 1872, which applies to every mine of whatever description, other than a mine to which the Coal Mines Regula-

* This article must now be read subject to the provisions of the Coal Mines Act 1911, published while this volume was passing through the press, which consolidates and amends the law.

tion Acts, 1887 to 1908, apply, and the latter Acts. The Coal Mines Regulation Act, 1896, the Coal Mines (Check-Weigher) Acts, 1894 and 1905, and the Mines Accidents (Rescue and Aid) Act, 1910, should also be mentioned. These Acts are somewhat identical in detail, but are so extensive that the limits of this work make it impossible to attempt any adequate exposition of their provisions. The best that can be done is to give some outline of some of the leading provisions of the Acts relating to coal mines, so far as they concern the employment of labour, to pay some special attention to the subject of the check-weigher, and to give the general statutory rules for working coal mines.

Coal mines.—*Employment of boys, girls, and women.*—No boy under twelve years of age, and no girl or woman of any age can be employed underground. A boy of twelve, or above that age, cannot be employed underground for more than fifty-four hours in any one week, nor more than ten hours in any one day. His employment must also be in accordance with the following regulations:—(1) There must be an interval of not less than eight hours between the period of employment on Friday and the period of employment on the following Saturday, and in other cases of not less than twelve hours between each period of employment; (2) The period of each employment is considered to begin at the time of leaving the surface, and to end at the time of returning to the surface; (3) A week begins at midnight on Saturday night and ends at midnight on the succeeding Saturday night. With respect to boys, girls, and women employed above ground, the following statutory provisions have effect:—(1) No boy or girl under the age of twelve years shall be so employed: (2) No boy or girl under the age of thirteen years shall be so employed—(*a*) for more than six days in any one week; or (*b*) if employed for more than three days in any one week, for more than six hours in any one day; or (*c*) in any other case for more than ten hours in any one day. And no boy or girl of or above the age of thirteen, and no woman, can be so employed for more than fifty-four hours in any one week, or more than ten hours in any one day. Nor can any boy, girl, or woman be so employed between 9 P.M. and 5 P.M., nor on Sunday, nor after 2 P.M. on Saturday afternoon. There must be an interval of at least eight hours between the termination of employment on Friday and the commencement of employment on the following Saturday, and in other cases of at least twelve hours between the termination of employment one day and the commencement of the next employment. A week begins at midnight on Saturday night and ends at midnight on the succeeding Saturday night. No boy, girl, or woman can be employed continuously for more than five hours without an interval of at least half-an-hour for a meal, nor for more than eight hours on any one day without an interval or intervals for meals amounting altogether to not less than one hour and a half. Nor can he or she be employed in moving railway waggons. But the prohibition against employment after 2 P.M. on Saturday does not apply in the case of a mine in Ireland, which is exempted by order of a Secretary of State. The owner, agent, or manager of every mine is required to keep a register in the office at the mine, and to enter therein in the prescribed manner the name, age, residence, and date of first employment of all boys employed in the mine below ground, and of all boys, girls, and women employed above ground in connection with the mine;

and on request he must produce it there to a mine inspector or a school-board officer, and permit inspection and copies to be made. The immediate employer of every boy, other than the owner, agent, or manager of the mine, before he allows the boy to go below ground in a mine, must report to the manager of the mine, or to some person appointed by that manager, that he is about to employ the boy in the mine. Any one who contravenes or fails to comply with, or permits a contravention or non-compliance with the foregoing provisions, is guilty of a punishable offence; and in the event of any such contravention or non-compliance by any person whomsoever, the owner, agent, and manager of the mine will each also be guilty, unless he proves that he had taken all reasonable means by publishing and to the best of his power enforcing the statutory provisions to prevent the contravention of non-compliance. A bill has recently been brought in to the House of Commons which proposes to limit to eight hours, in any consecutive twenty-four, the hours of employment of males under twenty-one; to prohibit the employment below ground of a person over eighteen not so employed before; and to require that at every mine there should be kept a book to be called "The Hours of Work Book." At present there is no immediate prospect of this bill passing into law. *Wages.*—No wages may be paid to any one employed in or about a mine at a public-house, beer-shop, or place for the sale of spirits, beer, or wine, or other house of entertainment, or at an office, garden, or place belonging or contiguous thereto, or occupied therewith. In the event of contravention or non-compliance by any person whomsoever, the owner, agent, and manager of the mine, as well as the other persons more directly concerned, will each be guilty of an offence unless he can prove that he had taken means to prevent the contravention or non-compliance.

Check-weighers.—Where the amount of wages paid to persons employed in a mine depends on the amount of mineral gotten by them, those persons must be paid according to the actual weight gotten by them of the mineral contracted to be gotten, and the mineral so gotten must be truly weighed at a place as near to the pit mouth as is reasonable and practicable. But this provision does not preclude the owner, agent, or manager of the mine from agreeing with his employees that deductions shall be made in respect of stones or substances other than the mineral contracted to be gotten, or in respect of tubs, baskets, or hutches being improperly filled in those cases where they are filled by the getter of the mineral or his drawer, or by the person immediately employed by him. These deductions are to be determined in the mode specially agreed upon between the owner, agent, or manager of the mine on the one hand, and the persons employed in the mine on the other; or by some person appointed for the purpose by the owner, agent, or manager; or (if a check-weigher is stationed for the purpose as hereinafter mentioned) by such person and such check-weigher; or, in case of difference, by a third person to be mutually agreed on by the owner, agent, or manager of the mine on the one hand, and the persons employed in the mine on the other, or, in default of agreement, appointed by the chairman of the local Court of Quarter Sessions. Here, too, in the event of contravention or non-compliance, the persons directly concerned therein are primarily

liable to a penalty; and also the owner, agent, and manager of the mine, unless he proves that he had taken all reasonable means by publishing and to the best of his power enforcing these statutory provisions to prevent the contravention or non-compliance. Where it is proved to the satisfaction of a Secretary of State, in the case of a mine or class of mines employing not more than thirty persons underground, to be expedient that the persons employed therein should, upon the joint representation of the owner or owners of the mine or class of mines and the said persons, be paid by some other method than that of check-weighing, the Secretary of State may, if he thinks fit, permit that method, either without conditions or during the time and on the conditions specified in his order. Those employed in a mine and paid according to weight are entitled, at their own cost, to station a person (in the Act referred to as a "check-weigher"), or a deputy check-weigher, at each place appointed for the weighing of the mineral, and at each place appointed for determining the deductions. He is so appointed in order that, on their behalf, he may take a correct account of the weight, or determine correctly the deductions, as the case may be. The appointment of the deputy must be made in accordance with the provisions of the Coal Mines (Weighing of Minerals) Act, 1905. A check-weigher is entitled by statute to have every facility afforded to him for enabling him to fulfil his duties, including a shelter from the weather, containing the number of cubic feet requisite for two persons, a desk for writing, sufficient weights, and facilities for examining and testing the weighing-machine, and checking the tareing of tubs and trams where necessary. If at any mine proper facilities are not so afforded to a check-weigher, the owner, agent, and manager of the mine will each be guilty of an offence, unless he proves that he had taken all reasonable means to enforce to the best of his power the statutory requirements. But a check-weigher has no authority in any way to impede or interrupt the working of the mine, or to interfere with the weighing, or with any of the workmen, or with the management of the mine. His authority is limited solely to taking an account or determining deductions as above-mentioned. When absent from his place the weighing must be done by the deputy check-weigher. A check-weigher has a perfect right to give to any workman an account of the mineral gotten by him, or information with respect to the weighing, or the weighing-machine, or the tareing of the tubs or trams, or with respect to the deductions or any other matter within the scope of his duties as check-weigher, provided he does not interrupt or impede the working of the mine. If the owner, agent, or manager of the mine desires the removal of a check-weigher he must complain to the local magistrates. But the complaint can only be received by the magistrate if it is based on the ground that the check-weigher has impeded or interrupted the working of the mine; or interfered with the weighing, or with any of the workmen, or with the management of the mine; or has, at the mine, to the detriment of the owner, agent, or manager, done anything beyond taking an account determining deductions or giving information as above-

mentioned. If the magistrates are of opinion that the owner, agent, or manager shows sufficient *primâ facie* ground for the removal of the check-weigher, they must call on the check-weigher to show cause against his removal. On the hearing of the case the Court will hear the parties, and if sufficient ground is then shown by the owner, agent, or manager to justify the removal of the check-weigher, the magistrates will make a summary order for his removal. Thereupon the check-weigher will be removed, but without prejudice to the stationing of another check-weigher in his place. The Court may in every case make such order as to the costs of the proceedings as the Court may think just. When, by an order of exemption of a Secretary of State, the persons employed in a mine are paid by the measure or gauge of the material gotten by them, the provisions of the Act apply in like manner as if the term "weighing" included measuring and gauging, and the terms relating to weighing are to be construed accordingly. The person appointed by the owner, agent, or manager to weigh the mineral is guilty of an offence if he impedes or interrupts the check-weigher in the proper discharge of his duties, or improperly interferes with or alters the weighing-machine or the tare in order to prevent a correct amount being taken of the weighing and tareing. Where a check-weigher or his deputy has been duly appointed by the persons employed in a mine who are paid according to weight, and has acted as such, he may recover from any person for the time being employed at such mine and so paid his proportion of the check-weigher's wages or recompense; and he may do this even though the persons who actually appointed the check-weigher have left the mine or others have entered it since the check-weigher's appointment. This is so, notwithstanding any rule of law or equity to the contrary notwithstanding. The owner or manager of a mine, where the majority of persons, as above-mentioned, have so agreed, may retain the agreed contribution of his employees concerned and pay it to the check-weigher. The Weights and Measures Act, 1878, apply to all weights, balances, scales, steelyards, and weighing-machines used at any mine for determining the wages payable to any person employed in the mine according to the weight of the mineral gotten by him, in like manner as it applies to weights, balances, scales, steelyards, and weighing-machines used for the trade. An inspector of weights and measures must once at least in every six months properly inspect and examine the weights, balances, scales, steelyards, and weighing-machines so used or in the possession of any person for use at every mine within his district. He must also make an inspection and examination at some other time in a case where he has reasonable cause to believe that there is in use at the mine any false or unjust weight balance, scale, steelyard, or weighing-machine. And it is also his duty to inspect and examine the measures and gauges in use at the mines within his district. But nothing in the Act is intended to prevent or interfere with the use of the measures or gauges ordinarily used at the mine.

General Rules as to the working of coal mines are included in the Act of

1887, and in addition to these a mine owner is empowered to make certain special rules. The general rules are as follows:—

1. An adequate amount of ventilation shall be constantly produced in every mine to dilute and render harmless noxious gases to such an extent that the working places of the shaft, levels, stables, and workings of the mine, and the travelling roads to and from those working places shall be in a fit state for working and passing therein. In the case of mines required by the Act to be under the control of a certificated manager, the quantity of air in the respective splits or currents shall at least once in every month be measured and entered in a book to be kept for the purpose at the mine.

2. Where a fire is used for ventilation in any mine newly opened after the passing of the Act, the return air, unless it be so diluted as not to be inflammable, shall be carried off clear of the fire by means of a dumb drift or airway.

3. Where a mechanical contrivance for ventilation is introduced into any mine after the commencement of the Act, it shall be in such position and placed under such conditions as will tend to ensure its being uninjured by an explosion.

4. A station or stations shall be appointed at the entrance to the mine or to different parts of the mine as the case may require; and the following provisions shall have effect:—(i) As to inspection before commencing work: A competent person or competent persons appointed by the owner, agent, or manager for the purpose, not being contractors for getting minerals in the mine, shall, within such time immediately before the commencement of each shift as shall be fixed by special rules under this Act, inspect every part of the mine situate beyond the station or each of the stations, and in which workmen are to work or pass during that shift, and shall ascertain the condition thereof so far as the presence of gas ventilation, roof and sides, and general safety are concerned. No workman shall pass beyond any such station until the part of the mine beyond that station has been so examined and said by such competent person to be safe. The inspection shall be made with a locked safety-lamp, except in the case of any mine in which inflammable gas has not been found within the preceding twelve months. A report specifying where noxious or inflammable gas, if any, was found present, and what defects (if any) in roofs or sides, and what (if any) other source of danger were or was observed, shall be recorded without delay in a book to be kept at the mine for the purpose, and accessible to the workmen, and such report shall be signed by, and so far as the same does not consist of printed matter shall be in the handwriting of the person who made the inspection. For the purpose of the foregoing provisions of this rule, two or more shifts succeeding one another without any interval are to be deemed to be one shift. (ii) As to inspection during shifts: A similar inspection shall be made in the course of each shift of all parts of the mine in which workmen are to work or pass during that shift, but it shall not be necessary to record a report of the same in a book, provided that in the case of a mine worked continuously throughout the twenty-four hours by a succession of shifts the report of one of such inspections shall be recorded in manner above required.

5. A competent person or competent persons appointed by the owner, agent, or manager for the purpose, shall, once at least in twenty-four hours, examine the state of the external parts of the machinery, the state of the guides and conductors in the shafts, and the state of head-gear, ropes, chains, and other similar appliances of the mine which are in actual use, both above ground and below ground, and shall once at least in every week examine the state of the shafts by which persons ascend and descend; and shall make a true report of the

result of such examination, and every such report shall be recorded without delay in a book to be kept at the mine for the purpose, and shall be signed by the person who made the inspection.

6. Every entrance to any place which is not in actual use or course of working and extension shall be properly fenced across the width of the entrance, so as to prevent persons inadvertently entering the same.

7. If at any time it is found by the person for the time being in charge of the mine, or any part thereof, that by reason of inflammable gases prevailing in the mine, or that part thereof, or of any cause whatever, the mine or that part is dangerous, every workman shall be withdrawn from the mine or part so found dangerous, and a competent person appointed for the purpose shall inspect the mine or part so found dangerous, and if the danger arises from inflammable gas shall inspect the mine or part with a locked safety-lamp; and in every case shall make a true report of the condition of the mine or part; and a workman shall not, except in so far as is necessary for inquiring into the cause of danger or for the removal thereof, or for exploration, be readmitted into the mine or part so found dangerous until the same is stated by the person appointed as aforesaid not to be dangerous. Every such report shall be recorded in a book which shall be kept at the mine for the purpose, and shall be signed by the person who made the inspection.

8. No lamp or light other than a locked safety-lamp shall be allowed or used : (*a*) In any place in a mine in which there is likely to be any such quantity of inflammable gas as to render the use of naked lights dangerous; or (*b*) in any working approaching near a place in which there is likely to be an accumulation of inflammable gas. And when it is necessary to work the coal in any part of a ventilating district with safety-lamps, it shall not be allowable to work the coal with naked lights in another part of the same ventilating district situated between the place where such lamps are being used and the return airway.

9. Wherever safety-lamps are used they shall be so constructed that they may be safely carried against the air current ordinarily prevailing in that part of the mine in which the lamps are for the time being in use, even though such current should be inflammable.

10. In any mine or part of a mine in which safety-lamps are required by the Act or by the special rules made in pursuance of the Act to be used: (i) A competent person appointed by the owner, agent, or manager for the purpose shall, either at the surface or at the appointed lamp station, examine every safety-lamp immediately before it is taken into the workings for use, and ascertain it to be in safe working order and securely locked; and such lamps shall not be used until they have been so examined and found in safe working order and securely locked; (ii) a safety-lamp shall not be unlocked except either at the appointed lamp station or for the purpose of firing a shot, in conformity with the provisions hereinafter contained; (iii) a person, unless he has been appointed either for the purpose of examining safety-lamps or for the purpose of firing shots, shall not have in his possession any contrivance for opening the lock of any safety-lamp; (iv) a person shall not have in his possession any lucifer match or apparatus of any kind for striking a light, except within a completely closed chamber attached to the fuse of the shot.

11. Where safety-lamps are required to be used, the position of the lamp stations for lighting or relighting the lamps shall not be in the return air.

12. Any explosive substance shall only be used in a mine below ground as follows:—(*a*) It shall not be stored in the mine; (*b*) It shall not be taken into the mines except in cartridges in a secure case or canister, containing not more than five pounds. Provided that on the application of the owner, agent, or

manager of any mine, the Secretary of State may by order exempt such mine from so much of this rule as forbids taking an explosive substance into the mine except in cartridges; (*c*) A workman shall not have in use at any time in any one place more than one of such cases or canisters; (*d*) In the process of charging or stemming for blasting, a person shall not use or have in his possession any iron or steel pricker, scraper, charger, tamping rod, or stemmer, nor shall coal or coal dust be used for tamping; (*e*) No explosive shall be forcibly pressed into a hole of insufficient size, and, when a hole has been charged, the explosive shall not be unrammed, and no hole shall be bored for a charge at a distance of less than six inches from any hole where the charge has missed fire; (*f*) In any place in which the use of a locked safety-lamp is for the time being required by or in pursuance of this Act, or which is dry and dusty, no shot shall be fixed except by or under the direction of a competent person appointed, the owner, agent, or manager of the mine, and such person shall not fire the shot or allow it to be fired until he has examined both the place itself where the shot is to be fired and all contiguous accessible places of the same seam within a radius of twenty yards, and has found such place safe for firing; (*g*) If in any mine, at either of the inspections under rule 4 recorded last before a shot is to be fired, inflammable gas has been reported to be present in the ventilating district in which the shot is to be fired, the shot shall not be fired—(1) Unless a competent person, appointed as aforesaid, has examined the place where gas has been so reported to be present, and has found that such gas has been cleared away, and that there is not at or near such place sufficient gas issuing or accumulated to render it unsafe to fire the shot; or (2) unless the explosive employed in firing the shot is so used with water or other contrivance as to prevent it from inflaming gas, or is of such a nature that it cannot inflame gas; (*h*) If the place where a shot is to be fired is dry and dusty, then the shot shall not be fired unless one of the following conditions is observed, that is to say—(1) Unless the place of firing and all contiguous accessible places within a radius of twenty yards therefrom are at the time of firing in a wet state from thorough watering or other treatment equivalent to watering, in all parts where dust is lodged, whether roof, floor, or sides; or (2) in the case of places in which watering would injure the roof or floor, unless the explosion is so used with water or other contrivance as to prevent it from inflaming gas or dust, or is of such a nature that it cannot inflame gas or dust; (*i*) If such dry and dusty place is part of a main haulage road, or is a place contiguous thereto, and showing dust adhering to the roof and sides, no shot shall be fired there unless—(1) both the conditions mentioned in sub-head (*h*) have been observed; or (2) unless such one of the conditions mentioned in sub-head (*h*) as may be applicable to the particular place has been observed, and moreover all workmen have been removed from the seam in which the shot is to be fired, and from all seams communicating with the shaft on the same level, except the men engaged in firing the shot, and such other persons, not exceeding ten, as are necessarily employed in attending to the ventilating furnaces, steam-boilers, engines, machinery, winding apparatus, signals or horses, or in inspecting the mine; (*k*) In the Act "ventilating district" means such part of a seam as has an independent intake commencing from a main intake air course; and "main haulage road" means a road which has been, or for the time is, in use for moving trams by steam or other mechanical power; (*l*) Where a seam of a mine is not divided into separate ventilating districts the provisions in the Act relating to ventilating districts shall be read as though the word "seam" were substituted for the words "ventilating district"; (*m*) So much of this rule as requires the explosive substance taken into the mine to be in cartridges, and

so much of the provisions of sub-head (*f*) as relates to a dry and dusty place, and the provisions (*g*), (*h*), (*i*), (*k*), and (*l*) shall not apply to seams of clay or stratified ironstone which are not worked in connection with any seam, and which contain no coal in the working.

13. Where a place is likely to contain a dangerous accumulation of water, the working approaching that place shall not at any point within forty yards of that place exceed eight feet in width, and there shall be constantly kept at a sufficient distance, not being less than five yards, in advance, at least one bore-hole near the centre of the working, and sufficient bore-holes on each side.

14. Every underground plane on which persons travel, which is self-acting or worked by an engine, windlass, or gin shall be provided (if exceeding thirty yards in length) with some proper means of communicating distinct and definite signals between the stopping places and ends of the plane, and shall be provided in every case with sufficient man-holes for places of refuge, at intervals of not more than twenty yards, or if there is not room for a person to stand between the side of a tub and the side of the plane, then (unless the tubs are moved by an endless chain or rope) at intervals of not more than ten yards.

15. Every road on which persons travel under where the load is drawn by a horse or other animal shall be provided, at intervals of not more than fifty yards, with sufficient man-holes or other places of refuge, and every such place of refuge shall be of sufficient length, and at least three feet in width, between the waggons running on the road and the side of such road. There shall be at least two proper travelling ways into every steam-engine room and boiler gallery.

16. Every man-hole and every place of refuge shall be constantly kept clear, and no person shall place anything in any such man-hole or place of refuge.

17. Every travelling road on which a horse or other draught animal is used underground shall be of sufficient dimensions to allow the horse or other animal to pass without rubbing against the roof or timbering.

18. The top of every shaft which for the time being is out of use, or used only as an air-shaft, shall be kept securely fenced.

19. The top and all entrances between the top and bottom, including the sump, if any, of every working, ventilating, or pumping shaft shall be properly fenced, but this shall not be taken to forbid the temporary removal of the fence for the purpose of repairs or other operations if proper precautions are used.

20. Where the natural strata are not safe, every working or pumping shaft shall be securely cased, lined, or otherwise made secure.

21. The roof and sides of every travelling road and working place shall be made secure, and a person shall not, unless appointed for the purpose of exploring or repairing, travel or work in any such travelling road or working place which is not so made secure.

22. Where the timbering of the working places is done by the workmen employed therein, suitable timber shall be provided at the working place, gate end, pass bye, siding or other similar place in the mine convenient to the workmen, and the distance between the strags or holing props where they are required shall not exceed six feet or such less distance as may be ordered by the owner, agent, or manager.

23. Where there is a downcast and furnace shaft to the same seam, and both such shafts are provided with apparatus in use for raising and lowering

persons, every person employed in the mine shall, on giving reasonable notice, have the option of using the downcast shaft.

24. In any mine which is usually entered by means of machinery, a competent male person not less than twenty-two years of age shall be appointed for the purpose of working machinery which is employed in lowering and raising persons therein, and shall attend for that purpose during the whole time that any person is below ground in the mine. Where any shaft, plane, or level is used for the purpose of communicating from one part to another part of the mine, and persons are taken up or down or along such shaft, plane, or level by means of an engine, windlass, or gin, driven or worked by steam or any mechanical power, or by an animal, or by manual labour, the person in charge of such engine, windlass, or gin, or of any part of the machinery, ropes, chains, or tackle connected therewith, must be a competent male person not less than eighteen years of age. Where the machinery is worked by an animal the person under whose direction the driver of the animal acts shall, for the purposes of this rule, be deemed to be the person in charge of the machinery.

25. Every working shaft used for the purpose of drawing minerals or for the lowering or raising of persons shall, if exceeding fifty yards in depth, and not exempted in writing by the inspector of the district, be provided with guides, and some proper means of communicating distinct and definite signals from the bottom of the shaft and from every entrance for the time being in use between the surface and the bottom of the shaft to the surface, and from the surface to the bottom of the shaft, and to every entrance for the time being in use between the surface and the bottom of the shaft.

26. If in any mine the winding apparatus is not provided with some automatic contrivance to prevent overwinding, then the cage, when men are being raised, shall not be wound up at a speed exceeding three miles an hour, after the cage has reached a point in the shaft to be fixed by the special rules.

27. A sufficient cover overhead shall be used for every cage or tub employed in lowering or raising persons in any working shaft, except where the cage or tub is worked by a windlass or where persons are employed at work in the shaft, or where a written exemption is given by the inspector of the district.

28. A single linked chain shall not be used for lowering or raising persons in any working shaft or plane except for the short coupling chain attached to the cage or tub.

29. There shall be on the drum of every machine used for lowering or raising persons such flanges or horns, and also if the drum is conical, such other appliances as may be sufficient to prevent the rope from slipping.

30. There shall be attached to every machine worked by steam, water, or mechanical power and used for lowering and raising persons, an adequate break or breaks, and a proper indicator (in addition to any mark on the rope) showing to the person who works the machine the position of cage or tub in the shaft. If the drum is not on the crank shaft, there shall be an adequate break on the drum shaft.

31. Every fly-wheel and all exposed and dangerous parts of the machinery used in or about the mine shall be securely fenced.

32. Each steam-boiler, whether separate or one of a range, shall have

attached to it a proper safety-valve, and also a proper steam-gauge and water-gauge, to show respectively the pressure of steam and the height of water in each boiler.

33. A barometer and thermometer shall be placed above ground in a conspicuous position near the entrance to the mine.

34. Where persons are employed underground, ambulances or stretchers, with splits and bandages, shall be kept at the mine ready for immediate use in case of accident.

35. No person shall wilfully damage, or without proper authority remove or render useless, any fence, fencing, man-hole, place of refuge, casing, lining, guide, means of signalling, signal, cover, chain, flange, horn, break, indicator, steam-gauge, water-gauge, safety-valve, or other appliance or thing provided in any mine in compliance with the Act.

36. Every person shall observe such directions with respect to working as may be given to him with a view to comply with the Act or the special rules in force in the mine.

37. The books mentioned in these rules shall be provided by the owner, agent, or manager, and the books, or a correct copy thereof, shall be kept at the office at the mine, and any inspector under the Act, and any person employed in the mine or any other having the written authority of any inspector or person so employed, may at all reasonable times inspect and take copies of and extracts from any such books; but nothing in these rules shall be construed to impose the obligation of keeping any such book or a copy thereof for more than twelve months after the book has ceased to be used for entries therein under the Act. Any report of the Act required to be recorded in a book may be partly in print (including lithograph) and partly in writing.

38. The persons employed in a mine may from time to time appoint two of their number or any two persons, not being mining engineers, who are practical working miners, to inspect the mine at their own costs, and the persons so appointed shall be allowed once at least in every month, accompanied, if the owner, agent, or manager of the mine think fit, by himself, or one or more officers of the mine, to go to every part of the mine, and to inspect the shafts, levels, planes, working places, return airways, ventilating apparatus, old workings, and machinery. Every facility shall be afforded by the owner, agent, or manager, and all persons in the mine for the purpose of the inspection, and the persons appointed shall forthwith make a true report of the result of the inspection, and that report shall be recorded in a book to be kept at the mine for the purpose, and shall be signed by the persons who made the inspection; and if the report state the existence or apprehended existence of any danger, the owner, agent, or manager shall forthwith cause a true copy of the report to be sent to the inspector of the district.

39. No person not now employed as a coal or ironstone getter shall be allowed to work alone as a coal or ironstone getter in the face of the workings until he has had two years' experience of such work under the supervision of skilled workmen, or unless he shall have been previously employed for two years in or about the face of the workings of a mine. *Penalty on non-compliance with rules.*—Every person who contravenes or does not comply with any of these general rules will be guilty of an offence against the Act; and in the event of any contravention of or non-compliance with any of the said general rules in the case of any mine to which the Act applies, by any person whomsoever, the owner, agent, or manager shall each be guilty of a similar offence unless he proves that he had taken all reasonable means, by publishing and to the best of his power

enforcing the said rules as regulations for the working of the mine, to prevent such contravention or non-compliance.

MINT.—The right to coin and issue money in this country belongs exclusively to the Crown as a part of the royal prerogative. A mint is a place where money is coined. At an early period of our history there were a number of mints established throughout the country controlled by moneyers and authorised and privileged by royal charter. Later it became the custom to temporarily establish mints at the various places at which the King from time to time resided, but the King's moneyers of London were always able to retain their privileges and obtain successive charters of confirmation thereof. The London Mint, which now coins for the whole of the United Kingdom as well as to a large extent for the Colonies, was, until 1850, the legitimate successor and representative of those moneyers of London. In that year, however, the Mint came under the complete control of the government. Its duties are primarily the conversion of bullion into money. Four distinct branches of its operations may be distinguished. In the first place it coins gold pieces in accordance with the provisions of the Coinage Act. In connection with this the Mint necessarily works at a loss, for it is required by statute to assay and coin gold bullion, and deliver it "without any charge for such assay or coinage, or for waste in coinage." In the second place it must coin and issue, from bullion purchased on account of the government, all the silver and bronze pieces the public require. Here the Mint makes a large profit, for our silver and bronze coinage is merely a token money. A shilling does not by any means represent the intrinsic value of the twentieth part of a sovereign; nor does a penny represent the two hundred and fortieth part. Because this is so the legislature has limited the amount of silver and bronze which, in any particular case, may constitute a legal tender. An account of the work of the Mint during a typical year, say 1901, will be interesting. The weight of silver bullion purchased by the Mint during that year for the manufacture of sterling silver coin amounted to 3,391,234·99 standard ounces, for which the price paid was £394,936, 16s. 8d., at the rate of 27$\frac{1}{16}$d. per ounce. And 815,733·85 standard ounces of worn silver coin, which must be purchased by the Mint at its nominal value (£243,075, 7s.), were withdrawn from circulation during the same period. A total weight of 4,206,968·84 standard ounces of silver was therefore purchased for £638,012, 3s. 8d., from which £1,156,916, 8s. 6d. was produced in coin, showing a gross profit of £518,904, 4s. 10d., or 81·33 per cent. During the same period the Mint issued nearly 49 millions of pence, halfpence, and farthings, weighing altogether 283 tons, and of the nominal value of £120,280. And its bronze coinage account for the year shows a net profit of £103,049, 4s. 8d. Calculated over the last forty years, up to 1910, the net annual profits on the whole operation of the Mint amount to £278,580. In the third place the Mint must execute such coinage for the British colonies and dependencies as they may require. No loss should be made in respect of this, as in every case a charge is made therefor calculated upon the cost price of the work. But the wants of the Colonies are not allowed to hinder the supply of the Imperial needs, and consequently when the Mint is unable to undertake this Colonial work it is handed over to a Birmingham firm, who do it under the control of the government. And lastly, the Mint is required to manu-

facture naval and military and certain other medals. In 1901, for instance, it executed three medals—"China, 1900"; "Ashanti, 1900"; and "Cape General Service." But the greater part of this medal work was carried out by contractors in London and Birmingham. In consequence of the decrease in the requirements of the War Office there has been, up to 1910, a great reduction in the amount of medal work. Incidental to the above duties of the Mint are some others of considerable importance. It has an assay department, the chief work of which is directly connected with the coinage. But samples of gold and silver wares are also forwarded to this department for its examination from the assay offices at Birmingham, Sheffield, and Chester. As a consequence of this some idea can be formed of the condition of the trade in gold and silver ware, and it is satisfactory to know that taking aggregate results the manufacture of gold and silver ware in this country has been steadily increasing during recent years. The increase in the production of silver ware is probably mainly due to the depreciation in the price of silver. In 1870 the average price per standard ounce in the London market was 60½d., but since then it has fallen, at the rate of more than 1d. per year, to 24$\frac{11}{16}$d. in 1910. In December 1902 it had fallen to so low a price as "spot and two months forward, 22¼d." In 1905 it rose to 27$\frac{13}{16}$d., and in 1908 it had fallen to 24⅜d. The Mint has also a duty with regard to prosecutions for coinage offences, and, fortunately for the public, this duty appears to be less onerous than formerly. In 1892 it obtained 128 convictions; in 1893 there were 158; but since the latter year they declined to 50 in 1901, and have increased to 122 in 1905, 105 in 1908, and 181 in 1910. During the year 1901 some cases were brought to the notice of the Director of Public Prosecutions in which copper coins or tokens, apparently intended to represent current coins, had been manufactured for and sold by street hawkers in the metropolis and elsewhere. The manufacturers were warned that they appeared to be offending against the Counterfeit Medals Act, 1883, and gave an undertaking not to make similar articles in future. The Trial of the PYX (*q.v.*) is also connected with the duties of the Mint. And *see* COINS; ISSUE DEPARTMENT.

MISSING SHIP.—A ship which has sailed out of port on her intended voyage, and has never since been heard of, is presumed to have foundered at sea. There is no precise time fixed at which this presumption will arise, that time always depending upon the circumstances of the particular case. No evidence is required to prove that the loss so presumed did or did not happen in any specified manner. It has been held unreasonable to expect such evidence, for every one on board is also presumed to be drowned, and consequently all that can be required is the best proof the nature of the case admits of.

MISTAKE has been defined as an unintentional act, omission, or error arising from ignorance, surprise, imposition, or misplaced confidence. It is either a mistake of fact or a mistake of law. As a general principle the Court will not relieve from the consequences of a mistake if it is one of law. A man for example who, under a misapprehension of his legal rights, parts with his property for a valuable consideration, cannot have the transactions set aside on the mere ground of mistake as to those rights. But where two parties under a mistake of fact enter into an agreement, either of them is entitled to relief from his obligations under that agreement. Thus where A, entered into an agreement for a lease of a fishery from B., both parties

believing that B. was the owner of the fishery, though afterwards it was discovered that A. was the owner, the Court set aside the agreement on behalf of A., but imposed certain terms for the benefit of B. If, however, fraud enters into a mistake of law, as where one of the parties knowing the other is making the mistake says nothing and takes advantage of the mistake, then the Court will relieve the party prejudiced. This is in accordance with the principle, adopted in cases of mistake of law, that the Court will relieve from them only where there exists some equitable ground which makes it inequitable that the relief should not be granted. And, therefore, relief was not granted in a case where, there being no fiduciary relationship between the parties, and both parties having a full knowledge of all the facts, one party demanded repayment of money received by the other, on the ground that, owing to a mistake in law, both parties had believed that the person receiving the money was entitled to it. When parties whose rights are doubtful have equal knowledge of the facts and equal means of ascertaining what their rights really are, and they endeavour to settle their claims among themselves, the Court is disposed to support the agreements to which they may fairly come, notwithstanding the subsequent discovery of common error.

In *London and River Plate Bank* v. *The Bank of Liverpool* it was decided that money once paid and received on a *bill of exchange*, in good faith, but under a mistake not immediately discovered, cannot be recovered. There a bill having become due and been presented for payment, was paid in good faith and the money received in good faith, but after an interval of time, during which the position of the holder might have been altered, it was discovered that the indorsements were forged. The money so paid was not allowed to be recovered from the holder. In *Cocks* v. *Masterman* the rule upon which this decision was based is laid down very clearly. When a bill becomes due and is presented for payment the holder ought to know at once whether the bill is going to be paid or not. If the mistake is discovered at once, it may be the money can be recovered back; but if it is not, and the money is paid in good faith, and is received in good faith, and there is an interval of time in which the position of the holder may be altered, the principle applies that money once paid cannot be recovered back. This rule is obviously indispensable for business. By a delay the holder may be too late to give notice of dishonour of the bill, and so lose recourse against prior indorsees. Sometimes, as in *Henkel* v. *Pape*, it falls to the Court to say which of two innocent parties is to suffer for a mistake occasioned by the carelessness of a third. In that case the defendant wrote a message for transmission by telegraph to the plaintiffs, ordering three rifles. By mistake the telegraph clerk telegraphed the word "the" for "three"; and the plaintiffs thereupon, acting upon a previous communication with the defendant to the effect that he might perhaps want as many as fifty rifles, sent that number to him. The defendant declined to take more than three. It was held that the defendant was not responsible for the mistake of the telegraph clerk, and that therefore the plaintiffs were not entitled to recover the price of more than three rifles. A negotiable security, such as a bill of exchange, which is given, in ignorance, in satisfaction of a liability from which the party giving the security is discharged in law, cannot be enforced

against him by the party to whom it is given. And where, as in *Smith* v. *Wheatcroft*, personal considerations enter into a contract, an error as to the person with whom the contract is made will annul the contract. But this will not be so where the person sought to be bound would have been equally willing to make the same contract with any other person.

MONETARY UNIONS.—The *Latin Union* is founded upon a convention adhered to by France, Belgium, Greece, Italy, and Switzerland, the object being the establishment of a mutual and uniform monetary policy and the maintenance of a uniform and interchangeable coinage of gold and silver based on the French franc. This object is attained mainly by each country of the union regulating, in harmony with the other countries, the fineness, weight, denomination and currency of its gold and silver coin. Other countries, such as Austria-Hungary and Spain, though not constituents of the Latin Union, have also regulated their coinage, or a considerable part of it, with a view to its uniformity and interchangeability with that of the countries of the Latin Union. The *Scandinavian Union*, comprising Norway, Sweden, and Denmark, is founded with a similar object to that of the Latin Union. These two unions do not, however, represent the whole of international sentiment on the subject of uniformity and interchangeability of coinage. It may be said that all the commercial powers are anxious to bring about some arrangement which will constitute an improvement upon the present multiplicity and irregularity of standards and denominations. And as witnesses to this anxiety the various *international monetary conferences* may be referred to, at one of which, held in Brussels in 1892, as many as twenty different countries were officially represented. Many and important have been the plans and suggestions laid before these conferences, but so far it would seem that the differences between the advocates of the single and double standard have absolutely prevented any definite step being taken by the nations concerned towards the realisation of their common ideal. In England the House of Commons has emphatically impressed upon the government the advisability of doing everything possible "to secure by international agreement a stable monetary par of exchange between gold and silver," but the Latin and Scandinavian unions yet remain in their isolation. The bimetallic controversy stands in the way of even some temporary and merely palliative international action.

MONEY ARTICLE.—One of the most important columns in the daily newspaper, yet perhaps the one least read by the general public, is that known as the Money or City article. The reason for this lack of general appreciation is probably that only dry facts are there recorded, and that the writer has no scope wherein to exercise his imagination. These facts, too, are always essentially financial or incidental to finance; they are not those of the wider and more human life. And yet sometimes they would appeal most strongly to the general reader. Had he, for instance, been a reader of one money article in particular he would have known much earlier than did the general newspaper reader of the happening of the Jameson Raid. But nevertheless it must be admitted that general news must be sought elsewhere than in the money article, for there, described in a technical terminology, are recorded only the movements of money and securities for money; men and general property have a place merely incidental to those movements.

The money article appears daily in some form or other in every morning newspaper of any importance, and its form in each paper never really varies. It usually commences with money itself, British Government securities, and so on, by a comparatively descending scale through the various classes of stocks and shares, to the miscellaneous class at the end. The great London dailies and those of the chief provincial towns make their money article a leading feature; so also do a few of the evening papers. Some daily papers—the financial ones—are each practically one complete money article and nothing else. The latter class of papers as we now know them are of comparatively recent origin, though they had at least one precursor so far back as two hundred years ago. The money article in the general newspaper had its birth about seventy-five years ago, since when it has maintained an existence of high importance, and developed perhaps, as by indicating in some few brilliant instances the name of its writer. He, as a rule, is known as his paper's City Editor.

It is to the money article that the investor and speculator look for information as to the state of the money and stock and share market. The movements in the BANK RATE and in DISCOUNT are there indicated, and the most recent price of bullion is stated. The latest prices of home and foreign government securities, railway stock, and mining, and miscellaneous industrial shares are also quoted. And all this is done together with some account, where possible, of the causes of any rises and falls; the past history of various securities is taken into consideration, the circumstances surrounding their movements are related, and their future is indicated. Announcements are also made of the coming Stock Exchange fixtures, as for example the date of the next monthly settlement in Consols; of the latest TRAFFIC RETURNS of railways; of important partnerships and dissolutions; of MEETINGS of companies, allotments of shares, declarations of DIVIDENDS, and every LIQUIDATION. The REPORTS of companies are also abstracted at sufficient length to show how their affairs are progressing. And notice is given of the date of any SPECIAL SETTLEMENT the Stock Exchange committee may have appointed, and of the shares in respect of which the settlement is fixed, and of any securities which have been admitted to a quotation in the OFFICIAL LIST. Here, too, will be found a notification of the numbers of drawn debentures [*see* AMORTISATION] and of the date and place of their payment, and of the date of the payment of coupons and the place where the security is DOMICILED.

From the foregoing it will be seen that the matter of the money article really appeals to a very large part of the class of general newspaper readers. Every one who has capital, who invests or speculates, who draws interest or a DIVIDEND, should there find something of use to him. He can watch the movements of the money market and conduct his business with some regard thereto, knowing with certainty whether trade is for the present bad or good, and having the means whereby he can anticipate and discount a commercial revival or depression. He can always know how financial experts view the condition of any securities in which he has invested his money. He need never be at a loss as to the time and place at which he can obtain his dividends, or as to whether any of his redeemable securities have been called in.

MONEY-LENDERS.—Persons who carry on business as money-lenders now come within the scope of the Money-Lenders Act, 1900. In the expression "money-lender," the Act specifically includes "every person whose business is that of money-lending, or who advertises or announces himself, or holds himself out in any way as carrying on that business." But certain persons and bodies are expressly excluded from the operation of the Act. Such are—(*a*) Any pawnbroker in respect of business carried on by him in accordance with the provisions of the Acts for the time being in force in relation to pawnbrokers—the mere fact that a pawnbroker has on one occasion lent money on the security of a bill of sale does not make him a money-lender within the meaning of the Act (*Newman* v. *Oughton*); (*b*) any registered society within the meaning of the Friendly Societies Act, 1896, or any society registered or having rules certified under sections 2 and 4 of that Act, or under the Benefit Building Societies Act, 1836, or the Loan Societies Act, 1840, or under the Building Societies Acts, 1874 to 1894; (*c*) any body corporate, incorporated or empowered by a special Act of Parliament to lend money in accordance with such special Act; (*d*) any person *bonâ fide* carrying on the business of banking or insurance, or *bonâ fide* carrying on any business not having for its primary object the lending of money, in the course of which and for the purposes whereof he lends money; and (*e*) any body corporate for the time being exempted from registration under the Money-Lenders Act by order of the Board of Trade made and published pursuant to the regulations of the Board of Trade. The object of this Act is to ensure, as far as possible, that the business of money-lending shall be carried on only by known and responsible persons, and with honesty and without unreasonable rapacity. As an attempt towards the attainment of that object, the legislature requires money-lenders, as defined by the Act, to register themselves; and it also confers power upon courts of law to reopen and inquire into money-lending transactions.

And it introduces penalties, as mentioned at the close of this article, in the event of a money-lender influencing a loan transaction by misrepresentation or concealment. And, what is of great importance, it amends the law as to presumption of knowledge of **infancy**, for it enacts that "where in any proceedings under section 2 of the Betting and Loans (Infants) Act, 1892, it is proved that the person to whom the document was sent was an infant, the person charged shall be deemed to have known that the person to whom the document was sent was an infant, unless he proves that he had reasonable ground for believing the infant to be of full age." The section referred to is of vital interest to the money-lender, and it is accordingly set out presently rather fully. If he offends against its provisions he becomes liable, upon conviction or indictment, to three months' hard labour and a fine of £100; or, upon summary conviction, to one month's hard labour and a fine of £20. The Court has a discretion, however, to inflict a lighter punishment. An offence is committed against the section by any one who, "for the purpose of earning interest, commission, reward, or other profit, sends or causes to be sent to a person [whom he knows to be] an infant any circular, notice, advertisement, letter, telegram, or other document which invites, or may reasonably be implied to invite, the person receiving it to borrow money, or to enter into any transaction involving the borrowing of money, or to apply to any person or at any place with a view to obtaining information or advice as to borrowing money." The words placed in brackets are as they stand in the Act, but they are now in effect repealed by the above-quoted provision of the Money-Lenders Act relating to the presumption of knowledge of infancy.

That presumption materially prejudices the position, and renders more difficult the defence, of any one now charged with an offence under section 2 of the Betting and Loans (Infants) Act, 1892. And the section also indicates the persons who may be charged with the offence of inviting business from infants. It says that if any such document as above-mentioned sent to an infant purports to issue from an address named therein, or indicates an address as the place at which the application is to be made with reference to the subject-matter of the document, and at that place there is carried on some business connected with loans, whether making or procuring loans or otherwise, *every person* who attends at that place for the purpose of taking part in or who takes part in or assists in the carrying on of the business, shall be deemed to have sent or caused to be sent the document, *unless* he proves that he was not in any way a party to and was wholly ignorant of the sending of such document. The offence is constituted by sending these documents to an infant, or causing them to be so sent; and it will be seen from the foregoing that, subject to his proving the contrary, an assistant in the business which transgresses the law is himself liable to prosecution. Apart from the presumption of knowledge of infancy introduced by the Money-Lenders Act, the Act of 1892 also specially provides that if a document of the above-mentioned class is sent to any one at a university, college, school, or other place of education, the sender is deemed to have known that the person to whom it was sent was an infant, "unless he proves that he had reasonable ground for believing such person to be of full age." And no one, except under the authority of the Court, may solicit an infant to make an affidavit or statutory declaration for the purpose of or in connection with any loan. Whoever does so will be liable, on summary conviction, to one month's hard labour and a fine of £20; or, on conviction on indictment, to three months' hard labour and a fine of £100. Very important, too, is the provision avoiding a contract for payment of a loan advanced during infancy. The precise words of the statute are as follows:—"If any infant who has contracted a loan which is void in law, agrees after he comes of age to pay any money which in whole or in part represents or is agreed to be paid in respect of any such loan, and is not a new advance, such agreement, and any instrument, negotiable or other, given in pursuance of or for carrying into effect such agreement, or otherwise in relation to the payment of money representing or in respect of such loan, shall, so far as it relates to money which represents or is payable in respect of such loan, and is not a new advance, be void absolutely as against all persons whomsoever." For the purpose of the foregoing, any interest, commission, or other payment in respect of the loan, is considered to be a part of that loan. In Scotland the word "infant" means and includes any minor or pupil.

Registration.—A money-lender, within the meaning of the Money-Lenders Act, 1900, must register himself as a money-lender in accordance with the regulations for the time being in force. He must do so under his own or usual trade name (not a name assumed for the first time for the purposes of registration, *Whiteman* v. *Sadler*), and in no other name, and with the address, or all the addresses if more than one, at which he carries on his business of money-lender. In the case of a money-lending firm the names of the real partners must be registered (*In re Robinson, Clarkson* v. *Robinson*). And a money-lender partner in a firm carrying on money-lending business at one address in a partnership name cannot carry on business alone at another address in a name different from that of the partnership (*Stirling* v. *Silburn* v. *Pyman*). He must carry on the money-lending business in his registered name, and in no other name and under no other description, and at his registered address or addresses, and at no other address. He cannot enter into any agreement in the course of his business as a money-lender with respect to the advance and repayment of money, or take any security for money in the course of his business as a money-lender, otherwise than in his registered name. And, on reasonable request and tender of a reasonable sum for expenses, he must furnish

the borrower with a copy of any document relating to the loan or any security therefor. Non-compliance with any of the foregoing requirements will render a money-lender liable to a heavy punishment upon summary conviction. This punishment consists of a fine of £100 for a first offence; but in the case of a second or subsequent conviction the offender may be imprisoned with hard labour for three months and also fined £100. If, however, the offender is a body corporate, that body corporate will be liable to a fine of £500 on a second or subsequent conviction. Moreover, a non-registered money-lender cannot recover on a contract entered into in the course of his business, nor can even an assignee of the security, for value without notice, enforce the same (*In re Robinson, Clarkson* v. *Robinson*). The whole of a particular transaction must be carried through at the registered address. Even an occasional place of business must be registered. This does not prevent, however, a particular loan being effected at the borrower's residence (*Kirkwood* v. *Gadd*); or the loan being made through the post, as by a cheque (*Jackson* v. *Price*; *In re Debloy, No. 2 of 1910*; *In re Seed*); or collecting repayments elsewhere than at the registered address (*Hopkins* v. *Hills*). A prosecution for non-registration merely can only be instituted with the consent of the Attorney-General or Solicitor-General, a provision which is probably intended to prevent the vexatious prosecution of persons who are not within the scope of the Act and so are not registered. Registration ceases to have effect at the expiration of three years from the date of the registration; but it may be renewed from time to time, and if renewed it has effect for three years from the date of the renewal. A fee of £1 is payable on each registration or renewal thereof. And this fee is payable whether the renewal arises in consequence of the expiration of the three years, or in consequence of a change of names or addresses of the person registered. The fee payable for the inspection of each separate return on the register is one shilling. On payment of this fee, together with a stamp duty of one shilling, any person, on demand, will be furnished with a certified copy of any registered return.

Exemption.—The application for exemption from registration is to be made on foolscap paper in a specified form, and must be signed by some responsible officer by and on behalf of the body corporate desiring the exemption. It is required to be accompanied by—(*a*) In the case of a body corporate registered under the Companies Acts, a copy of the Memorandum and Articles of Association, and, in other cases, a copy of the Charter, Deed of Settlement, or other document of Incorporation, and the regulations governing the rights of members, such copies being certified by some responsible officer of the body corporate as true copies; (*b*) A Statutory Declaration by a responsible officer of the body corporate setting out the nature of the business carried on by the body corporate; (*c*) A copy of the last balance-sheet. The Board of Trade may require, and the body corporate (if so required) must supply such further information by Statutory Declarations, production of documents, or otherwise, as the Board may think proper, concerning the constitution, objects, and financial position of the body corporate, and also concerning the manner in which the said body corporate has carried on the business. And the Board, if they think fit, may require notice of the application to be advertised in such papers as they may prescribe. If in the opinion of the Board the body corporate is a proper one for exemption, an order will be made exempting the body corporate from registration under the Act upon such conditions and for such period as the Board may think fit. In the case of a body corporate registered under the Companies Acts, the order is signed in quadruplicate on behalf of the President of the Board of Trade. In all other cases it is so signed in triplicate. One copy is retained by the Board and another copy forwarded to the body corporate. The Board also forwards another of such copies to the office for the registration of money-lenders, and, in the case of a body corporate registered under the Companies Acts, forwards the remaining copy to the Registrar of Joint-Stock Companies. The body corporate must forthwith

publish a copy of the order in the London or Edinburgh or Dublin *Gazette*, as the case may require, and in such other papers as the Board may direct. Upon the expiration of the period limited by any order, the body corporate may make a further application for renewal of the order of exemption, and the Board may from time to time make further orders exempting the body corporate from registration upon such conditions and for such further period as the Board may think fit. And the Board has power at any time to revoke any order of exemption. Upon a revocation it causes notice thereof to be given to the body corporate, to the Commissioners of Inland Revenue, and in case of bodies corporate registered under the Companies Acts, to the Registrar of Joint-Stock Companies. Thereupon the body corporate ceases to be exempted from registration under the Money-Lenders Act. The Board of Trade also publishes a copy of the revoking order in the London or Edinburgh or Dublin *Gazette*, as the case may require.

Relief.—The provisions of the Act enabling the reopening of money-lending transactions are expressly made applicable to any transaction which, whatever its form may be, is substantially one of money-lending. But this relief is granted only in the case of money lent after the 1st November 1900, or of an agreement or security made or taken after that date in respect of money lent either before or after that same date. And it should be noted that nothing in those provisions can affect the rights of any *bonâ fide* assignee or holder for value without notice; nor do they derogate from the existing powers or jurisdiction of any Court. Relief is granted by any Court in which a money-lender happens to be proceeding for the recovery of money lent or the enforcement of an agreement or security, provided the subject-matter of his action constitutes a case in respect of which relief can be granted as above-mentioned. It is granted in the course of such proceedings, or at the trial; but the person sued must be in a position to offer evidence which satisfies the Court—1, (*a*) that the interest charged in respect of the sum actually lent is excessive; or (*b*) that the amounts charged for expenses, inquiries, fines, bonus, premium, renewals, or any other charges, are excessive; and 2, that in either case the transaction is harsh and unconscionable, or is otherwise such that a court of equity would give relief. For the purpose of granting the relief the Court can reopen the transaction, take an account between the money-lender and the person sued, and, notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, reopen any account already taken between the parties. The person sued can then be relieved "from payment of any sum in excess of the sum adjudged by the Court to be fairly due in respect of such principal, interest, and charges as the Court, having regard to the risk and all the circumstances, may adjudge to be reasonable." If any such excess has been paid or allowed in account by the debtor, the Court has power to order the money-lender to repay it. It has been recently decided, in *Re a Debtor; Ex parte the Debtor* (114 L. T. 426) that relief under the Act is not limited to that which a court of equity would have given before the Act; it will be given if the bargain is harsh and unconscionable because of excessive interest and charges—even where the borrower is of full age and in no special relation to the lender (*Michaelson* v. *Nichols*). And the Court may also set aside, either wholly or in part, or revise or alter any security given or agreement made in respect of money lent by the money-lender, and if the latter has parted with the security, it may order him to indemnify the borrower or other person sued. In view of its importance, there is some

excuse for repeating here that the only transactions giving the Court jurisdiction to exercise this power of relief are those arising out of "money lent after the 1st November 1900, or of an agreement or security made or taken after that date in respect of money lent either before or after that same date." It should also be noted that the Court has jurisdiction to relieve even though the matter does not originally come before it in the form of proceedings by the creditor against the debtor. It can, for example, entertain any application for relief which is made to it for relief by a borrower or surety, or other person liable, notwithstanding that the time for repayment of the loan, or any instalment thereof, may not have arrived. And in bankruptcy proceedings the Court has a like power to the above, in respect of claims by money-lender creditors. In a *County Court* this power to relieve can be exercised at any stage of the proceedings, and whether notice has or has not been given by the defendant of his intention to apply for relief. An application in such a Court by a borrower or surety, or other person liable, must be by an action commenced by plaint and summons in the ordinary way. Particulars of demand are to be filed, and these should state concisely the grounds on which the application is made and the nature of the relief claimed. *See* also MONEY-LENDERS in Appendix.

Misrepresentations to borrower.—These are constituted misdemeanours by the Act when made by money-lenders, or their managers, agents, or clerks, or any one who is a director, manager, or other officer of a corporation carrying on the business of a money-lender. The maximum punishment upon conviction is two years' hard labour and a fine of £500. The offence is committed if either of the above-mentioned persons "by any false, misleading, or deceptive statement, representation, or promise, or by any dishonest concealment of material facts, fraudulently induces or attempts to induce any person to borrow money or to agree to the terms on which money is or is to be borrowed."

MONTH.—In all Acts of Parliament passed since the year 1850, the word "month" must be taken as meaning a calendar month unless there is an express declaration that the word is to mean a lunar month. Up to the end of that year the general rule was that a month, when referred to in an Act of Parliament, should be understood as a lunar month. In other cases the exact meaning of the word month is not always so clear. There is, however, express statutory authority for determining the word as importing a calendar month in the case of proceedings in the Supreme and County Courts, and in connection with Bills of Exchange and Promissory Notes. And it is well settled that a month for the purposes of a Notice to Quit, or redemption in a foreclosure suit, or the determination of the contract of service of a menial servant, is also a calendar month. As a rule of general application for practical purposes it may be said that in legal matters a month means a lunar month, and in commercial matters a calendar month; that in a contract at law and equity the word means a lunar month, and in a mercantile contract a calendar month. A month in law is a lunar month, not only because it is always one uniform period, but because it falls naturally into a quarterly division by weeks. Therefore a lease for "twelve months" is only for forty-eight weeks; but if it is for a "twelvemonth" in the singular number, it is good for the whole year. As in all cases, however, the Court reads the whole of the contract in order to gather the intention of the parties with

regard to the meaning of the word month, the rule must be taken as nothing more than the enunciation of a general principle. Invoices, terms of credit, bills of lading, charter-parties, and like commercial documents are always subject to the rule that a month means a calendar month. In calculating a calendar month, if the computation commences during the course of a month, the right method is to proceed from the given day in that month to the day with the corresponding number in the ensuing month. Accordingly, if a party purchases goods to be paid for in two calendar months, the credit does not expire until the end of the corresponding day of the second month. And in *The South Staffordshire Tramways Co., Ltd.* v. *The Sickness and Accident Assurance Association, Ltd.*, it was held that the effect of "from" in a clause in an accident policy—"for twelve calendar months from November 24, 1887"—was to exclude November 24, 1887, and to include November 24, 1888, in the period of the insurance.

MORTGAGE.—It has been said by an eminent judicial authority that it is dangerous to attempt to define the precise relation in which mortgagor and mortgagee stand to each other, in any other terms than those very words. At common law, however, a mortgage is described as an estate created by a conveyance, absolute in form but designed as a security for the payment of money or the performance of some other act, to become void upon such payment being made or act performed, agreeably to the terms prescribed at the time of the conveyance. It is in substance but a security for a debt or an obligation to which it is collateral; and it particularly differs from a pledge in that the property, the subject of the security, is retained in the possession of the mortgagor in the case of a mortgage, but is deposited with the pledgee in the case of a pledge. The one who gives a mortgage is called the mortgagor, and the one who takes, the mortgagee. A mortgage of goods and chattels is more properly known as a BILL OF SALE (*q.v.*), the term "mortgage" being applied to securities founded upon other classes of property. This article has reference only to securities of the latter description. It should, however, be read in the light of the wide definition of a mortgage given in the Conveyancing Act, 1881; there a mortgage is declared to include "any charge on any property for securing money or money's worth." A "legal" mortgage is one made in the form of a conveyance by deed, giving a right to the mortgagee to himself exercise in certain events the powers conferred on him by the Conveyancing Act, and which are described below with some particularity.

At the present day the ordinary form of a legal mortgage, according to the authors of *Prideaux's Conveyancing*, "is a conveyance by the mortgagor to the mortgagee, subject to a proviso or condition for a reconveyance on payment of the money intended to be secured on a day named, which is usually six months from the date of the deed. The conveyance is preceded or followed by covenants by the mortgagor with the mortgagee for payment of principal and interest on the appointed day, and if the principal is not paid on that day, for the future payment of interest half-yearly. Under the latter covenant arrears of interest can be sued for without requiring payment of the principal. If the property consists of houses or buildings there should be a covenant for insurance by fire." A mortgage of leaseholds is made either by way of assignment to the mortgagee of the whole residue of the term vested in the mortgagor, or of an under-lease to the mortgagee

of that residue, less the last day or two. "The latter course," write the above authorities, "should generally be adopted where the rent reserved by the lease is more than nominal, or the covenants are onerous; for if the mortgagee takes an assignment, a privity is established between him and the lessor, and he may be sued for the rent or for a breach of any of the covenants." It is possible, of course, that the mortgagor may do some act, or fail in some obligation under his lease, that may cause a forfeiture of the term to be incurred. A mortgagee of leaseholds should therefore be careful that his mortgagor does not incur a forfeiture, though in the event of his so doing relief therefrom may in most cases be obtained from the Court. On this point reference should be made to the article on LEASES, and particularly to the provisions therein set out of the Conveyancing Act, 1892, affecting under-lessees, and, consequently, mortgagees by way of under-lease.

The **Stamps** on a mortgage are as follows:—

MORTGAGE, BOND, DEBENTURE, COVENANT (except a marketable security otherwise specially charged with duty), and WARRANT OF ATTORNEY to confess and enter up judgment.

(1) Being the only or principal or primary security (other than an equitable mortgage) for the payment or repayment of money—

Not exceeding £10			£0	0	3
Exceeding £10 and not exceeding £25			0	0	8
„ £25	„ £50		0	1	3
„ £50	„ £100		0	2	6
„ £100	„ £150		0	3	9
„ £150	„ £200		0	5	0
„ £200	„ £250		0	6	3
„ £250	„ £300		0	7	6
„ £300					
For every £100, and also for any fractional part of £100, of the amount secured			0	2	6

(2) Being a collateral, or auxiliary, or additional, or substituted security (other than an equitable mortgage), or by way of further assurance for the above-mentioned purpose where the principal or primary security is duly stamped:

For every £100, and also for any fractional part of £100, of the amount secured	0	0	6

(3) Being an equitable mortgage:

For every £100, and any fractional part of £100, of the amount secured	0	1	0

(4) TRANSFER, ASSIGNMENT, DISPOSITION, OR ASSIGNATION of any mortgage, bond, debenture, or covenant (except a marketable security), or of any money or stock secured by any such instrument, or by any warrant of attorney to enter up judgment, or by any judgment:

For every £100, and also for any fractional part of £100, of the amount transferred, assigned, or disponed, exclusive of interest which is not in arrear	0	0	6
And also where any further money is added to the money already secured	The same duty as a principal security for such further money.		

91 Raynham Street
Camden Town. N.W.
23rd May 1910

To Mr James Forbes
149 High Street

Sir,

In consideration of your having this day lent to me the sum of One hundred pounds on the security of my promissory note for that amount of this days date I hereby charge All that my freehold dwelling-house and shop situate and being No 20 Greens place Limehouse (which premises are now mortgaged by me to Mr Joseph Roberts by a deed dated the 12th October 1908 as security for an advance of £500 and interest) with payment to you of the said sum of £100 and interest And I hereby agree that in case I make default in payment of the said promissory note I will execute to you a legal mortgage of my equity of redemption in the said premises subject only to the said existing security And I also agree to pay all the costs and charges of preparing and executing such mortgage

Yours obediently.

Alfred Greegory.

Charge on mortgaged property
to secure a loan.

(5) RECONVEYANCE, RELEASE, DISCHARGE, SURRENDER, RESURRENDER, WARRANT TO VACATE, OR RENUNCIATION of any such security as aforesaid, or of the benefit thereof, or of the money thereby secured:

For every £100, and also for any fractional part of £100, of the total amount or value of the money at any time secured £0 0 6

Meaning of "mortgage."—For the purposes of the Stamp Act the expression *mortgage* means "a security by way of mortgage for the payment of any definite and certain sum of money advanced or lent at the time, or previously due and owing, or forborne to be paid, being payable, or for the repayment of money to be thereafter lent, advanced, or paid, or which may become due upon an account current, together with any sum already advanced or due, or without, as the case may be." It includes—(*a*) Conditional surrender by way of mortgage, further charge, wadset, and heritable bond, disposition, assignation, or tack in security, and eik to a reversion of or affecting any lands, estate, or property, real or personal, heritable or movable, whatsoever: and (*b*) Any deed containing an obligation to infeft any person in an annual rent, or in lands or other heritable subjects in Scotland, under a clause of reversion, but without any personal bond or obligation therein contained for payment of the money or stock intended to be secured: and (*c*) Any conveyance of any lands, estate, or property whatsoever in trust to be sold or otherwise converted into money, intended only as a security, and redeemable before the sale or other disposal thereof, either by express stipulation or otherwise, except where the conveyance is made for the benefit of creditors generally, or for the benefit of creditors specified who accept the provision made for payment of their debts, in full satisfaction thereof, or who exceed five in number: (*d*) Any defeazance, letter of reversion, back bond, declaration, or other deed or writing for defeating or making redeemable or explaining or qualifying any conveyance, transfer, disposition, assignation, or tack of any lands, estate, or property whatsoever, apparently absolute, but intended only as a security: and (*e*) Any agreement (other than an agreement chargeable with duty as an equitable mortgage), contract, or bond accompanied with a deposit of title deeds for making a mortgage, wadset, or any other security or conveyance as aforesaid of any lands, estate, or property comprised in the title deeds, or for pledging or charging the same as a security: and (*f*) Any deed whereby a real burden is declared or created on lands or heritable subjects in Scotland: and (*g*) Any deed operating as a mortgage of any stock or marketable security. And for the purpose of the same Act the expression *equitable mortgage* means "an agreement or memorandum, under hand only, relating to the deposit of any title deeds or instruments constituting or being evidence of the title to any property whatever (other than stock or marketable security), or creating a charge on such property."

Direction as to duty in certain cases.—A security for the transfer or retransfer of stock is charged with the same duty as a similar security for a sum of money equal in amount to the value of the stock. And a transfer, assignment, disposition, or assignation of any such security, and a reconveyance, release, discharge, surrender, re-surrender, warrant to vacate, or renunciation of any such security, is charged with the same duty as an instrument of the same description relating to a sum of money equal in amount to the value of the stock. A security for the payment of a rentcharge, annuity, or periodical payments, by way of repayment, or in satisfaction or discharge of a loan, advance, or payment intended to be so repaid, satisfied, or discharged, is charged with the same duty as a similar security for the payment of the sum of money so lent, advanced, or paid.

A transfer of a duly stamped security, and a security by way of further charge for money or stock, added to money or stock previously secured by a duly stamped instrument, is not charged with any duty by reason of its containing any further or additional security for the money or stock transferred or previously secured, or the interests or dividends thereof, or any new covenant, proviso, power, stipulation, or agreement in relation thereto, or any further assurance of the property comprised in the transferred or previous security. Where copyhold or customary estate is mortgaged alone by a conditional surrender or grant, the *ad valorem* duty is charged on the surrender or grant, if made out of court, or the memorandum thereof, and on the copy of court roll of the surrender or grant, if made in court. Where copyhold or customary estate is mortgaged, together with other property, for securing the same money or the same stock, the *ad valorem* duty is charged on the instrument relating to the other property; and the surrender or grant, or the memorandum thereof, or the copy of court roll of the surrender or grant, as the case may be, is not to be charged with any higher duty than *ten shillings*. An instrument chargeable with *ad valorem* duty as a mortgage is not charged with any further duty by reason of the equity of redemption in the mortgaged property being thereby conveyed or limited in any other manner than to a purchaser, or in trust for, or according to the direction of, a purchaser.

Security for future advances.—A security for the payment or repayment of money to be lent, advanced, or paid, or which may become due upon an account current, either with or without money previously due, is charged, where the total amount secured or to be ultimately recoverable is in any way limited, with the same duty as a security for the amount so limited. Where such total amount is unlimited, the security is available for such an amount only as the *ad valorem* duty impressed thereon extends to cover; but where an advance or loan is made in excess of the amount covered, by that duty the security, for the purpose of stamp duty, is deemed to be a new and separate instrument, bearing date on the day on which the advance or loan is made. No money, however, is reckoned as forming part of the amount in respect whereof the security is chargeable with *ad valorem* duty, which is:—advanced for the insurance of property comprised in the security against fire; or for keeping up a policy of life insurance comprised in the security; or for effecting in lieu thereof a new policy; or for the renewal of a grant or lease of property comprised in the security upon the dropping of any life whereon the property is held.

Exemption in favour of benefit building societies.—The old-standing statutory exemption from stamp duty in favour of benefit building societies does not extend to any mortgage made after the 31st July 1868, except a mortgage by a member of a benefit building society for securing the repayment to the society of money not exceeding five hundred pounds.

Rights during subsistence of the security.—*Generally.*—The mortgagor is entitled to possession of the property notwithstanding he has conveyed it to the mortgagee, but during that possession he must not only pay the interest and observe and perform the covenants and conditions contained in the mortgage, but also have regard to certain restrictions imposed by statute upon his dealing with the property. He has, for example, only a restricted right to grant leases, as to which particular reference will be made presently. As a rule, however, he can exercise all the rights of ownership, sue for rent, and recover damages for trespass, for examples. But these rights only exist as incidental to his characteristic right to redeem the property, and consequently when that right is lost the incidental and collateral rights have gone also. This right to redeem, or

equity of redemption as it is more technically termed, is expressed in the mortgage deed by the proviso that if the principal and interest are paid in accordance with the covenant, the property mortgaged shall, at the request and cost of the mortgagor, his heirs or assigns, be reconveyed to him or them. It is really a right to call for a reconveyance of the property upon payment of the principal and interest. And even though he has further encumbered the property, the mortgagor can require the mortgagee, instead of reconveying, to assign the mortgage debt and convey the mortgaged property to a third person. And each further encumbrancer has the same right; but a requisition by an encumbrancer prevails over one by the mortgagor, and, as between encumbrancers, a requisition of a prior encumbrancer prevails over a requisition of a subsequent encumbrancer.

No mortgage can by any stipulations between the parties be made irredeemable. "Once a mortgage, always a mortgage" is an old-standing and inflexible principle of equity. "Whenever," said Lord-Justice Bowen, "a transaction is in reality one of mortgage, equity regards the mortgage property as security only for money, and will permit of no attempt to clog, fetter, or impede the borrower's right to redeem." No mortgage deed is allowed to provide that the property mortgaged shall become, in any event whatsoever, an absolute purchase by the mortgagee. Such a stipulation would be said to "clog the equity of redemption," and would accordingly be of no effect. This rule, however, would not invalidate a *bonâ fide* conveyance on sale containing a provision conferring upon the vendor a right to repurchase within a limited time. But the Court would regard the instrument very carefully in order to see that the transaction was not really a mortgage. It would even allow the person claiming to be mortgagor to give parole evidence as to the true nature of the transaction. A mortgagor may be bound by a covenant not to pay off the mortgage within a specified but limited period of time, "for although the law will not allow a mortgagor to be precluded from redeeming altogether, yet he may be precluded from redeeming for a fixed period, such as five or seven years." Twenty years has been disallowed by the Court. The mortgagor is also entitled from time to time at reasonable times, to inspect and make copies or abstracts of, or extracts from, the documents of title relating to the mortgaged property in the custody or power of the mortgagee; but he can only do this at his own cost, and on payment of the mortgagee's costs and expenses. He is entitled to redeem any one mortgage without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem. But this right can be excluded by covenant in any of the mortgage deeds. A mortgagee may make a deduction from the amount advanced, as a bonus, commission, or consideration for the peculiar nature of the particular transaction. But such a deduction would seem to be subject to review by the Court. And so subject would be any unusual stipulations for profit to the mortgagee beyond his principal and interest. And it may be taken as fairly certain that the Court would disregard and set aside any stipulation conferring upon the

mortgagee a collateral advantage beyond his principal and interest. If for example a mortgagor obtains an advance from a mortgagee who is an auctioneer, and the deed contains a stipulation in consideration of the advance that the mortgagee alone shall be entitled to sell the property and receive his commission for so doing, that mortgagor can safely disregard the stipulation and employ whom he pleases. It is only by virtue of the Mortgagees' Legal Costs Act, 1895, that even a solicitor, who is himself the mortgagee, can obtain under the mortgage any profit costs in respect of his professional labour in the matter.

Leases.—A mortgagor in possession has, as against every encumbrancer, power to grant any lease of the mortgaged property, provided the lease is one authorised by the Conveyancing Act, 1881; and a like power, as against all prior encumbrancers, is enjoyed by a mortgagee in possession. The leases so authorised by the Act are—(1) An agricultural or occupation lease for any term not exceeding twenty-one years; and (2) a building lease for any term not exceeding ninety-nine years. But every such lease must be made to take effect in possession not later than twelve months after its date; must reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without any fine being taken; and must contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days. A counterpart must also be executed by the lessee and delivered to the lessor. Every building lease granted by a mortgagor or mortgagee in possession is required to be made "in consideration of the lessee, or some person by whose direction the lease is granted, having erected, or agreed to erect within not more than five years from the date of the lease, buildings, new or additional, or agreeing to improve or repair buildings within that time, or having executed, or agreeing to execute, within that time, on the land leased, an improvement for or in connection with building purposes." In a building lease a peppercorn rent, or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years, or any less part of the term. In the case of a lease by the mortgagor, he must, within one month after making the lease, deliver to the mortgagee, or, where there are more than one, to the mortgagee first in priority, a counterpart of the lease duly executed by the lessee; but the latter is not concerned to see that this provision is complied with. There is nothing, however, to prevent the mortgage deed from conferring on the mortgagor or mortgagee any further or other powers of leasing.

Powers of mortgagee.—A power of sale by the mortgagee is not usually expressly contained in the mortgage deed, the parties as a rule relying upon the power of sale attached thereto by statute. And not only is it a power of sale which, apart from any special contract, the Conveyancing Act confers upon a mortgagee. It also confers powers relating to the insurance of the mortgaged premises, the appointment of a receiver, and the cutting of timber. These powers, however, may be varied or extended by the mortgage deed, and have effect subject to the terms of the deed and to the provisions contained therein.

Sale.—The mortgagee's power of sale is thus described by the Con-

veyancing Act, 1881: "A power, when the mortgage money has become due, to sell, or to concur with any other person in selling, the mortgaged property, or any part thereof, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to such conditions respecting title, or evidence of title, or other matter as he (the mortgagee) thinks fit, with power to vary any contract for sale, and to buy in at auction, or to rescind any contract for sale, and to resell, without being answerable for any loss occasioned thereby." But a mortgagee can only exercise this power of sale subject to certain statutory regulations. And it is not exercisable by an equitable mortgagee whose security is not in the form of a deed. The regulations provide that the power of sale shall not be exercisable unless and until—(1) Notice requiring payment of the mortgage money has been served on the mortgagor, or one of several mortgagors, and default has been made in payment of the mortgage money, or of part thereof, for three months after such service; or (2) some interest under the mortgage is in arrear and unpaid for two months after becoming due; or (3) there has been a breach of some provision contained in the mortgage deed or in the Conveyancing Act, and on the part of the mortgagor or of some person concurring in making the mortgage, to be observed or performed, other than and besides a covenant for payment of the mortgage money or interest thereon. In the case of a mortgage of real property, it is sufficient if the above-mentioned notice is affixed to or left on the mortgaged property. In other cases the service must be strictly in accordance with the statutory regulations, unless the mortgagee has been wise enough to specially vary them in this respect in the deed of mortgage. The deed could stipulate, for example, that service shall be sufficient if made at a specified address, the mortgagor having power reserved to him to change that address after sufficient notice to the mortgagee. A mortgagee exercising this power of sale has power to convey by deed the property sold; and the title of the purchaser from him cannot be impeached on the ground that no case had arisen to authorise the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorised, or improper, or irregular exercise of the power will have his remedy in damages against the person exercising the power.

It is very important that both mortgagor and mortgagee should clearly know the manner in which the money arising from a sale should be dealt with. Upon this matter section 21 (3) of the Conveyancing Act, 1881, enacts as follows:—"The money which is received by the mortgagee arising from the sale after discharge of prior encumbrances to which the sale is not made subject, if any, or after payment into Court under this Act of a sum to meet any prior encumbrance, shall be held by him in trust to be applied by him, first, in payment of all costs, charges, and expenses properly incurred by him, as incident to the sale or any attempted sale, or otherwise; and secondly, in discharge of the mortgage money, interest, and costs, and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof." It will be

seen, therefore, that after the sale of the mortgaged property the mortgagee is a trustee of the proceeds for the discharge of the encumbrances and, finally, for the payment of any balance to the mortgagor. It is also useful to note in this connection that the power of sale can be exercised by any one for the time being entitled to receive and give a discharge for the mortgage money, such as a transferee of the mortgage or an executor of the mortgagee. And the statutory power of sale does not affect the right of foreclosure. Neither a mortgagee, nor his executors, administrators, or assigns, is liable for any involuntary loss happening in or about the exercise or execution of the power of sale, or of any trust connected therewith. As soon as the power of sale becomes exercisable, the mortgagee can recover from any person all the debts and documents relating to the property, or to the title thereto, which a purchaser under a power of sale would be entitled to; but he cannot of course recover these from any one who has an interest in the mortgaged property in priority to the mortgage. The receipt in writing of a mortgagee is a sufficient discharge for any money or securities arising out of or comprised in his mortgage; and a person paying or transferring to the mortgagee is not concerned to inquire whether any money remains due under the mortgage.

Insurance.—The power of the mortgagee to insure the mortgaged property is thus described by statute:—"A power, at any time after the date of the mortgage deed, to insure and keep insured against loss or damage by fire any building, or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the mortgaged property, and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the mortgage money, and with the same priority, and with interest at the same rate as the mortgage money." But the amount of such an insurance effected by a mortgagee must not exceed the amount specified in the mortgage deed; or if no amount is so specified, then it must not exceed two-third parts of the amount that would be required, in case of total destruction, to restore the property insured. This statutory power to insure cannot be exercised by a mortgagee in any of the following cases:—(1) Where there is a declaration in the mortgage deed that an insurance is not required; (2) Where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage deed; (3) Where the mortgage deed contains no stipulation respecting insurance, and an insurance is kept up by or on behalf of the mortgagor, to the amount in which the mortgagee has a statutory authority to insure. All money received on an insurance effected under a mortgage must be applied by the mortgagor, if the mortgagee so requires, in making good the loss or damage in respect of which the money is received. A mortgagee has a right, however, to require that all money received on an insurance shall be applied in or towards discharge of the money due under his mortgage; but this right is subject to any obligation to the contrary imposed by law or by special contract.

Receiver.—A mortgagee has also a statutory power, when the mortgage money has become due, to appoint a receiver of the income of the mortgaged property, or of any part thereof. He cannot, however, exercise this power until he has become entitled to exercise the power of sale; then, by writing under his hand, he may appoint any person he thinks fit to be receiver. But the

receiver will be deemed to be the agent of the mortgagor; and the latter is solely responsible for the receiver's acts or defaults, unless the mortgage deed otherwise provides. A receiver has power to demand and recover all the income of the property of which he is appointed receiver, to the full extent of the estate or interest which the mortgagor could dispose of, and to give effectual receipts therefor. He can do this by action, distress, or otherwise, in the name of either the mortgagor or mortgagee. Any one paying money to the receiver is not concerned to inquire whether any event has happened which authorises the receiver to act. The receiver may be removed, and a new receiver appointed, from time to time by the mortgagee by writing under his hand. A receiver cannot charge what costs he pleases. He is only entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges, and expenses incurred by him as receiver, a commission at such rate, not exceeding 5 per cent. on the gross amount of all money received, as is specified in his appointment, and if no rate is so specified, then at the rate of 5 per cent. on that gross amount, or at such higher rate as the Court thinks fit to allow, on application made by him for that purpose. If so directed in writing by the mortgagee, he must insure and keep insured against loss or damage by fire, out of the money received by him, any building, effects, or property comprised in the mortgage, whether affixed to the freehold or not, being of an insurable nature. He is bound to apply all the money he receives in the following manner:—(1) In discharge of all rents, taxes, rates, and outgoings whatever affecting the mortgaged property; and (2) In keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver; and (3) In payment of his commission, and of the premiums on fire, life, or other insurances, if any, properly payable, and the cost of executing necessary or proper repairs directed in writing by the mortgagee; and (4) In payment of the interest accruing due in respect of any principal money due under the mortgage. The residue he must pay to the mortgagor, or the person who but for the possession of the receiver would have been entitled to receive the income of the mortgaged property, or who is otherwise entitled to that property

Action respecting mortgage.—A person entitled to redeem mortgaged property may bring an action for an order for its redemption or sale. In any action, whether for foreclosure, redemption, or sale, the Court can order a sale of the mortgaged property on such terms as it thinks fit, as for example the deposit in Court of a reasonable sum fixed by the Court to meet the expenses of sale and to secure performance of the terms. Such an order is made on the request of the mortgagee, or of the mortgagor or any person interested either in the mortgage money or in the right of redemption, and notwithstanding that the mortgagee, mortgagor, or other person does not appear in the action. The Court can also order the plaintiff to give security for costs.

"Foreclosure" is the process adopted by a mortgagee for extinguishing the mortgagor's right of redemption, whereby the estate becomes the absolute property of the mortgagee. When the mortgagor is sufficiently in default the mortgagee may proceed with an action for foreclosure, and compel the mortgagor to redeem by the payment of the debt, or submit to a fore-

closure and be for ever barred from any right of redemption. This in most cases would be a severe remedy, and is accordingly adopted only when the interests of both parties require it, as where the security is an insufficient one as it stands, but could be improved and made sufficient if the mortgagee could obtain absolute possession of it. As mentioned above, an action for a foreclosure is always subject to the Court's right to direct a sale. The proceedings are taken in the Chancery Division of the High Court, but where the mortgage does not exceed the sum of £500, they may be taken in a County Court. The practice is for the Court to take an account of the principal and interest due from the mortgagor, and then to allow a certain interval of time, usually six months, wherein the mortgagor, and any further mortgagees, can pay the amount found by the account. Default in such payment will extinguish the right of redemption and absolutely vest the property in the mortgagee. But even after the foreclosure has been completed the Court, in a proper case, will reopen the action and afford the mortgagor a further opportunity to redeem. Foreclosure is the proper and only remedy against the property in the case of an equitable mortgage by deposit of title-deeds; but if the deposit is accompanied by an agreement to execute a legal mortgage, the mortgagee may proceed with an action for sale.

Generally.—*Higher interest on default.*—It would seem that a covenant would be void which requires interest to be paid at a higher rate than that primarily payable under a deed of mortgage in case the interest is not punctually paid on a certain date. Practically the same result is attained, however, by primarily fixing the interest at the higher rate, and providing that in case it should be punctually paid on the agreed date the lower rate will be received in full satisfaction. This latter method is perfectly legal, and is frequently adopted when it is desired to secure payment of the interest as promptly as possible. *The title-deeds.*—Not only should a mortgagee be careful before completing the mortgage to see that the mortgagor's title to the property is perfectly clear, but he should always have his mortgage in the shape of a deed, and should take all the title-deeds into his own possession and control. If the mortgage is not by deed he will be only an equitable mortgagee. If he leaves the title-deeds in the possession of the mortgagor and the latter hands them over, with a legal mortgage, to another mortgagee who has made an advance without notice of the circumstances, then his security, generally speaking, will be postponed to that held by the second mortgagee. Sometimes the necessity of a particular case may require the title-deeds to be left with the mortgagor. Here the deed which finally vested the property on the mortgagor should be indorsed with a memorandum of the execution of the mortgage, for such a memorandum will constitute a notice of the mortgage to any one subsequently dealing with the property. As to mortgages of policies of insurance *see* LIFE ASSURANCE.

MORTMAIN.—Lands belonging to a corporate body, ecclesiastical, sole or aggregate, such for example as an incorporated company, a charity, a college, or a church, are said to lie in mortmain, or in *mortua manu*, that is, in a dead hand. The explanation of this term is given by Coke, who writes that "the lands were said to come to dead hands as to their lords, for that by alienation in mortmain they lost wholly their escheats, and in effect their knights' services for the defence of the realm, wards, marriages, reliefs,

and the like, and therefore was called a dead hand, for that a dead hand yieldeth no service." For a full understanding of this explanation it is necessary to have some knowledge of the feudal system, and to recognise that a corporation has perpetual continuance and succession. Because of this essential characteristic of a corporation the lord lost the profits on his lands which, under the feudal system, he derived either from the services of the tenant, while alive, or from the death of the tenant and other circumstances. As a consequence of the original legislation on the subject being directed against the holding of land by religious corporations, the impression has generally prevailed that the laws of mortmain were particularly directed against religious bodies. This, however, is not entirely correct, for religious corporations were then attacked only because at that time they were the principal corporations that desired to hold land. It was not long before legislation made it clear that all corporations were within the statutes of mortmain. So extensive and definite was the operation of these statutes that it required special legislation to exempt joint-stock companies incorporated under the Companies Acts; and in the case of companies formed for the purpose of promoting art, science, religion, charity, or any other like object not involving the acquisition of gain, this exemption was only a limited one. In view of this exemption in favour of joint-stock companies the subject of mortmain is once more of interest mainly from the point of view of charitable uses. In this connection it will now be considered with special reference to the Mortmain Acts, 1888 and 1891, which contain the statute law of mortmain.

Charitable uses.—Generally speaking, every assurance of land for the benefit of a charity, and every assurance of personal estate to be laid out in the purchase of land for a like benefit, must be made in accordance with certain statutory requirements, and unless so made they are void. The assurance must be made to take effect in possession for the charity for the benefit of which it is made, immediately upon the making thereof. And, except as will be presently mentioned, the assurance must be without any power of revocation, reservation, condition, or provision for the benefit of the assuror or of any person claiming under him. But the assurance, or any instrument forming part of the same transaction, may contain all or any of the following provisions, provided they reserve the same benefits to persons claiming under the assuror himself, namely—(1) The grant or reservation of a peppercorn or other nominal rent; (2) the grant or reservation of mines or minerals; (3) the grant or reservation of any easement; (4) covenants or provisions as to the erection, repair, position, or description of buildings, the formation or repair of streets or roads, drainage or nuisances, and covenants or provisions of the like nature for the use and enjoyment as well of the land comprised in the assurance as of any other adjacent or neighbouring land; (5) a right of entry on nonpayment of any such rent or on breach of any such covenant or provision; (6) any stipulations of the like nature for the benefit of the assuror or of any person claiming under him. If the assurance is made in good faith on a sale for full and valuable consideration, that consideration may consist wholly or partly of a rent, rent charge, or other annual payment reserved or made payable to the vendor, or any other person, with or without a right of re-entry for nonpayment thereof. If the assurance

is of land other than copyhold, or is of personal estate other than stock in the public funds, it must be made by a deed executed in the presence of at least two witnesses. If the assurance is of land, or of personal estate not stock in the public funds, then, unless it is made in good faith for full and valuable consideration, it must be made at least twelve months before the death of the assuror, including in those twelve months the days of the making of the assurance and of the death. If the assurance is of stock in the public funds, then, unless it is made in good faith for full and valuable consideration, it must be made by transfer thereof in the public books kept for the transfer of stock at least six months before the death of the assuror, including in those six months the days of the transfer and of the death. If the assurance is of land, or of personal estate other than stock in the public funds, it must, within six months after execution, be enrolled in the Central Office of the Supreme Court of Judicature, unless in the case of an assurance of land for the benefit of charitable uses those uses are declared by a separate instrument, in which case that separate instrument must be so enrolled within six months after the making of the assurance of the land.

Where an instrument required to be enrolled is not duly enrolled within the requisite time, the High Court, or the officer controlling the enrolment of deeds in the Central Office, may on formal application allow the instrument to be enrolled. But the applicant must first satisfy him that the omission to enrol in proper time arose from ignorance or inadvertence, or through the destruction or loss of the instrument by time or accident, and that the assurance required enrolment in order to be valid. Thereupon such subsequent enrolment will render the assurance valid, provided, however, that the assurance was made in good faith and for full and valuable consideration, and was made to take effect in possession immediately from the making thereof without any power of revocation, reservation, condition, or provision, except such as is authorised as above-mentioned, and if at the time of the application possession or enjoyment was held under the assurance. But if at the time of the application any proceeding for setting aside the assurance, or for asserting any right founded on the invalidity of the assurance, is pending, or any decree or judgment founded on such validity has been then obtained, the enrolment will not give any validity to the assurance. Where the instrument omitted to be enrolled in proper time has been destroyed or lost by time or accident, and the trusts thereof sufficiently appear by a copy or abstract thereof or some subsequent instrument, such copy, abstract, or subsequent instrument may be enrolled as if it were the instrument destroyed or lost. An application for enrolment under these latter circumstances may be made by any trustee, governor, director, or manager of, or other person entitled to act in the management of, or otherwise interested in, any charity or charitable trust intended to be benefited by the uses declared by the instrument to be enrolled.

Exemptions.—The preceding provisions do not apply to an assurance by deed of land of any quantity, or to an assurance by will of land of the quantity hereinafter mentioned for certain public purposes. These are—a public park, a schoolhouse for an elementary school, a public museum. Nor do they apply to an assurance by will of personal estate to be applied in or towards the purchase of land for all or any of the same purposes only.

SPECIMENS OF THE DIFFERENT STYLES AND SIZES OF TYPE IN GENERAL USE, WITH THEIR CORRECT DESIGNATIONS.

STYLES.

ROMAN CAPITALS. (Modern).
ROMAN SMALL CAPITALS. „
Roman lower case. „
ITALIC CAPITALS. „
Italic lower case. „
ANTIQUE CAPITALS. „
Antique lower case. „
ROMAN CAPITALS. (Old Style).
ROMAN SMALL CAPITALS. „
Roman lower case. „
ITALIC CAPITALS. „
Italic lower case. „
ANTIQUE CAPITALS. „
Antique lower case. „
GROTESQUE CAPITALS.
Grotesque lower case.
Tudor Black.
Black Letter.
German Script.
IONIC CAPITALS.
Ionic lower case.
SANSERIF.
GRECIAN.
Morland.
Morland Italic.
De Vinne.
De Vinne Italic.
THIN GROTESQUE CAPITALS.
Thin Grotesque lower case.
ITALIC SANSERIF CAPITALS.
Italic Sanserif lower case.
CONDENSED ANTIQUE CAPITALS.
Condensed Antique lower case.
VENETIAN CAPITALS.
Venetian lower case.
LATIN CAPITALS.
FRENCH CAPITALS.
Latin Expanded lower case

SIZES.

CANON.

Canon

TWO-LINE GREATPRIMER.

2-line Gt. P

TWO-LINE ENGLISH.

Two-line En

TWO-LINE PICA.

Two-line Pica

TWO-LINE SMALL P.

Information and

GREATPRIMER.

Information and Illustr

ENGLISH.

Information and Illustrati

PICA.

Information and Illustrations fo

SMALL PICA.

Information and Illustrations for T

LONGPRIMER.

Information and Illustrations for Theolo

BOURGEOIS.

Information and Illustrations for Theologic

BREVIER.

Information and Illustrations for Theological T

MINION.

Information and Illustrations for Theological Tea

NONPAREIL.

Information and Illustrations for Theological Teachers

PEARL.

Information and Illustrations for Theological Teachers and Pro-

DIAMOND.

Information and Illustrations for Theological Teachers and Professors of Bible

BRILLIANT.

Information and Illustrations for Theological Teachers and Professors of Bible Theory.

"Lower-case" is the technical term for what are popularly known as small letters (*i.e.* not capitals). The compositor's case containing them is "lower" in position than the case of capital letters.

Printers' Marks in General Use for Correcting for Press.

THE history of the Ballantyne press is associated with the most brilliant period of Scottish literature. During the later years of the last, and the early part of the century present, while Coleridge, Wordsworth, Byron, and a host of others were making their splendid contributions to English literature, there existed in Edinburgh a society of ~~light bearers~~ who have become world famous. Jeffrey, Cockburn, Brougham, Christopher North, Dugald Stewart, Hogg, Horner, Abercrombie, Jameson, Lockhart, and many others—though, individually, some of them might scarcely compare with their English contemporaries —formed a coterie which had for its nucleus the author of his age—SIR WALTER SCOTT. The literary prestige which the northern capital acquired in the days of Waverley and the "*Edinburgh Review*," has been well maintained, although in these later times the great capital of the nation absorbs her most illustrious men It was during the period referred to, and by aid of its famous patron ~~and friend~~, that the BALLANTYNE PRESS first earned its reputation.

Scott and Ballantyne were in the grammar school of Kelso, and their youthful acquaintance was destined to develop into a lifetime of business relationship and firm friendship. In 1796, JAMES BALLANTYNE had established himself at Kelso, where he edited and printed the Mail newspaper. This being only a weekly publication, he became desirous to engage in some literary enterprise which might employ his press during the intervening days, and in this he was assisted by his ~~old~~ friend and schoolfellow.

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¶ Instructs that the line is not to be indented.

‡ ‖ Directs that the triple and double underlined words are to be made capitals and small capitals.

² A letter placed upside down is to be turned.

⁴ ⁵ Marks for transposition of words, sentences, and letters.

⁵ Delete the scored-out word, and substitute the one written on margin.

⁶ Take out the black mark between the words.

⁷ ⁸ ⁹ Show the marks used for insertion of point and quotation marks.

⁸ Insert a space between the words.

⁹ Make close, by taking out the space.

¹⁰ Change the wrong letter in "which."

¹¹ Change the underscored italic words to roman.

¹² *N P* —A new paragraph is to begin here.

¹³ ¹⁴ The first shows the method of writing in a short insertion, the second a long one.

¹⁵ Delete the two scored out words.

¹⁶ *run on*—no new paragraph here.

¹⁷ *l.c.* or *l.c* ("lower case")—the underlined words to be altered to small letters.

¹⁸ The word "Mail," in roman type, to be changed to italic.

¹⁹ Insert a letter in misspelled word.

²⁰ Set straight the crooked lines.

²¹ *stet* (Latin, "let it stand") directs that a word is, advertently struck out is to remain.

²² *wf* ("wrong fount") points out that a figure or letter does not range with the others.

Observation.—Every mark made by the corrector on the page of letterpress should be supplemented by a corresponding mark on the margin. The compositor, when correcting, looks for both the one and the other.

But a will containing such an assurance, and a deed containing such an assurance and made otherwise than in good faith for full and valuable consideration, must be executed not less than twelve months* before the death of the assuror, or be a reproduction in substance of a devise made in a previous will in force at the time of such reproduction, and which was executed not less than twelve months before the death of the assuror, and must be enrolled with the Charity Commissioners within six months after the death of the testator, or in case of a deed the execution of the deed. The quantity of land so assured by will must not exceed twenty acres for any one public park, and not exceed two acres for any one public museum, and not exceed one acre for one schoolhouse. The expression (1) "Public park" includes any park, garden, or other land dedicated or to be dedicated to the recreation of the public; (2) "Elementary school" means a school or department of a school at which elementary education is the principal part of the education there given, and does not include any school or department of a school at which the ordinary payments in respect of the instruction from each scholar exceed ninepence a week; (3) "Schoolhouse" includes the teacher's dwelling-house, the playground (if any), and the offices and premises belonging to or required for a school; (6) "Public museum" includes buildings used or to be used for the preservation of a collection of paintings or other works of art, or of objects of natural history, or of mechanical or philosophical inventions, instruments, models, or designs, and dedicated or to be dedicated to the recreation of the public, together with any libraries, reading-rooms, laboratories, and other offices and premises used or to be used in connection therewith. There are further and special exemptions in the case of gifts of land, or of money to be laid out in the purchase of land, for any of the Universities of Oxford, Cambridge, London, Durham, and the Victoria University, or any of the colleges within any of those universities, or for Keble, Eton, Winchester, and Westminster Colleges. And there is also another special exemption in the case of a *bonâ fide* assurance of land, for valuable consideration, to a society or body of persons associated together for religious purposes or for the promotion of education, art, literature, science, or other like purposes. But to come within the benefit of the exemption the land must not exceed two acres for the erection thereon of a building for the above purposes, or any of them; or be land whereon a building used or intended to be used for such purposes, or any of them, has already been erected. The trustees of such an assurance may, however, if they think fit, at any time cause the instrument to be enrolled in the Central Office.

MOST-FAVOURED NATION.—This term is applied to a clause very generally inserted in international commercial treaties, by which the contracting powers bind themselves to grant to each other whatever privileges may be given by either to any third power. The clause is found in two forms, or if not in so many actually distinct forms, at least subject to two interpretations. One of these, based upon the principle of reciprocity, makes the grant of the privileges conditional upon the recipient power giving to the grantor power the same consideration or compensation as the third power to which they are granted has had to pay therefor. The other form or interpretation attaches no such condition

* In Ireland, three months.

to the grant. The clause has now been in use for considerably over a century, and during this long period has been so frequently inserted in treaties that its verbal variation in practice is too extensive to be here dwelt upon. It is sufficient to say that the former of the above two forms or interpretations was the original one, but is now only adopted by the United States; while the latter was introduced—but only constructively—in 1860, in the treaties of that year between France and England, and since then has been expressly accepted and adopted by the powers of Europe.

Article 2 of the treaty of peace and commerce between the United States and France of the year 1778 runs as follows:—

> The most Christian King and the United States engage mutually not to grant any particular favour to other nations, in respect of commerce and navigation, which shall not immediately become common to the other party, who shall enjoy the same favour freely, if the concession was freely made, or on allowing the same compensation if the concession was conditional.

In the 1891 treaties of the middle European States the clause is thus given:—

> In regard to the amount, the guaranty, and the payment of imposts on imports and exports, as well as in regard to the transit trade, neither of the high contracting parties shall treat a third State on a more favourable basis than the other contracting party. Each favour given in this connection to a third party is therefore to be given at once, and without compensation to the other contracting party.

These two examples show very clearly the difference between the forms, the difference between the resultant position of the European States to one another and to the United States in this matter, and the tendency in modern times to be more specific in particularising the subjects affected by the clause. It is perhaps in connection with the Customs tariffs of the various powers that this clause reveals its great importance, though certainly the other incidents of international commerce should not be overlooked. It means, in the case of the European nations, that if England has received this most-favoured-nation treatment from Germany, England has a guarantee that its commercial intercourse with Germany shall not be treated less favourably than that of any other country, say Italy, to which Germany may make a concession. Should such a concession be made which takes the shape of a lower tariff upon Italian imports into Germany than that imposed by the latter country upon English imports, then forthwith—automatically—that lower tariff must apply to English imports. And this advantage England acquires gratuitously, notwithstanding that Italy may perhaps have paid for it very heavily. And what here applies to England would apply to all other powers whose treaties with Germany have been concluded on the most-favoured-nation basis. The clause is most decidedly a limitation to future action which cannot be properly estimated at any time; for instance, a State which has handicapped itself by the clause finds the position a very difficult one when it desires on a future occasion to give some material commercial

advantage to another power. If England, for example, were bound by this clause with practically all the European nations—as in fact she is—a reduction of import duties upon light wines in favour of France would hardly be worth acceptance as a favour by the latter country. But a nation that has a highly protective tariff would be a more forcible illustration of the effect of the clause. It disturbs to a considerable extent the stability of international commercial relations and commercial prospects generally. In 1895 there was a movement in Germany to denounce the most-favoured-nation treaty of 1857 with Argentine, for the latter country, giving no consideration therefor, received all tariff concessions which Germany gave to Austria and Russia, and flooded the German market with wheat. One of the most significant instances of the working of the clause is that connected with the Frankfort Treaty of 1871, which being a treaty of peace cannot be denounced by either party thereto and must therefore be observed for ever. The clause at first worked very adversely to France; for Germany, refraining for the time being from entering at all extensively into commercial treaties, was able to enjoy without effort of its own the commercial advantages of the more active policy of France. Subsequently the position was reversed, for Germany became active and France passive in this respect. In the meanwhile, however, the clause made it difficult for a treaty to be negotiated between France and Switzerland; the former country declined to give privileges to Switzerland, for they would necessarily accrue to Germany as well, as also would any privileges which might be given by Switzerland to France. But the United States entirely dissociates itself from the European form and interpretation of the clause. In the words of an excursus in a number of the official *Monthly Summary of Commerce and Finance* of the United States, that country "reserves to itself the right to give concessions only in return for certain favours, and likewise reserves to itself the right to decide whether favours offered by other countries are the equivalent of those received from a specified country. The United States, therefore, is in a position to use any system of tariff, either a conventional and general tariff or a maximum and minimum tariff, without the disadvantages which the construction of the most-favoured-nation clauses imposes upon European countries." Wherefore the United States has the advantage of receiving the benefits of the European clause, but practically granting nothing in return. *See* TARIFF; TREATIES.

MURDER.—The law presumes every homicide to be malicious, or a murder, until the contrary is proved. It is murder when the killing is unlawful and malicious; manslaughter when unlawful but not malicious; excusable or justifiable when the killing is forced upon the person charged in order that he may defend himself. Murder is punishable with death; manslaughter with penal servitude, even for life; justifiable homicide entails no punishment. Malice as an element in murder is legal malice, and not malice in the ordinary sense of the term. If A. shoots at B. with intent to kill him, but by mere accident kills C., this is a killing from implied malice. In the case of *Reg.* v. *Serné and Goldfinch*, the prisoners' premises having been burnt down under suspicious circumstances, and a boy consequently burnt to death, they were charged with his murder. On the facts of the

case, however, they were acquitted on the charge of murder. In summing up to the jury Mr. Justice Stephen said: "There was wilful murder according to the plain meaning of the term, or there was no murder at all in the present case. The definition of murder is unlawful homicide with malice aforethought, and the words malice aforethought are technical. You must not therefore construe them, or suppose that they can be construed, by ordinary rules of language. The words have to be construed according to a long series of decided cases, which have given them meanings different from those which might be supposed. One of those meanings is, the killing of another person by an act done with intent to commit a felony. Another meaning is, an act done with the knowledge that the act will probably cause the death of some person. Now it is such an act as the last which is alleged to have been done in this case; and if you think that either or both of those men in the dock killed this boy, either by an act done with intent to commit a felony, that is to say, the setting of the house on fire in order to cheat the insurance company, or by conduct which to their knowledge was likely to cause death, and was therefore eminently dangerous in itself—in either of these case the prisoners are guilty of wilful murder in the plain meaning of the word." Homicide is not criminal when it occurs in the practice of a lawful sport or exercise of weapons not of a deadly nature, and without intent to do bodily harm, and where no unfair advantage is intended or taken. But no provocation can render homicide justifiable; nor will consent, as in the case of a duel. Great provocation may perhaps reduce a charge of murder to one of manslaughter, but if the killing is done with a deadly weapon the provocation must be very great indeed.

MUSICAL AND DRAMATIC COPYRIGHT.—The foundation of the law of copyright in musical and dramatic compositions was laid in the Act 3 & 4 Will. IV. c. 15, known as Sir Bulwer Lytton's Act, and the Copyright Act, 1842; but afterwards were passed the Copyright (Musical Compositions) Act, 1882, the Musical (Summary Proceedings) Act, 1902, and the Musical Copyright Act, 1906, which three Acts had reference to musical copyright alone. These statutes were ultimately, except the last two, repealed by the Copyright Act, 1911, which now protects the authors of dramatic and musical pieces. A dramatist or composer has a similar copyright, so far as regards the term, as a literary author. [*See* COPYRIGHT.] Musical or dramatic copyright means the sole right of the owner of such copyright to, or to authorise another person to, produce or reproduce the work or any substantial part thereof in any material form whatsoever, and to perform any substantial part thereof in public. This right includes, in the case of a dramatic work, the sole right to convert it into a novel or other dramatic work. In the case of both dramatic and musical works it includes a like right to make any record, perforated roll, cinematograph film, or other contrivance, by means of which the work may be mechanically performed or delivered. A "musical work" is, generally, any combination of melody and harmony, or

either of them, reduced to writing, or otherwise graphically produced or reproduced. A "dramatic work" includes any piece for recitation, choreographic work, or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise, and any cinematograph production where the arrangement or acting form or the combination of incidents represented give the work an original character.

The provisions of the Act in respect of the property of musical and dramatic copyright apply to the liberty of representing or performing a dramatic piece or musical composition; and the first public representation or performance of such a piece or composition is deemed equivalent to the first publication of a book. Thus the necessity for a "copyright representation or performance." Until the author has printed and published his composition, he or his assignees alone have the right of representing it, and are the owners of the copyright. In the case of a dramatic piece or musical composition in manuscript, the person having the sole liberty of representing or performing, or causing to be represented or performed the same, may assign his rights to another, either wholly or partially, and may grant any interest in those rights by licence. No such assignment or grant is valid unless in writing signed by the owner of the rights dealt with, or by his duly authorised agent. The author, who is also first owner of the copyright, cannot vest in an assignee or licensee any rights in the work beyond the expiration of twenty-five years from the death of the author.

The author of a dramatic or musical composition who is entitled to, and is desirous of, retaining in his own hands exclusively the right of its public representation or performance, should print upon the title-page of every published copy a notice to the public to the effect that the right of public representation or performance is reserved. This raises a legal presumption that he is in fact the author and owner of the copyright. A person is liable as an infringer who for his private profit permits a theatre or other place of entertainment to be used for the performance in public of the work, without the consent of the owner of the copyright, unless he was not aware, and had no reasonable ground for suspecting, that the performance would be an infringement. A person who immediately before the commencement of the Act of 1911 is entitled to a right or interest in a right specified in the first column of the following schedule is threafter entitled to the right or interest specified in the second column:—

Both copyright and performing right.	Copyright as defined by the Act.
Copyright, but not performing right.	Copyright as defined by the Act, except the sole right to perform the work or any substantial part thereof in public.
Performing right, but not copyright.	The sole right to perform the work in public, but none of the other rights comprised in copyright as defined by the Act.

Remedies.—Any one who infringes a musical or dramatic copyright is liable to be proceeded against for damages, not less in amount than forty shillings, and may be restrained by the Court from further infringement. And by an Act of George III., adopted by the Copyright Act, it is provided that in the action for damages the defendant may be ordered to pay double costs, but the action must be brought within twelve months from the commission of the offence. But so far as regards musical copyright it was found that proceedings for damages and an injunction were practically useless, especially when the offenders were men of no financial or commercial position. Accordingly the Act of 1902 was passed which provided for the summary seizure and destruction of any "pirated musical work"—a term defined by the Act as meaning "any musical work written, printed, or otherwise reproduced, without the consent lawfully given by the owner of the copyright in such musical work." Under the Act a court of summary jurisdiction, upon the application of the owner of the copyright in any musical work, may act as follows: If satisfied by evidence that there is reasonable ground for believing that pirated copies of such musical work are being hawked, carried about, sold, or offered for sale, may, by order, authorise a constable to seize such copies without warrant and to bring them before the Court, and the Court on proof that the copies are pirated may order them to be destroyed, or to be delivered up to the owner of the copyright if he makes application for that delivery. There is also a special power of seizure from hawkers. If any one hawks, carries about, sells, or offers for sale any pirated copy of a musical work, every such pirated copy can be seized by any constable without a warrant, on the written request of the apparent owner of the copyright, or of his agent thereto authorised in writing; but this seizure is at the risk of the owner. Upon the seizure the pirated copies are conveyed by the constable before a court of summary jurisdiction; and on proof that they are infringements of copyright, they will be forfeited or destroyed or otherwise dealt with as the Court may think fit. The provisions of the Act of 1906, which provides penalties for being in possession of pirated music, and confers special powers upon the police for dealing with offenders, are set out in the article on MUSICAL COPYRIGHT in the Appendix.

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NAME.—The word or words used to distinguish an individual are known as his name. His family name, the name of his father, is the surname; the other names being called "christian." The surname can be changed at any time, at the will of the owner, where there is no fraudulent or criminal intent, either by merely relinquishing it and adopting another without any special form. It may also be changed by royal licence, or by executing a deed poll, or by advertising the change, or by both of the two last mentioned modes. The formal modes are always the most useful on account of their availability as evidence. An illegitimate child having legally no father, has also no surname, and acquires one by reputation only; there is, however, no reason why he should not adopt the surname of either his mother or his natural father. A man can take, as a general rule, any surname he pleases, for no one has such a property in his own name as to prevent another man assuming it. The exception to the rule occurs in a case where a man has a TRADE

NAME (*q.v.*), whether his own originally or an assumed one; then, under certain circumstances, he can prevent another man taking that name. A name has been said to be "the very being of the constitution" of a corporation or company, and though a company acquires a legal name upon registration there is nothing to prevent it acquiring by reputation a subsidiary or additional trade name. Neither its legal nor its trade name can be assumed by any other company. A christian name—one conferred at baptism—differs from a surname in that it cannot be changed, unless, perhaps, by a bishop at confirmation. In contemplation of law a man can have only one christian name, and accordingly the foreign practice, when there are more than one, of compounding them, is the more correct one. A man is not allowed to deny that a name he may have used in a contract under seal is not his own.

It often happens that property is given under a will or settlement upon condition that the recipient assumes a specified surname and arms, or a surname only. In such cases the will or settlement very frequently indicates the mode in which the assumption shall be made; where this is so the recipient must act in accordance with the indication. When a Royal Licence is obtained the following are the

Stamp duties.

Grant or Licence under the sign manual of His Majesty to take and use a surname and arms, or a surname only.

In compliance with the injunctions of any will or settlement .	£50	0	0
Upon any voluntary application	10	0	0

NAME DAY is a Stock Exchange designation for the day preceding the account day. Where a jobber stands as a purchaser of shares he must pass to the broker, on name day, a ticket containing the name of some person, or several persons as the purchaser or purchasers of the shares; or he may if he pleases pass his own name as the purchaser, in which case only is he bound to take the shares himself. If the jobber fails to pass to the broker such a name or names by the name day, the selling broker can sell out the shares against him, and compel him to pay any loss thereon. Until the name day it is not known who stand ultimately either as purchasers or sellers, or, in other words, who will be the persons to transfer or to take transfers of shares, and until then a jobber may have had a great many transactions both of buying and selling with the same brokers or jobbers or with others. On the name day, in the case supposed, if the jobber having purchased had sold again, a ticket, containing the name of the person to whom the shares were to be transferred, would have been issued by, and passed on from the ultimate purchasing broker to his seller, and so on through the hands of the intermediate sellers and buyers in succession, who, whether acting as jobbers or as brokers, had dealt in the shares, until it reached the hands of the original selling broker. Every member of the Stock Exchange passing a ticket is required to write on its back the name of the member to whom it is passed; such ticket should also contain the amount of purchase-money agreed to be given for the shares by the ultimate purchasing broker, and also a note that he will pay it. So many transactions of this kind take place during an account, that on the name day the ticket necessarily only remains in the possession of an intermediate jobber or broker for the time required to take the

particulars of it. It sometimes happens that the same ticket passes through the same member's hands several times in fulfilment of bargains made with other members, and as a matter of fact he has neither the opportunity, time, nor the means for making inquiries respecting the name passed. The original selling broker is not bound to deliver a transfer of the shares to the ultimate purchasing broker until the expiration of ten days after the account day, and during these ten days the purchasing broker cannot buy in the shares against the seller. During this time it is open to the original selling broker to object to the name passed by his buyer, in which case the latter will pass on the objection to the person from whom he received the name as hereinbefore mentioned; and practically such buyer has no liability or interest in the question, for whatever grounds there might have been for objecting to the name must be met by the person from whom it emanated, and who had originally issued the ticket. The committee of the Stock Exchange, if appealed to by the selling broker, will decide as to the validity of such an objection, and will require another name to be given in case they consider it right to do so. But after the lapse of these ten days the selling broker is bound to deliver the certificates and a transfer of the shares to the ultimate purchasing broker; or, in default thereof, the latter can buy in the shares against the seller. The usual course of business is for the selling broker to deliver the transfer, together with the corresponding ticket, to the ultimate purchasing broker from whom he receives the purchase-money. The ultimate purchasing broker does not know to whom his ticket has been ultimately passed until the delivery of the transfer. According to the rules of the Stock Exchange, if the original selling broker does not deliver his transfer and certificates and obtain payment of the purchase-money within fifteen clear days from the name day, his immediate buyer is released from all loss caused by the default of the ultimate purchasing broker to pay for the shares, and the latter alone remains responsible. In like manner, if the member who issued the ticket containing the name of the intended transferee of the shares does not buy in, or attempt to buy in, the same shares within fifteen days from the account day, his immediate seller is released from all loss caused by the failure of any member through whose default the shares were not delivered to, and the purchase-money paid by, the ultimate purchasing broker; the jobber has fulfilled all the obligations required of him by the rules of the Stock Exchange in respect of his contract. (From the evidence in *Nickalls* v. *Merry*.) *See* JOBBER.

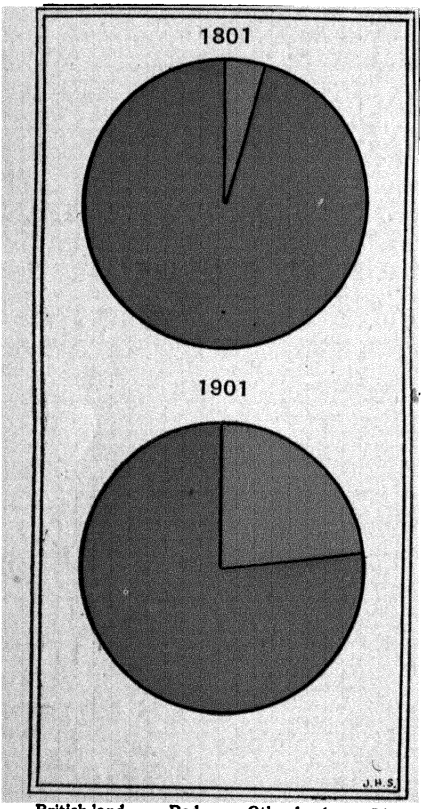
NATIONAL DEBT.—This is the public debt of the country, or rather the debt incurred and owing by the state on behalf of the nation generally. The feature which particularly characterises the national debt, as distinguished from a private debt, is that generally the state has at all times the right to pay off its creditors at par, while the creditors have no right to demand repayment of the principal money, but must content themselves with their dividends. It was at one time strongly insisted, and that only within recent years, that the real difference between a private debt and the national debt consists in the compound character of the creditors, who as members of the nation are legally and morally bound to contribute towards the maintenance of the public faith, while they have each a personal interest in its preservation. But that difference cannot altogether be recognised now, for the creditors are not by any means all members of the nation. It would seem, indeed, that regardless of the obvious advantage of having as many of such creditors as possible, in case of need, the Government now goes voluntarily outside the nation to place its loans with foreigners. Perhaps by adopting this course it

THE GROWTH OF THE BRITISH EMPIRE DURING THE NINETEENTH CENTURY

THE GROWTH OF THE BRITISH EMPIRE

THE growth of the British Empire during the nineteenth century was, in round numbers, from 2 millions of square miles in 1801 to 12 millions of square miles now: from a population of 115 millions in 1801 to a population of 400 millions now.

A British-tinted map of the world one hundred years ago would show to us, in the place of the present great Dominion of Canada, merely a few small areas that, even as late as 1867, were widely different from the Canada of to-day, both geographically and politically. The isolated British provinces of Nova Scotia, New Brunswick, Prince Edward Island, and the tiny Canada of 1801, with Newfoundland, were in North America the representatives of the British Empire; and to the north and west stretched the vast regions abandoned to the lonely trappers and fur-traders of the Hudson's Bay Company—wild regions then unknown, but now closely linked with civilisation, commerce, and society.



British land . . . Red. Other land . . . Blue.

The British Empire's Share of the Earth in 1801 and 1901. In 1801 4 per 100 square miles of land were British; in 1901, 23 per 100 square miles of land are British.

In Asia a thin strip or two down by the coasts of India, and at the north, represented in 1801 the vastly extended and consolidated India of to-day; these patches, with Ceylon and a part of the present Straits Settlements, were all that then existed of the present British Empire in Asia.

In Africa there was not in 1801 even the tiny patch, on its southern point, that in 1814 marked Cape Colony as British land. Two or three dots on or near to the Gold Coast did, in 1801, represent the present British Empire in Africa, east, west, south, and central, without counting what is very much like a large British Protectorate in North-East Africa (Egypt).

In Australasia, the year 1801 showed a little scratch on what is now New South Wales—a mere spot at Botany Bay, where we dumped our convicts. Now, a noble confederated continent and the large islands of New Zealand fly the Union Jack.

Without going into tedious details as to each item of growth, it suffices to state that the British Empire (at home and abroad) has been enlarged nearly six times since 1801.

Here are the condensed figures:—

	Actual Growth.		Percentage of Growth.	
	Area.	Pop.	Area.	Pop.
British Empire in 1801 . .	Sq. Miles. 2,121,000	Millions 115	P. cent. 100	P. cent. 100
British Empire Now. . .	11,890,000	396	561	344

We see that for every 100 square miles of British land in 1801 there are now 561 square miles (not including, of course, Egypt); and that for every 100 of population in 1801 there are now 344 persons in the British Empire.

Looking now at the facts from the point of view of the respective sizes of the United Kingdom and of British Colonies, &c., in 1801 and at the present time, the results are:—

AREA.

In 1801 the area of British Colonies, &c., was 16.5 times as big as the area of the United Kingdom.

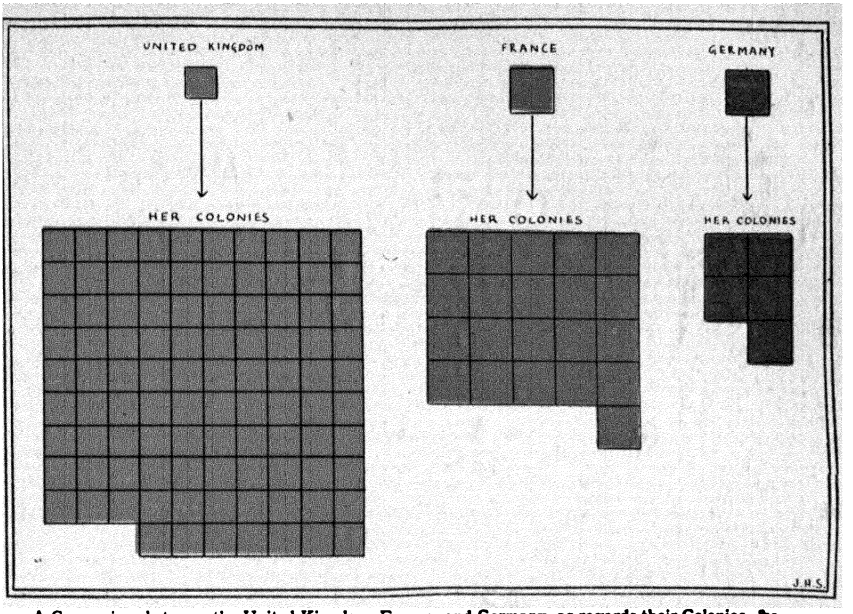
Now, the area of British Colonies, &c., is 97.3 times as big as the area of the United Kingdom.

POPULATION.

In 1801 the population of British Colonies, &c., was 6.7 times as numerous as the population of the United Kingdom.

Now, the population of British Colonies, &c., is 8.5 times as numerous as the population of the United Kingdom.

Thus, as regards the above comparison between the British Empire at home and the British Empire abroad, we can see that the area of British Colonies, &c., has grown to be nearly 100 times as big as the area of the United Kingdom, and that the population of British Colonies, &c., has become 8½ times as numerous as the present population of the United Kingdom.



A Comparison between the United Kingdom, France, and Germany, as regards their Colonies, &c., in the year 1901.

Accompanying this vast quantitative growth of the British Empire there has happily been a great qualitative growth. In 1801 there were no British Colonies, &c., of the kind that there are now. All the Colonies in 1801 were under the direct rule of the Crown; not one of them was self-governed, as so many are to-day. The British idea of colonies, one hundred years ago, was that of France at the present day: "What is the use of having colonies if you don't get something out of them?" The bad old colonial system has been for ever abandoned by us, and the great growth in the *quality* of the expansion of the British Empire, as well as in the quantity of its expansion, has been splendidly illustrated by the shoulder-to-shoulder work done in South Africa by all the main limbs of the British Empire, which are now really regarded, not as British *possessions* (to use the old and still surviving word of a hundred years ago), but as members of the British Empire—members having equal rights and mutually dependent interests, however far from the central hub in London this or that colony may lie.

It is this growth in the qualitative expansion of the British Empire that renders possible the maintenance of its vast quantitative growth: without it the great fabric must fall into a disintegrated and incoherent mass of ruin.

The full recognition of this vital truth has brought, and brings, a heavy burden of responsibility upon the people of the United Kingdom. For to a very preponderating extent the defence of this Empire depends upon the home-land and people. It is no exaggeration to say that every outlying part of the British Empire has, in the mind of the citizens of the United Kingdom, a defence-interest almost as strong as that felt by the Germans for Berlin, and in case of need that defence-interest would again be as valiantly and doggedly carried into act as it has been in South Africa.

Our absolute need for adequate defence-power is far greater than that of any other nation, and while the following comparison with France and Germany shows the quantitative differences between the three empires, it does not illustrate the great qualitative difference between the British Empire and other empires in the matter of the degree of responsibility that rests upon Englishmen, Frenchmen, and Germans, respectively, to defend their respective foreign Empires.

The area of British Colonies, &c., is 97 times as big as the area of the United Kingdom.
The area of French Colonies, &c., is 21 times as big as the area of France.
The area of German Colonies, &c., is 5 times as big as the area of Germany.

We must not complain if, in future years, we are asked to pay a larger national assurance premium than for many years prior to the war we did pay: to be under-insured is as imprudent for a nation as it is for an individual.

J. HOLT SCHOOLING.

raises larger sums in fewer "parcels" than it could by offering the stock to the mass of its own people, but granting even this, the policy is hardly wise and is certainly an unpopular one. The French debt, which is nearly half as large again as the English, is held almost entirely in France, and the national securities are very widely distributed among the masses. In addition to this enormous sum, securities of Portugal, Spain, Italy, and Russia are held in France in large amounts. Of Austria-Hungary's debt the large proportion is held by her own people. Of Germany, Belgium, Netherlands, Denmark, Sweden, and Norway, it may be said that almost the entire debt is held by citizens of the respective countries named. Practically all the debt of the United States is now held by her own people, who, it will be remembered, forwarded to the United States Treasury in 1899 subscriptions aggregating five times as much as the amount of the national securities offered on that occasion. The United Kingdom should in this matter, as in many others, adopt more modern methods; for one thing it should popularise the national securities, and attract the small capitalist. When a loan is issued every local post office, for example, could be made a receiving office for applications for small amounts, information as to these arrangements being well advertised. Then, most probably, the securities of the United Kingdom could be issued at par. Even Chili has a class of securities, aggregating about $7,000,000, which were issued at 101.

The contracting of the National Debt cannot be said to have begun before the Revolution of 1688, the first permanent instalment being the sum of £1,200,000 lent by the Bank of England in 1693, at the time of its charter. But war soon raised it, for in four years' time it stood at £21,500,000. After a reduction to £16,000,000 it rose again, this time to £54,000,00, at the time of the accession of George I. The high figure alarmed the House of Commons, and with a view to its reduction the system of annuities was introduced in the year 1717. But in 1748, so vain were the efforts at reduction, it rose to £76,000,000, while the Seven Years' war brought it in 1763 to about £133,000,000. Then, after another period of gradual reduction, the termination of the war of American Independence, in 1784, saw the total increase to £273,000,000, and finally, in the year 1815, that of Waterloo, the debt of this country reached the enormous figure of over £900,000,000. Fortunately, that year saw the high-water mark of our national indebtedness, and even in 1857, after the Crimean war, thanks to the long peace that had preceded it, the amount of the debt was no more than £842,500,000. Since then the gross liabilities of the State have moved on the following lines; the movement showing a most substantial decrease until the year 1900, when the South African war then forced an increase:—

1860	£827,788,168	1895	£660,160,607
1865	818,463,812	1900	639,165,265
1870	799,644,701	1902	768,443,386
1875	774,350,903	1906	788,990,187
1880	776,504,339	1909	754,121,309
1885	743,124,689	1910	762,463,625
1890	690,663,838	1911	733,072,610

The National Debt, strictly speaking and as regarded in the above figures, comprises four distinct classes of liabilities:—(1) The Funded Debt; (2) Terminable Annuities; (3) The Unfunded Debt; and (4) "Other Capital Liabilities." But there are also some contingent or indirect liabilities of the State which, pursuant to various Acts of Parliament, have the guarantee of the Consolidated Fund behind them, and which may therefore be regarded as proper additions to be made in a statement of the total indebtedness of the nation. And, on the other hand, the State has certain specific assets which admit of being calculated and set off against its debt. It is proposed in this article to give, in the first place, some account of the four constituents of the National Debt proper, then, following the practice of the Treasury, to notice the assets already referred to, and afterwards to summarise the additional contingent and indirect liabilities. The figures are those for the financial year ending on the 31st March 1909. Finally, the subject of the conversion of the National Debt will be referred to.

The Funded Debt.

	Bank of England Debt.	Bank of Ireland Debt.	Total.
	£	£	£
(1.) 2½ per Cent. *Consols* .	...	...	573,739,142
(2.) 2¾ per Cent. (1905) *Consols*	...	...	4,112,366
(3.) 2½ per Cents . . .	...	...	30,341,580
	...	...	608,193,088
(4.) Debts to the Banks of England and Ireland (2½ per cent.) . .	11,015,100	2,630,769	13,645,869
TOTAL FUNDED DEBT ON WHICH INTEREST IS INCLUDED IN THE PERMANENT OR FIXED ANNUAL CHARGE .	...	...	621,838,957

This funded debt is a permanent one, in the sense that no date is named for its final payment. In 1911, the total was £610,315,194. The State is under no obligation to reimburse the creditors; only to pay to them a certain interest fixed by law. But, fortunately, the British Government is one of the very few that recognise a practical necessity for the repayment, as far as possible, of all their capital liabilities. Its permanent character is therefore regarded more as a refuge in times of financial stress than as a reason for its undiminished maintenance, and a right to redeem within a certain fixed period is now usually reserved. The French and Italian governments, on the contrary, regard the great part of their respective debts as so actually permanent, as to measure their totals by the annual dividends or "rentes," instead of by the capital indebtedness the latter represent. The recognition of the necessity to reduce its capital liabilities has been followed, in Great Britain, by the introduction of the system of a Sinking Fund, the results of which, though also of the long

period of peace which prevailed until some three years ago, is found in a great part of the reduction of the debt, and in the enormous increase in borrowing capacity in times of stress. A sinking fund was first proposed by Sir R. Walpole in 1716, and by him the system was partially and for a time applied. Subsequently, in 1786, Pitt improved upon his predecessor and elaborated a scheme whereby certain sums of money and £1,000,000 per annum were appropriated out of the national income towards the extinction of the debt. But the annual fund of £1,000,000 had to be borrowed for the purpose, and the only real advantage of the scheme accrued from an unfounded confidence it imparted to the public, who were consequently more willing to bear a higher rate of taxation than might have been tolerable but for the expectation of future relief through its means. Other modifications and extensions of the scheme were from time to time introduced, particularly in the reign of George IV., when redemption by the sinking fund was made applicable to the Unfunded Debt and by a generally repealing and initiative Act of 1875. In pursuance of the latter statute the annual charge for the debt was, in 1876, made a fixed sum, which was to be raised in three years to £28,000,000. The excess amount of this charge, not required for the payment of interest and expenses of the debt, was to be applied to the redemption of debt as the "New Sinking Fund." In 1900 the annual charge for the debt was reduced to £23,000,000.

Terminable Annuities.

Estimated Capital Value:

(1.) Annuities for Life and Terms of Years: Per 10 Geo. 4, c. 24; 3 Will. 4, c. 14; 7 & 8 Vict. c. 83; 16 & 17 Vict. c. 45; 27 & 28 Vict. c. 43; 45 & 46 Vict. c. 51; and 51 & 52 Vict. c. 15 (£1,333,446, 1s. 6d.)	£14,438,482	0	0
(2.) Annuities created by the National Debt Act, 1883; National Debt and Local Loans Act, 1887; National Debt (Supplemental) Act, 1888; and the Finance Act, 1899:—			
(*a*) Savings Banks Annuities expiring in 1913-14, in lieu of "Rolling Annuities" (£490,533) . .	2,468,573	0	0
(*b*) Savings Banks Annuities expiring in 1924-25, in lieu of £15,000,000 Consols (£773,637) cancelled	10,873,380	0	0
(*c*) Book Debt Annuities expiring in 1924, in lieu of £13,000,000 Book Debt cancelled (£745,215) .	9,542,161	0	0

(3) Minor Annuities:			
(*a*) Trustee Savings Banks Deficiency Annuity, created in 1881 and expiring in 1917 (£83,672, 12s.)	686,741	0	0
An Annuity created in 1884, in consideration of the cancellation of Consols and creation of similar amount of 2½ per cent. Stock (£35,121), expired in 1903.			
(*b*) Sinking Fund Annuity created in 1884, to extinguish the increase in the nominal capital amount of the National Debt due to the conversion of 3 per cent. Stock into 2¾ and 2½ per cent. Stock, expiring in 1934 (£15,547, 5s.)	*		
Total Estimated Capital Value of Terminable Annuities included in the Permanent or Fixed Annual Charge	£38,009,337	0	0

By the Life Annuities Act, 1808, the Government Annuities Act, 1829, and a number of subsequent and recent statutes, the Commissioners for the Reduction of the National Debt are empowered to grant annuities, immediate or deferred, either for lives or for certain terms of years, payment therefor being accepted either in cash or in Government stock to the amount of the equivalent cash price. By this means, which it will be seen from the above figures has been adopted very freely, the Government can obtain some future relief from liability at the expense of a present sacrifice; and, provided the plan is not carried so far as to interfere with the onward progress of the country through an overload of taxation, an issue of terminable annuities is always more prudent than an issue of perpetual stock. Supposing that A. transfers to the Commissioners £1000 of 2¾ per cent. stock which would yield a perpetual dividend to him of £27, 10s. per annum, the Commissioners will grant him an annuity of say £50 a year for twenty years, and having received the stock will forthwith cancel it. The result of the transaction is that the funded debt is reduced by £1000, and the perpetual payment of £27, 10s. per annum as interest thereon is avoided; but for the next twenty years the Government incurs an annual liability of £50. This is really an advantage to the Government, and by no means an advantage to average private individuals. Consequently the latter make no very considerable demand for these annuities, and the State must dispose of them elsewhere. And so the many Government departments that hold Government stock, such as the Post-Office Savings Bank and the Chancery Division of the High Court, are practically compelled from time to time to exchange their stock for annuities, the stock then being cancelled [note (*b*) in above account]. And not only are they bound to do this, but when in times of financial difficulty the State's supply of money is restricted, they are required to temporarily accept interest on the capital value of their annuity holdings instead of the higher gross annuity instalments. Thus the Government not only makes a market for its annuities, but can make a provision for relief from some part of its outgoings which would be impossible if all the annui-

* This Annuity does not represent a capital liability, because it is applicable to the purchase and cancellation of stock, like the New Sinking Fund.

tants were private individuals. It took such a relief, in fact, in the year 1900–1, when in consequence of the large expenditure incurred in connection with the war in South Africa, the payment of so much of the terminable annuities created in 1883–84, and 1899–1900, as representing payment of capital (£4,540,771), was suspended; and in the next year, because of the continuance of the war, the corresponding payment was also suspended. The system of terminable annuities is not by any means an ideal one. Thus, to be consistent, the Government should never suspend its payments, but should create a sinking fund of an obligatory nature, and so be forced from time to time into the irrational position of borrowing money to pay off debts. Again, it works an injustice upon any income-tax payer who holds these annuities, for circumstances then make him pay a tax upon his property as well as upon his income. Other objections to the system could be raised, but here it will be sufficient to remark, that an unreasonable extension of the system may easily become both a public and private injustice and inconvenience.

Unfunded Debt (on which Interest is included in the Permanent Annual Charge) on March 31, 1909.

War Stock and War Bonds, 2½ %, repayable 1910.	Treasury Bills for Supply.	Exchequer Bonds, 3 %, repayable 1907.	Exchequer Bonds, 2½ %, repayable by Annual Drawings of £1,000,000.	Total.
£ s. d.	£ s. d.		£ s. d.	£ s. d.
21,339,602 0 0	14,500,000 0 0	(*paid off*)	7,000,000 0 0	42,839,603 0 0

This portion of the National Debt, the "Floating Debt," comprises the liabilities incurred by the State on the security of TREASURY BILLS (*q.v.*). It represents, in fact, loans the Government has been obliged to raise for temporary accommodation, bills being given therefor payable at various short dates. In 1911, the figure was £40,500,000. When these bills mature, the principal sum they represent must of course be paid off. EXCHEQUER BONDS are also issued for the purpose of obtaining temporary financial assistance, and advances are also obtained from the Bank of England. War Stock and War Bonds are also issued in the same manner. In the year 1901, in consequence of the large expenditure incurred in connection with the war in South Africa, so large a sum as £24,000,000 Exchequer Bonds were issued in addition to £5,000,000 Treasury Bills, the object being to obtain financial accommodation until a permanent loan could be issued. When such a loan has been raised, then the temporary loan is wiped out. In the usual course of things, Treasury Bills and Exchequer Bonds are paid off out of the revenue of the State, but

when in consequence of extraordinary circumstances the Unfunded Debt assumes abnormally large proportions, the repayment can ultimately only be effected with money raised upon the security of the Funded Debt. Exchequer Bonds and Treasury Bills are also paid off with the Sinking Fund monies. This was done for example in the year 1897, when £325,000 Exchequer Bonds and £1,517,200 Treasury Bills were paid off.

Other Capital Liabilities.

Estimated liability in respect of sums borrowed under —

	£	s.	d.
(*a*) Barracks Act, 1890	585,077	0	0
(*b*) Telegraph Acts, 1892 to 1907	6,880,829	0	0
(*c*) Uganda Railway Acts, 1896 and 1902	4,237,984	0	0
(*d*) Public Offices (Acquisition of Site) Act, 1895	403,701	0	0
(*e*) Public Offices (Whitehall) Site Act, 1897	452,340	0	0
(*f*) Naval Works Acts, 1895 to 1905	20,570,019	0	0
(*g*) Royal Niger Company Act, 1899	661,666	0	0
(*h*) Military Works Acts, 1897 to 1901	11,805,171	0	0
(*i*) Land Registry (New Buildings) Act, 1900	190,603	0	0
(*j*) Pacific Cable Act, 1901	1,880,795	0	0
(*k*) Public Offices Site (Dublin) Act, 1903	89,620	0	0
(*l*) Public Buildings Expenses Act, 1903	1,205,607	0	0
(*m*) Cunard Agreement Act, 1904	2,470,000	0	0
TOTAL OTHER CAPITAL LIABILITIES	£51,433,412	0	0

These "Other Capital Liabilities," which amounted to £47,840,151 in 1911, are loans obtained for special purposes, and repayment is made out of the funds of some particular Government department. Thus the loan for the Uganda railway was raised under a special Act by the creation of terminable annuities, the charge in respect of which is borne on the vote in Parliament for "Uganda, Central, and East Africa Protectorates and Uganda Railway." And so the charge in respect of the loan under the Telegraph Acts is borne on the vote for Post-Office Telegraph Services. And again, the money raised under the Barracks Act is a charge on the votes for Army Services, and no charge in respect to this item appears in the accounts for 1911. Loans of this class are always raised by creating terminable annuities.

The Assets.

Estimated market value of Suez Canal Shares on 31st March 1909	£32,667,000	0	0
Unrepaid Loans from Exchequer: Bullion, &c.	650,000	0	0
Colonial Contributions to Pacific Cable	1,373,162	0	0
Cunard Debentures held as security for repayment of advances under Cunard Agreement Act	2,470,000	0	0
Exchequer Balances	6,350,427	0	0
Moiety of estimated capital value of Red Sea and India Telegraph Company's annuity, repayable by Indian Government	(nil)		
TOTAL ESTIMATED ASSETS	£43,510,589	0	0

The Assets are remarkable only for their comparative pecuniary insignificance, and do not call for any special notice.

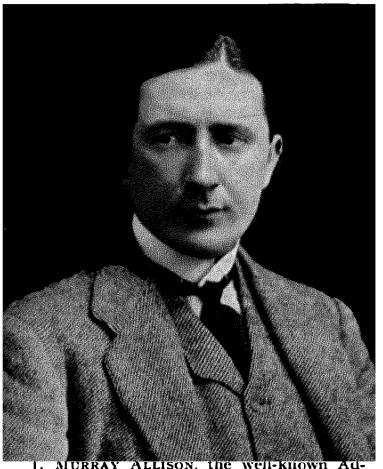
The following is, therefore, for 1909, the (Capital) National Balance-Sheet: —

Dr.	£	*s.*	*d.*	*Cr.*	£	*s.*	*d.*
To Funded Debt	621,838,957	0	0	By Estimated Assets	43,510,589	0	0
,, Terminable Annuities	38,009,337	0	0				
,, Unfunded Debt	42,839,603	0	0				
,, Other Capital Liabilities	51,433,412	0	0	Balance	710,610,720	0	0
	754,121,309	0	0		754,121,309	0	0
Balance	710,610,720	0	0				

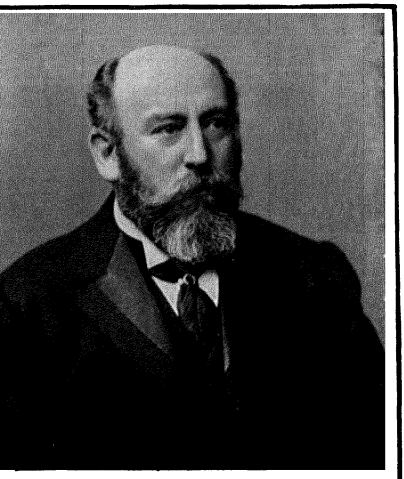
In addition, however, to this balance of direct indebtedness there must be noted a sum of considerably over 100 millions representing certain contingent or indirect liabilities of the State, which have behind them, pursuant to various Acts of Parliament, the guarantee of the Consolidated Fund. Of this large amount a small part of over 10 millions is made up of monies due to depositors in the Post-Office Savings Bank, to suitors' and bankrupts' estates in the English and Irish courts of law, and to sundry other creditors. The amount so due to the Post-Office Savings Bank is over £5,000,000, and, in view of the widespread belief that almost untold millions are lying in Chancery awaiting rightful claimants, it is worth remarking that the total amount due to all suitors in all the courts and divisions of the English Supreme Court is not more than 2½ millions. The remainder of these indirect liabilities is made up of a number of guaranteed loans. Of these may be mentioned certain loans to colonies—a loan to New Zealand, for the purpose of assisting immigration and the construction of roads, bridges, and other communication, the revenues of the colony being available as the primary security for repayment; also loans, similarly secured, to Canada to aid the construction

of railways and for the purchase of Rupert's Land from the Hudson's Bay Company; and a loan, also secured on the revenues of the colony, to Mauritius, for the relief of distress caused by a hurricane and for the construction of public works there. Then there are loans to foreign countries. There is nearly £4,000,000 still due from Turkey in respect of an advance made by England to meet the expenses of Turkey during the Crimean war; the security for the repayment of this is in the whole of the revenues of the Ottoman Empire, and especially the annual amount of the tribute of Egypt which remains over and above the part thereof appropriated to a prior loan, and on the customs of Smyrna and Syria. Over £6,000,000 is due to England from Greece in respect of a loan made a few years ago to enable the latter country to pay the war indemnity to Turkey; the repayment of this is charged on revenues assigned for the liquidation of the Hellenic Public Debt. About £14,000,000 is due from Ireland, the greater portion of which was utilised in the purchase of land, the repayment being secured by certain Guaranteed Land Stock. The rest of the Irish indebtedness is secured by the Irish Church Temporalities Fund, and represents monies advanced for such various objects as the purposes of the Irish Church Act, intermediate education, relief of distress, and the promotion, improvement, and encouragement of sea fisheries. And last, and by no means least, must be mentioned a sum of more than £71,000,000 charged on the assets of the Local Loans Fund, and representing many large loans for public works and improvements.

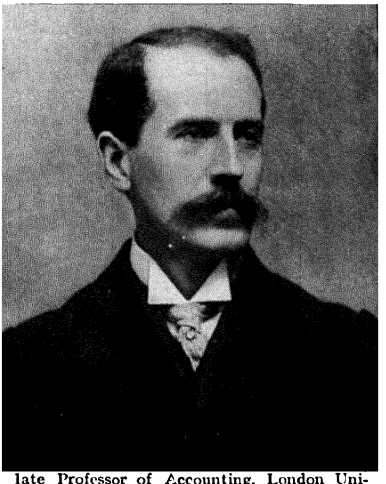
Conversion is now a very favourite practice of the financial statesman. A loan has been issued perhaps at a time when the country was in the throes of a great war, when the future was doubtful, and when money was scarce and tight. The issue, therefore, had to be made upon such favourable terms as would attract the public and its money; a good discount was allowed, and most certainly a high rate of interest. But since then the war has come to a successful end; the prosperity of the country is once more assured, and money is plentiful, freely available for investment, and comparatively cheap. And with this change has come the opportunity of the statesman. He at once proceeds to convert. His method is either that of conversion, strictly so-called, when he issues to the holders of the stock to be converted another stock bearing a different rate of interest, or that of redemption. By the method of redemption he raises a loan, at a lower rate of interest than that payable on the stock to be converted, but sufficient to pay off the holders of that stock. The former loan is then paid off and so practically converted into the later one. Without going so far as to suggest that governments should in perpetuity pay an exorbitant rate of interest, it is yet permissible to contend that some check should be placed upon their converting propensities. They should give a definite undertaking, in all cases, not to convert or redeem before a particular date. In the financial year 1888–89 the British Government effected a scheme of conversion by which it has saved an annual liability for interest amounting to over £1,000,000. Under the National Debt (Conversion) Act, 1888, it converted £549,094,010, 19s. 1d. consolidated, reduced, and new 3 per cents. into an equal amount of consolidated stock which was to bear interest at the rate of 2¾ per cent. until 5th April 1903, and thenceforward, until 5th April 1923, at 2½ per cent.,



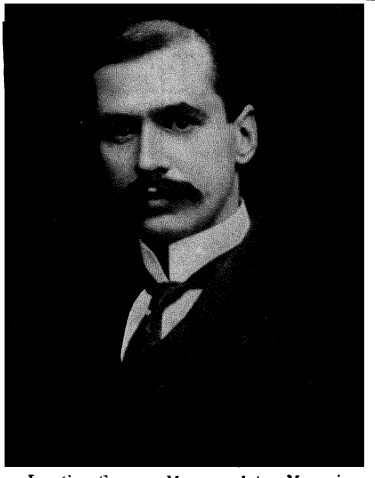
J. MURRAY ALLISON, the well-known Advertising expert, is to-day recognised as one of the leading authorities on Advertising. He is responsible for much of the matter dealing with this important subject in the "Business Encyclopædia." He has lately become Advertising Manager of the *Times*, since it passed under the control of Lord Northcliffe.



RICHARD BURBIDGE, Managing Director, Harrods, Limited, writes on "Departmental Stores." The information which he gives in this article is worth the price of the whole "Encyclopædia" to the man in the retail business. The huge business which he directs is one of London's most representative stores.



late Professor of Accounting, London University, head partner of Messrs. Sellers, Dicksee & Co., has published numerous books on Accounting, etc. He is responsible for the section on Accounting in the "Business Encyclopædia." He has been assisted by a staff of the most expert chartered accountants in the country.



L. G. CHIOZZA-MONEY, late Managing Director, *Commercial Intelligence*, is at once a business man and an author. Has for many years contributed articles on Industry, Finance, and Commerce to the leading newspapers, and on the side of the Free Trade school of publications has rendered yeoman service in popularising an intricate subject.

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after which date it should be redeemable at any time. After 5th April 1905 the new stock is to be known as the "Two-and-half per cent. consolidated stock."

NAVAL AND PRIZE AGENTS are appointed by the commanding officers of the ships of the Royal Navy. Each ship has one agent, and he is known as the ship's agent. A solicitor cannot be a ship's agent; nor can any one who holds any office or employment in the service of the King or Crown. But an incorporated partnership may be a ship's agent. The agent must have an office or place of business within five miles of the General Post Office, London; he is subject to the jurisdiction and authority of the Admiralty Division of the High Court, as if he were an officer thereof; his appointment is not vacated because of a change in the commanding officer of the ship, nor because of any change of partners in his own firm. His duty is to do everything that ought to be done on behalf of the ship in any of the following cases:—Salvage services rendered to any ship or cargo, or otherwise; a breach of law respecting national character or otherwise relating to merchant shipping; a seizure for breach of customs law; seizure or capture under an Act relating to the abolition of the slave trade; matters arising out of an attack on or engagement with pirates; the capture, recapture, or destruction of a ship, goods, or anything else in time of war or hostilities; special service or other matter in respect whereof a grant, reward or remuneration is payable. He distributes the salvage, bounty, and prize-money amongst the officers and crew entitled thereto; and as his sole remuneration in each case is paid a commission of 2½ per cent. on the amount actually distributable.

NEGLIGENCE may be considered as a test of either civil or criminal liability. As a test of criminal liability it need only be pointed out in this article that a gross and vicious disregard of the particular interests of others is not legally distinguishable, as a general rule, from a positive malicious intention to injure. Accordingly, where a man himself acts, or uses his own property carelessly and negligently, and without any care or caution not to injure others where injury is likely to ensue, he may be even criminally responsible for the consequences. Thus for example a trader may incur a criminal liability in case he should negligently sell an unwholesome article of food and an injury should result therefrom. And so may a contractor who so negligently constructs a building that it collapses and causes personal injuries; or a man who so negligently permits his house to fall into disrepair that some person is injured as a consequence. Negligence, considered as a cause of civil liability, is generally found in a breach of some duty or undertaking, express or implied. And ultimately the question of its existence is usually one of fact for a jury. The question may be either one of law, where the case falls within any general and settled rule or principle; or of fact, where no such rule or principle is applicable to the particular circumstances, and where therefore the conclusion of negligence in fact must be found, or excluded by the jury.

The remedy for an injury caused by negligence is an action for damages. A mere accident will not support an action, for if, in the prosecution of a lawful act, a purely accidental casualty arises, then, according to an American case, no action can be supported for an injury arising therefrom. In *Manzoni*

v. *Douglas* a horse, for some unaccountable reason, bolted with its carriage in a public highway and knocked down and injured a lady who was passing. She was unable to recover damages, for, in the words of Mr. Justice Lindley, "to hold that the mere fact of a horse bolting is *per se* evidence of negligence would be mere reckless guesswork." But leaving the cases where the *primâ facie* accidental circumstances have excluded any presumption of negligence, it is useful to stay and remark some cases in which *res ipsa loquitur*—the casualty itself raises the presumption of negligence, excluding that of pure accident, and lays upon the person sued the burden of rebutting the presumption of negligence. In *Kearney* v. *L. B. & S. C. Ry.*, where a man was quietly walking under a bridge belonging to the defendants and a brick fell out of it upon him and caused serious injury, it was held that the mere unexplained fact of the accident happening at all was *primâ facie* evidence of negligence. And so was it in *Byrne* v. *Boadle*, where a barrel of flour fell from the third floor of a Liverpool flour dealer's premises and pitched upon the head of a harmless pedestrian below; and so also in *Scott* v. *London Docks Co.*, where a bag of sugar fell from a crane on to a man beneath.

But it is for the judge to decide whether in a particular case there is any evidence at all from which negligence can be reasonably inferred; the jury decide, if the judge allows the case to reach them, whether such negligence ought to be inferred. In an action against a jobmaster for negligence, proof that the carriage broke down, and that the plaintiff was greatly bruised, is *primâ facie* evidence that the injury arose from the unskilfulness of the driver, or the insufficiency of the carriage (*Christie* v. *Griggs*); so that if, whilst the carriage is being properly used for its purpose, it breaks down, it becomes incumbent on the person who has let it out to show that the breakdown was in the proper sense of the word an accident not preventible by any care or skill: no proof short of this will exonerate him (*Hyman* v. *Nye*). The duty of a railway company in regard to the safety of a passenger is laid down, in *Redhead* v. *Midland Railway Co.*, as being "to take due care (including in that term the use of skill and foresight) to carry the passenger safely, and is not a warranty that the carriage in which he travels shall be in all respects fit for its purpose." Accordingly, as in the last-mentioned case, a company would not be liable to a passenger for damages in respect of injuries caused by his carriage leaving the metals and being upset, if the sole cause of the accident was the tyre of a wheel breaking because of a latent defect which could not be attributed to the fault of the manufacturer and could not be discovered before the breakage. If, however, a man sells an article with a specific warranty, and, in breach of that warranty, the article fails and causes an injury, the seller will be liable for the damages even though the defect that caused the failure was a latent one, and he himself had not been guilty of negligence (*Randall* v. *Newson*).

Trespassers and licensees are in a peculiar position in case they are injured whilst on the property of another. And it is only reasonable, with regard to a trespasser, that he should not be able to claim damages because he has suffered an injury which he would not have suffered had he refrained from the trespass. If for example a tramp wanders without invitation or leave in the grounds of a wayside house, he has only himself to blame if he is injured by stumbling into a well negligently left uncovered by the owner.

But the owner of the premises would be liable to even such a trespasser as a tramp if the injury were caused by some act which is prohibited by statute. Should he leave a quarry unfenced within fifty yards of the highway, and a trespasser fall in and be injured, he will be liable for damages; so also may he if the trespasser is injured by a spring gun, for setting spring guns or man-traps is a misdemeanour, unless set for the protection of a house by night. But a licensee, such as a guest, is on a slightly better footing than a trespasser. A tradesman's servant, on the premises of his master's customer by lawful authority, is not a mere licensee of the customer (*Indermaur* v. *Dames*). He stands in the position of one who has a full right to adequate protection from the results of negligence. So, in fact, does any one who is on premises for business purposes by the invitation of the owner (*Heaven* v. *Pender*). In *Southcote* v. *Stanley* a man was not allowed damages against his friend at whose house he had been injured by a loose pane of glass falling from a door. But probably he would have been successful if the master of the house had known that the pane was loose, that his visitor was likely to open the door and cause it to fall out, and that the visitor did not know of the defect—provided, of course, that the visitor had not been particularly warned. It was suggested in that case by Baron Bramwell that though a licensor might be liable to his licensee for the results of wrongful acts of commission, yet he was not liable for acts of omission. Said his lordship: "If a person asked another to walk in his garden, in which he had placed spring guns or man-traps, and the latter, not being aware of it, was thereby injured, that would be an act of commission. But if a person asked a visitor to sleep at his house, and omitted to see that the sheets were properly aired, whereby the visitor caught cold, he could maintain no action, for there was no act of commission, but simply an act of omission."

Contributory negligence.—It frequently happens that a person who suffers an injury through the negligence of another has himself been guilty of a negligence which contributed to the casualty. In such a case the injured person is said to have been guilty of contributory negligence. If he brings an action against the party who inflicted the injury, the defendant is entitled to plead that contributory negligence as a defence, and it then becomes a question whether, in view of the particular circumstances of the case, the defence is a valid one. And it will not be a valid defence to the plaintiff's claim if the defendant could have averted the casualty by exercising ordinary care, notwithstanding the plaintiff had contributed thereto by his own negligence. If for example an ass is wrongfully loose on a highway, and some person should be driving too fast, "or, which is the same thing, at a smartish pace," and consequently injure the ass, that person will be liable therefor to the owner of the animal. "For although the ass may have been wrongfully there," said Baron Parke in *Davies* v. *Mann*, "still the defendant was bound to go along the road at such a pace as would be likely to prevent mischief. Were this not so, a man might justify the driving over goods left on a public highway, or even over a man lying asleep there, or the purposely running against a carriage going on the wrong side of the road." The onus of proving affirmatively that there was contributory negligence on the part of the person injured, rests in the first instance upon the defendant, so that in the absence of evidence tending to that conclusion the plaintiff is not bound

to prove the negative (*Wakelin* v. *London and South-Western Railway Co.*). In the case of *The Bernina*, Lord-Justice Lindley reduced actions for negligence into three classes. Thus —(1) If A. without fault of his own, is injured by the negligence of B., then B. is liable to A. (2) If A., by his own fault, is injured by B. who has committed no fault, then B. is not liable to A. Class 3 is made up of cases in which A. is injured by B. as a consequence of the fault more or less of both combined—cases in which the question of contributory negligence may arise. In this class of case the following further distinctions must be made—(*a*) If notwithstanding B.'s negligence, A. with reasonable care could have avoided the injury, he cannot sue B. (*Butterfield* v. *Forrester*; *Bridge* v. *Grand Junction Railway Co.*; *Dowell* v. *General Steam Navigation Co.*); (*b*) If, notwithstanding A.'s negligence, B. with reasonable care could have avoided injuring A., the latter can sue B. (*Tuff* v. *Warman*; *Radley* v. *London and North-Western Railway Co.*; *Davies* v. *Mann*); (*c*) If there had been as much want of reasonable care on A.'s part as on B.'s; or, in other words, if the proximate cause of the injury is the want of reasonable care on both sides, A. cannot sue B.—in such a case A. cannot with truth say that he has been injured by B.'s negligence, he can only with truth say that he has been injured by his own carelessness and B.'s negligence, and the two combined give no cause of action at common law. To sum up, contributory negligence on the part of the person injured does not exonerate the person inflicting the injury and disentitle the person injured from recovering damages; provided, however, it can be shown that the person inflicting the injury might, by the exercise of reasonable care and prudence, have avoided the consequences of the negligence of the person injured. *See* DAMAGES.

NEGOTIABLE INSTRUMENTS.—"A negotiable instrument," writes His Honour Judge Willis in his work on *Negotiable Securities*, "is one the property in which is acquired by any one who takes it *bonâ fide* and for value, notwithstanding any defect of title in the person from whom he took it; from which it follows that an investment cannot be negotiable unless it is such and in such a state that the true owner could transfer the contract or engagement contained therein by simple delivery of the instrument." A bill of exchange or a cheque may be taken as the most generally known form of a negotiable instrument. But in the light of the above definition, it is evident that a bill or cheque is not necessarily a negotiable instrument; it is essential that the bill or cheque should be "such and in such a state" that the true owner can transfer the contract contained therein by simply delivering the instrument to some person or other. It is obvious that he cannot do this if the bill or cheque is payable to "A. B. or order" and A. B. has not indorsed it, for without such an indorsement there can be no transfer of the contract represented by the document. When, however, the bill or cheque has been indorsed by A. B. without restriction, it becomes a negotiable instrument, for the contract it represents is thenceforth, so long as no subsequent holder restricts the transfer by indorsement, freely transferable by delivery simply. Consequently a bill or cheque payable "to bearer," or to "A. B. or bearer" is, as it stands, a complete negotiable instrument. As completely so as a Bank of England note, which is perhaps the best illustration of such an instrument. In general parlance, however, an instrument is called "negotiable" if it is one belonging to a class capable

of negotiation in the strict sense of the word. Negotiable instruments have their original sanction in mercantile usage, and to-day they have effect either by the authority of the law itself, in ratification of mercantile usage, or by that usage only. The importance of this subject to the man of business is such that there is adequate warrant for here introducing an authoritative account of the nature and history of negotiable instruments, the account being an adapted and abridged extract from the judgment of Chief Justice Cockburn in the case of *Goodwin* v. *Robarts*.

There is no absolute need that an instrument, in order to be capable of negotiability by the law merchant, should strictly adhere to any old-time mercantile form. It may not contain a direct promise to pay money, but only a promise to give security for money, yet it may be a negotiable instrument. Any opinion to the contrary is founded on the view that the law merchant is fixed and stereotyped, and incapable of being expanded and enlarged so as to meet the wants and requirements of trade in the varying circumstances of commerce. It is true that the law merchant is sometimes spoken of as a fixed body of law, forming part of the common law, and as it were coeval with it. But as a matter of legal history, this view is altogether incorrect. The law merchant thus spoken of with reference to bills of exchange and other negotiable securities, though forming part of the general body of the *lex mercatoria*, is of comparatively recent origin. It is neither more nor less than the usages of merchants and traders in the different departments of trade, ratified by the decisions of Courts of law, which, upon such usages being proved before them, have adopted them as settled law with a view to the interests of trade and the public convenience, the Court proceeding herein on the well-known principle of law that, with reference to transactions in the different departments of trade, Courts of law, in giving effect to the contracts and dealings of the parties, will assume that the latter have dealt with one another upon the footing of any custom or usage prevailing generally in the particular department. Accordingly, "when a general usage has been judicially ascertained and established," said Lord Campbell, in *Brandao* v. *Barnett*, "it becomes a part of the law merchant, which Courts of justice are bound to know and recognise." Bills of exchange are known to be of comparatively modern origin, having been first brought into use by the Florentines in the twelfth century. In the time of Edward IV. promissory notes, payable to bearer, or to a man and his assigns, were known in this country; and though a statute of Richard II. expressly refers to bills of exchange as a means of conveying money out of the realm, yet, so late as the seventeenth century, there is no doubt that they were not very largely in use in England among merchants. With the development of English commerce their use would of course increase, yet the earliest case on the subject to be found in the English books is one of the reign of James I. Up to this time the practice of making these bills negotiable by indorsement had been unknown, and the earlier bills are found to be payable to a man and his assigns, though in some instances to bearer. But about the commencement of the seventeenth century the practice of making bills payable to order, and transferring them by indorsement, took its rise; and from its obvious convenience this practice speedily came into general use, and, as part of the general custom of merchants, received the sanction of our Courts. At first the use of bills of exchange seems to have been confined to foreign bills between English and foreign merchants. It was afterwards extended to domestic bills between traders, and finally to bills of all persons whether traders or not. In the meantime promissory notes had also come into use, differing herein from

bills of exchange that they were not drawn upon a third party, but contained a simple promise to pay by the maker, resting therefore upon the security of the maker alone. They were at first made payable to bearer, but when the practice of making bills of exchange payable to order, and making them transferable by indorsement, had once become established, the practice of making promissory notes payable to order, and of transferring them by indorsement, as had been done with bills of exchange, speedily prevailed. For some time the courts of law acted upon the usage with reference to promissory notes, as well as with reference to bills of exchange. But in the time of Chief Justice Holt a somewhat unseemly conflict arose between him and the merchants as to the negotiability of promissory notes, whether payable to order or to bearer, the Chief Justice taking what must now be admitted to have been a narrow-minded view of the matter, setting his face strongly against the negotiability of the instruments, contrary, as we are told by authority, to the opinion of Westminster Hall, and in a series of successive cases persisting in holding them not to be negotiable by indorsement or delivery. The inconvenience to trade arising therefrom led to the passing of a statute of Anne, whereby promissory notes were made capable of being assigned by indorsement, or made payable to bearer, and such assignment was thus rendered valid beyond dispute or difficulty. Then came the epoch when a new form of security for money, namely goldsmiths' or bankers' notes, came into general use. Holding them to be part of the currency of the country, as cash, Lord Mansfield had no difficulty in holding, in *Miller* v. *Race*, that the property in such a note passes, like that in cash, by delivery, and that a party taking it *bonâ fide* and for value, is consequently entitled to hold it against a former owner from whom it has been stolen. In like manner it was held, in *Collins* v. *Martin*, that where bills indorsed in blank had been deposited with a banker, to be received when due, and the latter had pledged them with another banker as security for a loan, the owner could not maintain an action to recover them from the holder. Both these decisions of course proceeded on the ground that the property in the bank-note payable to bearer passed by delivery, that in the bill of exchange by indorsement in blank, provided the acquisition had been *bonâ fide*. A similar question arose in *Wookey* v. *Pole*, in respect of an exchequer bill, notoriously a security of modern growth. These securities being made in favour of blank or order, contained this clause, "If the blank is not filled up the bill will be paid to bearer." Such an exchequer bill having been placed, without the blank being filled up, in the hands of the plaintiff's agent, had been deposited by him with the defendants on a *bonâ fide* advance of money. It was held, in favour of the defendants, that the bill was a negotiable instrument. Such a decision, and indeed all the decisions in favour of the negotiability of mercantile instruments, proceed, according to the judgment of Mr. Justice Holroyd in that case, "upon the nature of the property (*i.e.* money) to which such instruments give the right, and which is in itself current, and the effect of the instruments, which either give to their holders, merely as such, a right to receive the money, or specify them as the persons entitled to receive it." Another very remarkable instance of the efficacy of usage is to be found, in much more recent times, in the use of the cheque. Instead of the banker using his own notes in return for the money of the customer deposited with him, he gives credit in account to the depositor, and leaves it to the latter to draw upon him, to bearer or order, by an instrument called a cheque. Upon this state of things the general course of dealing between bankers and their customers has attached incidents previously unknown, and these by the decisions of the Courts have become fixed law. Thus while an ordinary drawee, although in admitted possession of funds of the drawer, is not

bound to accept, unless by his own agreement or consent, the banker, if he has funds, is bound to pay on presentation of a cheque on demand. Besides this, a custom has grown up among bankers themselves of marking cheques as good for the purposes of clearances, by which they become bound to one another. Mercantile usage having thus rendered negotiable the instruments already referred to, but circumstances having changed and the forms of instruments with them, the question arose whether a new usage which had sprung up under altered circumstances was to be less admissible than the usages of past times. This was the question that came before the Chief Justice in the case of *Brandao v. Barnett*, and which he answered to the effect set out in the earlier part of this article. The particular question in the case was whether scrip can constitute a legally negotiable instrument when it is issued in England by the agent of a foreign government in order to entitle the holder, on payment in full of his instalments, to delivery by the agent of definitive bonds of the foreign government, such scrip being already negotiable by mercantile usage. And *see* BILLS OF LADING; DOCK WARRANT.

NEUTRALITY is the relation a nation bears to other nations which are at war one with the other, and consists of the entire abstinence of that nation from any participation in the war, and an impartiality of conduct towards each belligerent. This relation may have a material effect upon the commerce of the neutral nation. If its subjects engage with a belligerent in a commerce of goods which are contraband of war, the nation cannot object to a prevention of that commerce; nor has it any ground of complaint if a subject's property is seized in consequence of his attempt to commit a breach of blockade; nor if a belligerent exercises the right of search. The Foreign Enlistment Act, 1870, contains some important provisions relating to this subject. Not only does it impose penalties on British subjects who enlist in the service of a foreign State at war with a State friendly with this country, and on any subject who leaves his Majesty's dominions with a view to such service, but it also penalises any person who induces either of the above offences, or who persuades any one to leave the dominions under false representations as to service. Of more practical importance to the commercial man, however, are some other provisions of the Act. The master or owner of a ship incurs a heavy penalty if, without licence, he takes on board any illegally enlisted persons; and, moreover, the ship will be detained until his conviction or acquittal, or until he has given security for the penalties. *Illegal shipbuilding and illegal expeditions.*—No one within the dominions of the King may build or agree to build a ship with the intent, or having reasonable cause to believe, that she will be employed in the military or naval service of a foreign State at war with a friendly State, unless he has first obtained the licence of the Crown. Nor can any one issue or deliver a commission for a ship with a like intent or cause of belief; nor so equip a ship; nor so despatch a ship, or cause or allow her to be despatched. The penalty for contravention is a fine and hard labour, and the ship in respect of which the offence is committed, and her equipment, will be forfeited to the Crown. But, subject to certain conditions, no one will be liable in respect of the foregoing offences if the acts constituting them have been done in pursuance of a contract made before the commencement of the war. These conditions are:—(1) If the person concerned forthwith upon the proclamation of

neutrality gives notice to the Secretary of State that he is building, causing to be built, or equipping the ship, and furnishes such particulars of the contract, and of any matters relating to, or done, or to be done under the contract as he may be required; (2) If he gives such security, and takes and permits to be taken such other measures, if any, as the Secretary of State may prescribe for ensuring that the ship will not be despatched, delivered, or removed without the licence of his Majesty until the termination of the war. *Presumption as to evidence.*—"Where any ship is built by order or on behalf of any foreign State when at war with a friendly State, or delivered to or to the order of such foreign State or any person who to the knowledge of the person building is an agent of such foreign State, or is paid for by such foreign State or such agent, and is employed in the military or naval service of such foreign State, such ship shall, until the contrary is proved, be deemed to have been built with a view to being so employed, and the burden shall lie on the builder of such ship of proving that he did not know that the ship was intended to be so employed in the military or naval service of such foreign State." *Aiding warlike equipment*, if done within the British dominions without the licence of the King, is also the subject of fine and imprisonment. This offence may consist of adding to the number of guns, or changing those on board for other guns, or adding, or being knowingly concerned in adding any war equipment to the warlike force of a ship which at the time of her being within these dominions was a ship in the military or naval service of a foreign State at war with a State friendly to Great Britain.

NEWSPAPERS and PERIODICALS.—A newspaper is a publication containing a narrative of recent events and occurrences, published regularly at short intervals from time to time. In the Newspaper Libel and Registration Act, 1881, the word newspaper is defined as meaning "any paper containing public news, intelligence, or occurrences, or any remarks or observations therein printed for sale, and published in England or Ireland periodically, or in parts or numbers at intervals not exceeding twenty-six days between the publication of any two such papers, parts, or numbers. Also any paper printed in order to be dispersed, and made public weekly or oftener, or at intervals not exceeding twenty-six days, containing only or principally advertisements." The place of publication, according to decisions in the United States Courts, is where the paper is first issued—that is, given to the public for circulation, and not the place where the paper may be sent for distribution. Thus, where the paper is set up in one place and the press work is done in another, the former would be the place of publication; and a paper, even though composed partly of a "patent insider" set up in another place, would still be published in the place where issued.

Printer's name.—Until the year 1869 when, as a consequence of the actions brought against Mr. Bradlaugh, the Newspapers, Printers and Reading Rooms Repeal Act was passed, there was a large number of statutes on the roll which aimed at the prevention of sedition, blasphemy and libel by means of repressive and restrictive measures against newspapers. That Act, however, by repealing those statutes, freed the newspapers from the oppressive stamp duties and also from the many unreasonable old restrictions. But some of those restrictions were expressly preserved so far as they related to disclosure of the names of the printers of newspapers. A summary of that part of the old legislation thus preserved will be found in the article on PRINTERS.

Registration.—By the Act of 1881 (which does not extend to Scotland) certain statutory provision was made for the registration of newspaper proprietors, the word "proprietor" being explained as meaning and including "as well the sole proprietor of any newspaper, as also in the case of a divided proprietorship the persons who, as partners or otherwise, represent and are responsible for any share or interest in the newspaper as between themselves and the persons in like manner representing or responsible for the other shares or interests therein, and no other person." A register of such proprietors was established under the superintendence of a registrar and the control of the Board of Trade, and the printer and publisher of every newspaper is now required to make a certain return to the Registry Office at Somerset House in each month of July. This return should be made in the prescribed form, and in every case must state: (*a*) the title of the newspaper; and (*b*) the names of all its proprietors, together with their respective occupations, places of business (if any), and places of residence. It should be noted, however, that the Act expressly enacts that these provisions as to registration of newspaper proprietors are not to apply to a newspaper belonging to a company registered under the Companies Acts. And, moreover, the Act allows the Board of Trade to authorise the registration of a newspaper in the name or names of only one or a few "responsible" representatives of the proprietors in cases where the paper is owned by several; but the Board will not authorise such a registration unless inconvenience may arise or be caused from the registry of the names of all the proprietors of the newspaper, either owing to minority, coverture, absence from the United Kingdom, minute subdivision of shares, or other special circumstances. If the annual return of a newspaper is not duly made within one month after the specified time the printer and publisher become liable to a penalty of £2.5, recoverable on summary conviction. And a penalty of £100 is incurred by any one who knowingly and wilfully makes a false return, that is to say, in the words of the Act, who "shall knowingly and wilfully make or cause to be made any return by this Act required or permitted to be made in which shall be inserted or set forth the name of any person as a proprietor of a newspaper who shall not be a proprietor thereof, or in which there shall be any misrepresentation, or from which there shall be any omission in respect of any of the particulars by this Act required to be contained therein, whereby such return shall be misleading." And a like penalty is inflicted upon a proprietor of a newspaper who shall "knowingly and wilfully permit any such return to be made which shall be misleading as to any of the particulars with reference to his own name, occupation, place of business (if any) or place of residence." That no one should err through ignorance, the Act particularly defines the word "occupation" as a person's trade or following, and if none, then his rank or usual title, as esquire, gentleman; and the phrase "place of residence" as including the street, square, or place where the person to whom it refers resides, and the number (if any) or other designation of the house in which he so resides. In the case of a transfer or transmission of or dealing with a share of or interest in a newspaper whereby some person ceases to be a proprietor, or a new proprietor is introduced, it is open to any party to the transaction to make at any time a return as to the change. All the prescribed returns are entered in a book called *The Register of Newspaper Proprietors*, and which is open to the inspection of any member of the public during the hours of business of the registry office. Any one has a right to an officially certified copy of an entry in or extract from the book. Such a copy is received in a court of law as conclusive evidence of the contents of the register, so far as they appear in the copy, and as *primâ facie* evidence of the truth of the statements therein, unless and until the contrary is shown.

Libel.—The repeal of the old Acts gave liberty to the press, but it did not give, or assume to give the press a greater measure of liberty than that enjoyed by the public generally. The Act of 1881, as amended and improved upon by a later one of 1888, did, however, provide a reasonable exceptional protection to newspapers in regard to criminal prosecutions. Thus the Act of 1888 prohibits such a prosecution being commenced against "any proprietor, publisher, editor, or any person responsible for the publication of a newspaper for any libel published therein without the order of a judge at chambers being first had and obtained." The application to the judge must be preceded by notice to the person accused, so that he may have an opportunity to oppose the granting of the order. If the prosecution is allowed to proceed, the court of summary jurisdiction before which the case is then brought is entitled to inquire into the question whether the libel was for the public benefit or was true. The section of the Act of 1881 which deals with this inquiry by the summary court is very important. It runs as follows:—"A court of summary jurisdiction, upon the hearing of a charge against a proprietor, publisher, or editor, or any person responsible for the publication of a newspaper, for a libel published therein, may receive evidence as to the publication being for the public benefit, and as to the matters charged in the libel being true, and as to the report being fair and accurate, and published without malice, and as to any matter which under this or any other Act [it is a defence under Lord Campbell's Act that the publication was for the public benefit —*see* LIBEL], or otherwise, might be given in evidence by way of defence by the person charged on his trial on indictment; and the Court, if of opinion after hearing such evidence that there is a strong or probable presumption that the jury on the trial would acquit the person charged, may dismiss the case." Further, the Court may deal with a case summarily if it considers that though the accused person is shown to have been guilty, yet the libel was of a trivial character, and that the offence may be adequately punished by the infliction of a fine not exceeding £50, provided the accused consents to being so dealt with summarily. As a preliminary to dealing summarily with the case, the Court must have the charge reduced into writing, and read to the accused. Thereupon the Court should put this question to him: "Do you desire to be tried by a jury, or do you consent to the case being dealt with summarily?" Upon this question being so put to him the accused must either assent or dissent, and, according to his answer, so the Court will deal with the case. A prosecution for libel comes within the VEXATIOUS INDICTMENT (*q.v.*) Act.

Copyright is a matter of very considerable importance in connection with newspaper enterprise, the protection of the copyright law being extended to newspapers, magazines, and other periodicals by the COPYRIGHT (*q.v.*) Act, 1911.

Registration.—This protection can now be claimed, and the aid of the Courts invoked, without any registration of the newspaper.

Subject matter of Copyright.—It has been held, in *Cox* v. *Land and Water*, that "a list of hounds" is of so changeable a character, and can be so easily procured as to be of insufficient importance to warrant the Court exercising its powers and restraining a piracy. But the Court would doubtless promptly interfere to restrain even a slight trespass of a newspaper proprietor's rights if it were not a merely casual one, occurring now and again at long intervals, and not likely to be repeated, but a deliberate and persistent abstraction of matter. And this is so notwithstanding the general principle that there is no copyright in news, for there can most certainly be a copyright in a literary composition, that is to say, in the particular forms of language or modes of expression by which information is conveyed, and not the less so because the information may be with respect to the current events of the day. Such was the

decision in *Walter* v. *Steinkopff*, wherein it was contended, in addition to the point that there can be no copyright in news, that there was a practice by newspapers to copy from other newspapers, and that this practice should be recognised by the Court as a defence to an action for infringement of copyright. With regard to the question of copying, Mr. Justice North made the following remarks: "The principal ground upon which the defendants attempt to justify what has been done is the alleged existence of a well-recognised general custom—a universal mutual understanding of journalists—a tacit convention to which the *Times* was a party—that one paper may copy from another without asking for permission, and that the consent of the proprietors of the paper copied may be taken for granted" if certain conditions are observed. The first of these conditions is that the source from which the quotation or information is taken should be duly acknowledged; the second, that the paper copying, and the paper copied, must not be direct rivals or competitors, as for instance two evening newspapers in the same town; the third, that the paper copied from has at some time itself taken matter from the other, whereby they have impliedly agreed to an interchange of literary matter. With regard to proof of compliance with these three conditions the defendants broke down altogether. "But even if all the alleged conditions had been complied with, what the defendants have done with respect to articles or paragraphs in which the *Times* has copyright is wholly incapable of justification in point of law. The plea of the existence of such custom, or habit, or practice of copying as is set up can no more be supported when challenged than the highwayman's plea of the custom of Hounslow Heath. It has often been relied upon as a defence in such cases, but has always been repudiated by the Courts."

A *picture* or a cartoon published in a newspaper, and also one inserted therein as a supplement, though not physically attached to the paper itself, can be the subject of copyright as a part of the whole publication (*Comyns* v. *Hyde*). But with regard to a picture reproduced in a newspaper, the fact must not be overlooked that the copyright in it will be vested in the original artist, or some person deriving title under him. That copyright, however, as in the case of original articles from contributors, can be acquired by the newspaper proprietor, either by special agreement or by an implied condition in the terms of the employment of the artist and his remuneration. If the newspaper proprietor has not legally acquired the copyright or a right to reproduce a picture, then he cannot lawfully publish or reproduce it. Should he do so, the owner of the copyright can proceed against him for infringement. And he is liable to such proceedings even though his acts were innocent, in the sense that he had no intention to pirate the original picture, and he has reproduced it under a mistaken apprehension of his rights. If, for example, some living pictures exhibited at a place of entertainment were, as they possibly might be, infringements of the copyright in the original pictures they represented, any one who represented in a periodical those living pictures in the form of sketches as a part of the news of the day, would be committing an infringement of the copyright; provided, of course, that the sketches were such faithful representations of the living pictures as to be themselves embodiments of the design of the originals (*Hanfstaengl* v. *Baines*). And it might be that though a particular living picture is not itself an infringement of the original, a sketch thereof is a sufficient representation of the original to justify the interference of the Court on behalf of the owner of the copyright of the original.

Articles.—Subject to the provisions of the Copyright Act, 1911, the author of a work is deemed to be the first owner of the copyright therein. But where he was in the employment of some other person under a contract of service or

apprenticeship and the work was made in the course of such employment, then, in the absence of any agreement to the contrary, the employer is deemed to be the first owner of the copyright. So, in the ordinary course of things, the copyright in the work of a member of the staff of the newspaper would vest and remain in the proprietor. Nevertheless, where there is no agreement to the contrary, the author has the right to restrain the publication of his work otherwise than as part of the newspaper. Articles in magazines or similar periodicals come within the same rule. A writer of periodical articles, if he desires to retain the copyright, should therefore be careful to have an express agreement to that effect. And it would also seem, on the authority of *Cox* v. *Cox*, that, apart from an express or implied agreement reserving to the author the copyright or some interest in it, the purchaser of the manuscript of the articles is entitled to alter and deal therewith as periodical articles in what manner he pleases. As against this, however, is the general principle, laid down in *Archbold* v. *Sweet*, that an author may maintain an action for an injury to his reputation against a publisher of an inaccurate edition of his work, falsely purporting to be by him, even though the publisher is the sole owner of the copyright. And his reputation may be injured in yet another way. He and his publisher may, for example, have contracted for the writing of a work of a popular nature, to be published in a periodical intended for a juvenile class of readers; under such circumstances the publisher cannot, without the consent of the author, publish the work only in a separate and distinct form, and so render the author liable to be judged by more severe rules than would be applied to a familiar work intended merely for children. This opinion was incidentally expressed by Chief-Justice Tindal, in *Planché* v. *Colburn*, a case which decided a point very useful to periodical proprietors and contributors. There, C. engaged P. to write a treatise for a periodical publication; P. commenced the treatise, but before he had completed it, C. abandoned the periodical; it was held that P. might sue for compensation, and that without even tendering or delivering the treatise.

What a literary composition is.—It has already been stated that there is copyright in the news of the day, so far as the mode of expression of that news is concerned. And this is all that can safely be said, for the Courts have declined to define in general terms what amounts to a literary composition. In *Chilton* v. *Progress Printing and Publishing Co.* the plaintiff published a weekly periodical, inserting in each issue, under the heading, "One Horse Selections," a list of horses expected to win certain races. The defendants having published a somewhat similar list under the title, "The Specials, One Horse Finals," the plaintiff claimed copyright in his list and proceeded against the defendants in respect of an alleged infringement. But he failed in his action. In the Court of Appeal Lord Halsbury said: "I have not been able to entertain a doubt that there is no copyright in this thing, notwithstanding the ingenious argument pressed upon us. It is really difficult to know by what name to describe it. What is really sought to be restrained is the publication of the fact that this gentleman, who is supposed to have good judgment as to winning horses, has expressed an opinion that this horse or that horse will win. It is idle to speak of this as something in the nature of literary composition such as is intended to be protected by the Copyright Act. It is not the form of printed words into which this gentleman

has cast the result of his investigation which is sought to be protected. What is really sought to be protected is his opinion; and he has published his opinion, which is susceptible of being handed down from one person to another in any way, it is admitted, except in writing. But it is contended by the applicant that if any person chooses to print it, and thereby make a copy of it, that is an infringement. . . . I am of opinion . . . there is nothing here which ought to be protected, and that there is no subject-matter of copyright."

Reports of Public Speeches.—It was decided, in *Walter* v. *Lane*, that a newspaper can have a copyright in its verbatim report of a public speech; the reporter is the "author" of the report within the meaning of the Copyright Act, and it is through him that the newspaper proprietor derives his title to the copyright. There the plaintiffs, as proprietors of the *Times*, had published reports of certain public speeches of Lord Rosebery, the reports having been taken by reporters who were employed on the terms that the copyright in all reports and articles composed by them for the *Times* should belong to the proprietors. The defendant had published a book containing, without the permission of the *Times*, identical reproductions of those reports. The *Times* thereupon took proceedings—successfully—for infringement of copyright. Lord Rosebery made no claim. In the course of his judgment, Lord Davey said that in his opinion "the reporter is the author of his own report. He it was who brought into existence in the form of a writing the piece of letterpress which the respondent has copied. I think also that he and he alone composed his report. The materials for his composition were his notes, which were his own property, aided to some extent by his memory and trained judgment. Owing to the perfection which the art of shorthand writing has attained in recent years, memory and judgment bear a less important part in the composition of a report of a speech than was formerly the case. But the question whether the composer has copyright in his report does not seem to me to vary inversely with or depend on his skill in stenography. Nor, as it appears to me, does the fact that the subject-matter of the report had been made public property, or that no originality or literary skill was demanded for the composition of the report, have anything to do with the matter. . . . It was of course open to any other reporter to compose his own report of Lord Rosebery's speech, and to any other newspaper or book to publish that report; but it is a sound principle that a man shall not avail himself of another's skill, labour, and expense by copying the written product thereof." But as against the orator a newspaper has no right to publish his public deliverances, except in the case of political speeches. In respect to such speeches when delivered at public meetings the Copyright Act 1911, sect. 20, expressly provides that it shall not be an infringement of the author's copyright to publish a report thereof in a newspaper.

Reports of the proceedings of Public Authorities.—Representatives of the press are entitled to admission to the meetings, other than a committee meeting, of every local authority, though they may be temporarily excluded by a resolution of a majority of members present where, in view of the special nature of the business then being dealt with, or about to be dealt with, such exclusion is advisable in the public interest.

Reporting Lectures.—A public lecture can be lawfully reported in a newspaper

or other publication only when the lecture does not come within the protection of the Copyright Act 1911, sect. 2 (1) (v), or when the lecturer has given his consent to the publication. In order to obtain this statutory protection in respect of a lecture, the report must be prohibited by conspicuous written or printed notice affixed before and maintained during the lecture at or about the main entrance of the building in which the lecture is given, and, except whilst the building is being used for public worship, in a position near the lecturer. But nothing in the foregoing is to affect the right of a newspaper to publish a summary of such a lecture. Once within the protection of the statute the author of the lecture, or his assignees, have the sole right of publishing it. But after copyright in the lecture has expired then any one may publish. In the case of *Caird* v. *Sime*, a professor was held entitled to restrain the publication, without his consent, of lectures delivered by him in his class-room at a university. The protection afforded to a lecture extends even so far as the prohibition of its publication in shorthand characters, as in the case of *Nicols* v. *Pitman*.

Reporting Summaries.—There is no infringement of copyright in any fair dealing with any work for the purposes of private study, research, criticism, review, or newspaper summary.

Reporting Trials.—The press may be excluded from a trial for incest.

News Agencies.—In *Exchange Telegraph Co.* v. *Gregory & Co.*, where the plaintiffs were the purchasers from the Committee of the London Stock Exchange of certain unpublished information in the nature of the prices of stocks and shares, collected originally by that committee, and the defendants had surreptitiously obtained the same information and were publishing it, the plaintiffs were held entitled to restrain the defendants from continuing to collect and publish the information. A somewhat similar case was that of *Exchange Telegraph Co.* v. *Central News*, the essential difference being that the information published by the plaintiffs was originally public property, such for example as the result of a horse race. The plaintiffs carried on the business of a telegraphic news agency in London, collecting news of different kinds, and by means of telegraphic apparatus, including a tape machine, communicating that news to subscribers. The latter contracted with the plaintiffs that they would not publish the news so recorded, or allow it to be published except within certain restricted limits. In breach, however, of this contract, and induced thereto by a third party, one of the subscribers communicated the news to the third party who published it for his own benefit. Upon the plaintiffs taking action the Court restrained the subscriber from communicating the news to any third party in breach of his contract, and also restrained the third party from inducing the subscriber to break his contract by supplying him with news with a view to publication. The defendants had urged that the news had become public property before it had been supplied to the subscriber. "But," said Mr. Justice Stirling, "the information was not made known to the whole world. . . . By the expenditure of labour and money the plaintiffs had acquired this information, and it was in their hands valuable property."

Newsvendors outside shops are not subject to the provisions of the Shops Act, 1911.

Wireless Telegraphy.—A newspaper may now, under the Wireless Telegraph

Act, 1904, obtain a special licence, at reduced terms, to establish and work a wireless telegraph station.

Name.—There is nothing analogous to copyright in the name of a newspaper (*Kelly* v. *Hutton*), but the proprietor has a right to prevent any other person from adopting the same name for any other similar publication (*ibid.*). This right is a "chattel interest" capable of assignment either by way of sale or mortgage. There is no need to register an assignment of a name at Stationers' Hall under the Copyright Act. If a name not precisely similar is adopted by a rival newspaper, the Court will not restrain its use in connection with that newspaper unless such use is likely to mislead the public to the prejudice of the original user. In considering whether there will be such an effect it is necessary to consider the degree of similarity between the two names, the class and appearance of the respective publications, and their respective prices and geographical spheres of circulation (*Bradbury* v. *Beeton*).

Generally.—In addition to the penal provisions referred to at the commencement of this article, it is incumbent upon a newspaper proprietor or printer to have some regard to the law relating to lotteries, betting, advertisements for stolen property, and to public morality generally. His criminal liability in respect of the lottery and betting laws has now been illustrated most clearly in such cases as those arising out of the Missing Word Competitions, Sun-Spots Searches, and the advertisements of both home and foreign bookmakers. And the problem of his responsibility in respect of cheating or fraudulent advertisements will no doubt call for an authoritative solution in the near future. If he inserts a fraudulent advertisement, knowing its true nature, or under such circumstances as thrust upon him the necessity for strict inquiry into its *bona fides*, it is impossible to doubt his co-responsibility therefor with the actual advertiser. Some other points in connection with newspapers may usefully be noticed. A newspaper proprietor is relieved by statute to a considerable extent from the rule, that a member of a local governing authority shall have no benefit or interest in contracts entered into by that authority; a newspaper proprietor who is a Town Councillor may therefore accept from the council, under certain conditions, advertisements for insertion in his own paper. Again, upon certain conditions being fulfilled, newspapers may be registered at the General Post Office to pass within the United Kingdom at the newspaper rate of postage, viz., ½d. for each copy. There is an annual fee of 5s. for this registration. The conditions are as follows:—1st, The publication must consist wholly or in great part of political or other news, or of articles relating thereto, or to other current topics, with or without advertisements: 2nd, It must be printed and published in the United Kingdom; and in numbers at intervals of not more than seven days: 3rd, The title and date of publication must be printed at the top of every page: 4th, A supplement must consist wholly or in great part of matter like that of a newspaper, or of advertisements printed on paper; or wholly or in part of engravings, &c., illustrative of articles in the newspaper; it must be published with the newspaper, and must have its title printed at the top of every page. A newspaper, or a packet of newspapers posted either unpaid or insufficiently paid, is chargeable with double the deficient postage. A newspaper must be prepaid, either by an adhesive stamp or by the use of a stamped wrapper. It must be posted either without a cover, or in a cover entirely open at both ends, and so that it can be easily removed for the purpose of examination; and it must be so folded as to admit of the title being readily seen. Nor may any enclosure (except supplements) be contained therein. No newspaper and no cover of a newspaper may bear anything (not being part of the newspaper) except the names and addresses of the sender and the addressee, a request for return in case of non-delivery, the title of the news-

paper, and a reference to any page of, or place in, the newspaper to which the attention of the addressee is directed.

NEW TRIAL.—A party to an action in the High Court who is dissatisfied with the result may, in certain cases, apply for and obtain a new trial. The application is to the Court of Appeal, and notice of it should be given to the other side within eight days after a trial in London and Middlesex, or, in the case of a trial on circuit, within seven days after the last day of the sitting on circuits. The notice should state the grounds of the application, and whether all or part only of the verdict or findings is complained of. Upon the hearing of the application the Court of Appeal has power to enter a judgment, or allow an appeal instead of a new trial; it may also direct issues, or accounts and inquiries. A new trial is only granted upon certain special grounds. It will only be granted upon such grounds as the misdirection of the jury by the judge, or the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the judge at the trial was asked to leave to them; and then only when, in the opinion of the Court to which the application is made, some substantial wrong or miscarriage has been thereby occasioned in the trial. The Court exercises its discretion with very great caution. It has granted a new trial, however, in instances where the case has come on unexpectedly, and the defendant's witnesses were absent; and where the damages given by the jury were excessive; and where the judge nonsuited the plaintiff without hearing his evidence, and without the consent of his counsel. Perhaps the most successful ground of an application for a new trial is that the verdict of the jury was against the weight of the evidence. But it is a generally accepted principle that where a question of fact is left to a jury, and they have answered it reasonably, their verdict cannot be disturbed. If, however, their verdict is one that could not reasonably have been found if they had paid regard to all the facts of the particular case, the Court may order a new trial. The principles and practice of a new trial are practically the same in the County Court as in the High Court, except that the application therefor is made to the County Court itself. *See* ACTION.

NEXT FRIEND is the name given to the person who prosecutes legal proceedings on behalf of a litigant infant, lunatic, or other person not *sui juris*. He requires no order from the Court to so act, but before his name can be used in an action in the High Court as the next friend of an infant or other party, he must sign a written authority to the solicitor for that purpose, and this authority must be filed at the central office, or in the district registry if the cause is proceeding therein. It is he who has power to consent as to the mode of taking evidence, or as to any other procedure in the action. An infant defendant does not appear by a next friend, but by a guardian *ad litem*. No order for the appointment of such guardian is necessary, but the solicitor applying to enter the appearance must make and file a certain prescribed affidavit. A married woman cannot act either as next friend or guardian *ad litem*. No one can be made the next friend of a plaintiff under a disability without his own written consent. Should a next friend conduct an action improperly the Court has power to dismiss him from the suit. Any one who is asked to act as a next friend should remember that if he consents to act he will render himself personally liable to the defendant for the costs of the action, and of any unsuccessful or unnecessary application therein; but he

cannot be made to give security for costs, even if he is insolvent or impecunious, unless, perhaps, he is prosecuting an appeal. As a general rule he is *primâ facie* entitled to costs as between himself and the infant, but this rule is subject to important exceptions in many cases. *See* ACTION.

NIGHT WORK.—The night employment of male young persons in factories and workshops is only lawful within the limits prescribed by the Factory and Workshop Act, 1901. It is specifically allowed by that Act in blast furnaces, iron mills, letterpress printing works, and paper mills, subject, however, to certain conditions in the case of youths not under the age of fourteen years. These conditions are—(*a*) The period of employment must not exceed twelve consecutive hours, and must begin and end at the hour specified in a certain statutory notice; (*b*) The provisions of the Act relating to meal-times must be observed with the necessary modifications as to the hours at which they are fixed; (*c*) A youth employed during any part of the night must not be employed during any part of the twelve hours preceding or succeeding the period of employment; (*d*) He must not be employed on more than six nights or, in the case of blast furnaces or paper mills, seven nights in any two weeks; provided that this condition shall not prevent the employment of male young persons in three shifts of not more than eight hours each, if there is an interval of two unemployed shifts between each two shifts of employment; and (*e*) He must not be employed during the night in any process other than one incidental to the business of the factory as described in part 1 of the sixth schedule to the Act. The statutory provisions relating to the period of employment on Saturday, and to the allowance to young persons of whole or half-holidays, do not apply to a youth employed in day and night turns in compliance with the above conditions. Youths of the age of sixteen years and upwards may be employed by night in non-textile factories and workshops by special order of the Home Secretary; but before making the order he must be satisfied that the employment is necessary by reason of the nature of the business requiring the process to be carried on throughout the night, and that the employment will not injure the health of the youths employed. In glass works a youth of fourteen years and upwards may work according to the accustomed hours of the works, if he is employed in accordance with the following conditions:—(*a*) The total number of hours of the periods of employment must not exceed sixty in any one week; (*b*) The periods of employment must not exceed fourteen hours in four separate turns per week, or twelve hours in five separate turns per week, or ten hours in six separate turns per week, or any less number of hours in the accustomed number of separate turns per week, so that the turns do not exceed nine hours; (*c*) He must not work in any turn without an interval of time not less than one full turn; (*d*) He must not be employed continuously for more than five hours without an interval of at least half-an-hour for a meal; and (*e*) He must not be employed on a Sunday. In newspaper printing works, where the process is carried on on not more than two nights in the week, a youth above the age of sixteen years may be employed at night during not more than two nights in a week, as if he were no longer a young person. But notwithstanding this provision, he must not be employed more than twelve hours in any consecutive period of twenty-four hours.

Intermittent employment.—It might also be noted that the provisions of the Act relating to the period of employment for women do not apply to flax-

scutch mills which are conducted on the system of not employing either young persons or children therein, and which are worked intermittently and for periods only which do not exceed in the whole six months in any year. But such a mill is not deemed to be conducted on that system until the occupier has served on a factory inspector a notice of his intention to conduct the mill on the system. *See* FACTORIES.

NOTARY, or NOTARY PUBLIC, is a person whose chief business it is, in England, to authenticate and certify commercial documents intended to be used abroad, to note and protest bills of exchange, and to receive and take affidavits of shipmasters and seamen. In this part of his business a notary exercises an office which has practically an international authority and recognition, for it is originally derived from the universal usages of the law merchant. When, however, the functions of a notary include such acts as the preparation and custody of wills, mortgages, conveyances and other legal documents, his authority depends entirely upon the municipal law of the country in which he practises. The preparation of deeds and legal documents generally, in England, is practically the exclusive province of solicitors, to whom is largely resigned the exercise of any rights in this connection which barristers and notaries may possess. But solicitors have no position in this country as authorised custodians of legal documents. In France, however, and also in many other continental countries, the notaries occupy a position somewhat analogous to conveyancing solicitors in England. And this position is perhaps even a more responsible one than that of the English solicitors, inasmuch as the notaries are required to retain the custody of certain documents and hand to the parties merely copies thereof. Such notaries are probably the most representative of their profession—one of an antiquity which reaches back to the days of early Roman jurisprudence, and, in England, to the period of the Anglo-Saxon.

In England notaries are appointed by the Archbishop of Canterbury through the "Court of Faculties," which is called a court "although it holdeth no plea of controversie;" but the profession is mainly regulated by the Public Notaries Acts of 1801, 1833, and 1843. Before any person can be so appointed he must have served as an apprentice for not less than five years to a duly qualified notary; and during the whole of that period he must have been actually and exclusively employed in notarial practice by his master, unless the latter is also a solicitor, in which case the apprentice may also be employed in the practice of a solicitor. No one can become a notary within three miles of the City of London, or in Westminster, or Southwark, unless he is admitted to the freedom of the Scriveners' Company in London. But, without any necessity for such an apprenticeship as above-mentioned, any solicitor may be admitted as a notary if he resides at a greater distance from the Royal Exchange in London than ten miles, the admission, however, not conferring upon him any right to practise as a notary outside any specified limits, or within ten miles from London. This appointment of a solicitor is made by the Archbishop "upon being satisfied as well of the fitness of the person as of the expediency of the appointment," and so as to operate only "within any district in which it shall have been made to appear to the said master of the Court of Faculties that there is not (or shall not hereafter be) a sufficient number of such notaries public admitted, or to be admitted . . . for the due convenience and accommodation of such district." A notary

must not act or allow his name to be used for the profit of any unqualified person, or he will be struck off the roll, and be for ever after disabled from practising; and should an unauthorised person practise as a notary he will incur a penalty of £50.

The document or certificate in which a notary publishes his authentication is known as a *notarial act*, and consists of three parts. In the first part are stated the title, time, and place, and the names of the notary and witnesses; in the second is described the nature of the transaction the subject of the act, whenever possible by means of a copy of the document containing the transaction; and in the third part there is appended a statement that the act has been read to the parties and approved and signed by them, and finally the signature and seal of the notary. Merchants throughout the world, as between themselves, generally accept a notarial act as sufficient evidence of the matters it certifies or authenticates. An underwriter, for example, would therefore generally accept, without further inquiry, a foreign notary's certification of dealings with the subject-matter of the insurance; and a man of business, as a rule, would act upon a power of attorney which had been acknowledged before a foreign notary and made the subject of a notarial act. And the courts of many foreign countries would probably pay a like respect to the seal of a notary. But according to the law of England the mere production of a certificate of a notary public, stating that a deed had been executed before him, would not in any way dispense with the proper evidence of the execution of the deed. An affidavit in an action in an English Court may be sworn, however, before a duly authorised foreign notary, and it will be received in evidence here if accompanied by a verification.

NOVATION is a term derived from the Civil Law. It is applied when, there being a contract already in existence, some new contract is substituted for it, either between the same parties or between different parties; the consideration mutually being the discharge of the old contract. Suppose, for instance, that A. owes B. £100, and B. owes C. £100, and the three meet, and it is agreed between them that A. shall pay C. the £100; B.'s debt is extinguished, there has been a novation, and C. may recover the £100 from A. (*Tatlock* v. *Harris*). But every case of novation is not exactly like that. It is most frequently found in connection with partnerships. A common instance of such a case is where upon the dissolution of a partnership the persons who are going to continue in business agree and undertake, as between themselves and the retiring partner, that they will assume and discharge the whole liabilities of the business, usually taking over the assets; and if in that case they gave notice of that arrangement to a creditor, and ask for his accession to it, there becomes a contract between the creditor who accedes and the new firm, to the effect that he will accept their liability instead of the old liability, and on the other hand that they promise to pay him for that consideration (Lord Selborne in *Scarfe* v. *Jardine*). It is not necessary that there should be an express contract in order to create a novation in respect of a partnership liability, provided there is sufficient proof in the dealings and transactions of the several parties, to show that the new firm on its formation adopted the liabilities of the old firm, and that the particular creditor had consented to accept the liability of the new firm, and to discharge the old firm, his original debtor. This was the decision in *Rolfe* v. *Flower*, in which case the creditors of the old firm, knowing of a change of partnership, and that the new part-

ners had taken over all the assets and had agreed to be subject to all the liabilities of the former firm, not only continued their dealings with the new firm upon the same footing as with the old, and received payment of a portion of their debt out of the blended assets of the old and new firms, but themselves proved that from the time when they understood that the new partners took over all the assets and became subject to all the liabilities of the preceding firm, they "thenceforth treated the partners in that firm as their debtors, in respect of the debt owing to them at the time of the creation of that firm, or of so much thereof as for the time being remained due." In a case arising out of the suspension of payment by a bank carried on by a partnership firm, it was held (*In re Head; Head* v. *Head*) that the acceptance by a customer, from the surviving partner, of a fresh deposit note for the balance of a debt due from a firm, one of whose partners is dead, is not sufficient evidence of novation to discharge the estate of the deceased partner. When a debt is extinguished by novation the liability of a surety in respect thereof is discharged also, for the absolute release of a principal debtor extinguishes the remedy against the surety (*Commercial Bank of Tasmania* v. *Jones*). The consideration for a novation is the extinction of the original contract, and the assent of the parties thereto and to the substituted contract. *See* CONTRACT; EQUITABLE ASSIGNMENT; CHOSE IN ACTION.

NUISANCE is a legal term signifying an unlawful act or omission which occasions annoyance, damage, or inconvenience to others. Nuisances may either be illegal acts or omissions of legal duties. They are of two kinds—public nuisances which affect all persons, and private nuisances which injure individuals.

Among **public nuisances** may be mentioned:—(1) Annoyances and obstructions on highways, public bridges, or navigable rivers, which are occasioned by rendering the passage inconvenient or dangerous, either actively by actual destruction or by placing dangerous objects thereon or near, or passively by omitting to repair or remove such objects where the law imposed a duty so to do: (2) Noxious processes of trade or manufacture in towns, by reason of the danger to the health of the inhabitants, as in the case of OFFENSIVE TRADES and chemical and ALKALI WORKS: (3) Disorderly houses, brothels, gaming houses, unlicensed dramatic entertainments, and places opened in contravention of the Lord's Day Observance Act, both on account of the injury they are supposed to cause to public morals and of the danger to the public peace by drawing together dissolute persons: and (4) Polluting water to the prejudice of public health or comfort. It is also a nuisance of this character to permit a house near a highway to continue in a ruinous condition; to permit a savage bull to go about the public thoroughfares; or to sell unwholesome food, or mix injurious ingredients in anything sold and supplied for the food of man. A public nuisance being a detriment to the public at large, no proceedings for its punishment and abatement, other than in a civil court, can be taken by any individual unless he acts on behalf of the public. The remedy then is by way of an *indictment* or information, and if the person proceeded against is found guilty he may be fined or imprisoned. Upon conviction he can also be ordered to abate the nuisance at his own cost, for the main object of the proceedings is the abatement of the nuisance, and the Court will naturally adapt its judgment to the circumstances of the case. If it is a nuisance which has not caused

any material public injury or inconvenience, the sentence can be postponed to afford him an opportunity to remedy it, and having done this his punishment may be only nominal. In order that an individual may maintain an action for *damages and an injunction*, in respect of a thing which amounts to a public nuisance, he must be in a position to prove that he thereby suffers a particular damage or injury other and beyond the general injury to the public, and that such damage is direct and substantial. This is the law as affirmed in the case of *Benjamin* v. *Storr*. The plaintiff kept a coffee-house in a narrow street near Covent Garden. The defendants carried on an extensive business as auctioneers in the same neighbourhood, having an outlet adjoining the plaintiff's house, where they were constantly loading and unloading goods into and from vans. The vans intercepted the light from the plaintiff's coffee-shop to such an extent that he was obliged to burn gas nearly all day, and access to the shop was obstructed by the horses standing in front of the door, and the stench arising from their frequent staling there rendered the plaintiff's dwelling incommodious and uncomfortable. The plaintiff having recovered damages the defendants appealed, but unsuccessfully. Mr. Justice Brett, on the hearing of the appeal said that those facts alone in the plaintiff's case which related to the obstruction of light and air, and the burning of gas constituted "a particular, a direct, and a substantial damage." And "as to the bad smell, that also was a particular injury to the plaintiff, and a direct and substantial one. So if, by reason of the access to his premises being obstructed for an unreasonable time and in an unreasonable manner, the plaintiff's customers were prevented from coming to his coffee-shop, and he suffered a material diminution of trade, that might be a particular, a direct, and a substantial damage." To give a right of action, therefore, the plaintiff must have sustained a substantial injury other than that which is the natural result of the alleged nuisance to any one else; he must be damaged, not to a greater extent merely, but in a different manner. In *Winterbottom* v. *Lord Derby*, which was an action for obstructing a public way, the plaintiff proved no damage peculiar to himself beyond being delayed on several occasions in passing along it, and being obliged, in common with every one else who attempted to use it, either to pursue his journey by a less direct road or remove the obstruction; and he was held not entitled to maintain the action. Accordingly no action will lie for merely the non-repair of a highway (*Cowley* v. *Newmarket Board*); but one will lie for a dangerous obstruction to a highway if it is brought by an individual who is personally injured by the obstruction. From the foregoing it will be seen that an action for damages for a public nuisance can only safely be taken after careful consideration of the law, and of the facts of the particular case; and perhaps still greater caution should be observed before taking an action for an injunction. The general principle which guides the interference of the Court by injunction is the same in the case of a public nuisance as in that of a private nuisance, namely, the inadequacy of the legal remedy, by way of damages, for injury to property. But this general principle is subject to the rule that the Court will interfere by injunction against a public nuisance only in the cases (*a*) where irreparable injury is threatened, and (*b*) where there is a continuing injury (*Attorney-General* v. *Sheffield Gas Consumers Co.*; *Attorney-General* v. *Cambridge Consumers Gas Co.*). Thus, for example, the

disturbance of the pavement of a town by an unincorporated gas company, without lawful authority, for the purpose of laying down gas-pipes, has been held not to be so serious and important a nuisance as to warrant the Court interfering by injunction to prevent it.

Private nuisances are acts which prejudicially affect individuals only; such an act need not be wrongful in itself, for it constitutes an actionable nuisance if its consequences are injurious or an annoyance to the person or property of another. It may be, however, that the one who commits the nuisance has a prescriptive right so to do, or that the person injured or annoyed has, in a particular case, no right to complain. And, as a general rule, the injury or annoyance must be comparatively substantial, and particularly so where the act which causes it is not in itself a wrongful act. A man who builds a wall upon his own land, so that he thereby obstructs the ancient lights of his neighbour, is not necessarily doing an act wrongful in itself; consequently the neighbour must be in a position to prove some actual damage if he desires to take legal proceedings. If, however, the branches of a man's tree overhang and so constitute a trespass upon the garden of his neighbour, the latter is entitled to lop them off, so far as they are a trespass, without paying any serious attention to the question of the injury, if any, done by them to his property, or to the amount of annoyance they cause him personally. A private nuisance is also committed where a man does such acts as throwing water from his roof upon the house or land of another; fouling the water of another; withdrawing support from adjacent land; allowing a refuse heap on his own land to drain into the land of his neighbour; and improperly keeping noisome animals, or establishing and carrying on an offensive trade or hazardous manufactory so near to a neighbouring property that the free enjoyment of the latter is interrupted either by injury to the health or comfort of its owner or occupiers, or by the apprehension of danger. It is impossible to lay down any absolute criterion of a private nuisance. Each case must depend upon its own particular circumstances as estimated by ordinary common-sense men of the world, who, whilst considering the theoretical right of a complainant to be protected absolutely from any interference, injury, or annoyance, have careful regard for the inevitable conditions of modern life, and the necessity for a mutual spirit of reasonable toleration. Depriving a man of a mere matter of pleasure, as of a fine prospect, by building a wall, or the like; this, as it abridges nothing really convenient or necessary, is no injury to the sufferer, and is therefore not an actionable nuisance.

Remedies.—It has already been stated that a person guilty of a public nuisance may be proceeded against by indictment or information, such proceedings generally resulting in his being forced to abate the nuisance and in his punishment. But in respect of both a public or a private nuisance the offender may be proceeded against by the person injured, for damages, or for an injunction restraining him from committing the nuisance, or for both. Apart, however, from this right of the person injured to obtain a remedy by litigation, he is entitled to abate the nuisance himself, that is, remove it, provided he commits no breach of the peace in so doing, and does no more injury to the thing which is a nuisance than is necessary for abating it. If a house or wall is erected so near to the house of a neighbour that it

stops his ancient lights, the neighbour may enter upon the land upon which the house or wall is built and peaceably pull it down. The expression *abatement of a nuisance* means, in effect, the destruction of a nuisance, and such an abatement is one of the few instances of legal remedies which a person injured is allowed to enforce himself without the authority or aid of a court of law. But the wiser course is for the injured party to resort to the authority of the law and not run the risk of acting upon an erroneous idea of his rights. In some cases, however, the nature of the nuisance is such that the remedy of abatement is the only practically useful one. If for example a gate or other obstacle is placed across a public way there is certainly no risk in any one who passes over that way removing or abating the nuisance. A man, too, whose ancient lights are obstructed by a wall may pull that wall down. But it must never be forgotten that an abatement is only lawful when performed subject to the above-mentioned conditions.

The **Public Health Acts** provide for the appointment of local sanitary inspectors whose duty it is to detect nuisances, take measures for their abatement, and to enforce the local bye-laws. There are certain specified nuisances in respect of which the statutes permit proceedings to be taken before the local magistrates, the word "nuisance" in this connection including any insanitary state of things which materially diminishes the ordinary comfort of existence, as well as insanitary conditions which are developed so as to destroy health. Wherever, in fact, an insanitary state exists, or can be foreseen as a result of existing conditions, the aid of the provisions of the Public Health Acts should be at once requisitioned. Local inhabitants may approach the local authorities with a complaint. The measures particularly specified by the above and certain other Acts are:—(1) Premises, including vacant land, in such a state as to be a nuisance; (2) any pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain, or ashpit so foul, or in such a state as to be a nuisance or injurious to health; (3) animals kept so as to be a nuisance or injurious to health; (4) any accumulation or deposit which is a nuisance or injurious to health; (5) any house or part of a house so overcrowded as to be dangerous or injurious to the health of the inmates, whether or not members of the same family; (6) any tent, van, shed, or other similar structure used for human habitation, in such a state as to be a nuisance or injurious to health, or which is so overcrowded as to be injurious to the health of the inmates, whether or not members of the same family; (7) any factory, workshop, or workplace not kept in a cleanly state, or not ventilated in such a manner as to render harmless as far as practicable any gases, vapours, dust, or other impurities generated in the course of the work carried on therein, that are a nuisance or injurious to health, or so overcrowded while work is carried on as to be dangerous or injurious to the health of those employed therein; (8) any fireplace or furnace which does not, as far as practicable, consume the smoke arising from the combustible used therein, and which is used for working engines by steam, or in any mill, factory, dyehouse, brewery, bakehouse, or gas work, or in any manufacturing or trade process whatsoever; and (9) any chimney (not being the chimney of a private dwelling-house) sending forth black smoke in such quantity as to be a nuisance. No penalty, as hereinafter mentioned, is imposed upon any one in respect of an accumulation or deposit necessary for effectually carrying on a business or manufacture,

who can prove to the satisfaction of the Court that it has not been kept longer than is necessary for the purposes of the business or manufacture, and that the best available means have been taken for preventing injury thereby to the public health. There is also a saving proviso in favour of a person who is summoned in respect of a nuisance arising from a fireplace or furnace which does not consume the smoke arising from the combustible used therein. It is provided that no nuisance will be considered to have been created, and the summons must be dismissed, if the Court is satisfied that the fireplace or furnace is constructed in such a manner as to consume as far as practicable, having regard to the nature of the manufacture or trade, all smoke arising therefrom, and that the fireplace or furnace has been carefully attended to by the person having charge of it. The owner or occupier of the premises is the party against whom proceedings must be taken in respect of smoke nuisances; but he can escape conviction if he proves that his premises were properly constructed, and his employees properly superintended, and that the nuisance was created by the negligence of the employees notwithstanding the adequate construction and superintendence. Either the owner or occupier of the premises is generally the person whom, failing others, the authorities can ultimately proceed against for a nuisance. The proceedings commence with a notice. This is served by the authorities "on the person by whose act, default, or sufferance the nuisance arises or continues, or, if such person cannot be found, on the owner or occupier of the premises on which the nuisance arises." It requires him to abate the nuisance within a specified time, and to execute such works and do such things as may be necessary for that purpose. But only the owner must be served with the notice in a case where the nuisance arises from the want or defective construction of any structural convenience, or where there is no occupier of the premises. And where the person causing the nuisance cannot be found, and it is clear that the nuisance does not arise or continue by the act, default, or sufferance of the owner or occupier of the premises, the local authorities may themselves abate the nuisance without further order. If a nuisance is not abated in compliance with the terms of the order the matter is brought before the magistrates and such order made and penalty inflicted as, within certain limits, the magistrates think proper. An owner is bound to comply with a notice to abate, even though he has no right to enter upon the premises except by permission of his tenant (*Parker* v. *Inge*). And even an agent of the owner, or a rate collector may incur responsibility in connection with an order for the abatement of a nuisance, as in *Broadbent* v. *Shepherd*, and *Cook* v. *Montagu*; and certainly a lessee for a long term is responsible, or a sub-lessee for the whole term less a few days (*Trueman* v. *Kerslake*). *See* DAMAGES; INJUNCTION.

O

OATHS.—An oath is a religious act by which a party invokes God not only to witness the truth and sincerity of a promise he is about to make, but also to avenge his imposture or violated faith, or, in other words, to punish his perjury if he shall be guilty of it. But in its widest sense the term includes all forms of attestation by which a party signifies that he is bound in

conscience to perform a certain act faithfully and truly. And this latter sense has now a full statutory recognition, for by the Oaths Act, 1888, any person is entitled to affirm instead of take an oath, upon objecting to be sworn and stating as the ground of his objection either that he has no religious belief or that the taking of an oath is contrary to his religious belief. He is so entitled in all places and for all purposes where an oath is required by the law. The form of affirmation is: "I, A. B., do solemnly, sincerely, and truly declare and affirm that," &c. The ordinary form of oath is either "I swear that, &c., so help me God," or "You do swear that, &c., so help you God," and in each case the person who takes the oath is usually required to kiss the Testament if a Christian, or the Pentateuch if a Jew. But he may refuse to kiss the book, and swear instead with uplifted hand in the form and manner in which an oath is usually administered in Scotland. And now, by the Oaths Act, 1909, he would, if without conscientious objection, swear with uplifted hand, with the Testament in his hand (but without kissing it), and repeating the formula after the officer. *See* AFFIDAVIT.

OFFENSIVE TRADES, and "noxious" ones, are the subject of statutory restriction by the Public Health Act, 1875, a trade being legally an offensive one only when the processes involved in its exercise are necessarily noxious and are injurious to health, unless it is a trade to which this definition can hardly apply with strictness, but is brought within the scope of the statute by specific provision. That a particular trade is a cause of inconvenience, unhappiness, or disgust to those who dwell near the scene of its exercise, is not in itself a sufficient reason for calling it an offensive or noxious one within the meaning of the above statute. But the trades of the blood boiler, bone boiler, fellmonger, soap boiler, tallow melter, tripe boiler, are specifically labelled noxious or offensive by section 112 of the above Act, and they cannot be established within the district of an urban authority, such as a town, without their previous consent in writing. Nor can "any other noxious or offensive trade, business, or manufacture." A business of bone-steaming, where the work is done in hermetically sealed cylinders and does not cause an offensive smell, would not, according to *Cardiff Manure Co.* v. *Cardiff Guardians*, be a "noxious or offensive trade," &c.; nor would a rag and bone or retail fish-frying business be necessarily noxious or offensive (*Passey* v. *Oxford Local Board*; *Braintree L. B.* v. *Boyton*); nor the business of a manure merchant and manufacturer (*Cardwell* v. *Newquay L. B.*); nor that of a brickmaker (*Wanstead* v. *Hill*). A business to be noxious or offensive within the statutory meaning must be one which is also analogous to those particularly specified in the Act; it must be a trade or manufacture connected with animal matter. Whoever establishes or carries on a trade within the proscribed limits without the necessary consent will be liable to a penalty of £50 "in respect of the establishment thereof, and any person carrying on a business so established shall be liable to a penalty not exceeding forty shillings for every day on which the offence is continued, whether there has or has not been any conviction in respect of the establishment thereof." And an urban authority can make bye-laws in order to prevent or diminish the noxious or injurious effects of any offensive trade established with their consent. Offensive trades of all kinds—not only those the subject of section 112—can be dealt with by an urban authority under the powers and subject to the

conditions of section 114 of the same Act. This section requires the authority to make a complaint to a local magistrate whenever it has been certified to the authority that "any candle-house, melting-house, melting-place, or soap-house, or any slaughterhouse, or any building or place for boiling offal or blood, or for boiling, burning, or crushing bones, or any manufactory, building, or place used for any trade, business, process, or manufacture causing effluvia" is a "nuisance or injurious to the health of any inhabitants of the district"—even if to only one or a few of them, provided he or they are at least temporarily sick as a consequence thereof. The certificate should be by the medical officer of health of the authority; but this official's certificate can be dispensed with if the facts are certified by any two legally qualified medical practitioners, or by any ten inhabitants of the district. Rich and poor, male and female, householder and lodger, are each entitled to join in the certificate; and the latter need only go so far as to state that the particular business complained of is "a nuisance" or "injurious to the health;" it is not necessary that both these effects of the trade should co-exist. The complaint having been duly made, the magistrate must summon the person by or on whose behalf the trade so complained of is carried on. If on the hearing of the summons the Court decides that the trade is a nuisance, or causes an effluvia which is a nuisance or injurious to the health of any of the inhabitants of the district, the offender will be liable to heavy penalties. But he can escape conviction if he can show that he has used the best practicable means for abating the nuisance, or preventing or counteracting the effluvia. And, moreover, the Court can suspend its final decision of the case on condition that he undertakes to adopt, within a reasonable time, such means as the Court may deem practicable, and order to be carried into effect, for abating the nuisance, or mitigating or preventing the injurious effects of the effluvia. And the decision may also be suspended if he gives proper notice of appeal to the Quarter Sessions.

These statutory provisions do not operate so as to exclude any persons injured by an offensive trade from pursuing their legal or equitable remedy therefor as a nuisance, if such it is. Because a man has the written consent of the authorities to establish an offensive trade, it does not by any means follow that he is thereby licensed to commit a nuisance.

As a nuisance.—Any one who carries on an offensive trade (in the wider as well as the above restricted sense of the term) which is a nuisance is liable to be proceeded against upon an indictment, and civil proceedings can also be taken to compel him to abate the nuisance. He is also liable for any damage the trade may have caused. In the case of a nuisance caused by smells an indictment can be maintained even though the smells are merely offensive to the senses and are not injurious to health. But, generally speaking, the nuisance must injure the health of the neighbourhood, unless it can be shown that it renders the houses in the locality uncomfortable or untenantable. It would probably, however, be a difficult matter to support an indictment for a nuisance arising out of an offensive trade, unless the facts were very clear and the circumstances of the exercise of the trade particularly unreasonable. It is even a matter of considerable difficulty to obtain an injunction against the owner of an offensive trade on the ground of it being a nuisance. Every man must so use his own property as not to injure that of his neighbour, unless he has a prescriptive right, the exercise

of which may, perhaps, cause some injury. Such is the general principle, but with this must be considered the modifications that the law will not have any regard for merely trifling inconveniences, that everything must be looked at from a reasonable point of view, that locality and all other circumstances must be taken into consideration, and that in localities where great offensive works have for long been carried on those injured must not stand on extreme rights (*St. Helens Smelting Co.* v. *Tipping*). But still every man must carry on his trade in a reasonable and proper manner, that is to say, in a manner which sums up all expedients for avoiding the commission of a probable nuisance. To carry it on in the ordinary and obvious manner is not necessarily carrying it on in a reasonable and proper manner (*Stockport Waterworks Co.* v. *Potter*). Nor even can an injunction be avoided because a trade is carried on, as in *Reinhardt* v. *Mentasti*, in a reasonable — indeed a perfectly reasonable — manner, if it causes serious annoyance and injury to a neighbour. The case of *Scott* v. *Firth* was one of a nuisance by vibration, caused by steel hammers used in the defendant's workshops, which, besides interfering with the comfort of the plaintiff, had, it was alleged, cracked the walls of the adjoining cottages. The defendant raised the plea that the grievances complained of were caused by him in the reasonable and proper exercise of his trade and in a reasonable and proper place. In the opinion of Lord Blackburn that plea was no legal answer to the action. "I think," said his lordship, "that there cannot be a reasonable and proper exercise of a trade which has caused such injury to the plaintiff as she complains of." The ultimate question is always: Is the nuisance an injury to the neighbour? Brick-burning is a trade which has frequently been before the courts in this connection. In *Walter* v. *Selfe* (but see *Hole* v. *Barlow*) a man was restrained from burning bricks on his own ground in a manner offensive to his neighbour; and in *Bamford* v. *Turnley* and *Cavey* v. *Ledbetter*, such an offender was not allowed to avoid an injunction by urging that the act was done temporarily only in a proper and convenient spot, and was a reasonable use of the land. But, generally speaking, it is a matter of fact, depending upon the particular circumstances of the case, whether brick-burning is a nuisance (*Cleeve* v. *Mahany*). In one case—*Pollock* v. *Lester*—an injunction was granted to restrain bricks from being burnt in future within sixty yards from the plaintiffs' houses, it having been proved that the burning that had already taken place had prejudicially affected the health of the plaintiffs and their families. A distance of the brick-burning of 240 yards from the complainant was not sufficient, in *Roberts* v. *Clarke*, to prevent an injunction being granted; and a limit of 653 yards from a house was imposed upon a brickburner in the case of *Beardmore* v. *Tredwell*. *See* ALKALI WORKS; NUISANCE.

OFFICIAL ASSIGNEES are appointed annually by the committee of the Stock Exchange to collect and administer the estate of a defaulting member on much the same principle as a trustee in bankruptcy collects and administers the estate of a bankrupt. In the words of the rules of the Stock Exchange, their duty is "to obtain from a defaulter his original books of account, and a statement of the sums owing to and by him; to attend meetings of creditors; to summon the defaulter before such meetings; to enter into a strict examination of every account; to investigate any bargains suspected to have been effected at unfair prices; and to manage the estate in

conformity with the rules, regulations, and usages of the Stock Exchange." An official assignee must find security amounting to £1000 from two or more members of the Stock Exchange. In the event of his making any default, or misappropriating the property entrusted to his care, or being guilty of dishonesty, the sureties will be called upon to pay. When a broker or jobber has failed, the official assignee publicly fixes the prices current in the market immediately before the failure, and it is at these prices that any one who has accounts open with the defaulter must close his transactions. The closure is effected by buying of or selling to the defaulter such stocks, shares, or other securities as he may have contracted to take or deliver, the differences arising from the defaulter's transactions being paid to or claimed from the official assignees. The latter cannot claim the differences due to a defaulter's estate until they become due. In the important case of *Ex parte Ward* (20 Ch. D., 356), it has been decided that a creditor of a defaulter on the Stock Exchange, who has taken the benefit of a realisation and distribution by the official assignee, is not thereby precluded from afterwards taking ordinary legal proceedings against the defaulter for the recovery of his debt, though he must give credit from what he has received from the official assignee. And by the second case of *Ex parte Ward* (22 Ch. D., 132) it is decided that "the amount of the differences due by a defaulter on the London Stock Exchange (as fixed by the official assignee of that body under its rules) to a Stock Exchange creditor is a 'liquidated sum' . . . and will support a bankruptcy petition by the creditor against the defaulter." These decisions were followed in the Court of Appeal in the recent case of *Ratcliff and Dealtry* v. *Mendelssohn*. *See* STOCK EXCHANGE.

OFFICIAL LIST is the name given to a list of prices of English and foreign stocks, shares, and other securities, officially recognised on the London Stock Exchange. It is published daily, under the authority of the committee, and is a record of the prices at which business has been done between the hours of 11 A.M. and 3 P.M. No member of the Stock Exchange can publish and sell a list of prices without the sanction of the committee. The prices of all bargains may be quoted in the official list. But no price will be inserted unless the bargain has been made in the Stock Exchange between members at the market price; nor on the authority of one of them if he refuse, when required by a member of the committee, to give up the name of the member with whom he has dealt. A price in the official list cannot be expunged without the authority of the chairman, deputy-chairman, or two members of the committee. Bargains at special prices, by reason of their exceptional amounts, are only quoted with distinguishing marks. Bargains in English stock for the next transfer day, or in foreign or other stocks for the following day, may be marked in the list. So also may bargains in all stocks made during the "shutting" for the opening, and in foreign bonds, with or without overdue coupons. During the shutting means during the hours—3 P.M. to 11 A.M.—of the official closing of the Exchange; the term "opening" referring to the hour at which the Exchange officially opens. Omnium can be quoted in the official list for the issue of the receipts, for money, and for the next succeeding payment.

Quotations.—Dealings in English stock (except bank stock), and in India stocks, for any day subsequent to the striking of the balances of the stock for

dividend, are always ex dividend, and are quoted accordingly. Bargains in transferable shares or stock are quoted ex interest from the beginning of the account in which the interest becomes payable. They are quoted ex dividend from the beginning of the account following that in which the dividend has been declared, provided the dividend is made payable to the holders then registered; but in case of a subsequent shutting of a company's books for payment of the dividend, then from the beginning of the account following that in which the shutting occurs. Bargains in securities to bearers are quoted ex dividend on the day when the dividend is payable; and shares in foreign railways are quoted, when practicable, ex dividend or ex interest at a period in accordance with the practice of foreign bourses. *See* STOCK EXCHANGE.

OFFICIAL RECEIVERS occupy a position created by the Bankruptcy Act, 1883, their duties having relation both to the conduct of bankrupts and to the administration of bankrupts' estates. The country is divided, for the purposes of bankruptcy administration, into a large number of "districts" co-extensive, as far as possible, with the districts of County Courts having bankruptcy jurisdiction. In London the local County Court districts, not having that jurisdiction, are disregarded, and the bankruptcy laws are administered in a substituted London Bankruptcy district. As a rule one Official Receiver is appointed for each district, but in London there are several, and in the large industrial centres there are frequently more than one. On the other hand, one person may be appointed for more than one district. The Official Receivers act under the general authority and directions of the Board of Trade, but they are also officers of the courts of their respective districts. As regards a debtor's conduct, an Official Receiver has duties which make him primarily the representative of the law, but as regards a debtor's estate, his duties are mainly on behalf of the creditors and the debtor himself. In the former capacity he is required to—(1) Investigate the conduct of the debtor and to report to the Court, stating whether there is reason to believe that the debtor has committed any act which constitutes a misdemeanour under the Debtor's Act, 1869 [*see* FRAUDULENT DEBTOR], or any amendment thereof, or under the Bankruptcy Acts, or which would justify the Court in refusing, suspending, or qualifying an order for his discharge; (2) make such other reports concerning the conduct of the debtor as the Board of Trade may direct; (3) take such part as may be directed by the Board of Trade in the public examination of the debtor: (4) take such part and give such assistance in relation to the prosecution of any fraudulent debtor as the Board of Trade may direct. As regards the debtor's estate it is his duty, pending the appointment of a trustee, to act as interim receiver of the debtor's estate, and as its manager where a special manager is not appointed. It is also his duty in this connection to—(1) authorise the special manager to raise money or make advances for the purposes of the estate in any case where, in the interests of the creditors, it appears necessary so to do; (2) summon and preside at the first meeting of creditors; (3) issue forms of proxy for use at the meetings of creditors; (4) report to the creditors as to any proposal which the debtor may have made with respect to the mode of liquidating his affairs; (5) advertise the receiving order, the date of the creditors' first meeting and of the debtor's

public examination, and such other matters as it may be necessary to advertise; (6) act as trustee during any vacancy in the office of trustee. For the purposes of his duties as an interim receiver or manager, an Official Receiver has the same powers as a receiver or manager appointed by the High Court. He must, however, as far as practicable, consult the wishes of the creditors with respect to the management of the debtor's property. For that purpose he can summon meetings of creditors, but, except by order of the Board of Trade, he has no power to incur any expense beyond such as is requisite for the protection of the debtor's property or the disposing of perishable goods. When a debtor cannot himself prepare a proper statement of affairs, the Official Receiver may, subject to any prescribed conditions, and at the expense of the estate, employ some one to assist in its preparation. *See* BANKRUPTCY.

OFFICIAL SECRETS of State must not be disclosed under pain of severe punishment; nor may an unauthorised person attempt to obtain any information about them. The Official Secrets Act, 1911, which is dealt with fully in the Appendix, Vol. II., under the title ESPIONAGE, makes it a misdemeanour to enter a fortress for the purpose of wrongfully obtaining information, and the offence extends to an arsenal, factory, dockyard, camp, ship, office, or other like place belonging to the King, and into which the intruder is not entitled to enter. So also does it to obtaining, communicating, or being in the wrongful possession of, or control over, any document, sketch, plan, model, or knowledge of anything relating to the private naval or military affairs of the State. The prohibition against *breach of official trust* particularly affects one who, by means of his holding or having held an office under the King, has lawfully or unlawfully either obtained possession of or control over a document, sketch, plan, or model, or acquired information. He will be guilty of such a breach if at any time he corruptly or contrary to his official duty communicates or attempts to communicate that document, sketch, plan, model, or information to some one to whom it ought not to be communicated in the interest of the State, or otherwise in the public interest. *Contractors* come within the prohibition, for by section 2 (1) of the above Act it applies to any person holding a contract with any department of the Government of the United Kingdom, or with the holder of any office under His Majesty the King as such holder, where such contract involves an obligation of secrecy, and to any person employed by any person or body of persons holding such a contract, who is under a like obligation of secrecy, as if the person holding the contract and the persons so employed were respectively holders of an office under His Majesty the King.

OFFICIAL SOLICITOR of the Supreme Court is the title of an officer of the Court who generally acts, when necessary, as the solicitor for the Court itself. His services may be requisitioned on behalf of private individuals under special statutory provisions, as under the JUDICIAL TRUSTEE (*q.v.*) Act, or the Lunacy Acts. The Rules of Court also provide for his intervention in cases of delay in proceedings. Under rule 9 of Order 33 of the Rules complaint may be made to the Court in case there is any undue delay in the prosecution of accounts or inquiries, or in other proceedings under a judgment or order. The Court will thereupon require the party having the conduct of the proceedings, or any other party, to explain the delay, and, if necessary for the expedition of the proceedings, will direct the

official solicitor to summon the necessary persons, and to conduct any proceedings and carry out any directions which may be given. The costs of the official solicitor are paid in such cases by the parties, or out of the fund in Court, or out of the public funds. He is also frequently appointed to act on behalf of a pauper litigant, and also on behalf of infant and lunatic defendants. His duties, moreover, include the visitation in prison of persons who have been committed by the Chancery Division for contempt of Court. He it is who watches over them on behalf of the Lord Chancellor, lest they are entirely forgotten and so unwittingly allowed to remain in prison for life. If paupers he must, in proper cases, apply to the Court for their liberation.

OPEN COVER is an informal document issued by a marine insurance company before the shipment of the goods intended to be insured. After the goods are shipped the party producing the open cover can obtain a policy upon payment of the premium, and, as a rule, the company will issue the policy to the party who produces the open cover, notwithstanding the latter had been issued in another person's name. The document is considered in law to be given by the company as a proposal to insure. Although it may be addressed to one person in particular, it may be handed by him to another, and will continue as a subsisting proposal capable of being accepted by that other person. It will be a sufficient acceptance if the person who holds the open cover produces it to the issuing company and requests the issue of the policy in the terms of the open cover. If an open cover is issued to A., and afterwards B. ships the cargo, the company would issue the policy to B. if so required; it would make no difference that A., to whom the open cover was issued, had not an insurable interest. (*Bhugwandass* v. *The Netherlands, &c., Insurance Co.*) *See* MARINE INSURANCE.

OPTIONS and FUTURES.—An option is a mode of speculation in stocks and shares very frequently met with on the London Stock Exchange, and even more frequently perhaps on the Paris Bourse and the New York Exchange. And the principle of operation by option is not by any means restricted to dealings in stocks and shares. It is also found, especially in the United States, in connection with wheat and other produce transactions. An option is a contract whereby one of the parties is privileged to call upon the other to conclude a purchase or sale of a special article on or before a certain future date, at a price agreed at the time the contract is entered into. A contract of this nature, that confers a right upon one of the parties to require the other to sell to him, is known as a "call" or a buying option; and a like contract that confers a right upon one party to require the other to buy from him, is called a "put" or selling option. The consideration for the contract is generally the payment, at the time it is entered into, of some comparatively small sum then agreed between the parties. Neither party to the contract is bound to exercise his right or option thereby created, but when he does so, and the bargain is concluded, the price fixed by the contract must be paid. The speculator finds his chief reason for adopting the method of an option in the fact that for a small present payment he obtains the right and the certainty of buying or selling, as the case may be, a specified commodity at any time within a future period, during which time the market

price of the commodity may so move as to render the exercise of his option, at the arranged price, a very profitable transaction. Contracts are sometimes entered into for both the "put and call," in which case the speculator has the right either to sell or buy while the option lasts, but the consideration payable for such a "double option" is ordinarily greater than that required for a single option. The loss possible to a speculator in an option is therefore necessarily limited to the amount he pays as the consideration therefor; but in order to discover his net profit on the whole transaction, this payment should be set off against any profit he makes upon an exercise of the option. And a large net profit on a deal by option cannot generally be expected, for the possibilities thereof are naturally discounted by the parties when they arrange the sum to be paid as a consideration. While the speculator who sells the option—or "takes" the put or call—assumes that there will be little movement in price during its currency, the buyer of the option—who "gives" the put or call—believes that there will be some material movement in his favour. On the London Stock Exchange the money payable for an option is paid to the jobber on the settling day in the same manner as an ordinary difference on stock or shares, and whether the option is exercised or not. There are also special rules as to when optional bargains shall be declared.

Futures.—Dealings in "futures" are based upon somewhat similar principles to those upon which optional bargains rest, and are most generally met with in this country in the Stock Exchange, the London Produce Clearing House, the Liverpool Cotton Market, and the various metal exchanges. The principle in such a deal of this class is that the seller and buyer contract that on a specified future date the former will deliver certain goods to the latter, who will then take delivery thereof and pay for them at a price agreed at the time of the contract. The buyer pays at the time of the contract a margin (say 5 per cent.) of the price; or, on a day fixed in each week by the market in which the operation is conducted, the parties pay from time to time until the bargain is finally concluded the differences between the agreed price and that for the time being ruling in the market. But the actual practice differs according to the goods and market dealt in, and according to the special arrangements between the parties themselves. By this method of dealing a considerable convenience and advantage may accrue to both seller and buyer. Many circumstances may conspire, speedily and unexpectedly, to disorganise the supply and price of such commodities as wheat, cotton, tea, coffee, sugar, tin, and others too numerous to mention. An unexpected change of circumstances must therefore be provided against as far as possible, and perhaps the most practicable method of insurance against the evil results of such a change is found in dealings in futures. The producer can ensure the sale of his produce in the near future at a price which compensates him for his expenditure of capital; a manufacturer, on the other hand, can ensure that he will receive the material necessary for the execution of his contracts and at a price anticipated when the contracts were entered into.

Options and futures: the law.—The following is an example of an option in stocks and shares. Assume that the price of Consols is 93 to-day, say 1st January, and that some person wishes to acquire the right to buy that stock on some future day, believing that the price will then be higher,

and is desirous of not risking more than a certain sum of money in a transaction, say 2 per cent. He would probably be obliged to give 95 for the stock for the end of March, upon the condition that if he did not wish to take up the stock he must pay 2 per cent., the difference between the day's price and the price at which he bought; that is in effect paying 2 per cent. for the right of saying at the end of March whether he will or will not buy the stock at 93. If he does not buy he loses 2 per cent., and the stock must rise 3 per cent. by the time before he can make 1 per cent. profit. Such is a "call" option, the converse case being a "put" option. A combination of both is called a "double" option, or, in America, a "straddle" or "spread-eagle." A "future" may be best illustrated by reproducing an actual American contract (illegal).

Bought of the E O. Stannard Milling Co., 3000 barrels of Eagle steam flour, at 3·85–100, f.o.b. St. Louis, for shipment at my option during the month of March 1893. It is further agreed and understood that if I do not want to receive the flour in March, settlement may be made as follows, viz.: E. O. Stannard Milling Co. paying me any difference that may be an advance in value, or my paying E. O. Stannard Milling Co. the difference between the purchase price and the market price at the time of settlement, provided the value then is less than the purchase price. Settling prices to be based on St. Louis Merchants' Exchange quotations on extra fancy flour at date of settlement.

Very few if any authoritative cases have been brought before the English courts in respect of options and futures. The reason is that the contracts are generally made between members of particular markets or exchanges which practically guarantee and assume responsibility for the parties duly performing their contracts. But should one come before a court of law the essential issue will be whether it is or is not a gaming contract, and so illegal and unenforceable against the parties thereto. For it has been decided, in *Hibblewhite* v. *McMorine*, that a contract for the sale of goods, to be delivered at a future day, is not invalidated by the mere circumstance that at the time of the contract the vendor neither has the goods in his possession nor has entered into any contract to buy them, nor has any reasonable expectation of becoming possessed of them by the time appointed for delivering them, otherwise than by purchasing them after making the contract [*see* further hereon below *Future Goods*]. Accordingly "futures" are not necessarily illegal, for they are consistent with a *bonâ fide* intention on the part of both parties to perform them. "The vendor of goods," said an American judge, "may expect to produce or acquire them in time for a future delivery, and while wishing to make a market for them, is unwilling to enter into an absolute obligation to deliver, and therefore bargains for an option which, while it relieves him from liability, assures him of a sale in case he is able to deliver; and the purchaser may in the same way guard himself against loss beyond the consideration paid for the option, in case of his inability to take the goods. There is no inherent vice in such a contract." There is not necessarily any gaming or wagering in an optional or future contract. "A time bargain," said Lord Justice Bramwell in the stock and share case of *Thacker* v. *Hardy*, "is not necessarily invalid; there may be a good contract to sell next year's crop of the apple trees growing in

a specified orchard, and what is this but a time bargain? But if the term 'time bargain' is understood to mean an agreement to pay the difference between the price at the time when the bargain is made and the price at a subsequent time, that agreement is perhaps in the nature of a wager, but it is not a 'time bargain' in the ordinary sense of the word." In the same case Lord Justice Cotton laid it down that the essence of gaming and wagering is that one party is to win and the other to lose upon a future event, which at the time of the contract is of an uncertain nature—that is to say, if the event turns out one way A. will lose, but if it turns out the other way he will win. This is not necessarily the state of facts in an optional or future bargain. But where an optional contract for the sale of property is made, and there is no intention on the one side to sell or deliver the property, or on the other to buy or take it, but merely that the difference should be paid according to the fluctuation in market values, then, without doubt, the contract is a gaming one and illegal. Accordingly the flour bargain set out above is a good example of an *illegal and unenforceable* contract, for the Court (American) before which it came found as a fact that all the parties clearly understood it to be "a wagering, speculating, future contract," in which an actual delivery of the flour was not contemplated under any contingency. Had that contract been one of sale, and a valid future bargain, it would have created a right to delivery of the flour. "But," in the language of the Court, "the agreement bears on its face that the parties were not contracting on the basis of the after-execution by either of the legal obligations springing from a contract of sale, but expressly *ab initio* upon the fact of the non-execution of such obligations." Apart, however, from the question of gaming, the courts in some of the United States have decided against the validity of optional and future bargains on the ground that they are against public policy. It is urged that they tend to unsettle the natural course of trade, and tempt the parties to them to work for a rise or fall in the prices of the commodities in respect of which they have an interest, without regard to actual values, and by methods calculated to promote their own profit at the expense or ruin of others, without reciprocity of benefit.

Future goods are defined by section 62 of the Sale of Goods Act, 1893, as "goods to be manufactured or acquired by the seller after the making of the contract of sale." And it is expressly provided by section 5 of the same Act that a valid contract of sale made be entered into not only of existing goods owned or possessed by the seller, but also of goods "to be manufactured or acquired by the seller after the making of the contract of sale." Such last-mentioned goods are also the subject of a special designation by the Act as "future goods." It is therefore clear that as a general rule any person may sell or offer for sale any goods of which he is not the owner, but which he expects or hopes to acquire. If he may thus contract to sell future goods, it follows that he has the right, as the first step to such a contract, to offer them for sale, and there is nothing to prevent him from making the offer by advertisement, or in any other lawful way. In *Ajello* v. *Warsley* the defendant, a furniture dealer, advertised in the newspapers that he would sell a certain piano, manufactured by the plaintiff, at a price which was less than that at which even the plaintiff himself sold his pianos of that class to the trade. The result was that other dealers declined to continue purchasing

pianos from the plaintiff, and the latter then refused to supply the defendant with any more. The advertisement, however, continued to appear, the defendant expecting to be able to acquire pianos of the plaintiff's make from other dealers. Thereupon the plaintiff took action to restrain the defendant from continuing the publication of the advertisement, and from selling pianos of the advertised description at less than the plaintiff's wholesale price. It was held, however, that so long as the defendant acted honestly he had a legal right to issue the advertisement, and he was entitled to make the offer at any price he chose, whether remunerative or not. And even if the advertisement contains a misrepresentation that the goods advertised are actually at the time in the possession of the advertiser, that alone does not necessarily make the advertisement fraudulent. As was said by the judge in the above case: "In order that a misrepresentation may be actionable, it must not merely be untrue, but cause damage to the person who complains of it. The question then arises, Is the damage complained of by the plaintiffs [the loss of customers] attributable to the misrepresentation of fact contained in the advertisement? It appears to me that this question must be answered in the negative; for an advertisement such as, in my opinion, the defendant might legally have issued would have produced the same consequences and been followed by the same damaging results."

In the case of *Watts* v. *Friend* there was an attempt to obtain a ruling that a contract for the sale of a thing of which no part is in existence at the time of the contract is on a different footing from a contract for the sale of existing goods, or of goods to be made, the materials of which then existed. There A. agreed to supply B. with a quantity of turnip seed, and B. agreed to sow it on his own land, and sell the crop of seed produced therefrom to A. And the contract was upheld as a valid one for the sale of goods. There is now, and for many years has been, no doubt whatever as to the law on this point. In the words of the Sale of Goods Act—subsection 3 of section 5—"where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods." Not a complete sale by way of a present assignment or transfer of the goods themselves, but an agreement to assign them and complete the sale after the goods have been acquired. Even if the contract of sale is in the form of an absolute present assignment of the "after-to-be-acquired" goods, that contract can be nothing more than an agreement to assign when the goods have been acquired. "A man cannot in equity, any more than at law, assign what has no existence. A man can contract to assign property which is to come into existence in the future," said the Master of the Rolls in *Collyer* v. *Isaacs*, "and when it has come into existence, equity, treating as done that which ought to be done, fastens upon that property, and the contract to assign thus becomes a complete assignment . . . When this is clearly understood, it follows that until the property comes into existence the contract remains only a contract by which the party entering into it will be bound when the property comes into existence, and it is a contract for the breach of which he will incur liability." In this connection it should be noted that, as a result of the necessary distinction between a mere agreement for sale and an actual completed sale, a person who has purchased the goods and gets them into his possession when acquired or in existence, has a good title to those goods as against a mere

purchaser thereof under a prior agreement for sale, provided, of course, that the second purchaser had no notice of that agreement (*Joseph* v. *Lyons; Hallas* v. *Robinson*). In such a case the only remedy of the first purchaser is to proceed against the vendor for damages for breach of his contract, and for the return of the purchase-money if that has been paid. *See* SALE OF GOODS.

ORDER AND DISPOSITION CLAUSE.—Reputed Ownership.—The doctrine of reputed ownership is peculiarly a part of the law of bankruptcy, and was introduced so far back as the reign of James I. Section 44 of the Bankruptcy Act, 1883, specifically describes what property of a bankrupt is available for distribution amongst his creditors, and clause iii. thereof, known very generally as the Order and Disposition Clause, contains the statutory reference to the doctrine of reputed ownership already referred to. Section 44 of the Act declares that "the property of the bankrupt divisible amongst his creditors, and in this Act referred to as the property of the bankrupt, shall not comprise . . . property held by the bankrupt on trust for any other person . . . but it shall comprise":—

(iii.) "All goods being, at the commencement of the bankruptcy, in the *possession, order, or disposition* of the bankrupt, in his trade or business by the consent and permission of the true owner, under such circumstances that he [the bankrupt] is the reputed owner thereof; provided that things in action [*see* CHOSE IN ACTION] other than debts due or growing due to the bankrupt in the course of his trade or business shall not be deemed goods within the meaning of this section."

The object of the doctrine of reputed ownership is to prevent a man obtaining credit, to the detriment of his creditors, by a false pretence of the ownership of property. The effect of the doctrine is to make the owner of goods practically liable for a proportion of the debts of another if he—*by his consent*—allows his goods to remain in the "possession, order, or disposition" of that other person, so that the latter obtains a credit in consequence thereof which eventually brings him into the bankruptcy court. The owner of such goods must then be content to resign them to the trustee of the bankrupt in order that they may be applied for the benefit of the creditors. And in the term "owner" is included a limited or qualified owner, such as a mortgagee or a person who lets out goods on the hire system, regard being had, however, in this connection to the restrictive application of the doctrine—of its non-application to bankrupts who are not in trade or business or do not use the goods in their trade or business. "If goods are in a man's possession, order, or disposition, under such circumstances as to enable him by means of them to obtain false credit, then the owner of the goods who has permitted him to obtain that false credit," said Lord Justice James in *Ex parte Wingfield*, "is to suffer the penalty of losing his goods for the benefit of those who have given the credit." In the case of goods let on hire, it is possible for a custom for this practice to obtain in certain trades, and so for the doctrine of reputed ownership to be excluded by the fact of that custom (*Ex parte Powell; Crawcour* v. *Salter*). In the last-mentioned case Lord Justice James said: "It is very common for hotel keepers to hire furniture in this way; and if it is a common practice it negatives the foundation of

the rule in bankruptcy as to reputed ownership, that the person who has the goods obtains false credit by the possession of them. He does not in this case, because everybody knows that it is so common for a hotel keeper to obtain furniture in that manner. I do not believe that any one gives credit to a hotel keeper on the assumption that the furniture in his hotel is his own property." So there is a recognised custom in their respective trades for printers to hire machinery (*In re Thackrah*); farmers to keep cattle as agisters (*In re Woodward*); and hop merchants to keep hops belonging to customers (*In re Taylor*).

A consideration of the above clause will at once show that the only goods to which the doctrine of reputed ownership applies are those which are used by a trader bankrupt as part of his trading goods. Goods in the mere possession of a trader, as his household furniture, and other chattels absolutely unconnected with and distinct from his trade, are clearly not within the scope of the doctrine. In the case of *In re Jenkinson; Ex parte The Nottingham and Nottinghamshire Bank*, one Jenkinson who carried on business as a stockbroker, silversmith, and watchmaker, deposited with his bankers the certificates of thirty shares in a company as security for the balance of his overdrawn account, no formal transfer thereof being made to the bank. Jenkinson being subsequently made a bankrupt the trustee in bankruptcy unsuccessfully endeavoured to recover the shares from the bank on the ground that they were "in the possession, order, or disposition of the bankrupt in his trade or business." In giving judgment against the trustee, Mr. Justice Cave pointed out particularly that the clause is confined to all goods in the possession, order, or disposition of the bankrupt *in his trade or business*. If a wine merchant carrying on business in the city lives, say at Surbiton, the furniture in his house at Surbiton cannot be said to be in his possession in his trade or business. And so, if a silk mercer in St. Paul's Churchyard were to keep a yacht for his amusement, it could hardly be said that it was in his possession in his trade as a silk mercer. Nor did the shares come into the reputed trading or business ownership of Jenkinson by reason of his having deposited them to secure a business debt. "Why because the bankrupt got the money on the security of his shares to use in his business therefore the shares, which he parted with to get the money which he wanted to use in his business, were themselves in his order and disposition in his business, passes comprehension. Let us take again the case of the silk mercer who has a yacht for purposes of pleasure; if he mortgages the yacht to secure his banking account, but continues to sail about in it for his pleasure, does the yacht cease to be in his possession for purposes of pleasure, and begin to be in his possession in his trade? So long as it is in his possession unmortgaged, no reputation of ownership arises; nor does any such reputation arise if he mortgages the yacht to secure a debt which is not a trade debt. But it is said that the moment he mortgages it to secure his trade account with his bankers this reputation of ownership arises, and arises, be it remembered, among people who are utterly ignorant of the mortgage; for if they knew of the mortgage which is said to give rise to the reputation of ownership, it is clear that that reputation could never arise." Though this decision is valuable from the clear manner in which the principle of the doctrine is illustrated, yet it must be remembered in reading it that

the House of Lords, in *Colonial Bank* v. *Whinney*, has now decided that shares in an incorporated company, which are transferable only by deed, are choses in action, and so not subject to the doctrine of reputed ownership. Other instances of choses in action similarly favoured are: policies of assurance, reversionary interests, and the interest which a partner possesses in the partnership assets.

The expression "trade or business" requires some illustration, for there is no definition thereof in the Act. It has been held, *In re Wallis; Ex parte Sully*, that a person does not carry on a trade or business, within the meaning of the above section, who occupies a residential property and engages in farming and market gardening for his pleasure, even though he sells his surplus produce after supplying his own household and carries on the whole affair at a profit. But if he abandons his primary intention and carries the place on as a business, with a view to profit as a means of livelihood, then he carries on a trade or business. *See* BANKRUPTCY.

OVERDRAFT.—An overdraft is created when a customer of a bank has drawn cheques upon his account there for a larger amount than the balance to his credit. Unless an overdraft has been arranged with the bank, such proceedings are dangerous in the extreme to the person who draws the cheque. It is, indeed, a mode of obtaining money by false pretences, if he cashes the cheque with some third party without disclosing the actual state of the banking account. When a cheque in overdraft of an account is presented for payment at the bank, the usual course is for the latter to return it dishonoured to the party presenting it; but the bank if it so pleases can honour the cheque, and may recover the amount of the overdraft, as a loan, from its customer. Apart from special agreement to the contrary, a bank is entitled to consider an account as overdrawn when the cheques upon it exceed the credit by reason only of cheques and bills already paid into the credit of the account by the customer not having then been cleared. When a customer's cheque is returned dishonoured for this reason it is usual for the bank to make a note thereon of the reason by indorsing the words "effects not cleared," or requesting that the party presenting it should "represent." Under such circumstances the cheque, if presented again in the course of a day or two, will probably be duly honoured. A director or manager of a bank commits a criminal offence if, not acting in good faith but with an intention to injure and defraud the bank, he permits overdrafts which he does not believe and has no reasonable ground to believe will be repaid. *See* also the article on BANKER AND CUSTOMER.

OVERTIME in factories and workshops is now regulated by the Act of 1901. In places where preserves are made from fruit, or fish is preserved or cured, or condensed milk is made, there are certain regulations as to the overtime employment of women. The period of employment there for a woman, on any day except Saturday or day substituted for Saturday, may be between 6 A.M. and 8 P.M., or between 7 A.M. and 9 P.M. if she is employed in accordance with the following conditions:—(*a*) There must be allowed her for meals not less than two hours, of which half-an-hour must be after 5 P.M.; and (*b*) she must not be so employed in the whole for more than three days in one week; and (*c*) the overtime employment must not take place on more than fifty days in the whole in any twelve months; in reckoning that

period every day on which a woman has been employed overtime is to be taken into account. And this overtime regulation may, by special order, be extended to other factories or workshops in which women are employed on perishable goods. Other detailed regulations are contained in the Act as to the overtime employment of women because of the weather and periodical press of work. And for the like employment of women and young persons in factories driven by water when work has been stopped by drought or flood; and in Turkey-red dyeing and open-air bleaching. And there are also special statutory regulations as to the overtime employment of children, young persons and women, in cases where their work is unfinished at the end of the regular period of employment, in certain factories and workshops. These latter are bleaching and dyeing works; print works; iron mills in which male young persons are not employed during any part of the night; foundries in which male young persons are not employed during any part of the night; and paper mills in which male young persons are not employed during any part of the night. *See* FACTORIES; NIGHT WORK.

OYSTERS.—An oyster fishery may be acquired by prescription, grant from the Crown, or by an order under the Sea Fisheries Act, 1868, vesting it in some person for a period not exceeding sixty years. No one can lawfully sell, expose for sale, consign for sale, or buy for sale any deep-sea oysters, between the 15th June and 4th August; nor any other description of oysters between the 14th May and 4th August. For acting in contravention hereof a fine of £2 is incurred in respect of the first offence, and £10 for a subsequent offence, and oysters so exposed for sale, or bought for sale, are forfeited. No offence is committed, however, in taking within these periods any oysters from foreign waters and relaying them in English waters for storage purposes (*Robertson* v. *Johnson*), nor is there in respect of oysters preserved in tins or otherwise cured, or intended for the purpose of oyster cultivation in accordance with the regulations of the Board of Trade. An application to the Board of Trade to restrict or prohibit dredging for oysters may be made by a person representing the local fishermen, or by any of the following authorities, if they appear to the Board to be locally interested in the fisheries, namely:—(*a*) The justices of a county assembled in general or quarter sessions; (*b*) a town council or other urban sanitary authority; (*c*) a rural sanitary authority; (*d*) any person being, or claiming to be, the proprietor of, or entrusted with the duty of improving, maintaining, managing, or regulating any harbour. On such an application the Board of Trade has power to prohibit or restrict, for a period of not more than one year, either entirely or subject to certain rules, the dredging for or taking of oysters on any oyster-bed or bank.

Stealing oysters.—Whoever steals oysters or oyster brood from an oyster-bed, which is the property of another person, and sufficiently marked out or known as such, is liable to be punished as for simple larceny, and whoever unlawfully uses a dredge, net, instrument, or engine, within an oyster-bed, which is the property of another person, for the purpose of taking oysters or oyster brood, though none are actually taken, is guilty of a misdemeanour, and liable to three months' hard labour. But no one is prevented by law from catching, or fishing for, floating fish within an oyster fishery with a net or instrument only adapted for taking floating fish.

P

PACKED PARCELS.—It is now a usual practice, especially with parcel delivery companies, to collect a number of parcels each directed to some different consignee, and then having packed them in one package, to consign the latter as one parcel per rail to an agent at a convenient centre for distribution amongst the various persons to whom the parcels are directed. By this means a number of parcels can be sent in one package at a lower charge per carriage than would be the case if they were forwarded separately. And not only this, but the custom affording an opportunity for profit to a distributing middleman caused the advent of the parcel delivery companies, and ultimately the parcels post. The railway companies have consequently lost an important source of profit, though they did not acquiesce therein until their obligation to carry packed parcels without extra charge had been established by the courts in such cases as, for example, *Great Western Railway Co.* v. *Sutton.*

PAINTINGS, DRAWINGS, PHOTOGRAPHS, ENGRAVINGS.—Paintings, Drawings, Photographs.—Until the enactment of the Fine Arts Copyright Act, 1862, the authors of paintings, drawings, and photographs had no copyright in their works. By that Act, however, such authors and their assignees in respect of works not sold or disposed of before the 29th July 1862, obtained the sole and exclusive right of copying engraving, reproducing and multiplying such "painting or drawing, and the design thereof, or such photograph, and the negative thereof, by any means and of any size." The term of the copyright thus conferred was expressly limited to the natural life of the author, and seven years after his death, but now this term is extended by the COPYRIGHT (*q.v.*) Act, 1911, to fifty years from the making of the original negative. In many cases a painting or drawing, or the negative of a photograph, is sold or disposed of, or made or executed for or on behalf of some person (the "sitter" in the case of a photograph) other than the author, the latter receiving some kind of payment or remuneration. Here the author does not retain his copyright, "unless it is expressly reserved to him by agreement in writing, signed at or before the time of such sale or disposition by the *vendee or assignee* of such painting or drawing, or of such negative of a photograph, or by the person for or on whose behalf the same shall be so made or executed." But a vendee or assignee is not entitled to the copyright unless, at or before the time of the sale or disposition, a written agreement to that effect has been signed by the seller or person disposing of it, or by his duly authorised agent. Accordingly, if such a work is sold or disposed of, and there has been no express written disposition or reservation of the copyright therein, it would then exist without the privilege of copyright. This statutory copyright does not, however, prevent the representation of the same subjects in other works, for the Act expressly provides that nothing therein contained shall prejudice the right of any one to copy or use any work in which there is no copyright, or to represent any scene or object, notwithstanding that there may be copyright in some representation of it. And copyright under the Act is also declared to be personal estate, and as such capable of legal assignment. But every

assignment must be in writing, signed by the proprietor of the copyright, or by his agent appointed for that purpose in writing; and so must every licence to use or copy a design or work which is the subject of copyright. The Copyright Act, 1911, which has repealed sects. 1 to 6 and 9 to 12, and part of sect. 8 of the Act of 1862, having been passed and published whilst this edition was passing through the press, it will be necessary to refer to it (obtainable from the King's Printer for 3d.), and to the Act of 1862, in order to ascertain the exact position of the law on this subject. This article must therefore be read subject to that statute.

Infringement.—Certain penalties are imposed in respect of infringement, the relevant section of the Act running as follows:—

If the author of any painting, drawing, or photograph in which there shall be subsisting copyright, after having sold or disposed of such copyright, or if any other person, not being the proprietor for the time being of copyright in any painting, drawing, or photograph, shall, without the consent of such proprietor, repeat, copy, colourably imitate, or otherwise multiply for sale, hire, exhibition, or distribution, or cause or procure to be repeated, copied, colourably imitated, or otherwise multiplied for sale, hire, exhibition, or distribution, any such work or the design thereof, or, knowing that any such repetition, copy, or other imitation has been unlawfully made, shall import into any part of the United Kingdom, or sell, publish, let to hire, exhibit, or distribute, or offer for sale, hire, exhibition, or distribution, or cause or procure to be imported, sold, published, let to hire, distributed, or offered for sale, hire, exhibition, or distribution, any repetition, copy, or imitation of the said work, or of the design thereof, made without such consent as aforesaid, such person for every such offence shall forfeit to the proprietor of the copyright for the time being a sum not exceeding ten pounds; and all such repetitions, copies, and imitations made without the consent as aforesaid, and all negatives of photographs made for the purpose of obtaining such copies, shall be forfeited to the proprietor of the copyright.

Fraudulent productions and sales.—No one may lawfully do or cause to be done any of certain specified acts. Thus no name, initials, or monogram, may be fraudulently signed or otherwise affixed to or upon any painting, drawing, or photograph, or negative. And no one may fraudulently sell, publish, exhibit, or dispose of, or offer for sale, exhibition, or distribution any painting, drawing, or photograph, or negative of a photograph, having thereon the name, initials, or monogram of a person who did not execute or make the work. Likewise no one may fraudulently utter, dispose of, or put off, or cause to be uttered or disposed of, a copy or colourable imitation of a painting, drawing, or photograph, or negative of a photograph, whether there is a subsisting copyright therein or not, as having been made or executed by the author or maker of the original work from which the copy or imitation has been taken. And it may happen that such an author or maker has sold or otherwise parted with the possession of his work and some other person has afterwards made an addition or alteration thereto. In such a case no one may, during the life of the author or maker, without his consent, make or knowingly sell or publish, or offer for sale, that work or any copies thereof so altered, or any part thereof, as and for the unaltered work of the author or maker. An offender in any of the foregoing respects will, upon conviction, forfeit to the person aggrieved a sum not exceeding £10, or not exceeding double the full price, if any, at which all the copies, engravings,

imitations, or altered works have been sold or offered for sale. All such copies, &c., will also be forfeited to the person (or his assignees or legal representatives) whose name, initials, or monogram, have been fraudulently signed or affixed thereto, or to whom such spurious or altered work has been fraudulently ascribed. But these penalties are not incurred unless such author or maker has been living at or within twenty years next before the time when the offence may have been committed.

The importation of such pirated works is expressly prohibited. Persons aggrieved by infringement of or fraudulent dealing with works in which they have a copyright, are entitled to obtain an injunction, and can also recover damages.

Engravings were, until the Copyright Act of 1911, the subject, with regard to the copyright therein, of certain statutes of George II. and III., William IV., and Victoria. The term "engraving" included any engraved print, etching, mezzotint, or lithograph; but, for the purpose of copyright, it did not include a map or an illustration in a book, for such productions were protected by literary copyright. Twenty-eight years constituted the term of protection afforded to engravings, and registration was not, in this connection, a condition precedent to legal proceedings. In order to acquire the protection an engraving was required to be executed in Great Britain, and on each impression thereof there had to appear, as a part of the original impression, the name of the proprietor. The copyright belongs primarily either to the inventor or designer, or to the engraver or the person who has caused the print to be executed. It does not matter for this purpose whether the design is original or not. The Act of 1911 should now be referred to.

PALMISTRY is classed by the law with certain other practices such as astrology, spiritualism, legerdemain, and so forth, when used as a means for telling fortunes, or for the purposes of any other form of deception or imposition. A palmist who intends to deceive and impose is legally a rogue and vagabond, for he comes within the scope of section 4 of 5 Geo. IV. c. 83 (*Reg.* v. *Entwistle*). The intention to deceive and impose is now generally assumed by the courts in all cases where there is proof of the actual practice of palmistry; and it does not really matter whether it it practised with a *bonâ fide* belief in it as a science, or gratuitously, or for gain. No one can therefore safely practise palmistry in this country, notwithstanding any dicta in the above-mentioned case which would seem to permit it under certain circumstances. The section already referred to runs as follows:—

> Every person . . . pretending or professing to tell fortunes or using any subtle craft, means, or device by palmistry or otherwise to deceive and impose on any of his Majesty's subjects . . . shall be deemed a rogue and vagabond within the true intent and meaning of this Act; and it shall be lawful for any Justice of the Peace to commit such offender (being thereof convicted before him by the confession of such offender or by the evidence on oath of one or more credible witness or witnesses) to the house of correction, there to be kept to hard labour for any time not exceeding three calendar months.

A *spiritualist* has been convicted under the Act, in *Monck* v. *Hilton*, it having been found as a fact by the Court that he attempted to deceive and impose upon people by falsely pretending to have the supernatural

faculty of obtaining from invisible agents and the spirits of the dead, answers, messages, and manifestations of power. These answers and manifestations of power were really noises, raps, and the winding-up of a musical box. The case of an *astrologist* is that of *Penny* v. *Hanson*. There the offender had published advertisements in various newspapers offering to cast nativities, give yearly advice, and answer astrological questions. A detective applied to him in answer to the advertisement and received in reply a circular which, after a declaration that astrology was a science, stated: "By the position of the planets in the nativity and their aspects to each other, we are able to give the general descriptions of persons, the diseases liable to, health, mental abilities and disposition, the occupation most suitable, where and when successful, marriage, travelling, friends, &c., and the events of everyday life. Interviews are unnecessary; all that is required is the time of birth as near as possible; day of week, day of month, year, sex and birthplace." To this was added a scale of charges. The astrologist never actually told anything to the detective, and there was no evidence to show whether or not he believed in the truth of his professions. He was nevertheless convicted under the above statute, and the conviction was upheld on appeal.

PARCELS POST.—This department of Post Office activity was introduced in the year 1882. Its introduction has proved of the utmost benefit to internal commerce, as also to foreign trade so far as parcel post agreements have been entered into with other countries. *Inland.*—Parcels intended to be sent by post must be handed over the counter of a post office, or, in country places, handed to the postman. On the left hand side of the cover of the parcel and immediately above the address, should appear the words "Parcels Post"; and the sender should place his name and address either on the outside or within the parcel. When posting the parcel it is always advisable to obtain a certificate of postage, for then compensation up to £2 (except for a watch, jewellery, money, and certain other articles) may be obtained, in case of default by the postal authorities. And this will be paid even though the Postmaster-General does not, as a rule, admit any liability except in respect of registered parcels [*see* REGISTERED POST]. Only parcels of limited size may be transmitted through the post. The dimensions prescribed are: Greatest length, 3 ft. 6 in.; greatest length and girth combined, 6 ft. 0 in. For example, a parcel measuring 3 ft. 6 in. in length may measure as much as 2 ft. 6 in. in girth. A shorter parcel may be thicker; thus, if it measure no more than 3 ft. in length it may measure as much as 3 ft. in girth, *i.e.* round its thickest part. Parcels may be addressed to a post office to be called for, and will be kept there three weeks. There is a charge made of 1d. a day after the first day for so keeping a parcel, but addressees who reside outside the free delivery or persons on board a ship are exempt therefrom. Parcels will be redirected by the postal authorities in the same manner as letters, but those who require such a redirection must be careful to fill up a form additional to that used in respect of the direction of their letters. Though postmen and mail-carriers are expected to decline all offers of employment by the public, yet they are allowed to carry for the latter *bonâ fide* light packets of medicine without first obtaining permission from the postal authorities; and, with

that permission, they may carry parcels of newly published newspapers addressed from the publishing office of the newspaper in question to a newsagent.

Articles which can or cannot be transmitted.—Directions as to packing.—The prohibitions against the sending by post of anything indecent, or explosive, or any living creature, except bees, or of any enclosure bearing an address different from that borne on the cover in which it is enclosed, are the same in the case of parcels as in the case of letters and other postal packets. There is no prohibition against enclosing in a parcel a letter intended for the same address as the parcel itself. The conveyance or delivery by post in or to any prohibited district in Ireland of any parcels containing arms or bullets is forbidden. Any such parcel addressed to a prohibited district is stopped, and can only be returned to the sender on payment of a second postage. No parcel containing arms or bullets and addressed to Ireland should therefore be posted, unless it has first been ascertained that the address for which the parcel is intended is not situated within a prohibited district. The expression "arms" includes any cannon, gun, revolver, pistol, and any description of firearms, also any sword, cutlass, pike, and bayonet, also any part of such arms. The expression "prohibited district" means any place in Ireland in respect of which the Lord-Lieutenant of Ireland may have made or may make any orders for prohibiting or regulating therein the sale or importation of arms and ammunition. These districts are altered by proclamation from time to time. China, crockery, eggs, fruit, fish, meat, &c., which may not be sent by Letter Post, may be sent by Parcel Post, if packed with special care. Liquids or semi-liquids, such as jellies, pickles, paint, varnish, &c., must be put into bottles or cases securely stoppered. The edges or points of sharp instruments, like axes, razors, needles, forks, &c., must be carefully protected. Any parcel containing eggs, or fragile or perishable contents, should be conspicuously marked "Eggs," or "Fragile—with care," or "Perishable." The general regulation with regard to packing is that every parcel must be packed and enclosed in a reasonably strong case, wrapper or cover, fastened in a manner calculated to preserve the contents from loss or damage in the post, and to prevent any tampering therewith. The packing of a parcel must also be such as to protect other postal packets from being damaged in any way by it. Any parcel not so packed will, if tendered for transmission, be refused, and if discovered in transit, will be liable to be detained.

Posting of parcels in large numbers.—Any person who wishes to send off a large number of parcels, whether on a particular day or at regular or irregular intervals, will facilitate the work of despatching them if he acquaints the office where they will be posted with his intentions, and gives as early information as convenient of the number of the parcels, their average weight, and the dates and times at which he proposes to post them. He will also consult the convenience of the department by sending the parcels to the post in batches, beginning as early in the day as possible. The department undertakes the collection of parcels at regular intervals from the premises of firms or private persons, when the number to be collected amounts to as many as ten at a time or fifty a week.

Foreign.—Parcels may now be posted to most foreign and colonial countries, the rates varying, as a rule, according to their respective distances from London. The permissible dimensions also vary, the maximum being as follows: Parcels for British Possessions (except Canada), Beyrout, China (Hong Kong Agencies), Colombia, Constantinople, Costa Rica, Egypt, Germany, Guatemala, Honduras, Morocco, Salonica. Siam, Smyrna, Switzerland.

Tangier—Greatest length and girth combined, 3 ft. 6 in.; greatest length and girth combined, 6 ft. For European countries (except Germany, Greece, Spain, Switzerland, and Turkey), and for Azores, Cameroons, Caroline Islands, Liberia, Madeira, Marshall Islands, and Samoa—Greatest length, breadth, or depth, 2 ft. For other foreign countries—Greatest length, 2 ft.; greatest length and girth combined, 4 ft. (For Japan, 6 ft.) For Canada—Greatest length, 2 ft.; greatest breadth or depth, 1 ft.

Though insurance is possible when forwarding to a large number of foreign countries, yet in many instances it must be limited to a prescribed amount. Thus a parcel addressed to Holland cannot be insured for more than £40. On the other hand some countries require parcels of a specified value always to be insured. No uninsured parcel for Zanzibar, for example, must exceed £50 in value. But as an isolated instance, no parcel for Egypt, even if insured, can exceed £120 in value. It will be seen, therefore, that the practice with regard to official insurance varies very considerably, though there is nothing to prevent a consignor effecting an insurance at Lloyd's in any case. One declaration or more of the contents and their value should accompany every parcel. This is necessary to facilitate the assessment of Customs duty (where payable), which is collected as a rule on delivery. Arrangements have been made, however, whereby persons sending parcels to certain countries and places can take upon themselves the payment of the Customs and other charges ordinarily payable by the addressees. Particulars of these arrangements can be ascertained at any head or branch post office.

PARENT AND CHILD.—This relationship can arise only from a lawful marriage. Its nature is higher than that of guardian and ward, for a guardian, merely as such, is not under any legal obligation to maintain his ward. A parent, on the other hand, is practically bound to maintain his child, though, perhaps, only to the extent of furnishing it with the necessaries of life. As against the mother, a father is primarily legally entitled to the care and custody of his children, but he may be deprived of the care of them if his conduct is such as, in the opinion of the Court, endangers their morals, or if he is guilty of conduct amounting to an abandonment of parental authority, or if he is guilty of improper conduct in relation to his marriage, or if it is in the interests of the children that they should be taken out of his care and custody. After the death of the father the mother is the natural guardian of their children. The mother's rights during the life of the father are mainly dependent upon statute, as for example the Guardianship of Infants Act, 1886. By section 5 of that Act the Court, upon the application of the mother of an infant, may make any order it thinks fit regarding its custody, and the right of access thereto of either parent, regard always being had to the welfare of the infant, to the conduct of the parents, and to the wishes of the mother as well as of the father. Section 3 confers upon the mother the right to appoint a guardian of her children after the death of herself and the father. And if, as a result of divorce or judicial separation proceedings, a parent is found guilty of marital misconduct, the Court has power to deprive him or her of the custody of the children. After the death of the parent to whom that custody has been given, the guilty parent is entitled to apply to the Court for the guardianship. The mother has also

a valuable right conferred upon her by section 5 of the Summary Jurisdiction (Married Women) Act, 1895, in that under that Act she may apply to the local magistrates for an order as against her husband, for the custody by her of those of their children who are under the age of sixteen; but she loses this privilege if she is guilty of adultery not condoned or conduced to by him. Other cases may be mentioned in which the law will interfere in the matter of the custody of children. Thus the Court will divest a parent or guardian of all authority over a female child under sixteen years of age, when that parent or guardian has been shown to have encouraged her seduction or prostitution (Criminal Law Amendment Act, 1885, sec. 12). Under the Poor Law Act, 1889, the guardians of the poor may assume the exclusive custody of a boy until the age of sixteen, or of a girl until the age of eighteen, when the parent is in penal servitude or has been convicted of an offence against the child, or has deserted him or her. And a writ of *habeas corpus* may be refused, by virtue of the Custody of Children Act, 1891, to a parent who has been guilty of misconduct or has abandoned or deserted his or her child, or allowed it to be brought up by an institution or some other person, or under circumstances showing that he or she has been unmindful of parental duties. A child can also be taken out of the control of a parent who has been found guilty of an offence under the Prevention of Cruelty to Children Act, 1894, or of one who has been convicted under the Incest Act, 1908.

It has already been said that a parent is bound only to furnish his child with the necessaries of life. But even this limited obligation is not positively recognised by the common law. It rather arises, inferentially, from the operation of the poor law and the criminal law. If a person becomes chargeable to the parish the guardians can obtain from the magistrates an order against his father for his maintenance. A child's mother, grandfather, or step-father or mother could, under these circumstances, also be made liable for its maintenance. And so could either of them be ordered to contribute, up to five shillings a week, towards its maintenance in a reformatory. And since a person can be guilty of crime as a consequence of merely passive conduct, it follows that a parent who carelessly suffers his child to starve to death may incur punishment for manslaughter, for example. In fact, the criminal law goes farther than this, for it is expressly provided that a parent who wilfully neglects to provide adequate food, clothing, medical aid, or lodging to his child, being in his custody, under the age of fourteen, whereby the health of the child has been, or is likely to be, seriously injured, is liable to imprisonment. A child, on the other hand, if of sufficient age and means—including a married woman with separate estate (8 Edw. VII., c. 27)—is liable for the maintenance of his or her parent or parents.

A parent is bound, by reason of the operation of the Education Acts, to take care that his child enjoys the benefit of the facilities for education supplied by the State, except so far as they include religious teaching, in respect of which he is entitled to exercise a certain discretion. A more extended education than this he need not give his child, no matter what his social position may be. If the child, being under the age of fourteen years, is beyond his control, he can apply to the magistrates for an order that the child be sent to a reformatory or industrial school.

This Indenture made the second day of May One thousand nine hundred and ten

Between Arthur Forbes Ringrose of 12 Adam Street Walthamstow in the County of Essex Draper of the one part and **Edward Phillips** of 93 Pretoria Road Ilford in the same County Draper of the other part **Witnesseth** as follows:—

1 The parties shall become and henceforth continue for and during the term of three years from the date hereof partners in the business of drapers to be carried on at 24 High Road Stratford in the County of Essex or at such other place or places as may be agreed between the said parties under the name or style of Ringrose Phillips & Co.

2 The capital of the partnership shall be the sum of one thousand pounds to be contributed equally by the said parties to and by whom the profits and losses shall belong and be borne respectively in equal shares

3 Each of the said parties shall be entitled to draw out of and on account of the profits the sum of three pounds in each week

4 The bankers of the partnership shall be the Stratford branch of the London and County Bank or such other banks as the said parties shall agree and the banking account or accounts shall be drawn upon only by cheques signed by both the said parties

5 No employee whatsoever shall be taken employed or discharged without the consent of both the said parties

6 Neither party shall purchase goods or incur liability on behalf of the firm to the amount of fifty pounds or give credit to the amount of ten pounds or give time exceeding one month to a debtor of the firm or release or compound debts due to the firm to an amount of loss exceeding five pounds in any one case without the previous written consent of the other party

7 All monies and securities for money shall be paid into and lodged with the bankers on the day of the receipt thereof or if received after banking hours on the following day

8 All usual and proper entries are to be made in proper books of account and the same shall be kept under the control of both the said parties at the said place of business and at all times be open to the inspection of either of the said parties

9 Immediately after each thirty first day of December in every year the partners shall take an account and valuation of the effects credits and liabilities of the partnership to be forthwith entered in two books to be signed by the partners each of whom is to retain one

and the entries in such books shall be conclusive except only as to such errors to the amount of £50 as shall be complained of within one month from such signing and the profits shall be divided after the making up of such account

10 In the event of said account showing a deficiency the same shall be made up by the partners equally

11 Any dispute or question which shall arise between the said partners in relation to the partnership shall be referred to two arbitrators or their umpire in accordance with the provisions of the Arbitration Act 1889

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

Signed sealed and delivered by the said Arthur Forbes Pringrose and Edward Phillips in the presence of

A F Pringrose (L.S.)

Edw. Phillips (L.S.)

Abraham Lindley.
Solicitor
Ilford

PARTNERSHIP is the relation which subsists between persons carrying on a business in common with a view to profit. Such is the short definition contained in the Partnership Act, 1890, an Act which amended and very largely codified the law relating to partnership, and is the chief statutory authority on the subject. But this definition does not profess to be complete. For one thing, it must be noted that no partnership, strictly so called, is constituted by the relation between members of a company or association registered as a joint-stock company under the Companies Acts; nor by the formation or incorporation of a company under a special Act of Parliament, or letter patent, or Royal Charter; nor by a mining company subject to the jurisdiction of the STANNARIES (*q.v.*). As a general rule, an agreement to share profits and losses in a business will constitute a partnership; and in most actual cases there is no dispute between the parties concerned as to the existence or non-existence of a partnership But in some cases there does arise a difficult question, whether the partners are really partners in the legal sense of the term, and so entitled to the rights and subject to the obligations incidental to a partnership. Thus in *Green* v. *Beesley*, it was agreed that Green should carry the mails, by horse and cart, between Northampton and Brackley at a remuneration payable by Beesley, at the rate of £9 per mile per annum, and also that Green would pay a certain proportion of the incidental expenses; the money received for the carriage of parcels was to be divided between the parties equally, in which proportion they were also to bear any losses in respect of damages to parcels and so forth. Upon Green suing Beesley in this action for certain arrears of the £9 per mile and his share of the receipts for carriage, the defendant set up the defence that the relationship between them was that of partners, and that, accordingly, neither party could claim anything from the other except upon a balance of a profit and loss account. And this defence succeeded, for it was held that the agreement constituted a partnership, and not a mere matter of wages and independent payments. Another case, which also incidentally illustrates the practice of marine insurance underwriting [*see* LLOYD'S], is that of *Brett* v. *Beckwith*. There the parties having agreed to act in concert as underwriters and share equally the profit and loss of all insurances, it was held that a partnership had been constituted by that agreement, even though each of the parties had underwritten policies in his own name for distinct sums.

The foregoing general rule is not, however, always a sufficient criterion, though as a working principle it is no doubt adequate. The Act itself lays down three important rules, to which regard should be had in determining whether a partnership does or does not exist. (1) Joint tenancy, tenancy in common, joint property, common property, or part ownership, does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof. For instance, if two persons buy a horse, each paying one-half of the price, under an agreement that either of them having possession of the horse shall provide for his keeping without cost to the other, and that each shall offer the horse for sale and endeavour to procure a purchaser at a profit over the cost, but that neither shall sell the horse without the concurrence of the other, they are owners of the horse as tenants in common, and not as partners (*American*). (2) The sharing of gross returns does not of itself

create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which, or from the use of which, the returns are derived. (3) But the receipt by a person of the share of the profits of a business is *primâ facie* evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business. In the words of the Master of the Rolls, in *Pooley* v. *Driver*, "If we find an association of two or more persons formed for the purpose of carrying on, in the first instance, or of continuing to carry on business, and we find that those persons share between them generally the profits of that business, as I understand the law of the case as laid down by the highest authority, those persons are to be treated as partners in that business unless there are surrounding circumstances to show that they are not really partners." In the case of *Cox* v. *Hickman*, the persons sought to be made liable as partners were held not so liable by the Court. They certainly shared in the profits of the business, but the "surrounding circumstances" were such that they were in fact trustees for the creditors of the business, and only as such were they authorised to carry it on and receive their share of the profits. But the cases that come before the courts in this connection are not always those in which creditors seek to attach a liability upon parties who, though they have participated in the profits of a business, are yet unwilling to be regarded and liable as partners therein. Sometimes, as in *Ex parte Tennant: In re Howard*, it is the participant in the profits who, because he is such, claims to be a partner. There the claimant, whose son was an underwriter at Lloyds, and this business being the one in which the partnership was claimed, had become a surety for his son, and in return was entitled, under an agreement, to a half share in the profits. But Lord Justice James, in view of all the "surrounding circumstances," found that the whole intent and meaning of the parties, as expressed by their agreement, was that the father should not be a partner, and should not have the rights of a partner. The agreement conferred upon him "no specific right to interfere with the monies in the hands of the brokers, or to intercept anything between a broker and the son, but that he was relying on the personal responsibility of the son to pay that which he intended to have as his reward for what he had done—one-half of the net profits. That being so, and there being no fraud upon the creditors, the father having never held out to the creditors that he was responsible, and having provided a fund for the creditors by means of his suretyship, it seems to be impossible to say that the creditors were in any way prejudiced or damnified by the mode in which this bargain was made between the father and the son. The fact is that the father is now seeking, contrary to his first impression as to what the relations between them were, to make out that he was a partner." Of this third statutory rule there are five particular applications. These are: (*a*) The receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business, does not of itself make him a partner in the business or liable as such; (*b*) A contract for the remuneration of a servant or agent of a person engaged in a business, by a share of the profits of the business, does not of itself make the servant or agent a partner in the business or liable as such; (*c*) A person being the widow or child of a deceased partner, and receiving by way of annuity a

portion of the profits made in the business in which the deceased person was a partner, is not by reason only of such receipt a partner in the business or liable as such; (*d*) The advance of money by way of loan to a person engaged or about to engage in any business, on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business or liable as such, *provided* that the contract is in writing, and signed by or on behalf of all the parties thereto; (*e*) A person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him of the goodwill of the business, is not by reason only of such receipt a partner in the business or liable as such. Another point of interest in connection with partnerships may be usefully noted. It is that the relationship of partnerships is not limited to affairs in the nature of continued and extensive business operations. It may exist only as to a particular transaction or adventure. Where this is so the rights and liabilities of the partners are naturally confined to those incident to transaction or adventure the subject of the partnership. In *Reid* v. *Hollinshead*, a merchant directed a broker to purchase cotton, it being agreed that the broker should not charge a commission but receive a share in the profit; it was held that the broker was interested as a partner in the cotton. But an agreement by A. and B. that C., because of his assistance, shall have a share in the profits and losses of a transaction, say a deal in coffee, between A. and B., does not give C. anything more than a share in the results of the transaction; it does not give him the interest of a partner in the coffee (*Alfaro* v. *De La Torre*). In the last-mentioned case the Master of the Rolls laid it down as long settled law, that if two persons enter into a joint adventure on these terms, that one is to pay for the goods, and that when the goods are sold the profits are to be divided or the losses borne equally, the owner of the goods is the person who bought them on his own account, and who has not specifically parted with any share in them to the other.

Position of lenders and sellers in consideration of a share in profits.—Any one who lends money or sells a goodwill upon a contract to receive a share in the returns or profits of a business, or a share in the property of the business, should have regard to the prejudicial (to him) provisions of section 3 of the Act. This section, which cannot be noted too carefully, runs as follows: "In the event of any person to whom money has been advanced by way of loan upon such a contract . . . or of any buyer of a goodwill in consideration of a share of the profits of the business, being adjudged a bankrupt, entering into an arrangement to pay his creditors less than twenty shillings in the pound, or dying in insolvent circumstances, the lender of the loan shall not be entitled to recover anything in respect of his loan, and the seller of the goodwill shall not be entitled to recover anything in respect of the share of profits contracted for, until the claims of the other creditors of the borrower or buyer for valuable consideration in money or money's worth have been satisfied."

Meaning of firm.—"Firm" is the name by which persons are collectively called who have entered into partnership with one another; the name under which their business is carried on is called the "firm name." In Scotland a firm is a legal person distinct from the partners of whom it is composed;

but an individual partner may be charged on a decree or diligence directed against the firm, and on payment of the debts is entitled to relief *pro ratâ* from the firm and its other members.

A limited partnership exists where one or more of the partners has only a limited liability. This form of partnership, which was introduced into English law by the Limited Partnerships Act, 1907, is not dealt with in this article, but is the subject of the article on LIMITED PARTNERSHIPS (*q.v.*) in the Appendix.

Relations of partners to persons dealing with them.—*Power of partner to bind the firm.*—Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership. Though the acts of a partner in the course of carrying on in the usual way the ordinary business of his firm bind the firm and his co-partners, yet the firm will not be bound if the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority, or does not know or believe him to be a partner. Great care should be taken in bills of exchange or promissory note transactions with partnership firms, for only trading firms, strictly so-called, are of such a character as impliedly to authorise their partners to draw and accept bills and make promissory notes (*Hedley* v. *Bainbridge; Garland* v. *Jacomb*). And even this implied authority may be rebutted by express previous notice to the party taking the security from a partner that the others would not be liable for it (*Lord Galloway* v. *Mathew*). A partner in a firm of solicitors is not impliedly authorised to negotiate bills (*Hedley* v. *Bainbridge*); nor, according to Mr. Justice Littledale in *Dickinson* v. *Valpy*, would a partner in a mining firm or a firm engaged in farming. It may therefore be stated generally, following the words of the Act, that only an act or instrument relating to the business of the firm and done or executed in the firm-name, or in any other manner showing an intention to bind the firm, by any person thereto authorised, whether a partner or not, is binding on the firm and all the partners. But this rule does not affect any general rule of law relating to the execution of deeds or negotiable instruments. Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, so that the firm is not bound unless he is in fact specially authorised by the other partners, yet that partner by so acting may incur a personal liability. Partners may agree between themselves to restrict the power of any one or more of them to bind the firm; but the restriction will only save the firm from liability, in respect of an act done in contravention thereof, in case the person with whom the liability is incurred has received previous notice of the restriction. A firm cannot, therefore, secretly restrict the powers of its partners to the prejudice of innocent third parties with whom it may deal.

Liability of partners.—In England and Ireland every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he is a partner; and this is so whether the property and profits of the firm belong to the partners in equal shares, or whether the interests of the partners are not equal. After the death of a partner his estate is also severally liable in a due course of administration for the debts and obligations of his firm, so far as they remain unsatisfied, this liability of

his estate being subject, however, to the prior payment thereout of his private debts. In Scotland a partner is also severally liable during his lifetime for the debts and obligations of his firm. *For wrongs and misappropriation.*—Where, by a wrongful act or omission of a partner acting in the ordinary course of the business of the firm, or with the authority of his co-partners, a loss or damage is caused to some person who is not a partner in the firm, or any penalty is incurred, the firm is liable therefor to the same extent as the partner so acting or omitting to act. And the firm is liable to make good any loss caused by one of the partners who, when acting within the scope of his apparent authority, receives the money or property of a third person and misapplies it; and also where a firm in the course of its business receives money or property of a third person, and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm. And not only is the firm liable in such cases, but every one of its partners is liable jointly with his co-partners, and also severally, for everything for which the firm while he is a partner therein becomes so liable. If a partner who is also a trustee improperly employs trust property in the business, or on the account of the partnership, no other person as a rule is liable for the trust property to the persons beneficially interested therein. But if any of the partners in the firm have had notice of the breach of trust, and yet permitted and enjoyed the benefit of it, he may become personally liable in respect thereof. Misapplied trust money, if it is still in the possession and under the control of a firm, may be followed and recovered from the firm. *Holding out.*—A person is said to be "holding out" who, by words spoken or written, or by conduct represents himself, or who knowingly suffers himself to be represented, as a partner in a particular firm. As a consequence of holding out he becomes liable as a partner. The liability is only to any one who has on the faith of his representation given credit to the firm; but it attaches whether the representation has or has not been made or communicated to the person giving credit by or with the knowledge of the apparent partner making the representation or allowing it to be made. Where, after a partner's death, however, the partnership business is continued in the old firm-name, the continued use of that name, or of the deceased partner's name as part thereof, does not of itself make his executors' or administrators' estate or effects liable for any partnership debts contracted after his death. *Incoming and outgoing partners.*—Merely by being admitted as a partner in an existing firm a man does not become liable to the creditors of the firm for anything done before he became a partner; and, on the other hand, a partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement. A retiring partner may be discharged from any existing liabilities, by an agreement to that effect between himself and the members of the firm as newly constituted and the creditors [*see* NOVATION]; and this agreement may be either express, or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted. A continuing guaranty, or cautionary obligation, given either to a firm or to a third person, in respect of the transactions of a firm is, in the absence of an agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of the transactions of which the guaranty or obligation was given.

Relation of partners to one another.—The mutual rights and duties of partners are usually defined by an agreement between the parties. This agreement need not be under seal, nor is even a simple written agreement necessary to constitute the partnership relation. If, however, there is no agreement under seal or in writing, then the mutual rights and duties of the partners must be ascertained from the Partnership Act. And whether there is a special agreement or not, the terms and conditions of the partnership can always be varied by the consent of all the partners; and such consent may be either express or inferred from a course of dealing. In the absence of any provision, express or implied, as to the proportions in which the partners share in the business, the law presumes that they share equally between them (*Peacock* v. *Peacock*).

Partnership property.—The partnership property includes all property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm or for the purposes and in the course of the partnership business. It must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement. The legal estate or interest in any land which belongs to the partnership devolves, however, according to its nature and tenure, and the general rules of law applicable thereto; but it so devolves in trust, so far as necessary, for the persons beneficially interested in the land, that is to say, the partners and their legal representatives. In Scotland the same rule applies to any heritable estate which may form part of a partnership property. In some cases there will be found an estate or interest in land which is not partnership property but belongs to co-owners who are partners as to profits made by the use of that land or estate. There the land or estate naturally belongs to its owners as co-owners as distinguished from partners; and so will any other land or estate they subsequently purchase, unless there is an agreement between them to the contrary. All property bought with money belonging to a firm is taken to have been bought on account of the firm, unless the contrary intention appears. Where land or any heritable interest therein has become partnership property it is treated as between the partners, unless the contrary intention appears, as personal or movable and not real or heritable estate; and this is so as between partners and their legal representatives and heirs.

Procedure against partnership property for a partner's separate judgment debt.—This procedure, specially introduced by the Act, is not applicable to Scotland, but it applies in the case of a cost-book company as if the company were an ordinary partnership firm. In the first place it is provided that a writ of execution shall not issue against any partnership property except on a judgment against the firm. The Act then proceeds:—

The High Court, or a judge thereof, or the Chancery Court of the county palatine of Lancaster, or a county court, may, on the application by summons of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits with payment of the amount of the judgment debt and interest thereon, and may by the same or a subsequent order appoint a receiver of that partner's share of profits (whether already declared or accruing), and of any other money which may be coming to him in respect of

the partnership, and direct all accounts and inquiries, and give all other orders and directions which might have been directed or given if the charge had been made in favour of the judgment creditor by the partner, or which the circumstances of the case may require. The other partner or partners shall be at liberty at any time to redeem the interest charged, or in case of a sale being directed, to purchase the same.

Rules as to interests and duties of partners.—Wherever there is a written agreement of partnership these rules, extended or modified perhaps according to the circumstances of the particular case, should always be incorporated therein. But where there is no such agreement, and no inconsistent agreement can be implied between the parties, and subject to such agreement as may exist, then the interests of partners in the partnership property and their rights and duties in relation to the partnership are determined by the following rules:—

(1) All the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses whether of capital or otherwise sustained by the firm. (2) The firm must indemnify every partner in respect of payments made and personal liabilities incurred by him—(*a*) In the ordinary and proper conduct of the business of the firm; or, (*b*) In or about anything necessarily done for the preservation of the business or property of the firm. (3) A partner making, for the purpose of the partnership, any actual payment or advance beyond the amount of capital which he has agreed to subscribe, is entitled to interest at the rate of 5 per cent. per annum from the date of the payment or advance. (4) A partner is not entitled, before the ascertainment of profits, to interest on the capital subscribed by him. (5) Every partner may take part in the management of the partnership business. (6) No partner shall be entitled to remuneration for acting in the partnership business. (7) No person may be introduced as a partner without the consent of all existing partners. (8) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the partnership business without the consent of all existing partners. (9) The partnership books are to be kept at the place of business of the partnership (or the principal place, if there is more than one), and every partner may, when he thinks fit, have access to and inspect and copy any of them.

Further statutory rules.—Expulsion of partner.—No majority of the partners can expel any partner, unless a power to do so has been conferred by express agreement between the partners. *Retirement from partnership at will.*—Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of his intention so to do to all the other partners. If the partnership has originally been constituted by deed, a written notice, signed by the partner giving it, is necessary for this purpose. *Continuance of a partnership for a term.*—Where a partnership entered into for a fixed term is continued after the term has expired, and without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as is consistent with the incidents of a partnership at will. The partnership so continues as a partnership at will. A continuance of the business by the partners or such of them as habitually acted therein during the term, without any settlement or

liquidation of the partnership affairs, is presumed to be a continuance of the partnership. *Rendering accounts.*—Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives. *Private profits.*—Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership, or from any use by him of the partnership property, name, or business connection. This rule also applies to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the affairs thereof have been completely wound up, either by any surviving partner or by the representatives of the deceased partner. *Competition with firm.*—If a partner, without the consent of the other partners, carries on any business of the same nature as and competing with that of the firm, he must account for and pay over to the firm all profits made by him in that business. *Assignee of partner's share.*—An assignment by a partner of his share in the partnership, either absolute or by way of mortgage or redeemable charge, confers only limited rights upon the assignee, as against the other partners during the continuance of the partnership. He is not entitled to interfere in the management or administration of the partnership business or affairs, or to require any accounts of the partnership transactions, or to inspect the partnership books. He can only receive the share of profits to which the assigning partner would otherwise be entitled, and he must accept the account of profits agreed to by the partners. In case of a dissolution of the partnership, whether as respects all the partners or as respects the assigning partner, the asignee is entitled to receive the share of the partnership assets to which the assigning partner is entitled as between himself and the other partners, and for the purpose of ascertaining that share, to an account as from the date of the dissolution.

Dissolution of partnership.—Subject to the terms of any agreement between the partners, a partnership is dissolved—if entered into for a fixed term, by the expiration of that term; and if entered into for a single adventure or undertaking, by the termination of that adventure or undertaking. So also is it, if entered into for an undefined time (as in the case of a partnership at will), by any partner giving notice to the other or others of his intention to dissolve the partnership: here the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is mentioned, as from the date of the communication of the notice. And so also, as regards all the partners, by the death or bankruptcy of a partner. And it is also dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership. And a partnership may be dissolved, at the option of the other partners, if any partner suffers his share of the partnership property to be charged under the Act for his separate debt.

By the Court.—On application by a partner the Court may decree a dissolution of the partnership in any of the following cases:—

(*a*) When a partner is found lunatic by inquisition, or in Scotland by cognition, or is shown to the satisfaction of the Court to be of permanently unsound mind, in either of which cases the application may be made as well on behalf of that partner by his committee or next friend or person having title to intervene

This Indenture made the twenty ninth day of September One thousand nine hundred and ten **Between Arthur Farleigh** of 19 Wood Street Manchester Grocer of the first part **James Edward Grace** of the same place Grocer of the second part and **Edward Albert Bevan** of the same place Grocer of the third part **Whereas** by an Indenture dated the ninth day of October One thousand nine hundred and eight and made between the parties hereto the said parties entered into a partnership in the business of grocers in equal shares for the term of three years and have since carried on the said business accordingly **And whereas** a statement and account of the assets and liabilities of the said business has been prepared and settled and has been signed by each of the said parties shewing as for and up to this date (which the said statement also bears) the sum of Six hundred pounds as the present net value of the said business including goodwill **And whereas** it has been agreed between the said parties that the said Arthur Farleigh shall retire from the said business and his partnership share and interest therein and shall receive and accept from the said James Edward Grace

and Edward Albert Bevan the sum of Two hundred pounds as consideration for such retirement and in full satisfaction and payment of all his share and interest aforesaid such sum of Two hundred pounds to be paid by five equal quarterly payments of Forty pounds payable on the usual quarter days the first to be paid on the execution hereof **Now this Indenture witnesseth** that in pursuance of the said agreement and in consideration of the premises the said Arthur Farleigh James Edward Grace and Edward Albert Bevan do hereby dissolve the said partnership hitherto existing between them so far as regards the said Arthur Farleigh and the said James Edward Grace and Edward Albert Bevan do hereby mutually covenant that they the said James Edward Grace and Edward Albert Bevan will henceforth be and remain partners in the said business in equal shares for the residue of the said term of three years upon and subject to the conditions and provisions contained in the said Indenture of partnership or as near thereto as the circumstances will permit **And this Indenture also witnesseth** that in further pursuance of the said agreement and in further consideration of the premises the said James Edward Grace and Edward Albert Bevan hereby covenant with the said Arthur Farleigh to pay to him the said sum of Two hundred pounds at the times and in the manner hereinbefore stated **And** the said Arthur Farleigh hereby assigns and releases unto the said James Arthur Grace and Edward Albert Bevan all his share and interest in the said business and the goodwill thereof and the stock in trade moneys credits and effects belonging thereto To hold

the same unto the said James Edward Grace and Edward Albert Bevan in equal shares **And also** appoints the said James Edwards Grace and Edward Albert Bevan to sue and institute legal proceedings for recover and receive and give receipts for and compromise and release all debts and claims due and belonging to the said partnership **And** the said Arthur Farleigh hereby releases the said James Edward Grace and Edward Albert Bevan from all the covenants and provisions contained in the said Indenture of partnership and the said James Edward Grace and Edward Albert Bevan hereby release the said Arthur Farleigh from the same covenants and provisions and indemnify him against all claims and demands which may be made against him in relation to the said partnership **In witness** whereof the said parties to these presents have hereunto set their hands and seals the day and year first before written

Signed sealed and delivered by the said Arthur Farleigh James Edward Grace and Edward Albert Bevan in the presence of

A Farleigh L.S.

Jas. Edwd. Grace L.S.

Edward A Bevan L.S.

James Bouvard
Solicitor
Manchester

as by any other partner; (*b*) When a partner, other than the partner suing, becomes in any other way permanently incapable of performing his part of the partnership contract; (*c*) When a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the Court, regard being had to the nature of the business, is calculated to prejudicially affect the carrying on of the business; (*d*) When a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him; (*e*) When the business of the partnership can only be carried on at a loss; (*f*) Whenever in any case circumstances have arisen which, in the opinion of the Court, render it just and equitable that the partnership be dissolved.

Apparent members of old firm.—Where a person deals with a firm after a change in its constitution he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change. A notice in the *Gazette* is sufficient in regard to persons who have not had prior dealings with the firm—those who have had such dealings require special notices. The estate of a partner who dies, or who becomes bankrupt, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of his death, bankruptcy, or retirement respectively, *Right to notify dissolution.*—On the dissolution of a partnership or retirement of a partner any partner may publicly notify the same; and he may require the other partner or partners to concur for that purpose in all necessary or proper acts, if any, which cannot be done without his or their concurrence. *Authority of partners when winding-up.*—After the dissolution of a partnership the authority of each partner to bind the firm, and the other rights and obligations of the partners, continue notwithstanding the dissolution so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise. The firm is in no case, however, bound by the acts of a partner who has become bankrupt; but this rule does not affect the liability of any person who has after the bankruptcy represented himself or knowingly suffered himself to be represented as a partner of the bankrupt.

Distribution of partnership property.—General rights of partners.—On the dissolution of a partnership every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership primarily applied in payment of the debts and liabilities of the firm. Afterwards the surplus assets should be applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm. In order to obtain this due application of the partnership property a partner, or his representatives, may, on the termination of the partnership apply to the Court to wind up the business and affairs of the firm. *Apportionment of premium.*—This question arises in cases where one partner has paid a premium to another on entering into a partnership for a fixed term, and the partnership is dissolved before the expiration of that term otherwise than by the death of a partner. Under such circumstances the Court may order the repayment of the premium, or of such part thereof as it thinks

just, having regard to the terms of the partnership contract and to the length of time during which the partnership has continued. But the Court will not exercise this power in a case where the dissolution is wholly or chiefly due to the misconduct of the partner who paid the premium; nor will it if the partnership has been dissolved by an agreement containing no provision for a return of any part of the premium. *In cases of fraud or misrepresentation.*—Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled—(*a*) to a lien on, or right of retention of, the surplus of the partnership assets, after satisfying the partnership liabilities, for any sum of money paid by him for the purchase of a share in the partnership and for any capital contributed by him; and is (*b*) to stand in the place of the creditors of the firm for any payments made by him in respect of the partnership liabilities; and (*c*) to be indemnified by the person guilty of the fraud or making the representation against all the debts and liabilities of the firm.

Outgoing partner's share.—There is a special statutory provision to meet a case where a member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his estate. It is provided that, in the absence of any agreement to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since the dissolution as the Court may find attributable to the use of his share of the partnership assets, or to interest at the rate of 5 per cent. per annum on the amount of his share of the partnership assets. Where, however, by the partnership contract an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits. But if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account as above mentioned. Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner or the representatives of a deceased partner in respect of the outgoing or deceased partner's share is a debt accruing at the date of the dissolution or death.

Rule for distribution of assets on final settlement of accounts.—In settling accounts between the partners after a dissolution of partnership, then, subject to any agreement, the following rules must be observed:—

(*a*) Losses, including losses and deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partner's individually in the proportion in which they were entitled to share profits; (*b*) The assets of the firm, including the sums, if any, contributed by the partners to make up losses or deficiencies of capital, shall be applied in the following manner and order:—1. In paying the debts and liabilities of the firm to persons who are not partners therein; 2. In paying to each partner rateably what is due from the firm to him for advances as distinguished from capital. 3. In paying to each partner rateably what is due from the firm to him in respect of capital. 4. The

ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible.

PARTNERSHIP, LIMITED. *See* APPENDIX.

PARTNERSHIP ACCOUNTS should always be kept and settled in strict accordance with the financial regulations contained in the contract of partnership, or, in the absence of such a contract, with those imposed generally by the legislature in the Partnership Act. In particular, a strict regard should be had to the capital subscribed by the partners, the allocation of the profits, the allowance of interest on the partners' capital accounts, any limitation of partners' drawings, the date upon which the books are to be balanced, and any stipulation as to the period within which balance-sheets should be made up and accepted by the partners. Any deviation from the prescribed or ruling principles of the accounting should be the subject of formal special agreement between the partners. Whenever a new partner is taken into a firm there should be prepared, as a basis for future accounting a correct certified balance-sheet; and the accuracy of this could well be made the subject of a specific guarantee by the original members.

PARTY WALLS.—The presumption of law is that adjoining owners are tenants in common of a wall which divides their property (*Wiltshire* v. *Sidford*; *Cubitt* v. *Porter*). This, according to Mr. Justice Fry in *Watson* v. *Gray*, is the most common and the primary meaning of the term. The same learned judge also distinguishes three other senses in which the expression "party wall" is used. (1) As signifying a wall divided longitudinally into two strips, one belonging to each of the neighbouring owners, as in *Matts* v. *Hawkins*. In such a case each neighbour, as was said in *Cubitt* v. *Porter*, has a right to pare away one moiety of the wall, even though the remaining part may be of little or no value to its owner. (2) As signifying a wall belonging entirely to one of the adjoining owners, but subject to an easement or right in the other to have it maintained as a dividing wall between the two tenements. (3) As designating a wall divided longitudinally into two moieties, each moiety being subject to a cross easement in favour of the owner of the other moiety. But to return to the more general case of a party wall held in common. In *Watson* v. *Gray*, the freeholds of two adjoining houses derived their title through conveyances from a common predecessor, and in each of which conveyances there was a declaration that the wall dividing the yards at the back of the two houses should be and remain a party wall, it was held that the two owners were tenants in common of the wall. One of them began to erect in his back yard a shed immediately adjoining the wall, and, without the permission of the other, built on and along the top of the wall a new piece of wall of a triangular shape, about 4 feet 6 inches at the bottom and about 3 feet 4 inches in height. In thickness it corresponded with the thickness of the old wall, and was intended to support the roof of the shed. The other owner thereupon threw down that new piece of wall. And the Court subsequently approved of his action in so doing. Somewhat similar were the facts in the case of *Stedman* v. *Smith*. One owner has no right to exclude the other from the use of the top of a party wall of which they are each tenants in common; he cannot for instance put flower-pots or broken glass thereon so as to prevent his neighbour running along the top of it, as he is entitled to do. What they must do, if

they wish to possess separate and independent rights in the wall, is to obtain a partition (*Mayfair Property Co.* v. *Johnston*).

In London the law as above stated is practically swept away by the London Building Act, and even in other cities it may be considerably modified by local bye-laws under the Public Health Acts. Confining our attention, however, to London, it will be useful to note first the definition of a party wall as set out in the Act. The expression is here declared to mean—(*a*) a wall forming part of a building and used or constructed to be used for separation of adjoining buildings belonging to different owners, or occupied, or constructed, or adapted to be occupied, by different owners; or (*b*) a wall forming part of a building and standing, to a greater extent than the projection of the footways, on lands of different owners. Part VIII. of the Act goes very fully into the rights of adjoining owners in respect of party walls, particularly from the point of view of one of those owners, called the "building owner," desiring to build in such a manner as to affect the user of a party wall. Such an owner has very extensive rights conferred upon him by the Act, and to these, when exercised in accordance with the statutory provisions, the adjoining owner must submit. The term "party fence wall" is applied in the Act to a wall which is "used, or constructed to be used as a separation of adjoining lands of different owners and standing on lands of different owners and not being part of a building," but the term does not include a wall constructed on the land of one owner, the footings of which project into the land of another owner. *See* ADJOINING OWNERS.

PASSAGE BROKER is a person who, at any place in the British Islands, sells or lets, or agrees to sell or let, or is anywise concerned in the sale or letting of steerage passages from any place in Europe not within the Mediterranean Sea. In order to lawfully act as such, he must first enter into a bond to the Crown, executed in duplicate, for £1000, this bond being also executed by two good and sufficient sureties approved by the emigration officer nearest to his place of business. In lieu of the two sureties the emigration officer may accept the bond of any guarantee society approved by the Treasury. It is also necessary to obtain a licence. Any one who acts as a passage broker without complying with these requirements is liable to a fine of £50; but the Board of Trade, and persons contracting with them or acting under their authority, and any passage broker's agent duly appointed under the Merchant Shipping Act, are exempt from compliance with the requirements. Application for the licence should be made to the licensing authority for the place in which the applicant has his place of business; and it will be granted if the applicant can prove that he has entered into the necessary bond and deposited one of the duplicate copies with the Board of Trade or the emigration officer, and has given to the Board of Trade at least fourteen days' clear notice of his intention to apply for the licence. The licensing authority is—(*a*) in the administrative county of London the justices of the peace at petty sessions; (*b*) elsewhere in England, the council of a county borough or county district; (*c*) in Scotland, the sheriff; and (*d*) in Ireland, the justices in petty session. The licence, unless forfeited, remains in force until the 31st December in the year in which it is granted, and for thirty-one days afterwards; it can be forfeited by order of the magistrate if the broker is convicted of a breach or non-performance of

his statutory obligations or duties. He cannot employ any one as an agent in his business unless that agent holds an appointment signed by himself—the broker, and countersigned by the emigration officer at the port nearest to his place of business; such an agent must, upon request, produce his appointment to any emigration officer, or to any person treating for a steerage passenger; if any one acts in contravention of the foregoing he renders himself liable to a fine of £50. A fine of £5 is incurred if a broker does not keep conspicuously exhibited in his office or place of business a correct list, in legible characters, containing the names and addresses in full of every person for the time being authorised to act as his agent or as an emigrant runner for him. And also if he does not on or before the fifth day, or if that day be a Sunday, on or before the fourth day in every month, transmit a true copy of that list, signed by him, to the emigration officer nearest his place of business; and if he does not report to that emigration officer every discharge or fresh engagement of an agent or of an emigration runner within twenty-four hours of the same taking place.

PASSENGERS IN SHIPS.—The general principles that govern the rights and obligations of carriers of passengers by sea are very much the same as those incidental to the carriage of passengers by land, the most important modifications being the subject of special statutory provisions. As instances of these modifications may be mentioned the LIMITATION OF LIABILITY of shipowners in respect of damages for casualties, and also the enactments of the Merchant Shipping Acts, 1894 and 1906, referred to below. A passenger may, as a rule, leave the ship at any time or place he pleases during the voyage, but so long as he remains on board he is under the absolute control of the captain. Moreover, he is bound to do whatever is absolutely necessary for the safety of the ship, whether arising from perils of the sea or enemies; and in case of refusal, he may be subjected to restraint or imprisonment, and perhaps in extreme cases to coercion. If he remains in a ship and assists her in distress, he is entitled to remuneration for that assistance. And it would seem that if a passenger thwarts the captain in the due exercise of his authority and the discharge of his duty, he may lawfully be put under restraint and imprisonment, provided the necessity of the case is not exceeded. A shipowner is not taken to warrant the seaworthiness and fitness of his ship, for he is absolved from all responsibility if he has rendered her as seaworthy and fit as care and skill make possible. Both in respect of the person of the passenger and his luggage the shipowner is liable, as a rule, for the acts of those whom he employs to navigate his ship, provided they are done within the scope of their employment. And this is so though the acts complained of are not merely wrong but even criminal. If, however, luggage is kept under the control of the passenger the general liability of the shipowner may thereby be modified or excluded. And so also may it be modified or excluded in respect of the passenger himself, and the luggage, by reason of special conditions contained in the contract for the passage; but where the shipowner relies upon such conditions he must prove that they have been brought to the notice of the passenger. Whether or not a passenger has had sufficient notice is always a question of fact depending upon the particular circumstances of the case. Such notice would probably not be considered to have been given if, in the case of an ignorant steerage

passenger for example, the conditions were printed inside the fold of the ticket in such a manner that he would not see them (*Richardson* v. *Rowntree*); but it would be otherwise, undoubtedly, if on the face of the ticket appeared a bold intimation that on the back or in the fold were certain conditions relating to the terms of carriage.

Statutory provisions.—Some part of such of these as are contained in the Merchant Shipping Acts in respect of passengers and passenger ships may perhaps be usefully noticed here.

Passenger steamers.—Such a steamer is expressly defined as "a British or foreign steamship carrying passengers to, from, or between any places in the United Kingdom, except steam ferry-boats working in chains (commonly called steam bridges) and every foreign steamship carrying passengers between places in the United Kingdom." The expression "passenger" includes any person carried in a ship other than the master and crew, and the owner, his family, and servants. A passenger steamer which carries more than twelve passengers must be surveyed at least once a year, and cannot proceed to sea without a certificate of the survey. The certificate is issued by the Board of Trade only after they have received the report of the official surveyors, and when the report justifies its issue. This report is called a "declaration," and it should be forwarded to the Board of Trade within fourteen days of its receipt by the owner of the steamer. He incurs a penalty for delay in duly forwarding this document. Should it be refused him by the surveyors, or should the nature of its contents not satisfy him, the owner has a right to appeal to the local court of survey. The certificate must be renewed annually. And it can be cancelled by the Board of Trade in case (*a*) a declaration of survey on which the certificate was founded has been in any particular made fraudulently or erroneously; or (*b*) the certificate has been issued upon false or erroneous information; or (*c*) since the making of the declaration, the hull, equipments, or machinery have sustained an injury, or are otherwise insufficient. The certificate must always be conspicuously posted up in the ship, or otherwise the owner or master will incur a penalty. And it is a misdemeanour to fraudulently alter or forge such a certificate. No more passengers can be carried than the certificate allows. If the master or owner allows an excess he renders himself liable to a fine of £20 and also to an additional fine of five shillings for every passenger above the number allowed, or if the fare of any passenger on board exceeds five shillings, then double the amount of the fares of all the passengers above the number allowed, reckoned at the highest rate of fare payable by any passenger on board. And further, also under a penalty, the owner must maintain the equipment of a steamer with compasses, hose, deck-shelters, and safety appliances; and on no account can any one increase the prescribed weight on the safety-valve.

Keeping order.—Passengers and others on board a passenger steamer are required by the law to conduct themselves with propriety. In particular, an offence will be committed on a steamer, and a fine of forty shillings incurred (without prejudice to the recovery of any fare payable), in any of the following circumstances: (*a*) If any person being drunk or disorderly has been on that account refused admission thereto by the owner or any person in his employment, and, after having the amount of his fare (if he has paid it) returned or tendered to him, nevertheless persists in attempting to enter the steamer; (*b*) If any person being drunk or disorderly on board the steamer is requested by the owner or any person in his employ to leave the steamer at any place in the United Kingdom, at which he can conveniently do so, and, after having the amount

of his fare (if he has paid it) returned or tendered to him, does not comply with the request; (*c*) If any person on board the steamer, after warning by the master or other officer thereof, molests or continues to molest any passenger; (*d*) If any person, after having been refused admission to the steamer by the owner or any person in his employ on account of the steamer being full, and having had the amount of his fare (if he has paid it) returned or tendered to him, nevertheless persists in attempting to enter the steamer; (*e*) If any person having gone on board the steamer at any place, and being requested, on account of the steamer being full, by the owner or any person in his employ to leave the steamer, before it has quitted that place, and having had the amount of his fare (if he has paid it) returned or tendered to him, does not comply with that request; (*f*) If any person travels or attempts to travel in the steamer without first paying his fare, and with intent to avoid payment thereof; (*g*) If any person having paid his fare for a certain distance, knowingly and wilfully proceeds in the steamer beyond that distance without first paying the additional fare for the additional distance, and with intent to avoid payment thereof; (*h*) If any person on arriving in the steamer at a point to which he has paid his fare knowingly and wilfully refuses or neglects to quit the steamer; (*i*) If any person on board the steamer fails, when requested by the master or other officer thereof, either to pay his fare or exhibit such ticket or other receipt, if any, showing the payment of his fare, as is usually given to persons travelling by and paying their fare for the steamer. And a fine of £20 is incurred by any one on board who wilfully does or causes to be done anything in such a manner as to obstruct or injure any part of the machinery or tackle, or to obstruct, impede, or molest the crew, or any of them, in the navigation or management of the steamer, or otherwise in the execution of their duty. The officers of the steamer have a right to detain a person who commits any of these offences, and take him before a magistrate. Such a person is also bound to give his name and address when so required by the master or an employee of the owner. If he refuses or gives a false name and address, he renders himself liable to a fine of £20, to be paid to the owner. The master of a home-trade passenger steamer has power to exclude drunken passengers and also those who are misconducting themselves to the annoyance or injury of other passengers.

Emigrants' ships are the subject of special statutory provisions. And particularly is this so with regard to the survey thereof, and to their due equipment with compasses, chronometers, fire-engines, anchors, &c. There are also regulations as to the number of, and accommodation for, the passengers; the limit of the number of steerage passengers that may be carried; their restriction on certain decks; the stowage of cargo and luggage, so that the health and comfort of the steerage passengers may be adequately provided for. The subject of food, water, and medical stores and attendance is dealt with very fully, and in great detail. An emigrant ship is one which carries more than fifty steerage passengers or a greater number of steerage passengers than one adult to every thirty-three tons of the ship's registered tonnage if she is a sailing ship, or one to every twenty tons of her registered tonnage if she is a steamer. By the term adult is meant a person aged twelve, or two persons between one and twelve years old. It must also be a seagoing ship—British or foreign—voyaging from the British Islands to some port out of Europe and not within the Mediterranean sea or on a colonial voyage. The master of the ship must give a bond for the due observance of his statutory obligations, and he is required to make lists of his passengers. Three months' imprisonment is the punishment inflicted upon any one who is found on board an emigrant ship with intent to obtain a passage therein without consent; and £20 is the fine which may be inflicted upon any one aiding and abetting him. *Passengers'*

contracts.—A printed contract ticket, according to a prescribed form, is given to every person who pays for a passage as a steerage passenger in any ship, or for a passage as a cabin passenger in any emigrant ship proceeding from the British Islands to any port out of Europe and not within the Mediterranean Sea. A cabin passenger is a person who (*a*) has a space of thirty-six clear superficial feet at least allotted to his exclusive use; (*b*) messes throughout the voyage at the same table as the master or first officer of the ship; (*c*) pays a fare which is in the proportion of thirty shillings for every week of the length of the voyage if the voyage is from Great Britain to a port south of the Equator, or twenty shillings if the voyage is from Great Britain to a port north of the Equator; and (*d*) has a duly signed ticket in the prescribed form. Any other passenger is a steerage passenger. But persons are not cabin passengers unless—(*a*) the space allotted to their exclusive use is in the proportion of 36 clear superficial feet to each statute adult; and (*b*) the fare contracted to be paid by them amounts to at least the sum of £25 for the entire voyage, or is in the proportion of at least 65 shillings for every 1000 miles of the length of the voyage; and (*c*) they have been furnished with a duly signed contract ticket in the form approved by the Board of Trade for cabin passengers. The ticket must be given by the person who receives the passage-money, and be signed by or on behalf of the owner, charterer, or master of the ship. It is not liable to stamp duty, nor need it be given when the contract is with the Board of Trade or its agents, but in any other case a fine of £50 will be incurred by any one who receives the passage-money and does not give the prescribed ticket. It may be that some question arises respecting the breach or non-performance of a stipulation in the ticket. In such a case the passenger has the right to have the question determined by a court of summary jurisdiction, and such a court has special power to award damages and costs to the complainant if the circumstances warrant it; but such damages and costs must not exceed the amount of the passage-money specified in the ticket, and £20 in addition. A passenger, unless he has reasonable cause not to do so, must on demand produce his ticket to any emigration officer for his inspection, failing which he will incur a fine; and so must the owner, charterer, or master of a ship produce his counterpart of the ticket. A penalty of £20 is incurred by any one who alters, or renders useless, his ticket, unless it is the ticket of a cabin passenger who consents. *Spirits* are not allowed to be sold on an emigrant ship. A steerage passenger in an emigrant ship is entitled to at least forty-eight hours after his arrival at the end of his voyage to sleep in the ship, and to be provided for and maintained on board thereof in the same manner as during the voyage, unless within that period the ship leaves the port in the further prosecution of her voyage. If his passage is not provided according to the contract, he is entitled to a return of passage-money and compensation; and if the ship delays in proceeding on her voyage, he is entitled either to subsistence money or maintenance on board. A penalty is incurred by the master for landing at the wrong place; and the expenses of rescue and the conveyance of passengers on a wrecked ship are allowed.

Emigrant runners.—For the purposes of the Merchant Shipping Act, 1894, an emigrant runner is defined as a person, other than a licensed passage-broker or his *bonâ fide* salaried clerk, "who, in or within five miles of the outer boundaries of any port, for hire or reward or the expectation thereof, directly or indirectly conducts, solicits, influences, or recommends any intending emigrant to or on behalf of any passage-broker, or any owner, charterer, or master of a ship, or any keeper of a lodging-house, tavern or shop, or any money-changer, or other dealer or chapman, for any purpose connected with the preparations or arrangements for

a passage, or gives, or pretends to give, to any intending emigrant any information or assistance in any way relating to emigration." *Licence and badge.*—An emigration runner must always hold a licence. This is obtained from the licensing authority for passage-brokers for the place in which he wishes to carry on his business; it will be granted only upon the written recommendation of an emigration officer, or of the chief constable, or other head officer of police in that place. It must be lodged with the local emigration officer within forty-eight hours after it is granted. That officer then registers the name and abode of the runner; and, upon receipt of a fee not exceeding seven shillings, supplies the runner with a badge. In the case of a renewed licence the officer need only note the renewal and its date in the registry book: and he must also note a change of address of the runner. The licence remains in force until the 31st December in the year in which it is granted, unless previously revoked or forfeited. A new badge can be obtained from the emigration officer if the original one is lost, or mutilated or defaced, upon payment of a fee of five shillings. A penalty of £5 is incurred by any one who (*a*) acts as an emigrant runner without being duly licensed and registered; or (*b*) retains or uses a runner's badge not issued to him according to the law; or (*c*) counterfeits or forges such a badge; or (*d*) employs as a runner a person who is not duly licensed and registered. And a penalty of forty shillings, and a forfeiture of his licence, is incurred by an emigrant runner who—(*a*) while so acting does not wear his badge conspicuously on his breast; or (*b*) does not duly lodge his licence with the emigrant officer; or (*c*) on changing his abode, does not within forty-eight hours give notice of the change to the emigration officer of the port in which he is licensed to act; or (*d*) on losing his badge, does not within forty-eight hours give notice to such emigration officer; or (*e*) does not produce on demand his badge for inspection, or permit any person to take its number; or (*f*) mutilates or defaces his badge; or (*g*) wears his badge while unlicensed; or (*h*) wears any other badge than that delivered to him by the emigration officer; or (*i*) permits another person to use his badge. *Remuneration.*—He is not entitled to recover from a passage-broker any fee, commission, or reward for or in consideration of a service connected with emigration, unless he is acting under the written authority of that passage-broker. He incurs a fine of £5 if he takes or demands a fee from any person about to emigrate for procuring his steerage passage, or in any way relating thereto.

Frauds in procuring emigration.—A fine of £50, or imprisonment, is the punishment for a person who, by any false representation, fraud, or false pretence, induces or attempts to induce any one to emigrate or engage a steerage passage in any ship. And one of £50 upon any one who—(*a*) falsely represents himself to be, or falsely assumes to act as, agent of the Board of Trade in assisting persons who desire to emigrate; or (*b*) sells any form of application, embarkation order, or other document or paper issued by the Board of trade, or by a Secretary of State, for the purpose of assisting persons who desire to emigrate; or (*c*) makes any false representation in any such application for assistance to the Board of Trade, or a Secretary of State, or in any certificate of marriage, birth, or baptism, or other document or statement adduced in support of any such application; or (*d*) forges or fraudulently alters any signature or statement in any such application, certificate, document, or statement, or personates any person named therein; or (*e*) aids or abets any person in committing any of the foregoing offences.

PASSPORTS.—A passport is a licence for safe passage through a foreign country. A British subject who desires to travel abroad should, when a passport is necessary, make application therefor to the Foreign Office. The application

must be made in the prescribed form, and enclosed in a cover addressed to "The Passport Department, Foreign Office, London, S.W." The charge for a passport, whatever number of persons may be named in it, is two shillings. Passports are issued at the Foreign Office between the hours of eleven and four on the day following that on which the application has been received, except on Sundays and public holidays, when the passport office is closed. If the applicant does not reside in London, the passport may be sent by post, and a postal order for two shillings should in that case accompany the application. Postage stamps will not be received in payment. Foreign Office passports are granted only (1) to natural-born British subjects, viz., persons born within His Majesty's dominions, and to persons from abroad who derive British nationality from a father or paternal grandfather born within His Majesty's dominions, and who, under the provisions of Acts 4 George II., cap. 21, and 13 George III., cap. 21, are to be adjudged and taken to be natural-born British subjects; (2) to the wives and widows of such persons; and (3) to persons naturalised in the United Kingdom, in the British Colonies, or in India. A married woman is deemed to be a subject of the State of which her husband is for the time being a subject. Passports are only granted to persons known to the Secretary of State, or recommended to him by some person who is known to him; or upon the production of a certificate of identity and recommendation signed by any banking firm established in the United Kingdom, or by any mayor, magistrate, justice of the peace, minister of religion, barrister-at-law, physician, surgeon, solicitor, or notary, resident in the United Kingdom. The applicant's certificate of birth may also be required, especially when his name is of foreign origin, in addition to the certificate of identity and recommendation. If the applicant for a passport be a naturalised British subject, his certificate of naturalisation must be forwarded to the Foreign Office with the certificate of identity and recommendation. Naturalised British subjects, if resident in London or in the suburbs, must apply personally for their passports at the Foreign Office; if resident in the country, the passport will be sent, and the certificate of naturalisation returned to the person who may have granted the certificate of identity and recommendation, in order that he may cause the applicant to sign the passport in his presence. Naturalised British subjects will be described as such in their passports, which will be issued subject to the necessary qualifications. Foreign Office passports are not limited in point of time, and are available for any number of journeys abroad. They may be renewed at the Foreign Office on personal application, or, if the applicant does not reside in London, on the receipt of a letter signed by him, returning the passport previously issued to him, and enclosing a Postal Order for two shillings. A passport cannot be issued by the Foreign Office, or by an agent at an outpost, on behalf of a person already abroad; such person should apply for one to the nearest British Mission or Consulate. The bearer of every passport granted by the Foreign Office must sign it as soon as he receives it; without such signature either the *visa* may be refused, or the validity of the passport questioned abroad. Travellers who intend to visit the Russian Empire, the Turkish dominions, the Kingdom of Roumania, Persia, Venezuela, Hayti, or Eritrea, in the course of their travels, must not leave the United Kingdom without having had their passports *viséd* either at the Russian Consulate-General, 17 Great Winchester Street, E.C., the Consulate-General of the Sublime Porte, 29 Mincing Lane, E.C., the Roumanian Consulate-General, 68 Basinghall Street, E.C.; the Persian Consulate-General, 120 Victoria Street, S.W.; the Venezuelan Consulate, Moorgate Station Chambers, Moorfields, E.C.; the Haytian Consulate, 32 Fenchurch Street, E.C.; or the Italian Consulate-General (for Eritrea), 44 Finsbury

Square, E.C., respectively, or at one of the other Consulates of Russia, Turkey, Roumania, Persia, Venezuela, Hayti, or Italy in the United Kingdom. Travellers about to proceed to any other country need not obtain the *visa* of the Diplomatic or Consular Agents of such country, except as an additional precaution, which is recommended in the case of passports of old date. Although travellers are now permitted to enter most foreign countries without passports, and the rules respecting passports have been generally relaxed, nevertheless British subjects travelling abroad are recommended to furnish themselves with passports, for even in those countries where they are no longer obligatory they are found to be useful as affording a ready means of identification in case of need. British subjects intending to reside in Germany or in Switzerland should provide themselves with passports. A statement of the requirements of foreign countries with regard to passports may be obtained upon application to "The Passport Department, Foreign Office, London, S.W."

PATENT.—This term, as the subject of the present article, refers to the letters patent by which an inventor is granted a monopoly in respect of his invention, and it is in this connection that the word is most generally used. The law relating to this monopoly is now comprised in the Statute of Monopolies, the amending and consolidating Patents Act of 1907, and a body of decisions declaratory of the common law, and explanatory of the old Statute and of a number of now repealed Acts which succeeded it. The statutory definition of the word "invention" is "any manner of new manufacture, the subject of letters patent and grant of privilege within section 6 of the Statute of Monopolies (that is, the Act of the twenty-first year of the reign of King James the First, chap. iii., intituled 'An Act concerning monopolies and dispensations, with penal laws and the forfeiture thereof'), and includes an alleged invention." The modern statute thus throws the reader back to the old one for enlightenment as to the real nature of the "new manufacture" which can lawfully be the subject of a patent. Before referring to that statute, however, it will be convenient to notice generally the nature and effect of a patent. It is, shortly, a grant by the Crown to some specified person, called "the patentee," of the exclusive right, or monopoly, of "making, using, exercising, and vending" a particular "new manufacture." Until the year 1624 the Crown, at times, had been very liberal in its grant of privileges of this class, the liberality being doubtless induced in most cases by some valuable consideration moving from the patentee. The Crown claimed to make these grants by right of its royal prerogative, and generally they were made without any regard to their effect, whether good or bad upon the community as a whole. It was sufficient that funds were badly needed, or that a favourite had earned some reward, or that a powerful subject should be conciliated. Under any of these circumstances a patent would be granted. The result was that in the reign of Elizabeth, for example, almost every department of commercial activity is seen to be crippled by a practically wholesale creation of patentees, who hold the traders and the public at their mercy. To one a monopoly in iron is granted; to another paper; to another ox shinbones; to another bottles. And the list can be almost indefinitely extended. Currants, iron, powder, cards, brushes, pots, the transportation of iron ordnance, and the importation of Spanish wool—

these are only instances. In the hands of the monopolists salt rises from sixteen pence a bushel to fourteen or fifteen shillings; saltpetre is but a pretext for breaking into and searching people's houses and extorting money. In the following reign some patentees, who are privileged to make and sell gold and silver lace, are not satisfied merely with making and selling their lace from copper and other base materials, but procure the fining and imprisonment of those who infringe their patent by making and selling the genuine article. Such being the state of affairs the commons agitate for reform, and ultimately the enactment of the Statute of Monopolies is secured, which, while generally prohibiting monopolies, provided by section 6 that the prohibition

Shall not extend to any letters patent and grants of privilege for the term of fourteen years or under, hereafter to be made, of the sole working or making of any manner of new manufactures within this realm to the true and first inventor and inventors of such manufactures, which others at the time of making such letters patent and grant shall not use, so as also they be not contrary to the law nor mischievous to the state by raising prices of commodities at home, or hurt of trade, or generally inconvenient: the said fourteen years to be accomplished from the date of the first letters patent or grants of such privilege hereafter to be made, but that the same shall be of such force as they should be if this Act had never been made, and of none other.

It is therefore as an exception to this prohibition against monopolies that the law and practice of letters patent for inventions exists, and it is to the above section of the Statute that the late and present Acts referred and refer in order to determine the legal subject-matter for a patent. And without doubt there is reason for this exception. It requires little or no argument to support the contention that a monopoly, limited in time, is the most practical encouragement to an inventor, and the best means by which he can obtain a reward. In return for this monopoly he makes public the secret of his invention, so that upon the expiration of his patent it becomes available for public use. The secret is exposed by the *specification*, an essential part, as will be seen later, of his formal application for the grant of a patent. The accuracy with which his specification discloses and describes the mystery and method of the manufacture of the invention is a criterion by which the validity of his patent is determined. Wherefore it is most essential that the utmost care and skill should be devoted to its preparation. "The object of the specification is that it is the price which the party who obtains the patent pays for it, and it would be a hard bargain on the part of the public if he were allowed to clothe his discovery and his description in characters so dark and so ambiguous that no one could make from it when the fourteen years have expired, and he should not have paid the price for which he enjoyed the exclusive privilege, but that he should have it in his hands for as long a period as he chooses; and therefore," said Chief Justice Tindal, in *Walton* v. *Potter*, "it is always a proper answer, when a patent is set up, to say that you have not so described it that it may be understood." But, subject to the principle thus expressed, a patent will not be vitiated merely because of immaterial clerical errors in the specification, or of an immaterial ambiguity. The patentee must give his specification in the clearest and most unequivocal

terms possible. It is generally stated that an error in the specification which any workman of ordinary skill and experience would perceive and correct, will not vitiate the patent. This, however, must be understood of "errors which appear on the face of the specification or the drawings it refers to, or which would be at once discovered and corrected in following out the instructions given for any process or manufacture, and the reason is because such errors cannot possibly mislead. But the proposition is not a correct statement of the law if applied to errors which are discoverable only by experiment and further inquiry. Neither is the proposition true of an erroneous statement in a specification amounting to a false suggestion, even though the error would be at once observed by a workman possessed of ordinary knowledge of the subject" (*Simpson* v. *Holliday*). The specification —considered, when necessary, as a combination of drawings and descriptive and directory matter—must describe the invention in such a way *that a person of ordinary skill in the trade shall be able to carry on the process.* In these latter words did Lord Lyndhurst sum up the position in *Sturtz* v. *De la Rue*, in which case the specification required "the finest and purest chemical white lead" to be used, but, as ordinary white lead would not answer the requirement, the specification was held to be insufficient and the patent invalid. "A workman would naturally go to a chemist's shop, and ask for 'the finest and purest chemical white lead'; the answer which he would receive would be that there was no substance known in the trade by that name. He would be compelled to ask for the purest and finest white lead, and according to the evidence the purest and finest white lead that can be procured in London will not answer the purpose. It is said that there is a substance prepared on the continent, which is white lead or some preparation of white lead, and that by using it in the manner described in the specification the desired effect is produced. If that be so, the patentee ought to have directed the attention of the public to that circumstance. He ought to have said 'the purest white lead which can be obtained in the shops of London will not do; but there is a purer white lead prepared on the continent, and imported into this country, which alone must be used.'"

What can be patented.—To determine this point it is necessary to refer back to the above-quoted section of the Statute of Monopolies. From a careful consideration thereof it will appear that the only valid subject-matter of a patent is a "manufacture" which is "new . . . within this realm," and which is neither illegal, nor conducive to raising the prices of commodities, nor harmful to trade, nor generally inconvenient. In other words, the subject-matter must (1) be a manufacture; (2) possess novelty; and (3) have utility—this last element having been introduced by the law as to some extent the positive aspect of the negative conditions of the statute itself. The word "manufacture" is not understood in this connection in its most limited signification. An invention may be "not so much for the thing when produced as for the mode in which it is produced; and its novelty may consist not so much in its existence as a new substance as in its being an old substance, but produced by a different process. In one sense," said Chief Baron Pollock in *Stevens* v. *Keating*, "an old substance produced by a new process is a new manufacture, of that there cannot be a doubt; and therefore although the language of the Act has been said to apply only to

manufactures and not to processes, when you come to examine it, either literally or even strictly, it appears to me the expression 'manufacture' is free from objection, because though an old thing, if made in a new way, the very making of it in a new way makes it a new manufacture." The word "manufacture" may therefore mean, for example, a machine when completed, or the mode of constructing the machine (*Morgan* v. *Seaward*). But neither a natural law, nor any principle of nature can be patented, for such are the common property of all, whether actually discovered or not. It is in a particular application to a manufacture, or process of manufacture, that an inventor can find a subject for protection by patent. And still less can a mere idea be patented. In the invention of the hot air blast in the manufacture of iron, for instance, there was nothing new at all except the idea that the application of hot air instead of cold air to the mixture of iron ore and fuel would produce some remarkably economical results. Yet "the inventor or discoverer could not patent that, but what he did was this: he said, 'I will patent that idea in combination with the mode of carrying it out; that is, I tell you you may heat your air in a closed vessel next the furnace, and then that will effect the object.' It was held that that would do" (*Otto* v. *Lenford*).

The second element of a valid patent is novelty. It is sufficient, however, that the manufacture is novel only within this realm, for he may obtain a patent for something he has discovered abroad, but which had been hitherto unknown here. And so he may obtain a patent for an invention which has been communicated to him from abroad: in fact, it is the usual practice for foreign inventors to communicate their inventions to agents here for the purpose of obtaining a patent. Novelty, for the purposes of patent law, is rendered impossible by a prior publication or prior user in this country of the subject proposed to be patented. The invention is then said to have been anticipated. Prior publication occurs where the public, or some part of it, have a knowledge of the particular facts at any time before the patent is applied for. There is such a publication when those facts have appeared in a book, even though the book was published abroad in a foreign language and is only to be found here in the British Museum library where it has been but occasionally consulted (*Otto* v. *Steel*). And certainly there is an anticipation by means of a prior publication if the invention has been previously described in a specification lodged at the Patent Office. On this point, however, the Act of 1902 provides as follows:—

An invention covered by any patent granted on an application to which section one of the Act applies shall not be deemed to have been anticipated by reason only of its publication in a specification deposited pursuant to an application made in the United Kingdom not less than fifty years before the date of the application for a patent therefor, or of its publication in a provisional specification of any date not followed by a complete specification.

Prior use, in order to be an anticipation and to invalidate a patent, must be a public use, and something more than a merely experimental use which has had no practical result. And if the prior user has been by a confidential agent of the patent, for the purpose of expert and technical assistance and advice, it will not be an anticipation, even though that user has been

necessarily somewhat public. "A necessary and unavoidable disclosure to others . . . if it be only made in the course of mere experiments, is no publication, although the same disclosure if made in the course of a profitable use of an invention previously ascertained to be useful, would be a publication" (*Newall* v. *Elliott*).

Utility in an invention is always a question of fact, and must always depend upon the particular circumstances of the case. It does not mean abstract or economic utility. Perhaps the most useful definition is that by Mr. Justice Grove, in *Young* v. *Rosenthal*, that "in law utility means an invention better than the preceding knowledge of the trade as to the particular fabric."

The patent.—The inventor having made due application for protection, and having deposited with it, and had officially accepted, a specification which, as precisely as the circumstances of the case permit, describes the nature of his invention, he should, in the ordinary course of things, obtain a patent, the validity of which he can maintain against all opposition. To ensure this as far as possible he should have had an expert investigation made as to its novelty and the absence of anticipation—an investigation quite independent of that undertaken by the official examiners. The patent when delivered to him is in accordance with a well-known prescribed form.

Infringement.—In order that the patentee may have complete protection during the specified term, all persons within the United Kingdom and the Isle of Man are strictly enjoined by the patent that they shall not, "either directly or indirectly, make use of, or put in practice, the said invention, or any part of the same, nor in anywise imitate the same, nor make or cause to be made any addition thereto or subtraction therefrom, whereby to pretend themselves the inventors thereof" without his consent or licence. Any one who offends against this prohibition is said to infringe the rights of the patentee, and the means by which he so offends constitute an infringement. On a subsequent page appear the rules specially applicable to an action for an infringement. Here should be emphasised the necessity for a patentee to institute such an action directly the infringement is brought to his notice, and, as part of the relief sought by the action, he should apply for an injunction without delay. If in the action for infringement it is shown that his patent is invalid, then of course the action will fail. Generally the fact of the infringement is practically admitted and the defendant hopes to succeed by attaching the patent; for, as it already appears, if he can show, for instance, that the specification is insufficient, or the invention anticipated, or without utility, the patent will be void and the patentee without a right to protection. But sometimes the fact of the infringement is itself disputed. Then arises the necessity for the Court to determine whether there has been an actual infringement; and this is mainly a question of fact depending upon the circumstances of the particular case. A general principle capable of application in all issues of infringement cannot possibly be laid down. It has been argued that the same criterion is to be applied to the question of infringement as to that of novelty. But that is not so. "In order to ascertain the novelty," said Chief Baron Pollock in *Newton* v. *Grand Junction Railway Co.*, "you make take the entire invention, and if, in all its parts combined

together, it answer the purpose by the introduction of any new matter, by any new combination, or by a new application, it is a novelty entitled to a patent. But in considering the question of infringement, all that is to be looked at is whether the defendant has pirated a part of that to which the patent applies; and if he has used that part for the purposes for which the patentee adapted his invention, and for which he has taken out his patent, and the jury are of opinion that the difference is merely colourable, it is an infringement." This case is more especially illustrative, however, when the subject-matter of the alleged infringement is only a part of the invention protected by the patent. Wherever the same result is obtained by the same means there undoubtedly is an infringement; but if the result, though the same as that in the subject of the patent, is obtained by different means, or the means employed are a development of those protected by the patent, then there can be no infringement (*Mackie* v. *Berry; Gosnell* v. *Bishop*). And as the patent confers a monopoly of the sale in this country of the product made according to the patented process, whether made in the realm or elsewhere, it necessarily follows that any one who makes or procures to be made abroad for sale in this country, and sells that product here, is indirectly making, using, and putting in practice the patented invention, and is guilty of an infringement thereof (*Von Heyden* v. *Neustadt*). A patented article can be made, merely as a *bonâ fide* experiment, in order to see whether the invention can be improved upon, and so long as there is no intention of selling or using it for a profit; "patent rights," said Sir George Jessel in *Frearson* v. *Lee*, "were never granted to prevent persons of ingenuity exercising their talents in a fair way." But nevertheless, as a general principle, no subject of a patent can be used for an actual advantage, as for example for instructing others (*United Telephone Co.* v. *Sharples*). Whoever sells an article which is an infringement upon one patented, is liable to the patentee. And so is he even though he only has a mere possession of the article for the purposes of sale, or even a possession for use, as where one has a pirated incandescent mantel bought for the purpose of burning.

Assignment and licence.—A patentee may assign all his interest in his patent either absolutely, as in the case of a sale, or conditionally, by way of mortgage. One of several co-partners has a like right to deal with his interest in the patent; but generally they would enter into an agreement between themselves, limiting and defining their respective rights. The assignment must be by deed. Though no particular form of words is necessary, the intention of the parties should always be clearly expressed in the document. Before taking an assignment of a patent, whether by way of sale or mortgage, the intending assignee should always search the Register of Patents in order to see that the assignor has a good title; and after the assignment is completed it should be registered. Where a document purports to assign a patent, and is not under seal, it may be treated by the courts as an EQUITABLE ASSIGNMENT (*q.v.*), and enforced as such. In an assignment of a patent it is quite lawful to insert covenants on the part of the patentee that he will assign to the assignee any future patents he may obtain, and that he will communicate and render available to the assignee all further improvements in the assigned invention. By means of such covenants as these a capitalist, on the one hand, may bind to himself

the future efforts of an inventor; while the latter, on the other hand, can secure the means to prosecute his efforts and researches. A licence of a patent should also be by deed. It may be distinguished from an assignment in that a licence only confers a specified personal right on the licensee, while an assignment transfers to the assignee an actual interest in the patent. Unless it is expressly so stated in the instrument a licence is not assignable by the licensee. There are many forms in which a licence may be granted, these depending always upon the particular circumstances of the case. It may permit the licensee to make and sell the invention during the whole of the term of the patent and throughout the whole country. Such is a "full, sole exclusive licence," except that this latter form further expressly excludes the patentee from making and selling it. And a licence may be only in respect of a certain district and for a certain term. But in every case the licence should expressly define or limit the right of the patentee to himself compete with the licensee, or to grant other licences to competitors; and it should also include a covenant by the patentee that the licensee shall have the benefit of any future improvements. A usual consideration for a licence is the payment of a royalty to the patentee; but other considerations are very frequently met with, *e.g.*, a sum paid down upon the execution of the licence, or certain fixed periodical payments. Or again, the royalty may be payable out of net profits, or payable in respect of the actual user of the invention; or the consideration may be a combination of several of these. There should always be a covenant in the licence that the patentee will keep up the renewal payments; and, where necessary, that the licensee will render accounts of his profits and give inspection of his stock, books of account, &c. And the licence should be revocable in the event of the licensee making default in his payments or committing a breach of covenant.

Procedure to obtain a patent.—*Application for and grant of patent.*—Any person, whether a British subject or not, can make an application for a patent; and two or more persons may make it jointly, and the patent can be granted to them jointly accordingly. A patent may be so granted to several persons jointly, even though only one of them is the true and first inventor, by which means a capitalist can acquire, jointly with an inventor, a working interest in the patent. As any one of such joint patentees may lawfully use the invention without the consent of the others, and cannot be required to account to them for his profits, the parties should always have an express agreement as to the exercise of their rights. The application for a patent is made in a form prescribed by the Patent Rules, and though the form does not now include a statutory declaration in respect of which criminal proceedings can be taken against the applicant in the event of falsity of its contents, yet such a falsity may avoid the patent granted thereon. The part of the contents which in particular must be wholly true is that which states "that the applicant is in possession of an invention, whereof he or, in the event of a joint application, one or more of the applicants, claims or claim to be the true and first inventor or inventors, and for which he or they desires or desire to obtain a patent." The application must be accompanied by either a provisional or complete specification. It must also be signed by the applicant himself; but all other communications with the Patent Office, and all attendances there, may be made by or through a patent agent.

The application must also be accompanied by a statement of an address to which notices and communications of every kind can be sent from the Patent Office. This statement is generally written on the back of the application, and is usually, where an agent is employed, the address of the agent.

Specifications.—It has already been stated that the application must be accompanied either by a provisional or a complete specification. Whether provisional or complete, a specification must always commence with the title; and in the case of a complete specification it must end with the "claim"—a distinct statement of the invention claimed. The title should so correctly and concisely express the subject-matter of the invention that no part of the invention is excluded, and no more matter included than the invention stself actually includes. To draw the title alone is the work of an expert. A claim, it will be noted, is not required in a provisional specification; only in a complete one. This again needs the hand of an expert, for its object is "to restrict and cut down what might be suggested as the claim made by the previous part of the description, so as to show what it does consist of, and to prevent the patent from being defeated in consequence of words being used which might lead to the inference that something which was not intended to be claimed was claimed, and then the patent being defeated by there being included in the previous part of the specification that which was not new but old." A provisional specification "must describe the nature of the invention"; a complete specification, whether left on application or subsequently, "must particularly describe and ascertain the nature of the invention, and the manner in which the same is to be performed." But in either case, where the comptroller deems it desirable he may require that suitable drawings shall be supplied with the specification, or at any time before the acceptance of the same, and such drawings shall be deemed to form part of the specification. If the applicant does not leave a complete specification with his application, but contents himself with a provisional, he may leave the complete specification at any subsequent time within six months from the date of the application. And the comptroller of patents has power to extend this period of six months, on payment of the prescribed fee. Unless a complete specification is left within the six months, or extended time, the application is taken to be abandoned. The drawings that, when needed, accompany an application must always be executed upon the size of paper and according to the style prescribed by the Patent Office Rules.

Examination of application.—Every application is referred to an examiner, who ascertains and reports to the comptroller whether the nature of the invention has been fairly described, and the application, specification, and drawings (if any) have been prepared in the prescribed manner, and the title sufficiently indicates the subject-matter of the invention. If the examiner reports that the application is irregular in either of these particulars, the comptroller can refuse the application. But he has the alternative power of requiring that the application, specification, or drawings, be amended before he proceeds with the application; and in this case he can direct that the application bear date as from the time when his requirements are complied with. Where a complete specification is left subsequently to a provisional specification the report of the examiner goes farther than that just referred to. Both the specifications are then referred, and the examiner must ascertain: (*a*) whether the complete specification has been prepared in the pre-

scribed manner; and (*b*) whether the invention particularly described in the complete specification is substantially the same as that which is described in the provisional specification. If the report is unfavourable, the comptroller can refuse to accept the complete specification until it has been amended to his satisfaction. Unless a complete specification is accepted within twelve months from the date of application, the application becomes void. But an extension of three months may be obtained by the applicant. And, moreover, this period does not run when an appeal is lodged against the refusal to accept. Such an appeal to the Attorney-General is available whenever any application has been refused by the comptroller. The report of an examiner can be seen only by order of the Court, and under special circumstances. On the acceptance of a provisional or complete specification the comptroller gives notice thereof to the applicant; and he also advertises the acceptance in the *Illustrated Official Journal* published at the Patent Office every Wednesday. Thereupon, in the case of a complete specification, the application and specification with the drawings (if any) can be inspected at the Patent Office. It should be noted that the Act of 1902 has introduced a most important reform in connection with the above duties of the examiner. In addition thereto the Act requires him to search for anticipations of the invention and to accept or refuse the application according to the result of his investigation. By this means it is hoped to practically guarantee, to some extent, the validity of every patent granted, at least from the point of view of anticipation. And now, by the Amending Act of 1907, the investigation is extended to specifications published subsequently to the application. *Opposition to grant of patent.*—Notice of such opposition may be given at the Patent Office by any person at any time within two months from the date of the advertisement of the acceptance of a complete specification. But the person who gives the notice can only do so on the following grounds:—(*a*) That the applicant has obtained the invention from him, or from a person of whom he is the legal representative; or (*b*) that the invention has been claimed in any complete specification for a British patent which is or will be of prior date to the patent the grant of which is opposed, other than a specification deposited pursuant to an application made more than fifty years before the date of the application for the last-mentioned patent; or (*c*) that the nature of the invention, or the manner in which it is to be performed, is not sufficiently or fairly described and ascertained in the complete specification; or (*d*) that the complete specification describes or claims an invention other than that described in the provisional specification, and that such other invention forms the subject of an application made by the opponent in the interval between the leaving of the provisional specification and the leaving of the complete specification. Where the ground or one of the grounds of opposition is that the invention has been patented in this country on an application of prior date, the number and date of that prior application must be specified in the notice. The comptroller sends a copy of the notice to the applicant. Thereupon, but after the expiration of the above period of two months, though within fourteen days therefrom, the opponent should leave at the Patent Office statutory declarations in support of his opposition, and on so leaving them deliver a list thereof to the applicant. Then, each within a period of fourteen days, the applicant and opponent should deliver an answer and a reply respec-

tively. The evidence being thus completed the comptroller gives the parties ten days' notice of the hearing of the case, and if they or either of them give him notice of their intention to appear at that hearing, the parties who have given such a notice can be then heard. In their absence the comptroller will decide the matter and give due notice to the parties of his decision. No opposition can be allowed on such a hearing except that based on grounds specified in the notice. And where the ground is that the applicant has obtained the invention from the opponent, or from a person of whom he is the legal representative, the evidence in support of the allegation is absolutely bound to be left at the Patent Office within the prescribed time; if it is not, the opposition is deemed to be abandoned, and the patent is sealed forthwith. There is an appeal from the comptroller to the Attorney-General.

Protection by mere acceptance.—From what has already been said it will be seen that there is a necessary interval between the acceptance of an application and the sealing of the patent. During this interval the inventor is afforded a protection, but one which should be distinguished from the protection conferred during the interval between the acceptance of the provisional and the filing of the complete specification. The protection now being dealt with is the "provisional protection" and the "protection by complete specification," the subject of section 10 of the Act of 1907. There is a provisional protection in a case where an application for a patent has been accepted; for during the period between the date of the application and the date of the sealing the invention may "be used and published" without prejudice to the patent to be granted therefor. Protection by complete specification comes into operation after the acceptance of a complete specification and until the date of sealing a patent in respect thereof, or the expiration of the time of sealing. By this protection the applicant has the like privileges and rights as if a patent for the invention had been sealed on the date of the acceptance of the complete specification. But during neither of these periods of protection is the applicant able to institute any proceedings for infringement; he must wait until the patent has been granted. Then, however, he can proceed, though in the latter case only for infringements committed between the date of the acceptance of the complete specification and the date of sealing the patent. He cannot take action in respect of infringement during the period of provisional protection.

Grant of patent.—If there is no opposition, or in case of opposition, if the determination is in favour of the grant of a patent, then the comptroller will cause a patent to be sealed with the seal of the Patent Office. The date of the sealing is that of the application. That seal has the same effect as if the patent were sealed with the Great Seal of the United Kingdom. A patent should generally be sealed within fifteen months from the date of the application. Exceptions to this rule can only arise in the following circumstances:—(*a*) Where the comptroller has allowed an extension; (*b*) where the sealing is delayed by an appeal to the law officer, or by opposition to the grant of the patent, when the law officer has power to direct the time at which the patent may be sealed; and (*c*) if the person making the application dies before the expiration of the fifteen months, when the patent can be granted to his legal representatives and sealed at any time within twelve months after his death; (*d*) where an extension has been allowed in consequence of non-

payment of fees. When sealed, a patent has effect only throughout the United Kingdom and the Isle of Man. It does not extend to any of the British colonies and dependencies, and not even to the Channel Islands. The term of the duration of a patent is fourteen years from its date, but it will cease if the patentee fails to make certain payments for its renewal within the prescribed times. The following is a table of these payments and times as prescribed by statute :—

(a) Up to Sealing.

On filing application for provisional specification	£1	0	0
On filing complete specification	3	0	0
or			
On filing complete specification with first application	£4	0	0
On the sealing of the patent in respect of investigations as to anticipation	1	0	0

(b) Further, for continuance of patent

Before the expiration of the fourth year from the date of the patent, and in respect of the fifth year	5	0	0
Before the expiration of the fifth year from the date of the patent, and in respect of the sixth year	6	0	0
Before the expiration of the sixth year from the date of the patent, and in respect of the seventh year	7	0	0
Before the expiration of the seventh year from the date of the patent, and in respect of the eighth year	8	0	0
Before the expiration of the eighth year from the date of the patent, and in respect of the ninth year	9	0	0
Before the expiration of the ninth year from the date of the patent, and in respect of the tenth year	10	0	0
Before the expiration of the tenth year from the date of the patent, and in respect of the eleventh year	11	0	0
Before the expiration of the eleventh year from the date of the patent, and in respect of the twelfth year	12	0	0
Before the expiration of the twelfth year from the date of the patent, and in respect of the thirteenth year	13	0	0
Before the expiration of the thirteenth year from the date of the patent, and in respect of the fourteenth year	14	0	0

On enlargement of time for payment of renewal fees:—Not exceeding one month, £1 ; not exceeding two months, £3 ; not exceeding three months, £5. If the patentee should have failed to make one of these payments within the prescribed time, provided the default has been caused by an unintentional omission, the lapsed patent may be restored, subject to certain conditions. In applying for restoration it is necessary that the application should state the circumstances in which the patentee by unintentional omission has failed to make the particular payment; and the patentee may be required to supply evidence in support of the allegations so stated.

Amendment of specification.—An applicant or patentee has the right at any time to apply to amend his specification, the application being made by a written request for leave. He must himself sign the request, and deliver with it a duly certified printed copy of the original specification and drawings, showing in red ink the nature of the proposed amendment and stating generally his reasons therefor. This request, and the nature of the proposed amendment, are then advertised in the Official Journal, and any person within one month from the first advertisement is entitled to give notice of opposition to the amendment. No amendment can be proceeded with so long as any proceedings for infringement or revocation of the patent are pending; nor

will an amendment in any case be allowed if its effect is to claim an invention substantially larger than, or substantially different from the invention claimed by the original specification [*sec* DISCLAIMER].

Compulsory Licences.—A patentee is expected to work his invention. He cannot obtain the privilege of a patent and then decline to give the public the benefit of it. Should he fail to satisfy the reasonable requirements of the public a petition may be presented to the Board of Trade by any person interested, either for the grant of a compulsory licence to exploit the invention, or *for the revocation of the patent.* If the Board of Trade is satisfied that a *primâ facie* case is made out, it affords the parties an opportunity to come to an arrangement, and then, failing such an arrangement, refers the petition to the Court. Where there is no *primâ facie* case the Board of Trade dismisses the petition without anything more. The Court, if convinced "that the reasonable requirements of the public with reference to the patented invention have not been satisfied," orders the patentee to grant licences on such terms as may be decided. But if it appears that the reasonable requirements of the public will not be satisfied by the grant of licences the patent may be revoked. No order of revocation can be made, however, before the expiration of three years from the date of the patent, or if the patentee gives satisfactory reasons for his default. Where the patent is worked or the patented article manufactured exclusively or mainly outside the United Kingdom, it lies upon the patentee to affirmatively show that the patented article or process is manufactured or carried on to an adequate extent in the United Kingdom; or else he must give satisfactory reasons why the article or process is not so manufactured or carried on. An application for revocation of a patent on these grounds cannot be made within four years from the date of the grant. The comptroller has power either to order an immediate revocation or to grant the patentee an opportunity to work the patent within the United Kingdom. These regulations relating to compulsory licences and revocation are an amendment to the law introduced in 1902, but nevertheless they are applicable to patents granted before as well as after the 18th December 1902, the date of the commencement of that Act.

Register of patents.—This is the name given to a book kept at the Patent Office. The register is *primâ facie* evidence of any matters directed or authorised to be inserted therein. Amongst such matters may be mentioned—the names and addresses of grantees of patents, notifications of assignments and of transmissions of patents, of licenses under patents, and of amendments, extensions, and revocations of patents, and certain other matters. Copies of deeds, licences, and any other documents, affecting the proprietorship in any letters patent or in any licence thereunder, should be filed at the Patent Office for the purpose of registration.

Fees.—The following are the fees payable at the Patent Office in respect to transactions relating to patents:—

	£	*s.*	*d.*	£	*s.*	*d.*
On application for provisional protection . .	1	0	0			
On filing complete specification	3	0	0			
				4	0	0
or						
On filing complete specification with first application . .				4	0	0
On appeal from comptroller to law officer. By appellant .				3	0	0

	£	s.	d.
For extension of time under Rule 16—			
Not exceeding 1 month	2	0	0
„ 2 months	4	0	0
„ 3 „	6	0	0
For extension of time for leaving complete specification not exceeding one month	2	0	0
For extension of time for acceptance of complete specification—			
Not exceeding 1 month	2	0	0
„ 2 months	4	0	0
„ 3 „	6	0	0
On notice of opposition to grant of patent by opponent	0	10	0
On hearing by comptroller. By applicant and by opponent respectively	1	0	0
On sealing of patent	1	0	0
For extension of time for sealing of patent where period allowed for the sealing of the patent will expire after the commencement of the Act—			
Not exceeding 1 month	2	0	0
„ 2 months	4	0	0
„ 3 „	6	0	0
For extension of time for sealing of patent where period allowed for the sealing of the patent has expired before the commencement according to the year of the duration of the patent from £5 to	14	0	0
On application to amend specification—			
Up to sealing. By applicant	1	10	0
After sealing. By patentee	3	0	0
On notice of opposition to amendment. By opponent	0	10	0
On hearing by comptroller. By applicant and by opponent respectively	1	0	0
On application to the Board of Trade for a compulsory licence. By person applying	1	0	0
On opposition to grant of compulsory licence. By opponent	1	0	0
On enlargement of time for payment of renewal fees—			
Not exceeding 1 month	1	0	0
„ 2 months	3	0	0
„ 3 „	5	0	0
On application for restoration of a lapsed patent	20	0	0
On notice of opposition to application for restoration of lapsed patent	1	0	0
On hearing	1	0	0
On application to revoke	2	0	0
On hearing by applicant and by patentee respectively	2	0	0
On offer to surrender a patent	1	0	0
On hearing by applicant and by opponent respectively	1	0	0
On application to revoke a patent worked outside the United Kingdom	2	0	0
On hearing by applicant and by patentee respectively	2	0	0
For duplicate of letters patent	0	10	0
On notice to comptroller of intended exhibition of a patent under section 45	0	10	0
Search or inspection fee . . . . . each	0	1	0

	£	s.	d.
For office copies, every 100 words (but never less than one shilling)	0	0	4
For office copies of drawings, cost according to agreement.			
For certifying office copies, MSS., or printed . . each	0	1	0
On request to comptroller to correct a clerical error—			
Up to sealing	0	5	0
After sealing	1	0	0
For certificate of comptroller under section 78	0	5	0
For altering name or address or address for service in register	0	5	0
For entry of two addresses for service in register	0	5	0
On request to enter name of subsequent proprietor in the register of patents	0	10	0
On request to enter notice of interest in the register of patents	0	10	0
On request to enter notification of a document in the register of patents	0	10	0
On notice of order of Court for amendment of specification or rectification of register	0	10	0
On postal request for printed specification	0	0	8

Extension of term.—The original term of a patent for fourteen years may be extended by the Privy Council for a further term not exceeding seven, or in exceptional cases fourteen, years. Or the grant of a new patent may be ordered for the term therein mentioned, and containing any restrictions, conditions, and provisions that the Privy Council may think fit. A patentee who desires such an extension must proceed by way of petition, having duly advertised it and presented it at least six months before the time limited for the expiration of the patent. Any person may enter a caveat and protest against the extension. The usual ground for an extension is that the patentee has been inadequately remunerated by his patent, but the Privy Council, in considering its decision, has regard to the nature and merits of the invention in relation to the public, to the profits made by the patentee as such, and to all the circumstances of the case.

Revocation of a patent is obtained on petition by the Court. "The proceedings may be instituted," according to Mr. Webster, "on the grounds of fraud, false suggestion, non-compliance on the part of the patentee with the condition of the letters patent, failure of any of the essential requisites of novelty and utility, or abuse of the privileges granted by the letters patent." The petition may be presented by—(*a*) The Attorney-General in England or Ireland, or the Lord Advocate in Scotland: (*b*) Any person authorised by the Attorney-General or Lord Advocate: (*c*) Any person alleging that the patent was obtained in fraud of his rights, or of the rights of any person under or through whom he claims: (*d*) Any person alleging that he, or any person under or through whom he claims, was the true inventor of any invention included in the claim of the patentee: (*e*) Any person alleging that he, or any person under or through whom he claims an interest in any trade, business, or manufacture, had publicly manufactured, used, or sold, within this realm, before the date of the patent, anything claimed by the patentee as his invention. Where a patent has been revoked on the ground of fraud the true inventor can then obtain a patent in lieu of and bearing the same date as the date of the revocation; but the patent so granted will cease on the expiration of the term for which the revoked patent was granted.

Generally.—*The Crown.*—A patent has to all intents the like effect as against the King as it has against a subject. But an officer of the Crown may at any time after the application use the invention for the services of the Crown, provided terms are agreed upon between him (with the approval of the Treasury) and the inventor. In default of such an agreement the Treasury fixes the terms after hearing all parties interested.

Legal proceedings.—In an action for infringement of a patent the plaintiff must deliver, with his statement of claim, particulars of the breaches he complains of; and the defendant with his defence, must deliver particulars of any objections on which he relies. If the defendant disputes the validity of the patent, the particulars delivered by him must state on what grounds he disputes it; and if one of those grounds is want of novelty, he must state the time and place of the previous publication or user alleged by him. At the hearing of the case no evidence, except by leave of the judge, can be given in proof of an alleged infringement or objection unless particulars thereof have been delivered. The plaintiff can get an interlocutory injunction if he applies for it promptly. But an injunction is granted before the trial of the action, according to Sir George Jessel in *Dudgeon* v. *Thomson*, only, as a general rule, "where the patent is an old one, and the patentee has been in long and undisturbed enjoyment of it, or where its validity has been established elsewhere, and the Court sees no reason to doubt the propriety of the result, or where the conduct of the defendant is such as to enable the Court to say that as against the defendant himself there is no reason to doubt the validity of the patent." It is therefore a considerable advantage to a patentee to obtain a *certificate of validity*. This is obtained in an action for infringement when the Court certifies that the validity of the patent came in question; but the action and the dispute as to validity should be *bonâ fide*. A further advantage of this certificate is that in any subsequent action for infringement the patentee, if successful, can recover from the defendant specially full costs.

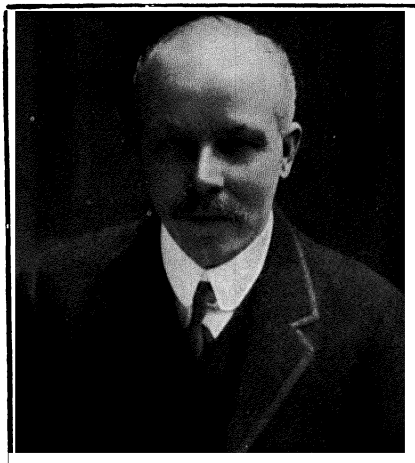
Groundless threats of legal proceedings.—Where any person claiming to be the patentee of an invention, by circulars, advertisements or otherwise threatens any other person with any legal proceedings or liability in respect of any alleged manufacture, use, sale or purchase of the invention, any person or persons aggrieved thereby may bring an action against him, and may obtain an injunction against the continuance of such threats, and may recover such damage (if any) as may have been sustained thereby, if the alleged manufacture, use, sale, or purchase to which the threats related was not in fact an infringement of any legal rights of the person making such threats. But the foregoing does not apply if the person making such threats with due diligence commences and prosecutes an action for infringement of his patent.

PATENT AGENT is a term defined by the Register of Patent Agents Act, 1907, as meaning "exclusively an agent for obtaining patents in the United Kingdom." The profession of a patent agent has existed in this country during the last eighty years, but it is only since the Patent Act of 1852 that the improved facilities for patenting inventions have produced a sufficient number of patentees to support a more than very limited number of professional agents. Now, however, the patenting public is comparatively so great as to render the profession a secure and lucrative one to its practitioners. A patent agent is necessarily an expert, highly skilled in his particular department of activity. It is not by any means

sufficient that he should know only the mere routine of the practice of the Patent Office. He must also have an intimate knowledge of the law relating to patents, and so be in effect a specialised patent lawyer, and as such able to profitably advise and assist his client. But in addition to this he must have a more than passing acquaintance with science generally, and particularly with the chemical, electrical, and mechanical sciences and their special applications in machinery and the manufactures. The modes of manufactures generally are also within his province. Lastly, but certainly not least from the practical point of view, he must be a competent mechanical draughtsman, so that he can aid his client in any necessary graphic description of a particular invention. From this and much more to a like effect that could be written, it is evident that a casual person who proffers his aid to an inventor is hardly likely to be of much assistance—he is likely more probably to contribute materially to the possibility of the patent being eventually invalidated. The best course an inventor can adopt is to seek the services of an agent who has specialised in the particular class to which his invention belongs.

The Act of 1907 does not prohibit any one, or any class of persons, from acting as an agent for obtaining patents. What it does is to enact that no one shall be "entitled to *describe himself* as a patent agent, whether by advertisement, by description of his place of business, or by any document issued by him, or otherwise, unless he is registered as a patent agent in pursuance of this Act or an Act repealed by this Act." Any one who knowingly describes himself as a patent agent in contravention of this prohibition is liable on summary conviction to a fine of £20. From this it would seem that there is ample need to warn an inventor against entrusting his agency to some unqualified person who only saves himself from conviction by carefully avoiding a contravention of the strict terms of the Act. There are yet a large number of unscrupulous and unqualified men who are able to prey upon the public by merely suggesting that they are in a position to act as agents for inventors.

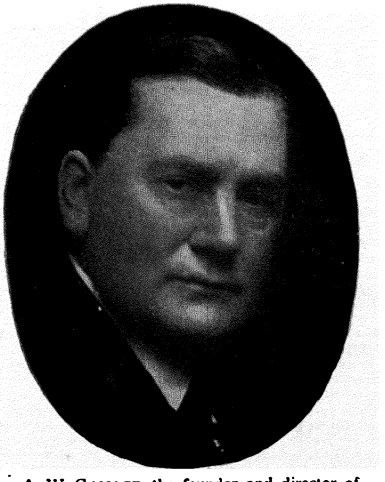
Patent agents are professionally associated in a society chartered by the Crown, known as the Chartered Institute of Patent Agents, and having its offices at Southampton Buildings, London. To this institute has been committed the charge and control of the Register in which patent agents must be registered in pursuance of the Act. An applicant for registration must pass a final examination, prescribed by the institute, as to his knowledge of patent law and practice and of the duties of a patent agent. This examination covers a wide range of subjects, including patent law and practice, science and its application, and the methods of manufacture. Having duly passed it the applicant is entitled to registration, and then to practise as a patent agent. Before, however, a candidate can present himself for the final examination he must give evidence to the institute either—(*a*) that he has passed an examination in general knowledge, such as that for matriculation at a university; or (*b*) has been for at least seven consecutive years continuously engaged as a pupil or assistant to one or more registered patent agents; or (*c*) is for the time being a practising solicitor in England or Ireland, or law agent before the Court of Session in Scotland. The fee payable on entry for the final examination is £2, 2s.; for regis-



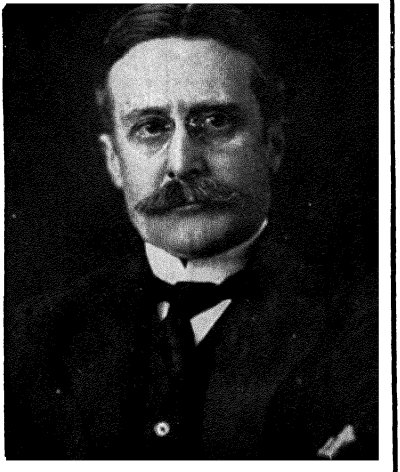
JOHN LAWRIE is Managing Director of William Whiteley's, Ltd., succeeding the late founder. He is a shrewd Scot, has been through the store business from the lowest to the highest rung of the ladder, and has been conspicuously successful at every stage of his career. A student of store methods, he possesses an international experience of store conduct.



SIR JOSEPH LYONS, D.L., is the moving spirit in Joseph Lyons, Ltd., and other catering enterprises which have revolutionised London's food supply. He has rapidly extended his business in the provinces, and has also invaded the hotel trade by founding the Strand Palace Hotel. He is a keen business man, with few hobbies outside his great enterprises.



A. W. GAMAGE, the founder and director of A. W. Gamage, Ltd., is a self-made man, beginning in a small way. He now holds a unique place amongst English storekeepers. He may be said to have developed the Christmas Bazaar, about which he writes in the "Business Encyclopædia."



H. GORDON SELFRIDGE is the founder and director of the store which bears his name in Oxford Street. He is American by birth and training, and is applying American methods of store management to English shopkeeping. His advertising is an innovation so far as English store publicity is concerned.

CONTRIBUTORS TO "BUSINESS ENCYCLOPÆDIA"

tration, £5, 5s.; and so long as a patent agent continues to practise he must pay an annual registration fee of £3, 3s.

PAWNBROKERS.—The business of a pawnbroker, that is to say, a person who "carries on the business of taking goods and chattels in pawn," is governed and regulated in England, Wales, and Scotland, by the provisions of the Pawnbrokers' Act, 1872. The Act applies to all loans by a pawnbroker not exceeding £10, but where the amount is above forty shillings a pawnbroker may make a special contract with the pawner according to a prescribed form. But in no case does the Act apply to a loan by a pawnbroker of above £10, or to the pledge on which the loan is made, or to the pawnbroker in relation to the loan or pledge; and, notwithstanding anything in the Act, no one can be considered to be a pawnbroker merely because he pays, advances, or lends on any terms, any sum of money above £10. A pawnbroker may also require to be registered under the Money-Lenders Act, as to which the article on MONEY-LENDERS should be referred to. A "pledge," in connection with pawnbroking, has the simple statutory definition of "an article pawned with a pawnbroker," and by the word "pawner," when used in the same connection, is meant "a person delivering an article for pawn to a pawnbroker." In order to prevent evasion of the statutory provisions relating to pawnbrokers, a certain class of persons other than pawnbrokers strictly so called is specifically brought within the scope of the Act. This class comprehends the "dollyman"—one who keeps a "dollyshop" or "leaving-shop," a place where goods are sold with the option of repurchase at an advanced price within a certain fixed time. The section of the Act which so checks the operations of the dollyman defines him, and others of the same type, as one who keeps a shop for the purchase or sale of goods, or for taking in goods as security for advances thereon, and who purchases or takes in goods, and pays or advances thereon any sum not exceeding £10, with an agreement or understanding expressed or implied, or to be from the nature and character of the dealing reasonably inferred, that those goods may be afterwards redeemed or repurchased on any terms. Every such transaction, article, payment, advance, and loan is a pawning, pledge, and loan respectively within the meaning of the Act, and the person within the scope of this section, unless he cares to run the risk of punishment, must observe and comply with its provisions. They also extend to and include the executors or administrators of deceased pawnbrokers; but an executor or administrator is not personally answerable for any penalty or forfeiture unless it is incurred by his own act or neglect. Anything done or omitted by the servant, apprentice, or agent of a pawnbroker in the course of or in relation to his business as such is considered to be done or omitted (as the case may be) by the pawnbroker himself; and anything authorised to be done by a pawnbroker may be done by his servant, apprentice, or agent. The rights and benefits reserved to pawners extend to their assigns, and to the executors or administrators of deceased pawners; but any one who represents himself to a pawnbroker to be the assign, executor, or administrator of a pawner must, if required by the pawnbroker, produce the assignment, probate, letters of administration, or other instrument under which he claims.

General obligations of pawnbrokers.—A pawnbroker must keep and use in his business the books and documents described in the Act, in the forms therein indicated or to the like effect; and from time to time, as occasion

requires, he must enter therein in a fair and legible manner the particulars indicated in and in accordance with the statutory directions, and must make all inquiries necessary for that purpose. These forms and directions are set out at the end of this article.

The following rules must be carefully observed by a pawnbroker:—(1) Always keep exhibited in large characters over the outer door of the shop the Christian and surnames, with the word "Pawnbroker"; (2) Always keep placed in a conspicuous part of the shop (so as to be legible by every person pawning or redeeming pledges, standing in any box or place provided in the shop for persons pawning or redeeming pledges) a notice containing the same information as is required to be printed on pawn-tickets. Should he fail in any respect to comply with these rules he will be guilty of an offence against the Act.

Pawning; Redemption; Sale.—On taking a pledge in pawn, a pawnbroker must give to the pawner a pawn-ticket, and he must not take it in pawn unless the pawner takes the ticket. He may take a profit and charges on a loan on a pledge upon the scale specified below, in the cases and according to the rules stated and prescribed in that scale. He cannot, however, in respect of a loan on a pledge, take any profit, or demand or take any charge or sum whatever, other than those so specified. And, if required at the time of redemption, he must give a receipt for the amount of loan and profit paid to him; but the receipt is not liable to stamp duty unless the profit amounts to forty shillings or more. Every pledge is bound to be redeemable within twelve months from the day of pawning, exclusive of that day; and there must be added to that year of redemption seven days of grace, within which every pledge (if not redeemed within the year of redemption) will continue to be redeemable. A pledge pawned for ten shillings, or under, if not redeemed within the year of redemption and days of grace, thereupon becomes the pawnbroker's absolute property. But one pawned for above that sum further continues redeemable until it is disposed of, as in the Act provided, even though the year of redemption and days of grace are expired; and when disposed of by the pawnbroker, can only be sold by public auction, subject to the regulations with reference to the sale, as set out below. He can bid for, and purchase at the sale by auction, any pledge pawned with him; and on making the purchase he becomes the absolute owner of the pledge purchased. If an auctioneer does anything in contravention of the provisions of the Act relating to auctioneers, or fails to do anything which he is thereby required to do, he is guilty of an offence. At any time within three years after the auction at which a pledge pawned for above ten shillings is sold, the holder of the pawn-ticket may inspect the entry of the sale in the pawnbroker's book, and in the filled-up catalogue of the auction (authenticated by the signature of the auctioneer) or in either of them. And where a pledge pawned for above ten shillings is sold, and appears from the pawnbroker's book to have been sold for more than the amount of the loan and profit due at the time of sale, the pawnbroker must, on demand, pay the surplus to the holder of the pawn-ticket in case the demand is made within three years after the sale; but the necessary costs and charges of the sale may be first deducted from the surplus. If on the demand the book shows that the sale of a pledge or pledges has resulted in a surplus, and that within twelve months before or

after that sale the sale of another pledge or other pledges of the same person has resulted in a deficit, the pawnbroker may set off the deficit against the surplus, and is liable to pay only the balance. A pawnbroker's interest in redeemable pledges may be taken in execution of a judgment of a Court (*In re Rollason*); but pledges cannot be distrained upon for rent due from the pawnbroker (*Swire* v. *Leach*).

A pawnbroker is guilty of an offence if, with respect to pledges for loans of above ten shillings, he—(1) Does not *bonâ fide* according to the directions of the Act sell a pledge pawned with him; (2) Enters in his book a pledge as sold for less than the sum for which it was sold, or fails duly to enter the same; (3) Refuses to permit any person entitled under the Act to inspection of an entry of sale in his book, or of a filled-up catalogue of the auction, authenticated by the auctioneer's signature, to inspect the same; (4) Fails without lawful excuse (proof whereof shall lie on him) to produce such a catalogue on lawful demand; (5) Refuses to pay on demand the surplus to the person entitled to receive the same. On conviction thereof in a Court of summary jurisdiction he is liable to forfeit to the person aggrieved a sum not exceeding £10.

Special contracts.—Notwithstanding anything in the Act, a pawnbroker may make a special contract with the pawner in respect of a pledge on which he makes a loan of above forty shillings, provided always that (1) At the time of the pawning he delivers to the pawner a special contract pawn-ticket, signed by himself or his lawful deputy; (2) A duplicate of the special contract pawn-ticket is signed by the pawner. The provisions of the Act, save so far as their application is excluded by the terms of the special contract, will apply thereto. A special contract pawn-ticket, or the duplicate, is not subject to stamp duty. There is nothing in the Act to prevent a pawnbroker recovering from the pawner the amount of any deficit which may result from a sale under a special contract (*Jones* v. *Marshall*).

Delivery up of pledge.—The holder for the time being of a pawn-ticket is presumed to be the person entitled to redeem the pledge. Subject to the provisions of the Act, the pawnbroker, on payment of the loan and profit, must deliver the pledge to the person producing the pawn-ticket; he is specifically indemnified by the Act for so doing. But this indemnity applies only as between the pawnbroker and the pawner, or the owner who has authorised the pledge, and therefore does not prejudice the rights of an owner who has not authorised the pledge (*Singer Manufacturing Co.* v. *Clark*). Accordingly, and notwithstanding section 2 of the Factors Act, the pawnbroker is not protected from a claim by the owner in respect of mercantile goods pledged by an agent whose authority is limited to selling (*Hastings* v. *Pearson*). A pawnbroker, except as the Act specially provides, is not bound to deliver back a pledge unless the pawn-ticket for it is delivered to him. Where a pledge is destroyed or damaged by or in consequence of fire, the pawnbroker is nevertheless liable, on application within the period during which the pledge would have been redeemable, to pay the value of the pledge, after deducting the amount of the loan and profit. Such value is the amount of the loan and profit, and twenty-five per cent. on the amount of the loan. He is entitled to insure to the extent of the value so estimated. Any one entitled and offering to redeem a pledge can recover compensation

in case the pledge has become of less value than it was at the time of the pawning thereof by the default, neglect, or wilful misbehaviour of the pawnbroker. He must, however, first prove this to a Court of summary jurisdiction, whereupon the Court has power to award a reasonable satisfaction to the owner of the pledge in respect of the damage; and the amount so awarded is deducted from the amount payable to the pawnbroker, or must be paid by the pawnbroker (as the case requires) in such manner as the Court directs. In order to protect the owners of articles pawned, and pawners not having their pawn-tickets to produce, the Act contains the following important provisions:—(1) Any person claiming to be the owner of a pledge, but not holding the pawn-ticket, or any person claiming to be entitled to hold a pawn-ticket, but alleging that the same has been lost, mislaid, destroyed, or stolen, or fraudulently obtained from him, may apply to the pawnbroker for a printed form of declaration, which the pawnbroker is bound to deliver to him; (2) If the applicant delivers back to the pawnbroker the declaration duly made before a justice by the applicant, and by a person identifying him, the applicant has thereupon, as between him and the pawnbroker, all the same rights and remedies as if he produced the pawn-ticket. But the declaration is not effectual unless it is duly made and delivered back to the pawnbroker not later than on the third day after the day on which the form is delivered to the applicant by the pawnbroker (exclusive of a day or days on which the pawnbroker is prohibited from carrying on business); the declarant is not, however, bound to redeem the pledge immediately, unless, of course, the period for redemption is just about to expire (*Burslem* v. *Attenborough*); (3) The pawnbroker is indemnified by the Act for not delivering the pledge to any person until the expiration of the period aforesaid; (4) He is further thereby indemnified for delivering the pledge or otherwise acting in conformity with the declaration, unless he has actual or constructive notice that the declaration is fraudulent or is false in any material particular. Any one who makes such a declaration, either as an applicant or as identifying an applicant, knowing it to be false in any material particular, will be guilty of a misdemeanour, and renders himself liable to punishment as for perjury. Provision is also made for the recovery by the true owner, from the pawnbroker, of goods unlawfully pledged. Section 30 of the Act runs as follows:—"In each of the following cases—(1) If any person is convicted under this Act in a Court of summary jurisdiction, of knowingly and designedly pawning with a pawnbroker anything being the property of another person, the pawner not being employed or authorised by the owner thereof to pawn the same; (2) If any person is convicted in any Court of feloniously taking or fraudulently obtaining any goods and chattels, and it appears to the Court that the same have been pawned with a pawnbroker; (3) If in any proceedings before a Court of summary jurisdiction it appears to the Court that any goods and chattels brought before the Court have been unlawfully pawned with a pawnbroker, the Court, on proof of the ownership of the goods and chattels, may if it thinks fit order the delivery thereof to the owner, either on payment to the pawnbroker of the amount of the loan or of any part thereof, or without payment thereof or of any part thereof, as to the Court, according to the conduct of the owner and the other circumstances of the case, seems just and fitting." It should be noted, however, in this connection, that after conviction the true owner of stolen property can

maintain against a pawnbroker the common law action for conversion, without compensating the pawnbroker (*Leicester* v. *Cherryman*). A pawnbroker who without reasonable excuse (proof whereof lies on him) neglects or refuses to deliver a pledge to the person entitled to have delivery of it, is guilty of an offence. A Court of summary jurisdiction may, with or without imposing a penalty, order the delivery of the pledge on payment of the amount of the loan and profit.

General restrictions on pawnbrokers.—A pawnbroker also commits an offence if he does any of the following things:—(1) Takes an article in pawn from any person appearing to be under the age of twelve years or to be intoxicated; (2) Purchases or takes in pawn or exchange a pawn-ticket issued by another pawnbroker; (3) Employs any servant or apprentice or other person under the age of sixteen years to take pledges in pawn; (4) Carries on the business of a pawnbroker on Sunday, Good Friday, or Christmas Day, or a day appointed for public fast, humiliation, or thanksgiving; (5) Under any pretence purchases, except at public auction, any pledge while in pawn with him; (6) Suffers any pledge while in pawn with him to be redeemed with a view to his purchasing it; (7) Makes any contract or agreement with any person pawning or offering to pawn any article, or with the owner thereof, for the purchase, sale, or disposition thereof within the time of redemption; (8) Sells or otherwise disposes of any pledge pawned with him except at such time and in such manner as authorised by the Act.

Unlawful pawning and taking in pawn.—Any one who knowingly and designedly pawns with a pawnbroker anything the property of another person, the pawner not being employed or authorised by the owner to pawn it, is guilty of an offence; on conviction thereof in a Court of summary jurisdiction he renders himself liable to forfeit any sum not exceeding £5, and in addition thereto any sum not exceeding the full value of the pledge as ascertained by the Court. These forfeitures when recovered are applied towards making satisfaction thereout to the party injured, and defraying the costs of prosecution, as the Court directs; but if the party injured declines to accept such satisfaction and costs, or if there is any surplus of the forfeitures, then the forfeitures or surplus (as the case may be) will be applied for the use of the poor.

A person is guilty of an offence if he does any of the following things:—(1) Offers to a pawnbroker an article by way of pawn, being unable or refusing to give a satisfactory account of the means by which he became possessed of the article; (2) Wilfully gives false information to a pawnbroker as to whether an article offered by him in pawn to the pawnbroker is his own property or not, or as to his name and address, or as to the name and address of the owner of the article; (3) Not being entitled to redeem, and not having any colour of title by law to redeem, a pledge, attempts or endeavours to redeem the same. In every such case, and also in any case where, on an article being offered in pawn to a pawnbroker he reasonably suspects that it has been stolen or otherwise illegally or clandestinely obtained, the pawnbroker may seize and detain the person and the article, or either of them; and he must deliver the person and the article or either of them (as the case may be) as soon as possible into the custody of a constable, who will forthwith convey the person, if so detained, before a justice, to be dealt with according to law. In an action against a pawnbroker for damages for false imprisonment, through having seized and detained an innocent person, it is a question for the judge, and not for the jury, whether he had cause to

reasonably suspect that person (*Howard* v. *Clarke*). For such an innocent person to succeed in his action against the pawnbroker, it would seem that he must affirmatively prove an absence of reasonable suspicion in the mind of the pawnbroker.

The justice, on the request of the pawnbroker, may give him a certificate of the amount of the compensation reasonable for his expenses, trouble, and loss of time about the seizure, detention, and delivery. This certificate has the effect of an order of Court for the payment of the expenses of a prosecution; and the amount mentioned therein will be paid as money mentioned in such an order.

A pawnbroker must not knowingly take in pawn any linen or apparel or unfinished goods or materials entrusted to any person to wash, scour, iron, mend, manufacture, work up, finish, or make up. If he does so he will be guilty of an offence against the Act, and will be liable, on conviction thereof in a Court of summary jurisdiction, to forfeit a sum not exceeding double the amount of the loan (which forfeiture is paid to the overseers of the poor of the parish where the offence is committed for the use of the poor). And the pawnbroker will also be required to restore the pledge to its owner, in the presence of the Court, or as the Court directs.

If the owner of any linen, or apparel, or unfinished goods, or materials entrusted to any such persons, and unlawfully pawned with a pawnbroker, or the owner of any other article unlawfully pawned (the last-mentioned owner having on oath satisfied a justice that his goods have been unlawfully obtained or taken from him), makes out on oath before a justice that there is good cause to suspect that a pawnbroker has taken in pawn the linen, apparel, goods, materials, or other article, without the privity or authority of the owner, and makes appear to the satisfaction of the justice probable grounds for such suspicion, the justice may issue his warrant for searching, within the hours of business, the shop of the pawnbroker. And should the pawnbroker, on request by a constable authorised by the warrant, refuse to open the shop and permit it to be searched, a constable may break it open within the hours of business and search therein for the linen, apparel, goods, materials, or other article, doing no wilful damage; and if any pawnbroker or other person opposes or hinders the search, he will be guilty of an offence. And if any such linen, apparel, goods, materials, or other article, is or are then found, and the property of the owner thereof is made out to the satisfaction of a Court of summary jurisdiction, the Court will cause it to be forthwith restored to its owner.

Inland Revenue Licences.—A pawnbroker must take out every year from the Commissioners of Inland Revenue an excise licence for carrying on his business, on which licence he is required to pay an excise duty of £7, 10s.

Every licence is dated on the day on which it is issued, and determines on the 31st day of July.

A separate licence must be taken out and paid for by a pawnbroker for each pawnbroker's shop kept by him.

If a person acts as a pawnbroker without having in force a proper licence he will be liable for every such offence to an excise penalty not exceeding £50.

All the provisions contained in any Act relating to excise licences,

duties or penalties, as far as the same are applicable, have full effect with respect to the pawnbroker's licence and duty and penalty.

If a pawnbroker is convicted on indictment of any fraud in his business, or of receiving stolen goods knowing them to be stolen, the Court before which he is convicted may, if it thinks fit, direct that his licence shall cease to have effect, and the same will then cease accordingly. The licence is never granted to any one except on the production and in pursuance of the authority of a certificate granted under the Act; but it is not necessary for any person who was a licensed pawnbroker in 1872, or for his executors, administrators, assigns, or successors, to obtain such a certificate. This exemption is personal to the pawnbroker and his legal representatives, and is not confined to his business (*Reg.* v. *Inland Revenue: Ohlson's case*). He and his successors may therefore open new premises at any time with a licence without procuring a certificate.

The certificates are granted (as regards England) in the metropolitan police district by a magistrate sitting in any police court in the metropolis having jurisdiction in the district where the application is made; in any place within the jurisdiction of a stipendiary magistrate by that magistrate; and in other places by the justices of the petty sessional division assembled at petty sessions specially convened for the purpose. A certificate remains in force for one year from its date. A person intending to apply for the first time for a certificate under the Act must proceed as follows:—(1) Twenty-one days at least before the application he should give notice by registered letter sent by post of his intention to one of the overseers of the poor of the parish or place in which he intends to carry on business, and to the superintendent of police of the district, and should in the notice set forth his name and address; (2) within twenty-eight days before the application he should cause a like notice to be affixed and maintained between 10 A.M. and 5 P.M. of two consecutive Sundays, on the principal door or one of the doors of the church or chapel of the parish or place, or if there is none, then on some other public and conspicuous place in the parish or place.

An application for a certificate cannot be refused except on the following grounds, or one of them:—(1) That the applicant has failed to produce satisfactory evidence of good character; (2) that the shop in which he intends to carry on the business of a pawnbroker, or any adjacent house or place owned or occupied by him, is frequented by thieves or persons of bad character; (3) that he has not conformed to the foregoing procedures. Any one who forges a certificate, or tenders a certificate knowing it to be forged, will be liable on conviction thereof in a Court of summary jurisdiction to a penalty not exceeding £20, or, in the discretion of the Court, to imprisonment for any term not exceeding six months, with or without hard labour. A licence granted in pursuance of a forged certificate is void; and if any person makes use of a forged certificate, knowing it to be forged, he will be disqualified from obtaining at any time thereafter a pawnbroker's licence.

Penalties and legal proceedings.—A pawnbroker or other person who is guilty of an offence against the Act, in respect whereof a specific forfeiture or penalty is not prescribed, is liable on conviction to a penalty not exceeding £10. Penalties recovered under the Act, and not directed to be

otherwise applied, may be applied under direction of the Court in which they are recovered as follows:—(1) Where the complainant is the party aggrieved, one moiety of the penalty may be paid to him; (2) Where the complainant is not the party aggrieved, there shall be paid to him no part, or such part only of the penalty as the Court thinks fit. Where an information or complaint of any offence against the Act (not being an offence relating to licences) is laid or made and not further prosecuted, or if it is further prosecuted but it appears to the Court that there was no sufficient ground for the making of the charge, the Court has power to award amends, not exceeding the sum of £5, to be paid by the informer or complainant to the party informed or complained against for his loss of time and expenses in the matter; and every sum so awarded is recoverable as penalties are recoverable.

Any person will be himself guilty of an offence who lodges an information for an alleged offence by which he was not personally aggrieved, and afterwards directly or indirectly receives, without the permission of a justice, a sum of money or other reward for compounding, delaying, or withdrawing the information. If any one utters, produces, shows, or offers to a pawnbroker a pawn-ticket which the pawnbroker reasonably suspects to have been counterfeited, forged, or altered, the pawnbroker may seize and detain the person and the ticket, or either of them, and deliver the person and the ticket, or either of them (as the case may be) as soon as may be into the custody of a constable, who will convey the person, if so detained, before a justice to be dealt with according to law. A pawnbroker must at any time, when ordered or summoned by a Court of summary jurisdiction, attend before the Court and produce all books and papers relating to his business which he is required by the Court to produce. If he fails to do so he shall be guilty of an offence. Where a pawnbroker is guilty of an offence (not being one relating to licences), no contract of pawn or other contract made by him in relation to his business of pawnbroker will be void by reason only of that offence; nor will he by reason only of that offence lose his lien on or right to the pledge or to the loan and profit. But this does not restrict the operation of any provision of the Act providing for the delivery of goods and chattels, or the restoration of linen, apparel, goods, materials, or article to the owner, under the order of a Court. Any person who thinks himself aggrieved by a conviction or order under the Act, or by the refusal of a certificate for a licence, may appeal therefrom, subject to the following conditions and regulations:—(1) The appeal must be made to some Court of general or quarter sessions for the county or place in which the cause of appeal has arisen, held not less than fifteen days and (unless adjourned by the Court) not more than four months after the decision or refusal appealed from: (2) The appellant must within seven days after the cause of appeal has arisen give notice to the other party and to the Court or authority appealed from of his intention to appeal and the ground thereof: (3) He must immediately after that notice enter into a recognisance before a justice with two sufficient sureties conditioned personally to try the appeal, and to abide the judgment of the Court thereon, and to pay such costs as may be awarded by the Court, or give such other security by deposit of money or otherwise as the justice allows: (4) Where the appellant is in custody the justice may, if he thinks fit, on the appellant

entering into such recognisance or giving other proper security, release him from custody: (5) The Court of appeal may adjourn the appeal; and upon the hearing thereof they may confirm, reverse or modify the decision or refusal appealed from, or remit the matter with the opinion of the Court of appeal thereon, or make such other order in the matter as the Court thinks just, and may make such order as to costs to be paid by either party as the Court thinks just.

No order or conviction of a Court of summary jurisdiction against which a person is authorised by the Act to appeal can be quashed for want of form, or be removed by certiorari or otherwise at the instance either of the Crown or of any private party into any superior Court. A warrant of commitment, on a conviction by a Court of summary jurisdiction under the Act, is not void by reason of any defect therein, if only there is a valid conviction to maintain the warrant, and it is alleged therein that the party has been convicted. Any person who is sued or prosecuted for anything done by him in pursuance or execution or intended execution of the Act, may plead generally that the same was done in pursuance or intended execution of the Act, and give the special matter in evidence.

Scotland.—This Act applies to Scotland, subject to the following necessary provisions: (1) The following expressions occurring in the Act have the meanings here assigned to them; (that is to say), "Overseers of the poor" means inspectors of the poor; "Entering into a recognisance before a justice" means finding caution with the clerk of the peace to the satisfaction of such clerk; "Recognisance" means a bond of caution; "Penalty" means any money recoverable under the Act from a person convicted of contravening any of its provisions, and also any money recoverable as aforesaid as or through and in consequence of a forfeiture; "Sheriff" includes sheriff substitute; "Court of summary jurisdiction" means any sheriff, justice or justices of the peace, or magistrate by whatever name called, to proceedings before whom the provisions of "The Summary Procedure Act, 1864," may be applied: (2) The provisions of "The Summary Procedure Act, 1864," may be applied to all proceedings for the trial or prosecution for any offence, or for the recovery of any penalty, or for the obtaining of any order before a Court of summary jurisdiction under this Act: (3) The Court of summary jurisdiction when hearing and determining an information or complaint under this Act is to be constituted of two or more justices in petty sessions, or two or more magistrates of a burgh in a burgh court, or of a sheriff or some other magistrate or officer for the time empowered by law to do alone any act authorised to be done by more than one justice of the peace: (4) A person found liable under this Act in any penalty will be liable in default of immediate payment to imprisonment for a term not exceeding six months; and the conviction and warrant may be in the form of No. 3 of Schedule K. of "The Summary Procedure Act, 1864": (5) A person making default in complying with an order of Court of summary jurisdiction under the Act will be liable to imprisonment for a term not exceeding three months: (6) The Court of summary jurisdiction may award costs, and shall have and exercise all the jurisdictions, powers, and authorities necessary for that court for the purposes of the Act: (7) A person authorised by the Act to appeal from a conviction or order of a Court of summary jurisdiction may, when that court

is a burgh or sheriff court, appeal to the next circuit court of justiciary, or, where there are no circuit courts, to the High Court of Justiciary in Edinburgh, in the manner prescribed by such of the provisions of the Act of the twentieth year of the reign of King George the Second, and any Act amending the same, as relate to appeals in matters criminal, and by and under the rules, limitations, conditions, and restrictions contained in the same provisions: (8) Certificates under the Act will be granted by the justices for counties or districts, and the magistrates of burghs at their respective meetings for granting and renewing certificates for the sale of excisable liquors, or at some adjournment thereof, which adjournment they respectively may make from time to time as they think fit for the purposes of the Act, or at some other meetings specially convened for that purpose: (9) Pawnbrokers will not be guilty of an offence against the Act who carry on the business of a pawnbroker on Good Friday or Christmas Day.

Use.—So long as the pawnbroker thereby does no damage to the pledge, and does not expose it to injury, it would seem that he has the right to reasonably use it, and where the pledge absolutely requires use, as in the case of a horse, then the right of user becomes practically an obligation.

PROFIT AND CHARGES ALLOWED TO PAWNBROKERS.

Part I.—Profit on Loan.

A. On a loan of forty shillings or under—

For any time during which the pledge remains in pawn not exceeding one month, for every two shillings or fraction of two shillings lent	One halfpenny.
For every month after the first, including the current month in which the pledge is redeemed, although that month is not expired, for every two shillings or fraction of two shillings lent	One halfpenny.

Provisoes.

1. If the pledge is redeemed before the end of the first fourteen days after the expiration of any month, the pawnbroker shall, in respect of those fourteen days, be entitled to take half of the amount which he would be entitled to take for the whole month.

B. On a loan of above forty shillings—

For every month or part of a month for every sum of two shillings and sixpence or fraction of a sum of two shillings and sixpence	One halfpenny.

Part II.—Charge on Pawn-Ticket.

Where the loan is ten shillings or under	One halfpenny.
Where the loan is above ten shillings	One penny.

Part III.—Charge on Inspection of Sale Book.

For the inspection of the entry of a sale	One penny.

PART IV.—CHARGE ON FORM OF DECLARATION.

Where the loan is five shillings or under	One halfpenny.
Where the loan is above five shillings	One penny.

Rule.

This sum is to be paid by the applicant at the time of application.

DECLARATION WHERE PLEDGE CLAIMED BY OWNER.

TAKE NOTICE *if this declaration is false the person making it is punishable as for perjury.*

Unless this printed form is taken before a magistrate and declared to and signed and delivered back to the pawnbroker not later than the day of , the articles mentioned in it will be delivered to any person producing the pawn-ticket.

I, *A.B.*, of , in pursuance of The Pawnbrokers Act, 1872, do solemnly and sincerely declare that the article [*or* articles] described below is [*or* are] my property, and that I believe they are pledged at the shop of

The article [*or* articles] above referred to is [*or* are] the following:—

And I, *C.D.*, of , in pursuance of the same Act do solemnly and sincerely declare that I know the person now making the foregoing declaration to be *A.B.*, of

Declared before me, one of His Majesty's justices of the peace for the county of [*Middlesex*] this day of 19 .

DECLARATION WHERE PAWN-TICKET LOST, &c.

TAKE NOTICE *if this declaration is false the person making it is punishable as for perjury.*

Unless this printed form is taken before a magistrate and declared to and signed and delivered back to the pawnbroker not later than the day of , the articles mentioned in it will be delivered to any person producing the pawn-ticket.

I, *A.B.*, of , in pursuance of The Pawnbrokers Act, 1872, do solemnly and sincerely declare that pledged at the shop of , Pawnbroker, the article [*or* articles] described below being property, and received a pawn-ticket for the same, which has since been by , and that the pawn-ticket has not been sold or transferred to any person by or to knowledge or belief.

The article [*or* articles] above referred to is [*or* are] the following:—

And I, *C.D.*, of , in pursuance of the same Act, do solemnly and sincerely declare that I know the person now making the foregoing declaration to be *A.B.*, of

Declared before me, one of His Majesty's justices of the peace for the county of [*Middlesex*] this day of 19

REGULATIONS AS TO AUCTIONS OF PLEDGES ABOVE TEN SHILLINGS

1. The auctioneer shall cause all pledges to be exposed to public view.
2. He shall publish catalogues of the pledges, stating—
   (1) The pawnbroker's name and place of business;
   (2) The month in which each pledge was pawned;
   (3) The number of each pledge as entered at the time of pawning in the pledge book.
3. The pledges of each pawnbroker in the catalogue shall be separate from any pledges of any other pawnbroker.
4. The auctioneer shall insert in some public newspaper an advertisement giving notice of the sale, and stating—
   (1) The pawnbroker's name and place of business;
   (2) The months in which the pledges were pawned.
5. The advertisement shall be inserted on two several days in the same newspaper, and the second advertisement shall be inserted at least three clear days before the first day of sale.
6. Pictures, prints, books, bronzes, statues, busts, carvings in ivory and marble, cameos, intaglios, musical, mathematical, and philosophical instruments, and china, sold by auction, shall be sold by themselves, and without any other goods being sold at the same sale, four times only in every year (that is to say), on the first Monday in the months of January, April, July, and October, and on the following day and days, if the sale exceeds one day, and at no other time.
7. Where a pawnbroker bids at a sale the auctioneer shall not take the bidding in any other form than that in which he takes the biddings of other persons, at the same sale; and the auctioneer on knocking down any article to a pawnbroker shall forthwith declare audibly the name of the pawnbroker as purchaser.
8. The auctioneer shall, within fourteen days after the sale, deliver to the pawnbroker a copy of the catalogue, or of so much thereof as relates to the pledges of that pawnbroker, filled up with the amounts for which the several pledges of that pawnbroker were sold, and authenticated by the signature of the auctioneer.
9. The pawnbroker shall preserve every such catalogue for three years at least after the auction.

PLEDGE BOOK

of Pawnbroker,

of 19 .

For Date of Redemption.	For Profit charged.	£ s. d. For Amount of Loan.	For No. of Pledge in the month.	For Name of Pawner.	For Address of Pawner.	For Name of Owner, if other than Pawner.	For Address of Owner, if other than Pawner.	For List of Articles Pawned, as described on Pawn-Ticket.

Rule.

All entries in the last five columns respecting each pledge shall be made on the day of the pawning thereof or within four hours after the end of that day,

PAWN-TICKET.

A.—*For loan of ten shillings or under.*

Pawned with [*John Smith*], Pawnbroker,
[236 *High Street, Whitechapel*],
this [17*th*] day of [*March* 1873],
by [*Henry Williams*], of [25 *King Street, Holborn*],
for the sum of [*ten*] shillings,
[*One Black Frock Coat*].

The pawnbroker is entitled to charge—

For this ticket . . . . . One halfpenny.

For profit on each two shillings or part of two shillings lent on this pledge for not more than one calendar month . One halfpenny.

And so on at the same rate per calendar month.

After the first calendar month any time not exceeding fourteen days will be charged as half a month, and any time exceeding fourteen days and not more than one month will be charged as one month.

This pledge must be redeemed within twelve calendar months and seven days from the date of pledging. At the end of that time it becomes the property of the pawnbroker.

If the pledge is destroyed or damaged by fire the pawnbroker will be bound to pay the value of the pledge, after deducting the amount of the loan and profit, such value to be the amount of the loan and profit and twenty-five per cent. on the amount of the loan.

If this ticket is lost, mislaid, or stolen, the pawner should at once apply to the pawnbroker for a form of declaration to be made before a magistrate, or the

pawnbroker will be bound to deliver the pledge to any person who produces this ticket to him and claims to redeem the same.

B.—*For loan of above ten shillings and not above forty shillings.*

Pawned with [*John Smith*], Pawnbroker,
[236 *High Street, Whitechapel*],
this [18*th*] day of [*March* 1873],
by [*Henry Williams*], of [25 *King Street, Holborn*],
for the sum of [*eleven*] shillings,
[*One Grey Tweed Coat*].

* The pawnbroker is entitled to charge—

For this ticket	One penny.
For profit on each two shillings or part of two shillings lent on this pledge for not more than one calendar month .	One halfpenny.

And so on at the same rate per calendar month.

After the first calendar month any time not exceeding fourteen days will be charged as half a month, and any time exceeding fourteen days and not more than one month will be charged as one month.

If this pledge is not redeemed within twelve calendar months and seven days from the day of pledging, it may be sold by auction by the pawnbroker, but it may be redeemed at any time before the day of sale.

Within three years after sale the pawner may inspect the account of the sale in the pawnbroker's books on payment of one penny, and receive any surplus produced by the sale. But deficit on sale of one pledge may be set off by the pawnbroker against surplus on another.

If the pledge is destroyed or damaged by fire the pawnbroker will be bound to pay the value of the pledge, after deducting the amount of the loan and profit, such value to be the amount of the loan and profit and twenty-five per cent. on the amount of the loan.

If this ticket is lost or mislaid the pawner should at once apply to the pawnbroker for a form of declaration to be made before a magistrate, or the pawnbroker will be bound to deliver the pledge to any person who produces this ticket to him and claims to redeem the same.

C.—*For loan of above forty shillings.*

Pawned with [*John Smith*], Pawnbroker,
[236 *High Street, Whitechapel*],
this [19*th*] day of [*March* 1873],
by [*Henry Williams*], of [25 *King Street, Holborn*],
for the sum of [*forty-one*] shillings,
[*One Shooting Coat*].

The pawnbroker is entitled to charge—

For this ticket	One penny.
For profit on each two shillings and sixpence or part of two shillings and sixpence lent on this pledge for every calendar month or part of a calendar month .	One halfpenny.

If this pledge is not redeemed within twelve calendar months and seven days from the day of pledging, it may be sold by auction by the pawnbroker, but it may be redeemed at any time before the day of sale.

Within three years after sale the pawner may inspect the account of the sale in the pawnbroker's books on payment of one penny, and receive any surplus

produced by the sale. But deficit on sale of one pledge may be set off by the pawnbroker against surplus on another.

If the pledge is destroyed or damaged by fire the pawnbroker will be bound to pay the value of the pledge, after deducting the amount of the loan and profit, such value to be the amount of the loan and profit and twenty-five per cent. on the amount of the loan.

If this ticket is lost or mislaid the pawner should at once apply to the pawnbroker for a form of declaration to be made before a magistrate, or the pawnbroker will be bound to deliver the pledge to any person who produces this ticket to him and claims to redeem the same.

SALE BOOK OF PLEDGES FOR LOANS OF ABOVE TEN SHILLINGS.

[Date and place of sale.]
[Name and place of business of Auctioneer.]

For No. of Pledge as in Pledge Book.	For Date of Pawning.	For Name of Pawner.	£ s. d. For Amount of Loan.	For Amount for which Pledge sold as stated by Auctioneer.

PEDLAR.—This term is defined by the Pedlars Act, 1871, as meaning "any hawker, pedlar, petty chapman, tinker, caster of metals, mender of chairs, or other persons who, without any horse or other beast bearing or drawing burden, travels and trades on foot and goes from town to town or to other men's houses, carrying to sell or exposing for sale any goods, wares, or merchandise, or procuring orders for goods, wares, or merchandise immediately to be delivered, or selling or offering for sale his skill in handicraft." *Certificate.*—A pedlar can only lawfully act as such when, and within the district for which, he is certificated. By acting without a certificate he incurs a penalty of 10s. for the first offence, and £1 for a subsequent one. The certificate is granted by the chief officer of police of the district in which the applicant has resided during the month previous to the application, but the officer requires to be satisfied that the applicant is above seventeen years of age, is a person of good character, and in good faith intends to carry on the trade of a pedlar. The fee for the certificate is 5s., and it remains in force for a year from the date of issue. A pedlar must not, under a penalty of 20s., lend, transfer, or assign his certificate to any other person; nor under a like penalty may any one borrow or make use of a certificate granted to another. A fine of £20, with imprisonment, is the penalty for forging or dealing with a forged certificate. No one is exempt from the provisions of any Act relative to idle and disorderly persons, rogues, and vagabonds, by reason only that he holds a pedlar's certificate, or assists or is accompanying a certificated pedlar. *Duties of pedlars.*—At all times on demand a pedlar must produce and show his certificate to any justice of the peace, or police officer, or any person to whom he offers his goods for sale, or any person in

whose private grounds or premises he is found. An uncertificated pedlar, or a pedlar who refuses to show his certificate, may be arrested; and a police officer can at any time open and inspect any pack, box, bag, trunk, or case in which a pedlar carries his goods; and should the pedlar attempt to prevent the officer making the search, he will render himself liable to a penalty of 20s. Certain persons are **exempt** from the necessity of obtaining a pedlar's certificate. These are—(1) Commercial travellers or other persons selling or seeking orders for goods, wares, or merchandise to or from persons who are dealers therein and who buy to sell again, or sell or seek orders for books as agents authorised in writing by the publishers of the books; (2) sellers of vegetables, fish, fruit, or victuals; and (3) persons selling or exposing to sale goods, wares, or merchandise in any public mart, market, or fair legally established. A pedlar can only deal in PETROLEUM (*q.v.*) subject to the same conditions as those imposed upon HAWKERS (*q.v.*).

PENALTIES under the Factory Act.—*For not keeping a factory or workshop in conformity with the Act* the occupier is liable to a fine not exceeding £10, and, in the case of a second or subsequent conviction in relation to a factory within two years from the last conviction for the same offence, to a fine of not less than £1 for each offence. In addition to inflicting a fine the Court may order means to be adopted by the occupier for the purpose of bringing his premises into conformity with the Act. *Death or injury.*—If, as a consequence of not so keeping his factory or workshop in conformity with the Act, a death, or bodily injury, or injury to health has taken place, then the fine imposed upon the occupier may be increased to £100. The whole or any part of this fine may be applied for the benefit of the injured person or his family, or otherwise, as the Home Secretary may determine. In the case of injury to health the occupier is not liable unless the injury was caused directly by the neglect. Nor is he liable if an information against him for not observing the regulation to the breach of which the death or injury was attributable has been heard and dismissed previous to the time when the death or injury was inflicted. For *wrongful employment.*—There are various fines imposed upon the occupier in cases where workpeople have been employed in contravention of the provisions of the Act; and even the parent of a young person or child can be fined in respect of any such offence, unless it appears to the Court that the offence was committed without the consent, connivance, or wilful default of the parent. For *forgery* of certificates, false entries, false declarations, and kindred offences, an offender not only incurs a heavy fine, but is also liable to imprisonment for a term not exceeding three months, with or without hard labour. *Responsibility for offences committed by others.*—Where an offence for which the occupier of a factory or workshop is liable to a fine has in fact been committed by some agent, servant, workman, or other person, that agent or other person is liable to the like fine as if he were the occupier. And where the occupier is charged with an offence, he is entitled, upon laying an information, to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge. And that other person will be summarily convicted of the offence, and the occupier will be exempt from the fine if, after the commission of the offence has been proved, the occupier can satisfy the Court—(*a*) that he has used due diligence to enforce the execution of the Act; and (*b*) that the other person had committed the offence in question without his knowledge, consent, or

connivance. But proceedings can be taken against the actual offender in the first place, without proceeding against the occupier, if the inspector is satisfied that the occupier has used all due diligence to enforce the execution of the Act, and as to the identity of the actual offender, and that the offence was committed without the knowledge, consent, or connivance of the occupier, and in contravention of his orders. The owner of a machine may be liable in certain cases instead of the occupier. *Generally.*—Where a young person or child is, in the opinion of the Court, apparently of the age alleged by the informant, it lies on the defendant to prove that the young person or child is, in fact, not of that age. There is a limit prescribed with regard to cumulative fines, and also an appeal to Quarter Sessions from a conviction or order made by magistrates. An information must be laid within three months after the date at which the offence comes to the knowledge of the inspector, or, in the case of an inquest being held in relation to the offence, then within two months after the conclusion of the inquest, so, however, that it be not laid after the expiration of six months from the commission of the offence. *See* FACTORIES AND WORKSHOPS.

PETITION is a document containing a prayer from the person presenting it—called "the petitioner"—that the Court to which it is presented will grant some right or redress some wrong. Many legal proceedings are commenced by the presentation of a petition instead of by a writ. Of such may be mentioned divorce, bankruptcy, winding-up, and lunacy proceedings. *In Bankruptcy*, for example, if a debtor commits an ACT OF BANKRUPTCY (*q.v.*), the Court, on a petition being presented either by a creditor or by the debtor, has power to make a receiving order for the protection of the estate. A creditor is not entitled to present a petition against a debtor unless—(*a*) The debt owing by the debtor to the petitioning creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to the several petitioning creditors, amounts to £50; and (*b*) the debt is a liquidated sum, payable either immediately or at some certain future time; and (*c*) the act of bankruptcy on which the petition is grounded has occurred within three months before the presentation of the petition; and (*d*) the debtor is domiciled in England, or, within a year before the date of the presentation of the petition, has ordinarily resided or had a dwelling-house or place of business in England. A secured creditor must, in his petition, either state that he is willing to give up his security for the benefit of the creditors in the event of the debtor being adjudged bankrupt, or give an estimate of the value of his security. In the latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him, after deducting the value so estimated, in the same manner as if he were unsecured. A creditor's petition must be verified by affidavit of the creditor, or of some person on his behalf having knowledge of the facts; it must be served on the debtor in the prescribed manner. At the hearing the Court requires proof of the debt, of the service, and of the act of bankruptcy. It has been decided, *In re X. Y. ex parte Haes*, that on the hearing of a petition the petitioning creditor is entitled to production of the debtor's books in order to prove the allegations in the petition. If more than one act of bankruptcy are alleged it may be sufficient to prove only one. The Court will dismiss the petition if these proofs are not satisfactory; and so also will it if satisfied that the debtor is able to pay his debts, or that for

some other sufficient cause no order ought to be made. When the act of bankruptcy relied on is non-compliance with a bankruptcy notice, the Court has power to stay or dismiss the petition on the ground that an appeal is pending from the judgment. And on the hearing of the petition the debtor may have an opportunity to contest the creditor's claim—an opportunity afforded by section 7 (5) of the Bankruptcy Act, 1883. By this section, "where the debtor appears on the petition and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the Court, on such security (if any) being given as the Court may require for payment to the petitioner of any debt which may be established against him in due course of law, and of the costs of establishing the debt, may instead of dismissing the petition stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt." Where proceedings are stayed, the Court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make a receiving order on the petition of some other creditor. Thereupon it will dismiss, on such terms as it thinks just, the petition in which the proceedings have been stayed. A creditor, after he has once presented his petition, cannot withdraw it without the leave of the Court; nor can even a debtor withdraw his own petition except with leave. The question of the right of a debtor to present a petition on his own behalf has been fully discussed in *Ex parte Painter; In re Painter*, from which case it appears that it cannot be rightly said that a receiving order ought not to be made on a debtor's petition merely because the petition was presented for a purpose foreign to the bankruptcy laws, nor can the receiving order be annulled on those grounds. Certainly it cannot be annulled because the debtor has no assets; nor because, for instance, he is possessed of an inalienable pension, nor because, having no assets and being in possession of such a pension, he has presented the petition for the express purpose of avoiding a committal under the Debtors Act to compel him to pay the debt out of his pension. *See* BANKRUPTCY.

PETROLEUM, and its safe keeping, is the subject of the Petroleum Acts, 1871 and 1879, and the Petroleum (Hawkers) Act, 1881, all which statutes are known generally as the Petroleum Acts, 1871–1881. The term "petroleum" includes any rock oil, Rangoon oil, Burmah oil, oil made from petroleum, coal, schist, shale, peat, or other bituminous substance, and any products of petroleum, or any of the above-mentioned oils. But the legislation on the subject only applies to petroleum, within the above definition, which, when tested according to the manner set forth in the Act of 1879, gives off an inflammable vapour at a temperature of less than 73° Fahrenheit. Bye-laws under the Acts are framed by every harbour authority regulating the movements of ships carrying petroleum; and, subject to a penalty of £50, the owner or master of every ship carrying a cargo including petroleum must, on entering any harbour within the United Kingdom, give notice of the nature of the cargo to the local harbour authority.

Labels.—In certain cases a vessel which contains petroleum must have attached thereto a label upon which is conspicuously stated the description of the petroleum, with the addition of the words "highly inflammable." These cases occur where the petroleum—(*a*) is kept at any place except during the seven days next after it has been imported; or (*b*) is sent or con-

veyed by land or water between any two places in the United Kingdom; or (*c*) is sold or exposed for sale. There must also be added to the statements on the label—(*a*) in the case of a vessel kept, the name and address of the consignee or owner; (*b*) in the case of a vessel sent or conveyed, the name and address of the sender; (*c*) in the case of a vessel sold or exposed for sale, the name and address of the vendor. For non-compliance with the foregoing the petroleum and its vessel will be forfeited and a fine of £5 incurred. *Regulations as to storage.*—A licence of the local authority is generally necessary in order that petroleum may be lawfully kept. If kept without such a licence the occupier of the premises becomes liable to a penalty of £20 a day for each day during which the petroleum is so kept. The exemption from this general necessity for a licence is found in the case of petroleum kept either for private use or for sale, and then only provided the following conditions are complied with—(1) That it is kept in separate glass, earthenware, or metal vessels, each of which contains not more than a pint, or is securely stopped; (2) that the aggregate amount kept, supposing the whole contents of the vessels to be in bulk, does not exceed three gallons. A *licence* may be granted for only a limited time, and may be subject to renewal or not in such manner as the local authority think necessary. And further, there may be annexed to the licence conditions as to the mode of storage, the nature and situation of the premises in which, and the nature of the goods with which the petroleum is stored, the facilities for testing the petroleum, the mode of carrying the petroleum within the district of the licensing authority, and generally as to the safe keeping of the petroleum. A licensee who violates any of the conditions of his licence is deemed to be an unlicensed person. The authority cannot charge a higher fee for the licence than 5s. In case an authority refuses to grant a licence, the applicant may appeal from the refusal by memorialising a Secretary of State or the Lord Lieutenant. *Testing.*—The officer of a local authority has power to test the petroleum in his district; and to exercise this power he is entitled to purchase petroleum from a dealer, or, upon producing his authority, require the dealer to show him every or any place, and all or any of the vessels in which any petroleum in his possession is kept, and to give him samples thereof upon payment of their value. The officer can then take away the samples for the purpose of testing, and give notice to the dealer of the time and place of the test. The certificate of the test will be evidence against the dealer in any proceedings against him under the Act; but the dealer is entitled to give evidence that the certificate is incorrect, and thereupon the Court can appoint a skilled expert in petroleum to decide as to the accuracy or otherwise of the certificate. A penalty is incurred by refusing information to an officer, or obstructing him in his duty. So also is there for refusing or failing to admit him into a place, building, or ship in which he is authorised by warrant to search for petroleum. Such a warrant is issued upon information upon oath laid before the local magistrates.

Hawking petroleum.—For the purposes of the Petroleum (Hawkers) Act, 1881, a person is considered to hawk petroleum if by himself or his servants he goes about carrying petroleum to sell, whether going from town to town or to other men's houses, or selling it in the streets of the place of his residence or otherwise, and whether with or without any horse or other beast bearing or drawing burden. Any one licensed under the Act of 1871 to

keep petroleum may, subject to the enactments for the time being in force with respect to hawkers and pedlars, hawk such petroleum by himself or his servants. But he must observe the following regulations:—(1) The amount of petroleum conveyed at one time in any one carriage must not exceed twenty gallons; (2) The petroleum is to be conveyed in a closed vessel so constructed as to be free from leakage; (3) The carriage in which the vessels containing the petroleum are conveyed must be so ventilated as to prevent any evaporation from the petroleum mixing with the air in or about the carriage in such proportion as to produce or be liable to produce an explosive mixture; (4) No fire or light or any article of an explosive or highly inflammable nature may be brought into or dangerously near to the carriage in which the vessels containing the petroleum are conveyed; (5) The carriage in which the vessels containing the petroleum are conveyed must be so constructed or filled that the petroleum cannot escape therefrom in the form of liquid, whether ignited or otherwise; (6) Proper care is to be taken to prevent any petroleum escaping into any part of a house or building, or of the curtilage thereof, or into a drain or sewer; (7) The petroleum must be stored in some premises licensed for the keeping of petroleum and in accordance with the licence for such premises both every night and also when the petroleum is not in the course of being hawked; (8) All due precautions are to be taken for the prevention of accidents by fire or explosion, and for preventing unauthorised persons having access to the vessels containing the petroleum; and every person concerned in hawking the petroleum must abstain from any act whatever which tends to cause fire or explosion, and is not reasonably necessary for the purpose of the hawking; (9) No article or substance of an explosive or inflammable character other than petroleum, nor any article liable to cause or communicate fire or explosion, can be in the carriage while such carriage is being used for the purpose of hawking petroleum. The expression "carriage" is always used in this connection as including any waggon, cart, truck, vehicle, or other means of conveyance by land, in whatever manner it is drawn or propelled. In the event of any contravention of these regulations, the petroleum, together with the vessels containing and the carriage conveying it, will be liable to forfeiture; and in addition thereto the licensee by whom or by whose servants the petroleum was being hawked will be liable, on summary conviction, to a penalty not exceeding £20. But where some servant of the licensee or other person has in fact committed the offence, that servant or other person will be liable to the same penalty as if he were the licensee. And where the licensee is charged with a contravention, he is entitled to have any other person whom he charges as the actual offender brought before the Court; and if the licensee proves that he had used due diligence to enforce the regulations, and that such other person had committed the offence in question without his knowledge, consent, or connivance, that other person will be convicted, and the licensee will be exempt from any penalty.

PHYSICIANS AND SURGEONS—MEDICAL PRACTITIONERS.—Any person, without any legal qualification, may freely practise medicine and surgery, but he cannot recover any fees for his services, and will incur heavy penalties if he describes or holds himself out as a legally qualified medical practitioner. In order to obtain a legal qualification the practitioner must have passed through the prescribed course of education, obtained

certain necessary diplomas, and have his name inscribed on the medical register. A registered practitioner has by virtue of his registration full authority to practise all branches of medicine, surgery, and midwifery. One of the penalties above referred to is that of £20 imposed upon any one "who shall wilfully and falsely pretend to be, or take or use the name or title of, a physician, doctor of medicine, licentiate in medicine and surgery, bachelor of medicine, surgeon, general practitioner or apothecary, or any name, title, addition, or description implying that he is registered or that he is recognised by law as a physician, or surgeon, or licentiate in medicine and surgery, or a practitioner in medicine, or an apothecary."

A medical practitioner, like any other person who holds himself out as qualified to practise a particular profession, must be actually possessed of specialised skill reasonably competent for the task he undertakes (*Harmer* v. *Cornelius*). This rule applies equally to legally qualified and to unqualified practitioners. If the practitioner has not that skill, or exercises it negligently, when attending a particular case, he is liable to damages in respect of the consequences (*Scare* v. *Prentice; Ruddock* v. *Lowe; Jones* v. *Fay*). And should his lack of skill, or his negligence, be so gross and extreme as to warrant a jury finding that it is actually "felonious," the practitioner will incur a criminal responsibility (*R.* v. *Long; R.* v. *Noakes*). *See* CHEMISTS; DENTISTS; MIDWIVES.

PILOT.—This is the name applied to the person taken on board a ship at a particular place for the purpose of navigating the ship through a river, road, or channel, or from or into a port. In certain circumstances and places the master of a ship is bound by law to employ a pilot. When the ship is thus compulsorily under the control of the pilot it follows, reasonably, that all responsibility in respect of the navigation of the ship is assumed by the pilot, and that the master and owners are relieved therefrom and from any corresponding liability. But the latter will nevertheless incur a liability for the consequences of any acts done by the master and crew in opposition to or neglect of the orders of the pilot. If, however, the pilot is incapable—by sickness or drunkenness for example—of performing his duties, or is incompetent, it then becomes the duty of the master to reassume his authority and ordinary responsibility. It has been said, in the old Lex Mercatoria, that if the fault of a pilot be so notorious that the ship's crew see an apparent wreck, they may lead him to the hatches and strike off his head! But the common law, very properly, "denies this hasty execution." When a pilot is taken on board at the discretion of the master, and not under any legal compulsion, the liability of the owners of the ship remains unaffected, for a pilot under such circumstances is but one of their servants for the time being. The law relating to pilots and pilotage is now consolidated in the Merchant Shipping Acts, 1894 and 1906, a *résumé* of the material provisions whereof now follows. A pilot may now, in general, enjoy the advantages of the Workmen's Compensation Act.

Compulsory pilotage.—Subject to any alteration which may be made by the Board of Trade or by any pilotage authority, the employment of pilots continues to be compulsory in all districts where it was compulsory immediately before the commencement of the Merchant Shipping Act, 1894, but all exemptions from that compulsory pilotage continue to be in force. If, within a district where pilotage is compulsory, the master of an unexempted ship, after

a qualified pilot has offered to take charge of the ship, or has made a signal for the purpose, pilots his ship himself without holding the necessary certificate, he renders himself liable to a fine of double the amount of the pilotage dues that could be demanded for the conduct of the ship. The master of a ship carrying passengers to and fro between places in the British Islands is required, while navigating within the limits of a district for which pilots are licensed, to employ a qualified pilot, unless he or the mate holds a pilotage certificate or a certificate for the district; in default he is liable for each offence to a fine of £100. The Board of Trade, on being satisfied, by examination or otherwise, of the competency of such a master or mate, may grant him a certificate authorising him to pilot any ship belonging to the same owner and not being of greater draught of water than that stated in the certificate within those limits; and any master or mate to whom the certificate is granted is entitled to conduct the specified ship within the limits of the certificate. The latter remains in force for such time as the Board of Trade may direct, and may be indorsed on any certificate of competency. On the application for such a certificate the fees payable to the Board of Trade must not exceed those payable on an examination for a master's certificate of competency.

Saving for liability of owners and masters.—An owner or master of a ship is not answerable to any person for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of that ship within any district where the employment of a qualified pilot is compulsory by law.

Licensing.—A pilot is *qualified to act* as such only if duly licensed by a pilotage authority. Every pilot on his appointment receives a licence containing his name, abode, a description of his person, and a specification of the limits within which he is qualified to act. The nearest chief officer of customs registers the licence, and until registration a pilot is not entitled to act. If and when acting beyond his limits, a pilot is considered to be unqualified. Since the passing of the Merchant Shipping Act, 1906, licences can be lawfully granted only to British subjects. Every pilot on receiving his licence is furnished with a copy of part of the Merchant Shipping Act, 1894, and a copy of the rates, bye-laws, and regulations of his district, and these copies he must produce to the master of any ship or other person employing him when required to do so (except with reasonable cause) under a penalty of £5. A qualified pilot when acting in that capacity must carry his licence, and produce it to every one employing him and to whom he offers his services as a pilot. On his refusal to do so he is liable to a fine of £10, and subject to suspension or dismissal by the pilotage authority; also, when required, he is bound to produce and deliver up his licence to such authority, and on his death the persons into whose hands his licence comes must transmit it to the authority. Any pilot or other person failing to comply with these provisions is liable to a fine of £10. If an unqualified pilot, for the purpose of making himself appear to be qualified, uses a licence which he is not entitled to use, he is liable for each offence to a fine of £50.

Pilotage dues.—The following persons are liable to pay pilotage dues for any ship for which the services of a qualified pilot are obtained, namely:—(*a*) The owner or master; (*b*) as to pilotage inwards, such consignees or agents as have paid or made themselves liable to pay any other charge on account of the ship in the port of her arrival or discharge; (*c*) as to pilotage outwards, such consignees or agents as have paid or made themselves liable to pay any other charge on account of the ship in the port from which she clears out; and these dues are recoverable in the same manner as fines under the Act, but only after a previous demand in writing. A consignee or agent (not being the owner or master of the ship) who is liable for the payment of pilotage dues in respect of any ship may, out of any monies received by him in respect of that ship or belonging to her owner, retain the amount of all dues he has paid, together with reasonable ex

penses incurred. A pilot must not demand or receive, and a master must not offer to pay to a pilot, any rate greater or less than the lawful one; and a pilot or master offending in this respect is liable for each offence to a fine of £10. If a boat or ship having on board a pilot leads any ship which has not a qualified pilot on board when the last-mentioned ship cannot from particular circumstances be boarded, the pilot so leading the last-mentioned ship is entitled to the full pilotage rate as if he had been on board and had charge of that ship. Except under circumstances of unavoidable necessity, a pilot must not, without his consent, be taken to sea or beyond his licensed limits in any ship whatever; and if he is so taken he will be entitled, over and above his pilotage dues, to the sum of 10s. 6d. a day, the sum so to be paid to be computed from, and inclusive of, the day on which the ship passes the licensed limit, and up to, and inclusive of, either the day of his being returned in the said ship to the place where he was taken on board, or, if he is discharged from the ship at a distance from that place, such day as will allow him sufficient time to return thereto; and in the last-mentioned case he is entitled to reasonable travelling expenses. The master of a ship on being requested by a pilot having charge of his ship must declare her draught of water. On refusal, or making, or being privy to a false declaration to the pilot in relation thereto, he is liable to a fine not exceeding double the amount of pilotage dues which would have been payable to the pilot. The master, or any other person interested in a ship making, or being privy to the making, of any fraudulent alteration on the stem or stern-post of the ship denoting the draught of water, is liable to a fine of £500. An unqualified pilot within any pilotage district is allowed to take charge of a ship as pilot, without subjecting himself or his employer to any penalty—(*a*) When no qualified pilot has offered to take charge of that ship, or made a signal for that purpose; (*b*) when a ship is in distress, or under circumstances making it necessary for the master to avail himself of the best assistance which can be found at the time; or (*c*) for the purpose of changing the moorings of any ship in port, or of taking her into or out of any dock, in cases where the act can be done by an unqualified pilot without infringing the regulations of the port, or any lawful orders of the harbour-master. A qualified pilot may supersede an unqualified pilot, but the master must pay to the unqualified pilot a proportionate sum for his services, and deduct that sum from the charge of the qualified pilot; and in case of dispute the pilotage authority determines the sum to which each party is entitled. If an unqualified pilot, whether within a district in which pilotage is compulsory, or outside such district, assumes or continues in charge of a ship after a qualified pilot has offered to take charge of the ship, he is liable for each offence to a fine of £50. When the master of a ship, whether navigating within a district in which pilotage is compulsory, or outside such a district, knowingly employs or continues to employ an unqualified pilot after a qualified pilot has offered to take charge of the ship, or has made a signal for that purpose, he incurs a penalty of double the amount of the pilotage which could be demanded for the conduct of the ship.

Master or mate licensed as pilot.—A pilotage authority, on the application of the master or mate, and on payment of expenses, can examine him as to his capacity to pilot his particular ship, or any other ships belonging to the same owner, within any part of the district of the pilotage authority. If, on examination, the authority find that he is competent, they will grant him a certificate specifying (*a*) his name; (*b*) the ship or ships in respect of which it is granted; (*c*) the limits within which he is entitled to pilot the ship or ships; and (*d*) the date on which it is granted. Such a certificated person is entitled, while master or mate in any of the ships specified in the certificate, to pilot that ship within the specified limits, without incurring any penalty for not employing a qualified pilot. These certificates remain in force for a year only, but may be renewed annually. If it

appears to the Board of Trade upon complaint made to them (*a*) that a pilotage authority have without reasonable cause refused or neglected to examine a master or mate who has applied to them for the purpose; or (*b*) that a pilotage authority have without reasonable cause refused or neglected to grant a pilotage certificate after examination; or (*c*) that an examination of a master or mate has been unfairly or improperly conducted; or (*d*) that a pilotage authority have imposed unfair or improper terms or conditions on the granting of a certificate; or (*e*) that a pilotage certificate has been improperly withdrawn from the holder thereof; the Board of Trade may appoint persons to examine the master or mate, and, if he is found competent, grant him a pilotage certificate upon such terms and conditions as they think fit. Such a certificate contains the same particulars, is of the same effect and continues in force for the same period as a certificate granted by a pilotage authority, and may be renewed and indorsed either by the pilotage authority of the district or by the Board of Trade. The Board of Trade or a pilotage authority, as the case may be, may respectively withdraw any pilotage certificate granted by them in cases of misconduct or incompetency. Masters and mates pay certain specified fees upon the granting or renewal of pilotage certificates.

Pilot boats and pilot signals.—All boats and ships regularly employed in the pilotage service are approved and licensed by the authority of the district, who at their discretion appoint and remove the masters; and every such boat is distinguished by the following characteristics, viz.: (*a*) On her stern the name of her owner and the port to which she belongs are painted in white letters at least one inch broad and three inches long, and on each bow appears the number of her licence; (*b*) In all other parts a black colour is painted or tarred outside, or some other colour or colours consented to by the Board of Trade; (*c*) When afloat a flag of large dimensions of two colours (the upper horizontal half white and the lower horizontal half red) is placed at the mast head, or on a sprit or staff in some equally conspicuous situation. The master takes care that his boat possesses these characteristics, and that the flag is kept clean and distinct; also that the name and numbers are never concealed, for otherwise he may incur a penalty of £20. When a pilot is carried off in a vessel not in the pilotage service, he exhibits a pilot flag to show that he is on board; for not doing this there is a penalty of £50, and when the master or mate of a ship holds a pilotage certificate, a pilot flag must be displayed on the ship whilst he is on board and the ship is within a pilotage district in which pilotage is compulsory; here the penalty for default is £20. A pilot flag or a flag resembling one is not allowed to be displayed on a ship or boat not having on board a licensed pilot or a master or mate holding a pilotage certificate. The master or owner of a vessel so displaying any such flag is liable for each offence to a fine of £50, unless he proves that he had no intention to deceive.

Offences, suspension, and dismissal of pilots.—A pilot is liable, in addition to damages (if any), to a fine of £100 if, either within or without his district, he commits any of the following offences:—(*a*) Keeps himself, or is interested in keeping by any agent, servant, or other person, any public-house or place of public entertainment, or sells, or is interested in selling any wine, spirituous liquors, tobacco, or tea; (*b*) commits any fraud or offence against the revenues of customs, or against the excise or the laws relating thereto; (*c*) is in any way directly or indirectly concerned in any corrupt practices relating to ships, their tackle, furniture, cargoes, crews, or passengers, or to persons in distress at sea, or by shipwreck, or to their monies, goods, or chattels; (*d*) lends his licence; (*e*) acts as pilot when suspended; (*f*) acts as pilot when in a state of intoxication; (*g*) employs, or causes to be employed on board any ship of which he

has charge any boat, anchor, cable, or other store, matter or thing, beyond what is necessary for the service of that ship, with intent to enhance the expenses of pilotage for his own gain, or for the gain of any other person; (*h*) refuses or wilfully delays, when not prevented by illness or other reasonable cause, to take charge of any ship within the limits of his licence, upon a signal for a pilot being made by that ship, or upon being required to do so by the master, owner, agent, or consignee thereof, or by any officer of the pilotage authority by whom the pilot is licensed, or by any chief officer of customs; (*i*) unnecessarily cuts or slips, or causes to be cut or slipped, any cable belonging to any ship; (*k*) refuses, when requested by the master, to conduct the ship of which he has charge into any port or place into which he is qualified to conduct the same, except on reasonable ground of danger to the ship; or (*l*) quits the ship of which he has charge without the consent of the master, before the service for which he was hired has been performed. Those who aid or abet in the commission of any of these offences are liable to similar damages and penalty. A pilot so offending is, in addition, liable to be suspended or dismissed by the pilotage authority. And he is guilty of a misdemeanour if, when in charge of a ship, by wilful breach of duty or by neglect of duty, or by reason of drunkenness, he either—(*a*) does any act tending to the immediate loss, destruction, or serious damage of the ship, or tending immediately to endanger the life or limb of any person on board the ship; or (*b*) refuses or omits to do any lawful act proper and requisite to be done by him for preserving the ship from loss, destruction, or serious damage, or for preserving any person belonging to or on board the ship from danger to life or limb. And for so offending he is also liable to suspension or dismissal. *See* TRINITY HOUSE; SHIPS.

PLEADINGS.—Such are the documents usually required in the High Court to be delivered between the parties before the trial of an action, the object being to describe and limit the issue or contention between them and intended to be tried. In the County Court there are no pleadings, strictly so-called, unless the plaintiff's particulars of claim and the defendant's notice of a special defence, and certain other documents in special cases, may be included within the meaning of the term. The Rules of the Supreme Court regulate very carefully the form and matter of pleadings. They must contain only material facts, stated in a summary manner; evidence must not be pleaded; the performance of conditions precedent need not be, and should not be, alleged; the contents of documents should not be set out, unless the precise words are material. Facts not denied in a pleading are taken to be admitted, except as against an infant, lunatic, or person of unsound mind not so found by inquisition. Certain matters must always be mentioned in a pleading. Such are those which show an action is not maintainable, or which if not raised would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings, as for instance fraud, Statute of Limitations, release, payment, performance, facts showing illegality either by statute or common law, or Statute of Frauds. No pleading, not being a petition or summons, can, except by way of amendment, raise a new ground of claim or contain an allegation of fact inconsistent with the previous pleadings of the party pleading it. It is not sufficient for a defendant in his statement of defence to deny generally the grounds alleged by the statement of claim, or for a plaintiff in his reply to deny generally the grounds alleged in a defence by way of counterclaim, but each party must deal specifically with each allegation of fact of which he does not admit the truth, except damages. A denial must not be evasive, but must answer the point of substance. Thus if it be alleged that the defendant received a certain sum of money, it is not

sufficient for him to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with divers circumstances, it is not sufficient to deny it along with those circumstances. When a contract, promise, or agreement is alleged in a pleading, a bare denial thereof by the opposite party is construed only as a denial in fact of the express contract, promise, or agreement alleged, or of the matters of fact from which the same may be implied by law, and not as a denial of the legality or sufficiency in law of such contract, promise, or agreement, whether with reference to the Statute of Frauds or otherwise. Wherever the contents of a document are material, it is sufficient in a pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof unless the precise words of the document or any part thereof are material. If it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it will be sufficient to allege it as a fact without setting out the circumstances from which it is to be inferred. Wherever it is material to allege notice to any person of any fact, matter, or thing, it is sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, be material.

A party need not plead a fact presumed by law, as for example consideration for a bill of exchange, where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim. No technical objection can be raised to a pleading on the ground of a mere want of form; but the Court will always strike out or order to be amended a pleading which is unnecessary or scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of the action. Allegations which are relevant cannot be struck out because they are scandalous. *See* ACTION.

POACHING.—In this connection the word "game" is defined by the Poaching Prevention Act, 1862, as including hares, pheasants, partridges, eggs of pheasants and partridges, woodcocks, snipes, rabbits, grouse, black or moor game, and eggs of grouse, black or moor game; and the words "justice" and "justices" mean respectively a justice and justices of the peace for the place in which any game, gun, part of gun, net, snare or engine is found. Any constable in Great Britain or Ireland may search, in any highway, street, or public place, any person suspected of coming from land where he has been unlawfully in search of game, or any person abetting him, and having in his possession any game unlawfully obtained, or any gun, part of gun, or nets or engines, used for killing or taking game. He may also stop or search any cart or other conveyance in or upon which he may have good cause to suspect that any such game or article is being carried by such person. When found, he may seize the game or implements, and then apply for a summons citing the person to appear before two justices in England or Ireland, and before a sheriff and two justices in Scotland. If the accused person has obtained the game by unlawfully going on land in search or pursuit thereof, or has used any such implement for unlawfully killing or taking game, or has been accessory thereto, he may be fined £5, and will forfeit the game or implement. These the justice will order to be sold or destroyed. No person selling game so seized by the direction of a justice in writing is liable to a penalty for the sale. If no conviction takes place the game or implement must be restored to the person from whom it has been seized. *See* GAME.

POISONS can be lawfully sold retail only by registered CHEMISTS

(*q.v.*), and in certain cases by medical practitioners and veterinary surgeons; and, in the case of poisonous substances to be used exclusively in agriculture or horticulture for the destruction of insects, fungi, or bacteria, or as sheep-dips or weed-killers which are poisonous by reason of their containing arsenic, tobacco, or the alkaloids of tobacco, by persons licensed by the local authority; and even when sold wholesale there must be a strict observance of the appropriate statutory regulations as in the case of retail transactions. The general statute on the subject is the Pharmacy Act, 1868, as amended by the Poisons and Pharmacy Act, 1908, but to these must be added, with regard to arsenic, the Arsenic Act of 1851. Poisoned grain or flesh can be dealt with, and poison placed on or in land or buildings, only in accordance with the provisions of section 8 of the Protection of Animals Act, 1911 (see GRAIN). It would seem that no scientific definition of the term poison, under the Pharmacy Acts, is recognised by the law, for by the above Acts it is merely generally provided that the several articles specifically described in the schedules thereto, and any other articles added to the schedules under the approval of the Privy Council, are to be deemed to be poisons within the meaning of the Acts. At the foot of this article will be found the schedule as it now stands, and it will be seen to be divided into two parts. In section 17 of the Act of 1868 appear the regulations necessary to be observed in the sale of poisons, but these must be read, in appropriate cases, in conjunction with the provisions of the Arsenic Act. *General regulations.*—No poison of the following substances, viz. sulphuric acid, nitric acid, hydrochloric acid, soluble salts of oxalic acid, can be lawfully sold, either by wholesale or retail, unless the box, bottle, vessel, wrapper, or cover in which it is contained be distinctly labelled with the name of the article and the word "Poisonous," and with the name and address of the seller of the poison. No poison of those contained in the first part of the schedule can be lawfully sold unless labelled with the word "Poison," or to any person unknown to the seller, unless introduced by some person known to the seller. On every sale of any such article the seller must, before delivery, make or cause to be made an entry in a book to be kept for that purpose stating, in the form prescribed by statute, the date of the sale, the name and address of the purchaser, the name and quantity of the article sold, and the purpose for which it is stated by the purchaser to be required, to which entry the signature of the purchaser and of the person, if any, who introduced him must be affixed. Any person who sells poison otherwise than so provided, renders himself liable to a penalty of £5 for the first offence, and to a penalty of £10 for any subsequent offence. The person on whose behalf a sale is made by an apprentice or a servant is deemed to be the seller. But so much of these regulations (which are solely applicable to poisons in the first part of the schedule) as requires that the label shall contain the name and address of the seller, does not apply to articles to be exported from Great Britain by wholesale dealers, nor to sales by wholesale to retail dealers in the ordinary course of wholesale dealing. Nor do any of the regulations entirely apply to a medicine supplied by a legally qualified apothecary to his patient, nor to any article when forming part of the ingredients of a medicine dispensed by a registered person. A medicine must be labelled, however, in the above manner, with the name and address of the seller, and the ingredients thereof must be entered, with the name of the person to whom it is sold or delivered, in a book to be kept by the seller for that purpose. "Name" here includes any trade name under which the chemist carries on

business (*Edwards* v. *Pharmaceutical Society*). The prohibition does not apply to the sale of a mixture containing an infinitesimal quantity of poison, such as a trace of morphine estimated at not more than one-fiftieth to three-fiftieths of a grain per ounce (*Pharmaceutical Society* v. *Delve*), but if the quantity of poison in the mixture is appreciable, as in chlorodyne or certain vermin killers, the prohibition will apply (*Pharmaceutical Society* v. *Piper; Ibid.* v. *Weldon*). Nor does the prohibition apply to a sale by and through a mere agent, as where a seedsman took the order and forwarded it to the manufacturers who themselves delivered the poison to the purchaser (*Pharmaceutical Society* v. *White*). A limited company may lawfully sell poisons through a qualified assistant (*Pharmaceutical Society* v. *The London and Provincial Supply Association*).

Arsenic.—On every sale of arsenic, including arsenious acid and the arsenites, arsenic acid and the arseniates, and all other colourless poisonous preparations of arsenic, the seller must forthwith, and before delivery to the purchaser, enter certain prescribed particulars of the sale in a book to be kept for the purpose. These particulars he must obtain from the purchaser before delivering the arsenic. It is necessary to have a witness to the sale if the purchaser is unknown to the seller, and such witness must be known to both seller and purchaser, and the sale must be made in his presence. He must also sign his name and address in the book before the arsenic is delivered. Arsenic must not be sold to a person not of full age. Nor may it as a general rule be sold unless, before the sale, it is mixed with soot or indigo, in the proportion of 1 oz. of soot or ½ oz. of indigo at the least to each pound of arsenic. The exceptions to this rule occur in three cases:—(1) Where the purchaser states that the arsenic is not required for agricultural purposes, but for some other purpose for which he states such an admixture would render it unfit. The arsenic may then be sold to the purchaser without any admixture, but not in any quantity less than 10 lbs. at any one time; (2) Where the arsenic is sold forming part of the ingredients of a medicine required to be made up or compounded according to the prescription of a medical practitioner; (3) Where the sale is by wholesale to retail dealers, upon orders in writing, in the ordinary course of wholesale dealing. A £20 penalty is incurred by any one who sells arsenic without making the necessary entries and obtaining the necessary signatures, and by any purchaser who gives false information, and by any one who signs his name as a witness to persons unknown to him.

The Schedule.

Part I.—Arsenic and its preparations; Prussic Acid; Cyanides of Potassium and all metallic Cyanides; Strychnine and all poisonous vegetable Alkaloids and other Salts; Aconite, Aconitine, and their preparations; Emetic Tartar; Corrosive Sublimate; Cantharides; Savin and its Oil; Ergot of Rye and its preparations. Preparations of Atropine; Cyanide of Potassium and of all metallic Cyanides; Prussic Acid and Strychnine. *Part II.*—Oxalic Acid; Chloroform; Belladonna and its preparations; Essential Oil of Almonds unless deprived of its Prussic Acid; Opium and all preparations of Opium or of Poppies; Ammoniated Mercury; Chloral Hydrate; Compounds containing any poison within the Act, intended for destruction of vermin; Nux Vomica and all its preparations; Preparations of Corrosive Sublimate and Morphine; Red Oxide of Mercury; Tincture of Cantharides and all vesicating liquid preparations of Cantharides.

Committee on poisons.—The amendment of the law by which traders other than chemists are now allowed, if licensed by the local authorities, to deal in poisonous substances used in agriculture and horticulture is due to the report of the Committee of Poisons appointed in 1902. This committee, as a result of its deliberations, came to the conclusion that some relaxation of the Pharmacy Act could be conceded without undue risk to human life.

Prosecution of unregistered sellers of poison.—Under the law as it then stood, certain poisons and poisonous compounds (other than liquid carbolic acid for sheepwash or other agricultural or horticultural purpose) could not be legally retailed except by a registered chemist, and the Pharmaceutical Society was charged with the duty of proceeding against unauthorised vendors. The execution of this duty, in the opinion of the committee, had been characterised by considerable uncertainty and irregularity, because the Society had no regular machinery for detecting the sale of poisons by unregistered persons. And further, the Society could only exercise its powers upon voluntary information and by extemporised means, which rendered the working of the restrictive provisions the reverse of uniform. For instance, in the West-Midland district of England, the sale by unregistered persons of poisons used in agriculture and horticulture had been completely stopped in consequence of successful prosecutions by the Society. In part of Kent it had been stopped temporarily; whereas in many parts of Scotland and the North of England it was conducted by such persons with impunity. It followed from this that the effect of the 749 prosecutions undertaken by the Society during the six years 1896–1901, and of the numerous cases in which penalties were exacted without prosecution, had been very unequally felt; for while the law had been enforced in some districts it had been wholly inoperative in others. The committee were therefore of opinion that the obligation laid upon the Society was unduly onerous, seeing that even the limited extent to which they had taken action under it had involved them in a net loss beyond the sums received as penalties.

Inconvenience to farmers and gardeners.—Inconvenience had been experienced by farmers and gardeners, in the view of the committee, owing to the restriction of the sale of poisonous material to registered chemists in districts where there was no such qualified tradesman within easy reach. This inconvenience would have amounted to a very serious interference with legitimate industry had the law been universally put in effect. For example, in the Highlands and Islands of Scotland, where sheep-farming is the principal business of agriculture, farmers are sometimes upwards of fifty miles distant from the nearest registered chemist, and the sale of sheep-dips was regularly carried on by ironmongers and other traders in contravention of the statute. As to Kent, a nurseryman and florist gave evidence as to the extreme inconvenience caused to cultivators when, owing to the successful prosecution of a firm of seedsmen, the sale of weed-killers and insecticides was discontinued by nurserymen. He alleged that in horticulture there were numerous small cultivators and amateurs who would use these materials if they could get them, to the advantage of their greenhouses and gardens, but that chemists did not know what to recommend, whereas the nurserymen had knowledge of the proper remedies and ought to be in a position to supply them.

Conveyance of arsenic and arsenical compounds.—In the course of their inquiry the committee had their attention drawn to the manner in which arsenic intended for industrial purposes is conveyed. A manufacturing chemist, making sheep-dips and weed-killers, stated that he received arsenic by rail or by ship, and he added: "We often receive the casks of arsenic with the contents running out on to the cart." He stated that a small lot, say a four-ton lot, would come by train, and that arsenic not only might be, but was, distributed about the goods station. Although the railway companies have regulations as to the handling of

dangerous things, they are not acted upon, and he cited a case as evidence of the fact. Asked if the barrels coming to him were marked "Poison," he answered: "Some of them, not all; sometimes they are marked 'Arsenic' with a small stencil; in other cases they have the word 'Poison.'" But he added, "It is the exception they are so marked; in fact, the only time that I recollect their being marked 'Poison' is when we have bought foreign arsenic." He also stated that foreign arsenic was packed in casks enclosed in a second cask, which in his opinion tended to make the carriage "absolutely safe," but that such is never done in the case of English goods. The witness then instanced cases where unfortunate results had followed from the careless way in which arsenic is handled in the wholesale trade. There was, he stated, a very general evasion by traders of the 17th Section of the Pharmacy Act. Arsenical residue from oil of vitriol works—sulphide of arsenic for example—was sent away to be treated, and any packages were thought good enough to hold it. The committee were accordingly of opinion that the conveyance of arsenic and substances containing large quantities of arsenic under such lax observance of precaution is a source of danger to the public.

Recommendations.—The committee thereupon recommended that preparations for use in connection with agriculture, horticulture, or sanitation might be placed in a third part of the schedule, to be sold only by licensed persons, not necessarily chemists, but subject to regulations to be made by the Privy Council. And, further, that the traffic in arsenic should be regulated either by an amendment of the Arsenic Act, 1851, or by more stringent enforcement of the provisions of the 17th Section of the Pharmacy Act, 1868.

Minority report.—But to the above report of the committee there was added the dissenting report of a minority. From a comprehensive survey of the testimony submitted by the twenty-six witnesses examined, the chief impression conveyed to the minority was that a strong agitation against the salutary principle underlying the Pharmacy Act—namely, the competent technical training of the vendor—had been organised on behalf of manufacturers, proprietors, and agents of specifics containing poison; and that the demand for relaxation of the statutory restrictions emanated not from agriculturists or from horticulturists, but from those persons whose natural desire it is to promote the sale of their own particular preparations. Only two witnesses who might properly be described as *users* of poisonous compounds furnished evidence, but neither of them stated that he had any practical difficulty in procuring what was necessary for his own requirements, though one of them desired to have the liberty of *selling* poisonous compounds without formality of any kind. The point was strikingly exemplified by the remark of a witness, who stated as a reason for objecting to the Pharmacy Act that he could not readily introduce poisonous novelties through chemists and druggists. That objection is distinctly a manufacturer's objection, and was the predominant note throughout the inquiry. But some regard must be had to the public side of the question, and it is an important advantage that chemists and druggists *do* act as a restraint upon the development of the retail business in poisonous novelties, and *do* to that extent carry out the object which the Legislature had in view in passing the Act. A more detailed examination of the body of evidence led the minority to form the following conclusions:—(*a*) That the administration of the Pharmacy Act by the Society did not interfere, and had not interfered with, the legitimate use of poisons for technical or manufacturing purposes, and did not prejudice or harass either agriculture or horticulture; (*b*) that no real ground was shown for the relaxation of the restrictions imposed on behalf of the public by the Pharmacy Act, and that no departure from the sound principle of that Act is warranted; (*c*) that urgent necessity existed for the efficient

registration and supervision of every open shop in which poison was sold by retail; (*d*) that it was expedient that the "putting up," packing, storing, and conveyance of poisons and poisonous compounds should be subject to regulation. The evidence was not convincing to the minority that under the then conditions any serious practical inconvenience had been experienced by the *bonâ fide* user in obtaining supplies of poisonous compounds for the need of agriculture and horticulture It failed to find that it supported the view that there was any hardship imposed by the Act. Nor did it find any justification for assuming that the general tendency of the operation of the Act was to enhance the price of agricultural preparations. Carbolic acid was no dearer, and its sale was no less, as the result of being supplied through qualified channels. Furthermore, it was difficult to imagine what real advantage could accrue to agriculture, or to agricultural *users*, if unqualified vendors were permitted to reap whatever pecuniary benefit there might have been in the sale of poisons, rather than the persons then existing and specially created by statute for that purpose. At any rate there was no reason, on behalf of the public, to acquiesce in a special readjustment and relaxation of the law for the mere object of transferring alleged profits from the pockets of one licensed class to another licensed class. Relaxation of the Act in the manner suggested was a departure from the principle that safety to the public lies in the training of the vendor. Only the most exceptional cases, based upon public necessity, could justify such a backward step, and the evidence did not reveal the existence of rational cause or urgent circumstance for even partial abandonment of such a well-proven statutory principle. A third part to the schedule to the Pharmacy Act, as suggested in the report of the committee, was therefore unnecessary, would be impolitic, and would be unworkable in practice.

POLICE (property in possession of).—Property found on prisoners, or the owner of which is for the time being unknown, very frequently comes into the possession of the police in connection with a criminal charge. Generally under such circumstances the local magistrates have power, on the application of the police or a claimant to the property, to order it to be delivered to the person who appears to the Court to be its owner, or to be otherwise dealt with as the Court thinks fit. If the Court refuses to deliver the property to the claimant a period of six months is allowed, from the date of the refusal, wherein he may take legal proceedings against the person in possession of the property for its recovery. The police themselves should always obtain an order before they deliver up such property, for otherwise, if it should happen that they have delivered it to the wrong person, they may be liable therefor to the true owner.

POOL.—This term is applied to an association of the holders of certain specified shares in a company based upon an agreement that none of them will part with his holding unless and until the shares are dealt with on the market at a specified price or some other agreed contingency shall happen. The object of this arrangement is to prevent any of the allied shareholders putting their shares on the market during the period in which an effort is being made to raise the price. A pool is an incident in RIGGING THE MARKET (*q.v.*), for the promoters of the rig would find it impossible to attain their end if any considerable parcel of shares could at any time be thrown on the market for sale. The term is also used, in America, to denote an association of railroad companies to maintain rates and regulate freight traffic.

POOR RATE.—This rate is one levied for the relief of the poor. Its importance extends, however, to the general subject of RATING (*q.v.*).

POSSESSION, from the legal point of view, may be either actual or legal. Thus if a man occupies a house as the servant of the owner, the servant could be said to have the actual possession, but not the legal, for that is in the owner. In such a case the master, and not the servant, would be the proper party to take proceedings for trespass to the house. Possession of real property, to be legal, must be exclusive. That is to say, that though two or more persons may jointly possess property, yet no one can be said to have legal possession thereof if another person is exercising adverse rights of ownership therein or claiming to do so. Possession is *primâ facie* evidence of title to real property, and when it has continued for a period of twelve years a title may generally be acquired thereby. But title is always superior to mere possession.

POSTAGE AND REVENUE STAMPS.—*Postage Stamps* of all values, from ½d. to £5, are kept at every money order office, and halfpenny and penny stamps at all other offices. Postmasters of money-order offices, and all sub-postmasters in London, are allowed, but are under no obligation, to purchase stamps from the public, at a charge of 2½ per cent.; but they are not allowed to purchase single stamps. A stamp is of no use for postage purposes if imperfect or defaced. But embossed or impressed stamps cut out from envelopes, cards, wrappers, or telegraph message forms may, if perfect and unused, be used for postage purposes. A stamp will be "defaced" if marked with any written, printed, or stamped characters. But in consequence of representations made to the Post Office by various firms that there was reason to believe that their stamps were purloined by their employees, the public are now allowed to perforate their stamps with initials, and no postmaster will now purchase a stamp so perforated. The perforation of stamps on post cards, newspaper wrappers, and embossed envelopes with initials is also not objected to. Whenever adhesive stamps are used for denoting the stamp duty on a receipt or other document the perforation is not to be regarded as a cancellation of the stamp, but in all such cases the stamp must be cancelled in writing across it as required by law. The value of spoiled stamps may be recovered upon application to the Controller of Stamps in London, Dublin, or Edinburgh. Such an application, however, will only be entertained if the stamps have been spoilt or become useless within the period of two years preceding the application; and in all cases applications must be accompanied by the articles on which the stamps have either been affixed or impressed intact, as no allowance will be granted on stamps cut therefrom. *Inland Revenue* and fee stamps can be obtained at all money-order offices. If a required stamp is not in stock the applicant may deposit its cash value and the postmaster will thereupon obtain it. Except at a few head post offices, no stamp of a value exceeding £200 can be obtained, and in towns where there is a recognised distributor or sub-distributor no stamp of a higher value than £5 can be obtained at the ordinary town sub-offices. Ordinary postage and revenue stamps may be used for—Agreements under hand only, where liable to the fixed duty of 6d.; Bills of Exchange (including cheques) for payment of money *on demand;* Certified copies of, or extracts from, Registers of Births, &c.; Charter Parties; Contract notes for less than £100, where duty 1d.; Delivery Orders; Lease or Tack, or Agreement for a Lease or Tack, for any definite term not exceeding a year; (*a*) of a Dwelling-house or part of a Dwelling-house, at a rent not exceeding the rate of

£10 a year (duty 1d.). For any definite term less than a year: (*b*) of a Furnished Dwelling-house or Apartments (duties 6d., 1s., 1s. 6d., 2s., and 2s. 6d., according to the rent); Letters of Renunciation (duties 1d. and 6d.); Notarial Acts (duty 1s.); Policies of Insurance, not Life or Marine (duty 1d.); Protests of Bills of Exchange or of Promissory Notes (duties 1d., 2d., 3d., 6d., 9d., in agreement with the duty on the Bill or Note, and 1s. when the Bill or Note is stamped with 1s. or upwards); Proxies (where liable to the duty of 1d. only); Receipts (duty 1d.); Transfers of Shares in Cost Book Mines (duty 6d.); Voting Papers (duty 1d.); Warrants for Goods (duty 3d.). The use of adhesive stamps is strictly limited to the foregoing documents, and their use on other documents affords no protection from the penalties payable for non-stamping. One or more stamps may be used to make up any duty payable, and in all cases the stamps used should be cancelled by writing the signature or initials and date across each stamp at the time when the instrument is signed. Certain *Excise licences*, namely for dogs, guns, establishment, motors, private brewers, game, and gamekeepers, may be obtained at a money-order office.

POSTAL ORDERS and MONEY ORDERS.—A postal order is an authority to postmasters to pay a specified sum of money to some person therein named. They are generally used as a means of transmitting payments through the post. They can be bought at all money-order offices, and are issued for the sum required, provided it is one of the amounts—from 1s. to 20s.—fixed by the authorities. The purchaser pays the value of the order he requires, and also a rateable poundage thereon by way of remuneration to the post office. He can buy as many orders as may be necessary to make up the sum he desires to forward to the payee. If he desires to make up a payment which exceeds the amount of the postal order by not more than fivepence, he can do so, except as regards fractions of a penny, by affixing to the face of the postal order a sufficient sum in postage stamps. Perforated stamps are not accepted for this purpose. A postal order should always be cashed within six months from the last day of the month of its issue, for after the expiration of that period it will only be paid after reference has been made to the chief post office in London. In practice it is advisable to cash a postal order within three months, for thereafter an additional poundage is payable before it will be paid. But *payment may be deferred* by the holder of a postal order, for a period of not more than ten days, if he writes on its face a direction that the same shall not be paid before a date he specifies. When so deferring payment it is essential that he inserts the name of the money-order office at which the order is to be paid. *Payment through bankers.*—If a postal order is crossed, payment will only be made through a banker, and if the name of a banker is added, payment will only be made through that banker. *Special directions* are given by the post-office authorities to the purchaser of a postal order that, before parting with it, he should fill in the name of the person to whom the amount is to be paid, and, where possible, the name of the money-order office at which the payment is to be made. The person so named must, before payment can be made, sign the receipt at the foot of the order, and also fill in the name of the money-order office, if that has not been done. A postal order is specifically described on its face as "non-negotiable," and accordingly any person who gives money to another for a postal order runs the risk of being required to return the

order, or pay a second time, to the true owner of the order, in case it has been stolen or the person who passed it had otherwise a bad title. Subject to this risk, however, a postal order may be passed from hand to hand like a bank-note. The insertion of the name of the paying office is claimed, by the authorities, to afford a safeguard against payment being made to the wrong person. Once the post office has paid an order there is then an absolute end to its liability, notwithstanding perhaps the person who cashed the order had no title to it. A postmaster is entitled to require the person who presents the order to sign his name thereon before payment, although the name of the payee mentioned in it may have already subscribed his name at the foot in receipt. *Miscarriage or loss.*—It is advisable to keep a record of the number and cypher of an order to facilitate inquiry in case of miscarriage or loss. But the post office will make no attempt to trace a missing order unless and until it has been satisfactorily proved that the name of the payee was inserted before the holder parted with it, and its number can be furnished.

Money orders are issued for any sum not exceeding £10, which does not include a fractional part of a penny. The person procuring one pays a small rate of commission in addition to the sum payable under the order, unless he is sending it to the Commissioners of Inland Revenue for inland revenue purposes, when no commission will be payable, and its amount may be any sum not exceeding £50. There are three classes of these orders—Inland, Foreign, and Telegraph. Inland money orders may be made payable to a particular person (designated either by name or by an official title or description), or to a form or business undertaking or corporation or society or joint-stock company, and may be made payable at any money-order office. When issued, a money order is handed by the postmaster to the remitter to be sent by him to the payee, and a separate advice is sent from the issuing office to the paying office, containing information as to the amount and as to the name of the remitter and of the payee. It will be cashed (when not presented through a bank) only when properly receipted by the payee, and the name of the remitter, as furnished by the applicant, is in agreement with the advice, unless the postmaster has good reason to believe that the applicant is neither the rightful claimant nor deputed by him. The remitter may cross the order, and make it payable through a bank. He may also defer or absolutely stop payment. In the latter case the amount will be refunded to the remitter; but the Postmaster-General incurs no liability if, notwithstanding the instructions given, the order is paid through oversight or negligence on the part of any of his officers. If the payment of an order is refused, in consequence of the remitter's name not being furnished correctly, or in consequence of the signature on the order not corresponding with the entry on the advice, the applicant for payment should communicate with the remitter, and request him to apply personally to the issuing postmaster. Under certain conditions the name of a remitter or payee may be altered, or the office for payment may be changed; and, in case of loss, a duplicate will be issued. A money order, if still unpaid, lapses and becomes void at the end of twelve months from the month in which it was issued, but when a good reason can be given for the delay in presenting it, an application for a new order will be entertained. *See* POST OFFICE; TELEGRAPHS.

POST CARDS.—There is no legal way of sending a written letter

through the post for a postage of a halfpenny except by means of a post card. A certain number of persons seem to imagine—so the post-office authorities say—that if envelopes are left unfastened letters may be enclosed in them and sent for a postage of a halfpenny only. The authorities therefore specially point out that the minimum postage upon all written letters (which are not written on post cards) is one penny, whether they are open or closed, and that letters posted contrary to the rule are liable to an additional charge. A private post card must be made of ordinary cardboard, not thicker than an official card; it must not exceed 5½ by 3½ inches in size, or be less than 3¼ by 2¼ inches. Nothing must be written or printed on the address side in inconvenient proximity to the stamp, or in any way which tends to prevent the quick and easy reading of the address, or to otherwise embarrass the officials. A post card can be re-directed on the same conditions as a letter. One intended for a *colony or foreign* country must have the words "Post Card" printed on the address side. And there also may appear engravings or advertisements which do not interfere with the clear indication of the address, or with the stamping or marking; and postal directions too, such as "Registered," "Acknowledgment of delivery," &c.; and also the name and address of the recipient in writing, or on a gummed label not exceeding in size 2 by ¾ inches, and the written or printed name and address of the sender.

POSTE RESTANTE.—Letters, parcels, &c., to be called for are, as a rule, taken in at all the Post Offices excepting town sub-offices. They should have the words "to be called for" or "Poste Restante" included in the address. The Poste Restante being intended solely for the accommodation of strangers and travellers who have no permanent abode in the town, letters or parcels for residents may not be addressed to the Post Office "to be called for." Even strangers may not use the Poste Restante for more than two months. Letters or parcels addressed to initials, or to fictitious names, or to a Christian name without a surname, are not taken in at the Poste Restante, but are at once sent to the Returned Letter Office. And they cannot be re-directed from one Poste Restante to another in the same town, nor from a private address to a Poste Restante in the same town. Any one applying for Poste Restante letters or parcels must, if required, be able to state from what place or district he expects them, and produce some proof of identity; and if he sends for his letters or parcels, the messenger, besides being furnished with this information, must have a written authority to receive them. If the applicant be a foreigner he must produce his passport or other evidence of identity; or if he send for his letters or parcels the messenger must produce such evidence. Subjects, however, of States not issuing passports are treated as subjects of the United Kingdom. Letters from abroad addressed to the *Poste Restante, London*, are retained for two months, letters from provincial towns for one month, and letters posted in London for one fortnight; all such letters at the end of these periods being sent to the Returned Letter Office for disposal. A letter addressed to a Provincial Post Office to be called for is, as a rule, retained one month. If not called for by the end of that time, it is sent to the Returned Letter Office. A letter addressed to a Post Office at a seaport town for a person on board a ship, expected to arrive at that port, is kept for two months. When, however, letters, &c., addressed to a Post Office to be called for bear a request for their return within a specified time if not delivered, they are dealt with in accordance with such request.

POST OFFICE.—Originally this office was established by the State for the conveyance of letters and other documents from and to places in England. But the office as we know it to-day has functions far more extensive than those it originally possessed. Its activities are not now limited to England, for they extend through the British Islands to the colonies and all civilised foreign countries. Nor is the conveyance of letters its only concern. It operates a great inland, foreign, and colonial telegraph system; has instituted an inland telephone service, as well as a direct communication between London and Paris; conducts a national savings bank, and in connection therewith acts as an agent for investment in Government stock; effects life assurances and grants annuities; transmits money by means of money orders and postal orders; carries and delivers parcels; and will even personally conduct a strayed stranger to his desired destination. Many other functions of this great department of the State could readily be enumerated. The foregoing are sufficient, however, to generally indicate the place it occupies in modern life. Before the seventeenth century the post office, as now understood, can hardly be said to have had an existence. There then were established in certain parts of the country from the time of Edward II. a number of fixed stations or "posts," whereat were kept horses for the use of messengers. These posts were controlled and regulated by a public official known as the master of the posts, subsequently to be styled the chief postmaster; but common carriers and private messengers were nevertheless the persons who generally carried private letters, the duties of the official postmaster, so far as the public were concerned, being confined to the posts and horses. Even as late as 1644 it would appear that the postmaster's duties were not connected directly with letters. In 1656, however, the post office may be said to have been actually established. An Act was then passed, the preamble to which set forth "that the erecting of one Generall Post Office for the speedy conveying and re-carrying of letters by post to and from all places within England, Scotland, and Ireland, and into several parts beyond the seas, hath been and is the best means not only to maintain a certain and constant intercourse of trade and commerce between all the said places, to the great benefit of the people of these nations, but also to convey the publique dispatches, and to discover and prevent many dangerous and wicked designs which have been and are greatly contrived against the peace and welfare of this commonwealth, the intelligence whereof cannot well be communicated but by letter of escript." It also enacted that "there shall be one Generall Post Office, and one officer stiled the postmaster generall of England and comptroller of the Post Office." This officer was to have the horsing of all "through" posts and persons "riding in posts." Prices for letters, both English, Scotch, Irish, and foreign, and for post horses, were fixed. All other persons were forbidden to "set up or employ any foot-posts, horse-posts, or pacquet boats." These arrangements continued until the reign of Queen Anne, and then from 1710 to 1838 upwards of 150 Acts regulating the post office were passed. In 1837 ninety-nine of these Acts were repealed, either wholly or partially, and a series of Acts were passed by which the whole department of the post office was regulated anew. In the following year the legislature effected arrangements for the conveyance of the posts by railways, and since then similar arrangements have been made with regard to tramways. But the year 1840 is perhaps the most remarkable in the annals of post-office legislation, for then was introduced a uniform system of penny postage. On the 10th January, when this system came into operation, the old-established parliamentary franking also entirely ceased, and on the 6th May stamps were introduced. Among the most remarkable of subsequent postal reforms may be noticed the introduction of money orders in 1840, the institution

THE WORK OF THE POST OFFICE

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LIKE all Government departments, the Post Office is sometimes abused for the *quality* of its work. This fault-finding may be just or unjust, but when we look at the *quantity* of the work done by the Post Office, there can be no two opinions as to the stupendous results that are produced by the gigantic social and commercial machine that daily grinds for the nation at Saint Martin's-le-Grand, London.

During the year ended 31st March 1909, the most recent year for which the facts have been published, there were 208,000 persons employed in the Post Office. This means that one person in every 216 of the population of the United Kingdom assists in the all-important work of postal and telegraphic communication. The wages bill for 1909 was nearly 12 millions sterling, (say) £226,000 per week, or over £37,000 per working day. This wages bill includes the Telephone Service.

The postal deliveries in the United Kingdom only, not including letters, &c., sent abroad, for the year ended 31st March 1909, were as follows :—

Postal Packets Delivered.	Number.	Average No. per Head of Population.
	Millions.	
Letters	2907	65.1
Halfpenny Packets . .	953	21.3
Postcards	860	19.3
Newspapers	202	4.5
Parcels*.	113	2.5
Total . . .	5035	112.7

* These parcels include also parcels sent abroad.

Each member of the population received, on the average, 112 postal packets in the year, and we have to bear in mind that this average result includes all children and other persons who rarely receive any letters.

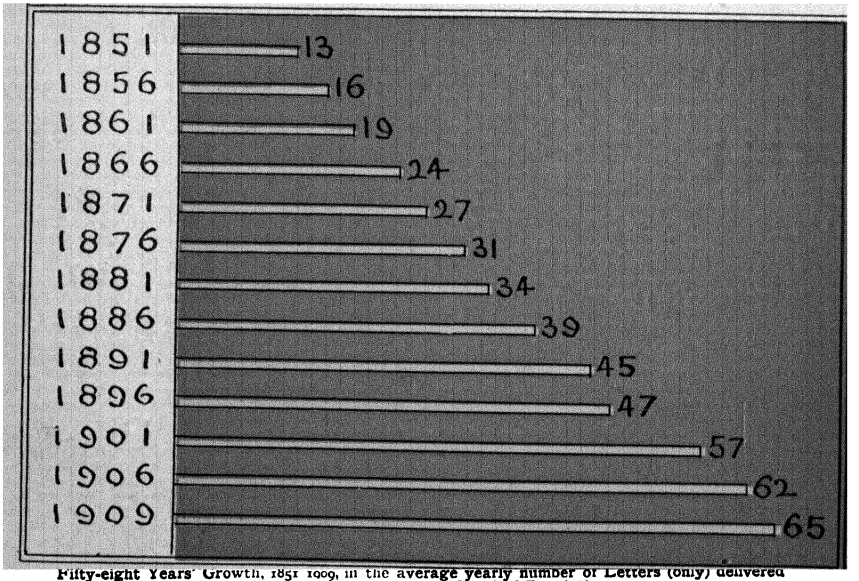
Gradual growth does not arrest public attention to the degree that scientific discovery or mechanical development strikes upon the country's sense. To illustrate the growth in the work of the Post Office, I now show a statement I have compiled covering the last fifty-eight years, in respect of the yearly number of letters (only) delivered in the United Kingdom per head of population :—

AVERAGE NUMBER OF LETTERS (ONLY) DELIVERED YEARLY IN THE UNITED KINGDOM PER HEAD OF POPULATION.

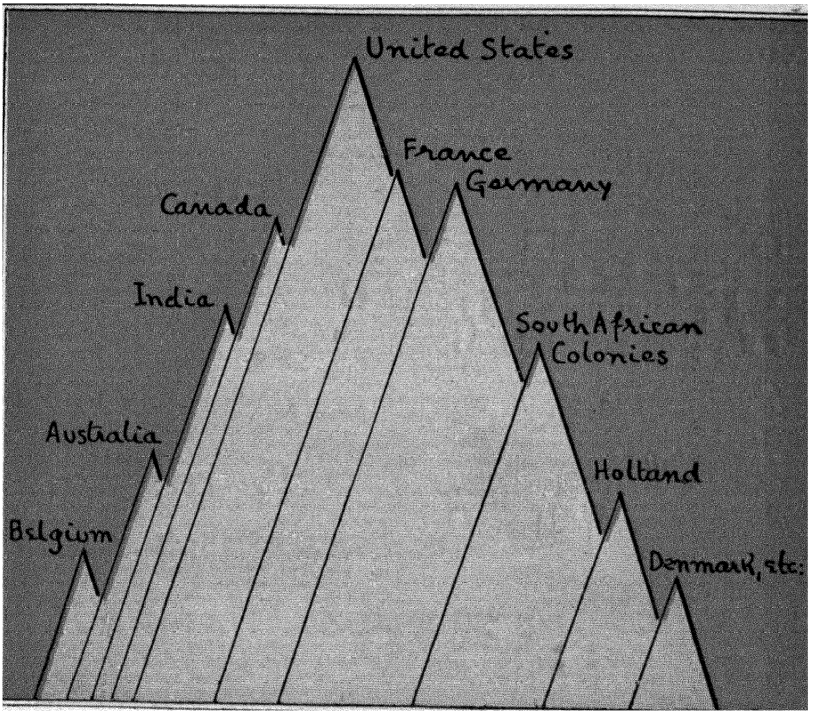
Year.	Number.
1850–51	13
1855–56	16
1860–61	19
1865–66	24
1870–71	27
1875–76	31
1880–81	34
1885–86	39
1890–91	45
1895–96	47
1900–01	57
1905–06	62
1908–09	65

It is not easy to realise the immense significance of the little column of figures in the above table, which shows a growth, in the average number of letters per head of population, from 13 letters in the year 1850–51 to 65 letters in the year 1908–09. A five-fold growth, and this despite the great increase in population. It is a remarkable proof of social and commercial activity, and it is both a cause and an effect of the great development of the nation during the last sixty years.

We will now look outside these islands and see



Fifty-eight Years' Growth, 1851–1909, in the average yearly number of Letters (only) delivered in the United Kingdom per Head of Population



Letters and Postcards (only) despatched from the United Kingdom to various Countries
The weight of Letters and Postcards is represented by the height of the peaks. See the Table in the next page.

what our Post Office is doing for us as regards intercourse with the continents of the world. The letters, postcards, and other postal packets exchanged between the United Kingdom and other parts of the world are reckoned by weight, and the following table gives a summary of the facts for the year 1908 (excluding parcels):—

Continent.	Weight of the Letters, Postcards, and other Postal Packets exchanged between the United Kingdom and the Continents of the World in the Year 1908		The Percentage received into the United Kingdom for every 100 tons despatched from the United Kingdom.	
	Despatched from the United Kingdom	Received into the United Kingdom.	Despatched.	Received.
	Tons.	Tons.	Per Cent.	Per Cent.
1. Europe. .	4322	2416	100	56
2. America .	4462	2138	100	48
3. Asia. . .	2453	475	100	19
4. Africa . .	1724	353	100	20
5. Australasia	1331	568	100	43
Total . .	14,292	5950	100	42

The weight of the letters, &c., exchanged with the various continents was, we see, 20,242 tons. This means 389 tons per week, or 65 tons per working day. As might be expected, our biggest correspondent is Europe, with America second, and Australia last on the list. Asia and Africa are nearly equal. In each case we despatched much more correspondence than we received, and the percentages in the table show this feature very clearly. For every 100 tons of letters, &c., which we despatched, only 42 tons were received by us. Europe sent us 56 tons for every 100 tons sent by us to Europe, and thus Europe was our best correspondent relatively, as well as in actual bulk of correspondence. Asia was our worst correspondent, sending us only 19 tons for every 100 tons we sent to Asia.

With regard to individual countries, and looking at letters and postcards only, our despatches to

foreign countries, &c., were in the following order of importance :—

LETTERS AND POSTCARDS DESPATCHED FROM THE UNITED KINGDOM.

Country.	Per Year.	Per Day.
	Lbs.	Lbs.
1. United States	507,000	1389
2. France	419,000	1148
3. Germany	410,000	1123
4. Canada	380,000	1041
5. India	311,000	852
6. South African Colonies	284,000	778
7. Australian Commonwealth	196,000	537
8. Holland	169,000	463
9. Belgium	117,000	320
10. Denmark, Norway, Sweden	100,000	274
Total	2,893,000	

The above are the ten leading countries in the list of despatches of letters and postcards from the United Kingdom, and the United States is at the head of the list of countries to which we send letters.

With regard to countries that send letters to the United Kingdom, the list is as follows :—

LETTERS AND POSTCARDS RECEIVED BY THE UNITED KINGDOM.

Country.	Per Year.	Per Day.
	Lbs.	Lbs.
1. United States	537,000	1471
2. Germany	448,000	1227
3. France	383,000	1049
4. Canada	319,000	874
5. India	206,000	564
6. South African Colonies	182,000	499
7. Holland	118,000	323
8. Australian Commonwealth	109,000	299
9. Belgium	95,000	260
10. Denmark, Norway, Sweden	74,000	203
Total	2,471,000	

The "per day" results in the two foregoing statements are the average results per day throughout the year, week-days and Sundays—not the results for mail-days only. And, as stated, these figures refer to letters and postcards only. The circulars, book-packets, &c., are greatly in excess of the above-stated letter correspondence between the United Kingdom and other countries.

The United States and Germany each send to us more letters and postcards than we send to each of these countries. But, as regards the other separate countries named above, we send to each of them more letters and postcards than each of them sends to us.

The Money Order and Postal Order business of the Post Office is very large. During 1908 only the number and value of these Orders issued were as follows :—

	No.	Value.	Average Value of each Order
	Mills	Mill £	£ s. d.
Money Orders	13 38	48 14	3 11 11
Postal Orders (6d. to 21s)	119 28	46 21	0 7 9
Total	132 66	94 35	

More than one hundred and thirty millions of money orders and postal orders were issued in one year, whose value was over 94 millions sterling. In addition to this huge financial business of the Post Office, the Post Office Savings Bank received in the year more than 18 million deposits, value nearly 45 millions sterling, and there were nearly 10 million withdrawals, value over 45 millions sterling. The amount standing to the credit of depositors at the end of the year was 160 millions sterling, and as there were over 11 millions of depositors, the average amount was £14, 11s 5d each. The proportion to population of depositors in the Post Office Savings Bank is approximately 1 in 4 of the whole population of the United Kingdom

J. HOLT SCHOOLING.

of the savings bank in 1861, the acquisition of a telegraph monopoly in 1868–70, the addition of the parcels post in 1882, and the power to purchase and work telephones in 1892. Such in outline is the road by which the post office has travelled from the mediæval "posts" to the modern mailing, banking, carrying, assurance, and express messenger department of State under the control of the Postmaster-General.

The old repealed Act of 1656 recited above is particularly interesting, as showing the early statutory monopoly vested in the post office. The monopoly still continues, but now it depends upon the Act of 1837, section 2 of which confers upon the Postmaster-General "the exclusive privilege of conveying from one place to another all letters," except in certain specified cases, and also "the exclusive privilege of performing all the incidental services of receiving, collecting, despatching, and delivering all letters," except also in certain specified cases. The cases so specified create the following exemptions from the Postmaster-General's exclusive privilege: (1) Letters sent by a private friend on his way, journey, or travel, to be delivered by the friend to the person to whom they are directed; (2) Letters sent by a messenger on purpose, concerning the private affairs of the sender or receiver thereof: commissions or returns thereof: and affidavits and writs, process or proceedings or returns thereof, issuing out of a Court of Justice; (3) Letters sent out of the United Kingdom by a private vessel (not being a packet boat); (4) Letters of merchants, owners of vessels of merchandise, or of the cargo or loading therein, sent by such vessels of merchandise, or by any person employed by the owners for the carriage of the letters, according to their respective directions, and delivered to the respective persons to whom they are directed, without paying or receiving hire or reward, advantage or profit, for the same in anywise. (Such, if handed over to the post office on arrival in the United Kingdom, will be delivered on payment of the postage as on prepaid inland letters, provided that the owners, charterers, or consignees are described as such on the address and superscription); (5) Letters concerning goods or merchandise sent by common known carriers, to be delivered with the goods which such letters concern, without hire or other advantage for receiving or delivering such letters. No person, however, is authorised to make a *collection* of such excepted letters for the purpose of sending them in the manner above described. The following persons are expressly forbidden to carry a letter, or to receive or collect or deliver one, even though they do not receive a hire or reward: (*a*) Common known carriers, their servants or agents, except a letter concerning goods in their carts or waggons, or on their pack-horses; and owners, drivers, or guards of stage-coaches; (*b*) Owners, masters, or commanders of ships, vessels, steamboats, or boats called or being passage or packet-boats, sailing or passing coastwise or otherwise between places between Great Britain or Ireland, or between, to, or from ports within His Majesty's dominions or territories out of the United Kingdom, or their servants or agents, except in respect of letters of merchants, owners of ships, or goods on board; (*c*) Passengers or other persons on board any such ships, vessels, steamboat, passage or packet-boat; and (*d*) The owners of or sailors or others on board a ship or boat passing on a river or navigable canal within the United Kingdom or other of His Majesty's dominions.

By another Act of the same year the monopoly is protected by the following important penal provisions.

Exclusive privilege of the Postmaster-General.—Any person conveying, otherwise than by the post, a letter (which by law includes a packet) not exempted from the exclusive privilege of the Postmaster-General, or who performs, otherwise than by post, any services incidental to conveying letters from place

to place, whether by receiving, or by taking up, or by collecting, or by ordering, or by despatching, or by carrying or re-carrying, or by delivering a letter not exempted from such privilege, incurs by law a penalty of £5 for every letter, and £100 for every week the practice is continued. A person who sends or causes to be sent, otherwise than by post, a letter not exempted from such privilege is also liable to similar penalties.

Other offences.—Of the many statutory offences against the Post-Office laws some few may be usefully referred to here. It is an indictable offence for a post-office employee to open, detain, or delay a post letter contrary to his duty, or to steal, embezzle, secrete, or destroy one; any person to steal or unlawfully take away a post letter-bag sent by a post-office packet, or a letter out of the bag, or unlawfully to open it; any person fraudulently to retain a post letter delivered by mistake, or wilfully to secrete or detain it; any person employed under or acting for the Post-Office to disclose, make known, or intercept the contents of a telegram contrary to his duty; any person to place or attempt to place in or against a post-office letter-box any fire, match, light, explosive, or dangerous substance or filth, or to do anything likely to injure the box or its contents; any person to send or attempt to send a postal packet enclosing explosive, dangerous, or deleterious substance, or indecent or obscene print or article, or having thereon indecent, obscene, or offensive words; any person to forge or wilfully and without due authority to alter a telegram, or utter a forged telegram, or transmit a false telegram; any person who is not a post-office employee or a parent or guardian of the addressee of the letter, maliciously and with intent to injure some other person, to open or cause to be opened, a letter intended for and addressed to another person, or to do anything to prevent or impede the delivery of the letter. But it is only an offence punishable on summary conviction for the master of an outward bound vessel to refuse to take a mail tendered to him for conveyance, or to open or take a letter from a mail, or not duly to deliver a mail; and for a collector of tolls, ferryman, or gatekeeper, to demand tolls for mails, or stop or delay mails; and for a person employed to carry or deliver post letter-bags or post letters to lose them, or being drunk, negligent, or misconducting himself, to thereby endanger or delay mails. And a similarly punishable offence is it for any person—to wilfully obstruct post-office officials or business; or to place or maintain without due authority on a house, wall, window, or place the word "post-office"; or fraudulently to remove from a post letter a postage stamp or post-mark with intent to use it for another letter, or otherwise do something with the intention of defrauding the postal revenue; or to affix, or attempt to affix, without due authority, a placard, board, or thing on a post office, letter-box, telegraph post, or other property of the Postmaster-General, or to paint or disfigure it; or to make, issue, or use imitation post-office envelopes, forms, stamps, or marks; or to make, utter, knowingly use, or unlawfully possess a fictitious stamp, or an instrument for making one.

Liability of the Postmaster-General.—It was determined, so long ago as the reign of William III., in the case of *Lane* v. *Cotton*, that no action can be maintained against the Postmaster-General for the loss of bills or articles sent in letters by the post. A similar action was brought, in *Whitfield* v. *Lord Despenser*, wherein the Court held that there was no resemblance, or analogy, between the postmasters and a common carrier; and that no action for any loss in the post office could be brought against any person, except him by whose actual negligence the loss accrued. The effect of this rule is somewhat modified by the introduction of a scale of compensation in respect of loss or damage of REGISTERED LETTERS, and also by the limited liability gratuitously assumed by the Post-

master-General in connection with the PARCELS POST, whether the particular parcel is registered or not.

Opening letters by the authorities.—The preamble to the statute of 1656 states, as already remarked, that the establishment of a general post office, besides the benefit to commerce and the convenience of conveying public despatches, will be the best means "to discover and prevent many dangerous and wicked designs." The policy of having the correspondence of the kingdom under the inspection of Government would still, according to Blackstone, be available in practice in case of need, for by the warrant of a Secretary of State letters could undoubtedly be detained and opened. In the case of a bankruptcy there is express statutory provision for the diversion to the official receiver or trustee of all letters forwarded to the bankrupt through the post.

Articles not allowed to be sent by post.—It is not everything that is allowed to be sent by the post. For example the postage of indecent or obscene prints, paintings, photographs, lithographs, engravings, books, cards, or any article having thereon, or on its cover, any words, marks, or designs of an indecent, obscene, or grossly offensive character, is absolutely prohibited. So also is the transmission of explosive, dangerous, noxious, or deleterious substances, filth, sharp instruments not properly protected, living creatures, except bees, and everything likely to injure the contents of the mails, or any offices of the post office. If a postal packet be tendered for transmission in contravention to the foregoing rule, it is refused, or if detected in transit it is detained. The contents are dealt with at the discretion of the authorities, and the sender of it is liable to prosecution. Certain articles, such as china, crockery, eggs, fruit, fish, and meat, can only be sent by the parcel post, and when so sent must be packed with special care. A postal packet sent by letter post which cannot from the nature of its contents be transmitted thereby is, if admissible by parcel post, transferred to that post, and treated and charged as a parcel posted out of course. If inadmissible by parcel post the packet is liable to be detained and disposed of. Letter packets containing liquids, grease, glass, or colouring powders, which are not packed in accordance with the regulations provided with regard to these articles, will be stopped. No one can send a number of letters differently addressed under cover of one letter or parcel, and so infringe upon the post-office monopoly. Such an infringement is guarded against by the important rule that "no postal packet may contain an enclosure addressed to a name and address differing from the name and address borne on the cover of the packet. If any packet is observed to contain such enclosures each forbidden enclosure is liable to be taken out and forwarded to the address thereof, charged with separate postage at the prepaid rate." There is also a general prohibition against sending postal packets of such a form, or so made up for transmission, as to be likely to embarrass the officials in dealing with them in the post.

Different modes of sending and delivering letters.—There is first the *ordinary* mode of posting and delivering in the ordinary course. With this may be mentioned the arrangement whereby, upon payment of an extra fee, letters will be received for transmission after the public collection is closed until within five minutes of the despatch of the mail. For the receipt of *late letters* bearing an extra ½d. stamp, letter boxes are affixed to all mail trains to which travelling post offices or sorting carriages are attached. *By rail.*—Consistently with the official monopoly no railway company as such is entitled to carry letters for the public, though, as is well known, there is no such prohibition in the case of parcels. But by post-office arrangement with most of the railway companies the latter, subject to certain conditions, may accept and convey by the next available train

or steamship any inland letter which does not exceed 4 ounces in weight, either to be called for at the station of address, or to be transferred there to the nearest post-office letter-box for delivery by a postman. The conditions require that the sender of such a letter delivers it at the appropriate passenger station to a railway official in the parcels booking-office, or if that office is closed in the passenger booking-office. He must not hand it in at a post office unless he intends it to go by express delivery. The total charge of 3d. will defray the whole cost of transmission. A letter will not be accepted for transmission by rail if it exceeds the weight already mentioned; nor will it if (*a*) from any words or marks thereon it appears to be intended for registration; or (*b*) it appears to contain a watch, coin, jewellery, or anything requiring registration when forwarded through the post; or (*c*) it appears to contain anything excluded from transmission by letter post. Foreign or colonial letters are not accepted. Letters addressed to a railway station to be called for are kept there seven days.

Example of a letter addressed to a railway station to be called for :—

T. Jones, Esq.,
Parcel Office,
_____Station.
(To be called for.)

Example of a letter addressed to the actual residence of the addressee :—

T. Jones, Esq.,
.....
.....
To ..... Station.
(To be posted on arrival.)

Express delivery of letters and parcels may be effected in either of three manners, namely:—(*a*) By special messenger all the way. This is the most rapid service, and to secure it letters, &c., should be handed in at an express delivery office. A cab or any other special conveyance for the messenger can be arranged for; several letters or packets may be sent for distribution amongst different addressees; on completion of delivery the messenger may take a reply or perform a further express delivery service—the words "wait reply," or "further service," should be written by the sender above the address; a packet may be handed to a telegraph messenger for express delivery, and an express delivery messenger is permitted to take a telegram for transmission; late fee letters can be posted at railway stations by the messenger; and letters may be so taken to a railway station for transmission by rail, and trains met for the reception of railway letters. Living animals may be delivered by messenger; and a person may also be conducted to any address on payment of the mileage fee. (*b*) Express delivery to addressee after transmission by post. This can be ensured by marking the words "Express delivery" above the address on the left-hand side of the cover (whether of letter or parcel); but in the case of a letter the cover must also be marked with a broad perpendicular line from top to bottom, both on front and back. Parcels and registered letters for this service must be handed in at a post office, or to a rural postman. In addition to the full ordinary postage the express fee is 3d., which must be prepaid. (*c*) Persons or firms who desire at any time to receive their postal delivery, of any kind, in advance of the ordinary delivery, may have them delivered by special messenger on payment of the prescribed fee. Signed application for this must be made at the post office from which the letters are ordinarily delivered.

Other features of the postal service might be set out at some length. Space, however, forbids anything more than a slight notice. There are, for example, special regulations with regard to the transmission of commercial papers, circulars, and books; the express delivery system is available in correspondence with a number of foreign countries, and the telephone may be used in connection with that system.

Conditions of free re-direction.—Letters, book packets, post cards, and newspapers are not liable to additional postage for re-direction, whether re-directed by an officer of the post office or by an agent of the addressee after delivery, provided in the latter case that the letters, &c., are re-posted not later than the day (Sundays and public holidays not being counted) after delivery, and that they do not appear to have been opened or tampered with. Re-directed letters, &c., which are re-posted later than the day after delivery will be liable to charge at the prepaid rate. Any which appear to have been opened or tampered with will be chargeable as freshly posted unpaid letters or packets. Whenever it may be thought necessary, a receipt may be required from the addressee of a re-directed letter or packet at the second address. *Parcels treated differently.*—Parcels are, when re-directed, liable to additional postage at the prepaid rate for each re-direction except where the original and corrected addresses are both within a delivery from the same post office, and the re-direction is made within the period of free re-direction. *Re-direction of registered packets.*—Registered letters or packets, on being re-directed, cannot be dropped into a letter-box, but must be taken to a post office to be dealt with as registered. No additional postage or registration fee will be charged upon them if they are presented for re-registration not later than the day after delivery, but if they are presented after that time they will be treated as freshly posted, and fresh postage and registration fees will be payable in respect of them. If a registered letter or packet when re-directed, instead of being given back to the post office to be dealt with as registered, is dropped into a letter-box as an ordinary letter or packet (the word "registered" not having been erased, or having been erased in pencil only), it becomes liable to surcharge on delivery. *Notices of removal.*—Notices of removal and applications for letters, &c., to be re-directed, must in all cases be signed by the persons to whom the letters are addressed. Printed forms can be obtained from the local postmaster, and in London at any district or branch office, or from the postman of the walk; and, when filled up and signed, they should be given to the postmaster or to the postman. It is desirable, however, in order to prevent mistakes, that persons who are about to change their residence should inform their correspondents beforehand of their intention, so that their letters may be directed in the first instance to their new address. Separate notices should be filled up if it is desired that parcels and telegrams are to be re-directed. The post office does not undertake to provide for the re-direction of letters, book packets, post cards, and newspapers, for a longer period than twelve months from the date of removal, but it is open to any person, after his correspondence has been re-directed for that time, to apply for an extension of the privilege on prepayment of a fee of 1s. a year for the second and third years. Letters, &c., cannot be re-directed for more than three years after the change of address. *Cases in which correspondence is not re-directed.*—The post office does not undertake re-direction for a person temporarily leaving home, unless the house is left uninhabited; nor does it undertake to re-direct letters addressed to clubs, hotels, boarding-houses, or lodgings.

Disposal of undelivered correspondence.—Every letter should bear the full name and address of the sender, in order to ensure its return in case of non-

delivery. An undelivered inland letter bearing the full name and address of the sender printed or written on the outside is returned direct and unopened. Other undelivered inland letters are sent to the Returned Letter Office, where they are opened, and returned, if possible, to the senders; if they contain neither sender's address nor any enclosure of importance they are destroyed. Letters found to contain value are recorded, and, if returned, are registered. Letters from abroad are returned unopened to the country of origin after a brief detention in the Returned Letter Office. Book packets (not exceeding 2 ozs. in weight), post cards, and newspapers which cannot be delivered are disposed of as follows: (1) those bearing on the outside the name and address of the sender with a request for their return in case of non-delivery are sent back direct from the office of delivery, and are delivered to the sender on payment of a second postage; (2) those bearing on the outside no request for return in case of non-delivery are disposed of at the head office of delivery. Senders of packets prepaid one halfpenny are desired by the post-office authorities—(*a*) to print or write their name and address, with a request for return, on the outside of every packet which they wish to recover in case of non-delivery; (*b*) to place such request upon the front of the packet in the upper left-hand corner and in small type, in order that it may not be confounded with the original address on the packet; (*c*) to word the request somewhat as follows, "In case of non-delivery, to be returned to (name and address of sender)."

Foreign and Colonial mails.—To most of the British possessions and protectorates the rate of letter postage is 1d. per half oz.; and generally, for all colonies and foreign countries, whether in the postal union or not, the rate is 2½d. per half oz. Letters posted unpaid, or insufficiently prepaid, for any country in which prepayment is compulsory, are returned to the writers; and no letter may exceed 2 ft. in length or 1 ft. in width or depth. The addresses of letters for Russia should be very plainly written; the name of the town and of the province in which it is situated should also be added in English, French, or German. Printed and commercial papers are transmitted at the rate of ½d. per 2 oz., with a minimum charge of 2½d. Commercial papers comprise such papers as deeds, bills of lading, invoice and public companies paper. They must be posted either without a cover (in which case they should not be fastened), or in an ordinary envelope left wholly unfastened or a cover entirely open at both ends, so as to admit of the contents being easily withdrawn for examination. For the greater security of the contents, however, the packets may be tied at the ends with string; but the string must be easy to unfasten. In order to secure the return of packets which cannot be delivered, the names and addresses of the senders should be printed or written outside. Printed matter is subject to exceptional conditions in many colonies and foreign countries. For instance, in Queensland advertising matter other than catalogues and prices current is liable to customs duty; in Russia, as a general rule, printed matter in the Russian language is prohibited; in the United States there is a customs duty of 25 per cent. of the value of all books and printed matter, the only exemptions being (*a*) newspapers and periodicals already exempt from duty; (*b*) photographs and printed papers, other than books, received in the United States in such small quantities as to suggest that they are intended for personal use and not for sale; (*c*) books, engravings, photographs, etchings, maps, charts, and music, which have been printed more than twenty years, publications printed for private consultation or issued for subscribers, or exchanges by scientific and literary associations or academies, books and music in raised print for the use of the blind, and works printed exclusively in any other than the English language.

Miscellaneous regulations and suggestions.—*Postmasters and the public.*—Postmasters are not allowed to return any letter, parcel, or other postal packet to the writer or sender, or to any one else, or to delay forwarding it to its destination according to the address, even though a request to such effect be written thereon. They are not bound to give change, nor are they authorised to demand it; and when money is paid at a post office, whether as change or otherwise, no question as to its right amount, goodness, or weight can be entertained after it has been removed from the counter. Nor are they to weigh for the public letters, books, packets, or newspapers, brought for the post, but they *may* do so, if their duty is not thereby impeded. This rule does not apply to parcels, which are tested both as to weight and size before being accepted. No information can be given respecting letters or any other postal packets except to the persons to whom they are addressed; and in no other way is official information of a private character allowed to be made public.

To prevent frauds as to place of posting.—If a postal packet is forwarded under cover to a postmaster with a request that he will re-post it at his office, the postal packet, on being re-posted, will be indorsed with the words "posted at —— under cover to the postmaster of ——. *Applications for information* should always be addressed to the Secretary of the Post Office. *How to address.*—Letters, &c., should be clearly and legibly addressed. When writing to a place where there is a sub-post office only, the name of the post-town (or county in some cases) should be added. The name of the post-town, as a rule, completes the address, but in certain cases the name of the county is required, as for instance when there are two or more places of the same name in the United Kingdom, or where there is an important town bearing a similar name in a British Colony or foreign country. Abbreviated addresses registered for telegrams should not be used for letters. In the case of letters and other postal packets for places abroad the name of the country, as well as the town, should be given in full. For example, a letter intended for Boston (U.S.A.), London (Canada), or Halifax (Nova Scotia), should be so addressed. The initials N.B. should not be used in the addresses of letters for Scotland, as there is some risk of their being regarded as intended for New Brunswick. Nothing may be written or printed on the address side of any postal packet which, either tending to prevent the easy and quick reading of the address, or by inconvenient proximity to the postage stamps, or in any other way, is likely to embarrass the officers of the department in dealing with the packet. Any packet which is posted in contravention of this regulation will be liable to be withheld from delivery. *The date stamp.*—In certain cases the time of posting is indicated approximately in the date stamp to clock time. It is intended that the arrangement shall be extended gradually. *Circulars* should be tied in bundles, with all the addresses in one direction, and should be posted early in the day to secure due despatch. *Surcharging.*—When a person to whom a letter has been delivered has reason to think that it has been improperly charged as overweight, the letter should be taken to a post office to be weighed before being opened. Unless this course is followed, no question as to the correctness of the surcharge can afterwards be entertained. *Generally.*—The Postmaster-General has power to delay the despatch or delivery of book packets post cards, and parcels, when it is necessary to do so in order to secure the due despatch of the letter mails, and also to delay parcels when he considers it expedient for their safety and protection to do so. He is likewise empowered to detain packets of every description which, from their size, weight, or character, are unsuitable for transfer by mail-bag apparatus, and to forward them by mails for which the apparatus is not employed. Town postmen are not allowed to take

charge of letters for the post, but rural postmen may accept letters handed to them on their route, except in the vicinity of a letter-box. Rural postmen are instructed to accept for delivery ordinary postal packets, on which the postage is fully prepaid by means of stamps, if addressed to any house which they will have to pass in the usual course of their duty. This arrangement does not extend to registered postal packets. *See* POSTAL ORDERS; TELEGRAPHS; TELEPHONES; PARCELS POST; REGISTERED LETTERS.

POWER OF ATTORNEY, or Letter of Attorney, is a deed which authorises a person to act as the agent or attorney of the person who executes or grants it. The deed may be in the form of an indenture or a deed-poll, and it may confer a general authority of agency or a special authority. A general power authorises the agent to act generally on behalf of the principal, while a special power only authorises an agency limited to certain prescribed matters. The law relating to powers of attorney is but an incident in the general law of principal and agent [*see* AGENCY]. The essential characteristic of a power of attorney is that it is an instrument under seal, and it is therefore the means whereby a person may authorise another to execute a deed on his behalf, as, for example, to execute a deed of conveyance to a purchaser of land, or a transfer to a purchaser of shares. The principal is frequently referred to as the "donor" of the power, and the agent as the "donee."

Section 48 of the Conveyancing Act, 1881, provides for the deposit in the Supreme Court of instruments creating powers of attorney. Sections 46 and 47 relate to the execution of deeds under a power and to payment thereunder by the attorney. These two sections are to the following effect:—The donee of a power may, if he thinks fit, execute or do any assurance, instrument, or thing in and with his own name and signature and his own seal, where sealing is required, by the authority of the donor of the power. Every assurance, instrument, and thing so executed and done is as effectual in law to all intents as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof. And this applies to powers of attorney created by instruments executed either before or after the commencement of the Act. Any person who makes or does any payment or act in good faith, in pursuance of a power of attorney, is not liable in respect thereof by reason that before the payment or act the donor of the power had died or become lunatic, of unsound mind, or bankrupt, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, or revocation was not at the time of the payment or act known to the person making or doing it. But this rule does not affect any right against the payee of any person interested in any money so paid; for that person always has the like remedy against the payee as he would have had against the payer if the payment had not been made by him. This, however, applies only to payments and acts made and done after the commencement of the Act. The effect of a power of attorney when made irrevocable is dealt with in sections 8 and 9 of the Conveyancing Act, 1882. The following is the purport of these sections:—If a power of attorney, given for valuable consideration, is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser who derives his title thereunder—(i.) The power cannot be revoked at any time, either by anything done by the donor without the concurrence of the donee, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor: and (ii.) Any act done at any time by the donee, in pursuance of the power, will be as valid as if anything done by the donor without the concurrence

Know all men by these Presents

that I Charles Edward Royle of 15 Grahamstown Road in the City of Rochester do hereby constitute and appoint John Warren of "The Firs" in the same City Accountant to be my Attorney in my name and on my behalf to manage and let upon lease or agreement my real and leasehold estate for such period and upon such terms as he shall think fit and to take possession of or receive the rents of my said real and leasehold estate and to accept surrender of leases or tenancies and to relet the premises and generally to deal therewith as effectually as I myself could do and particularly to

And also to take all lawful proceedings by way of distress or otherwise for the recovery of any rent in arrear damages or for the eviction of tenants And also to demand sue for enforce payment of and receive and give discharges for all moneys securities for money dividends interest debts chattels and other personal estate whatsoever now belonging or hereafter to belong to me And also to commence carry on or defend all actions and other proceedings in which I or my estate may be in anywise concerned And also to settle compromise or submit to arbitration all accounts claims and disputes between me and any other person And out of the moneys to be received by my Attorney to pay any rents payable by me premiums upon any policies of assurance and the expenses of collection repairs or improvements calls upon shares and other outgoings payable in respect of any part of my estate as my said Attorney shall think fit And for all or any of the purposes aforesaid or any of them to sign my name set my seal and as my act and deed deliver any deed or other document And also to sign or endorse my name upon or to all cheques bills of exchange promissory notes contracts or other instruments whatsoever And also to appoint and remove at his pleasure any agent under him in respect of any of the matters aforesaid upon such terms as my said Attorney shall think fit And generally to act in relation to my estate and to the premises as fully and effectually in all respects as I myself could do I hereby undertaking to ratify everything which my said Attorney or any substitute or agent appointed by him under the power in that behalf hereinbefore contained shall do or purport to do in virtue of these presents And I direct that any moneys received by virtue of this power after making payments or allowances hereby authorised shall be paid by my said Attorney as to Five pounds every week to my daughter Jane Royle and as to the balance to my account at the Rochester branch of Lloyds Bank

In witness whereof I the said Charles Edward Royle have hereunto set my hand and seal this fifth day of November in the year of Our Lord One thousand nine hundred and ten.

Signed sealed and delivered by the said Charles Edward Royle in the presence of

G. F. Partridge
3. Deans Gate
Rochester
Clerk

C. E. Royle (L.S.)

Dated 5th Novr 1910.

Mr C. E Royle
— and —
Mr J. Warren

Power of Attorney

of the donee, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor, had not been done or happened: and (iii.) Neither the donee nor the purchaser will at any time be prejudicially affected by notice of anything done by the donor without the concurrence of the donee, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor. If a power of attorney, whether given for valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding one year from the date of the instrument, then, in favour of a purchaser who derives his title thereunder—(i.) The power cannot be revoked, for and during that fixed time, either by anything done by the donor without the concurrence of the donee, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor: and (ii.) Any act done within that fixed time by the donee, in pursuance of the power, will be as valid as if anything done by the donor without the concurrence of the donee, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor, had not been done or happened: and (iii.) Neither the donee nor the purchaser will at any time be prejudicially affected by notice either during or after that fixed time of anything done by the donor during that fixed time, without the concurrence of the donee, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor within that fixed time. These two sections apply only to powers of attorney created by instruments executed after the commencement of this Act.

Construction of a Foreign Power of Attorney.—In the case of *Chatenay* v. *The Brazilian Submarine Telegraph Co.*, the plaintiff, a Brazilian subject, executed in Brazil in the Portuguese language a power of attorney to a broker resident in London to buy and sell shares. The question arose for decision whether the extent of the authority thus conferred upon the broker was to be determined by Brazilian or by English law. It was decided that, so far as the authority was intended to be acted upon in England, its extent, with regard to English transactions, must be determined by English law. But the intention of the principal should be first ascertained by the evidence of competent translators, including if necessary Brazilian lawyers. Said Lord Esher: "This authority was given in Brazil, and the meaning is to be established by ascertaining what the plaintiff meant when he wrote it in Brazil. The authority being given in Brazil, and being written in the Portuguese language, the intention of the writer is to be ascertained by evidence of competent translators and experts, including if necessary Brazilian lawyers, as to the meaning of the language used; and if according to such evidence the intention appears to be that the authority shall be acted upon in foreign countries, it follows that the extent of the authority in any country in which the authority is to be acted upon is to be taken to be according to the law of the particular country where it is acted upon."

General principle of construction.—Powers of attorney are to be construed strictly—that is to say, that where an act purporting to be done under a power of attorney is challenged as being in excess of the authority conferred by the power, it is necessary to show that on a fair construction of the whole instrument the authority in question is to be found within the four corners of the instrument, either in express terms or by necessary implication. Such is the old rule of law as recently judicially indorsed in the case of *Bryant Powis* v. *La Banque du Peuple*, wherein it was held that a power authorising the agent to make contracts for—(1) the purchase or sale of goods; (2) the

chartering of vessels; and (3) the employment of agents and servants; and as incidental thereto to do certain specified acts, including the indorsement of bills, and other acts of the same kind as those specified, but not including an authority to borrow money, does not authorise the agent to borrow money on his principal's behalf when such an act is not necessary for the declared purposes of the power. The old authority of *Stagg* v. *Elliot* was there referred to and approved, and may be usefully mentioned here. That case is responsible for the important proposition that the words "per pro," in the acceptance or indorsement of a bill of exchange or promissory note, amount to an express statement that the party so accepting or indorsing the bill or note has only a special and limited authority, and therefore, that a person who takes a bill or note so accepted or indorsed is bound at his peril to inquire into the extent of the agent's authority.

Stamps.—Power relating to Government Stocks.—A letter or power of attorney for the sale, transfer, or acceptance of any of the Government stocks or funds, duly stamped for that purpose, is not chargeable with any further duty merely because it contains an authority for the receipt of the dividends on the same stocks or funds.

Scale:—LETTER OR POWER OF ATTORNEY, and COMMISSION, FACTORY, MANDATE, or other instrument in the nature thereof:

(1) For the sole purpose of appointing or authorising a proxy to vote at any one meeting at which votes may be given by proxy, whether the number of persons named in such instrument be one or more	£0	0	1
(2) By any petty officer, seaman, marine, or soldier serving as a marine, or his representatives, for receiving prize money or wages	0	1	0
(3) For the receipt of the dividends or interests of any stock:			
Where made for the receipt of one payment only	0	1	0
In any other case	0	5	0
(4) For the receipt of any sum of money, or any bill of exchange or promissory note for any sum of money, not exceeding £20, or any periodical payments not exceeding the annual sum of £10 (*not being hereinbefore charged*)	0	5	0
(5) For the sale, transfer, or acceptance of any of the Government or Parliamentary stocks or funds:			
Where the value of the stocks or funds does not exceed £100	0	2	6
In any other case	0	10	0
(6) Of any kind whatsoever not herein-before described	0	10	0

Exemptions.

(1) Letter or power of attorney for the receipt of dividends of any definite and certain share of the Government or Parliamentary stocks or funds producing a yearly dividend less than £3.

(2) Letter or power of attorney or proxy filed in the Probate Division of the High Court of Justice in England or Ireland, or in any ecclesiastical court.

(3) Order, request, or direction under hand only from the proprietor of any stock to any company or to any officer of any company or to any banker to pay the dividends or interest arising from the stock to any person therein named.

PRELIMINARY ACT.—In actions for damage by collision between vessels, the plaintiff is required, within seven days after the commencement of the action, and the defendant within seven days after appearance, and before any pleading is delivered, to file a document called a Preliminary Act; this is sealed up, and is not opened until ordered by the Court. It contains a statement of the following particulars:—(*a*) The names of the vessels which came into collision and the names of their masters; (*b*) the time of the collision; (*c*) the place of the collision; (*d*) the direction and force of the wind; (*e*) the state of the weather; (*f*) the state and force of the tide; (*g*) the course and speed of the vessel when the other was first seen; (*h*) the lights, if any, carried by her; (*i*) the distance and bearing of the other vessel when first seen; (*k*) the lights, if any, of the other vessel which were first seen; (*l*) whether any lights of the other vessel, other than those first seen, came into view before the collision; (*m*) what measures were taken, and when, to avoid the collision; (*n*) the parts of each vessel which first came into contact; (*o*) what sound signals, if any, and when were given; (*p*) what sound signals, if any, and when were heard from the other vessel. The Court may order the Preliminary Act to be opened and the evidence to be taken thereon without its being necessary to deliver any pleadings; but in such case if either party intends to rely on the defence of compulsory pilotage, he may do so, but should give notice thereof in writing to the other party, within two days from the opening of the Preliminary Act. It will be seen that these documents prevent either party adjusting his facts to those of his opponent as the action progresses and the case develops.

PREMIUM.—*In Insurance* this term is applied to the money paid to the insurer by an assured as a consideration for the insurance. In marine insurance the premium is generally paid in one sum; in fire insurance in one sum also, the term of such an insurance being usually one year; and in life assurance by periodical instalments. There are various methods, however, by which a life assurance premium may be paid, these varying according to the liberality or otherwise of the different offices. For example, only half the premium need be paid during the first few years of the assurance, the balance being charged by the company as a debt against the monies payable under the policy. *In Finance* the term is used to denote the difference between the par value of a security and its actual market price when such price is higher than the par value. Thus, if the £1 shares in a company are quoted at $1\frac{1}{4}$, they will be said to stand at a premium of 5s. *In Foreign Exchange* the term is used to denote the extra sum required to be paid in one money when it is desired to exchange that money for another when the latter is in greater request than the former.

PRICE CURRENT.—This is the name given to a list or schedule of mercantile commodities, showing their market prices, discounts, and places of usual delivery. Such lists are published by merchants, brokers, dealers and others for the use of their customers, the commodities enumerated in each being those in which the publisher carries on business. They are published either at irregular intervals or periodically—daily, twice-weekly, weekly,

and so forth—according to the usage of the particular trade concerned and the custom of the publisher. As a rule a price current is printed entirely, but many firms keep partially blank forms, the names of their staple articles being printed, the columns for prices, &c., being left blank and filled in at the time of issue. By means of price currents customers are kept informed of the state of the market and the variations in price of the commodities concerned. The term is also applied to lists of a similar character published in commercial and financial journals, whose lists have their contents restricted or extended according to the needs of the class of reader catered for. A general paper will include practically every merchantable commodity, from pepper to bullion and securities, whilst a paper devoted to the interests of the iron trade, for example, may exclude every commodity other than metals.

Of a similar character are *Circulars* and *Market Reports*, their main distinguishing feature being the comments and opinions they contain with regard to the state of the market for the time being and the probable future movements therein. In certain periodical issues of these circulars, the quarterly and annual for example, the prices are more generally dealt with and the comments and opinions are usually more comprehensive.

When published in certain journals the current prices of commodities are set out in comparison with the prices ruling during a number of past years. An opportunity is thus afforded the reader to determine the possibility and the direction of future movements, and, in aid of this, there is usually appended a note of any events which may have influenced the prices in the past, are influencing them in the present, and are likely to influence them in the future. It will often be seen that during any year the price of some commodity has never fallen below a certain figure or risen above another. And probably an identical period may be noticed in each year during which a certain part of the variation may have occurred. These and other points have obviously a great value to one whose business requires him to buy or sell that commodity. Prices are also scheduled in comparison with various markets, home and foreign. Less practical at first sight, and certainly more academic, are the comparisons of prices over a great number of years; and very interesting and useful are the attempts made at extracting their real social significance by, for example, quoting them at a figure proportioned to consumption.

PROBATION OF OFFENDERS. *See* APPENDIX.

APPENDIX

LIGHTS ON VEHICLES.—Vehicles in a street highway or road to which the public have access must, during the period between one hour after sunset and one hour before sunrise, be provided with a lamp or lamps in proper working order and properly lighted. The lamps must be so constructed and capable of being so attached as when lighted to display to the front a white light visible for a reasonable distance. If only one lamp is provided it should be placed on the off or right side of the vehicle; and, if the lamp or lamps are so constructed as to permit a light to be seen from the rear, that light should be red. A vehicle used for carrying timber or any load projecting more than six feet to the rear must in every case have a red light at the rear. Non-compliance with the law in this matter is punishable by a fine. Borough Councils have power to exempt vehicles from the operation of the law in regard to vehicles carrying inflammable goods, as also have County Councils in regard to vehicles engaged in harvesting. The Lights on Vehicles Act, 1907, is the authority for the foregoing, but the following vehicles are expressly excluded from the operation of the statute: (*a*) bicycles, tricycles; (*b*) light locomotives or motor cars; (*c*) heavy road locomotives; (*d*) vehicles drawn or propelled by hand. The first three of these classes of vehicles are the subject, in the matter of lighting, to special statutes. A machine or implement of any kind drawn by animal traction would be a vehicle within the meaning of the Act of 1907.

LIQUOR LICENCES.—Since the passing of the Finance (1909-10) Act, 1910, the following licences are no longer to be granted: (*a*) The additional retail dealer's licences for the sale of spirits or beer; (*b*) the licence for the sale of table beer; and (*c*) the combined retail wine and beer licence. The licences now granted are as follows: (1) *Manufacturers*—(*a*) Spirit Distiller; (*b*) Rectifier or Compounder of Spirits; (*c*) Brewer for sale; (*d*) Brewer other than for sale; (*e*) Maker for sale of sweets. (2) *Wholesale Dealers*—(*a*) Spirits; (*b*) Beer; (*c*) Wine; (*d*) Sweets. (3) *Retailers* (*On*)—(*a*) Spirits (publican's licence); (*b*) Beer (beerhouse licence); (*c*) Cider; (*d*) Wine; (*e*) Sweets. (4) *Retailers* (*Off*)—(*a*) Spirits; (*b*) Beer; (*c*) Cider; (*d*) Wine; (*e*) Sweets. (5) *Passenger Vessel* licences. (6) *Railway Restaurant Car* licences. (7) Occasional licences. The duties on these licences are set out in the schedules below.

Duration.—All the licences, other than the manufacturers' and wholesale dealers', must be taken out annually, and expire (except as stated below) in England and Ireland on the 30th September, and in Scotland on the 28th May in each year. A manufacturer's licence expires on the 30th September and a wholesale dealer's on the 30th June in every year. Where, however, a retailer's off-licence is held by the holder of a wholesale dealer's licence for the sale of the same liquor, the retailer's licence expires on the same day as the wholesale dealer's. And a licence *ipso facto* expires by reason of default in payment of the second half of the duty where the latter can be paid in half-parts in the cirumstances set out in the next paragraph.

Duty may be Paid by Two Instalments of One-half each where it exceeds the sum of £60, the first half being required to be paid on the grant of the licence, and the other immediately after the expiration of six months from the commencement of the year for which the licence was granted. But if the licence was granted after the month of September, the second half of the duty will be payable on the 1st March next after the commencement of such year. The foregoing applies to two or more licences granted in respect of one set of premises as it applies to a single licence.

Definitions.—In reading this article and the schedule regard should be had to the following definitions: The expression *beer* includes ale, porter, spruce beer, black beer, and any other description of beer, and any liquor which is made or sold as a description of beer or as a substitute for beer, and which on analysis of a sample thereof at any time is found to contain more than 2 per cent. of proof spirit; *wines* means imported wines; *sweets* are any fermented liquor made from fruit and sugar, mixed or not with any other material, and includes British wines, made wines, mead, and metheglin. *Cider* includes perry. A *publican's licence* is the on-licence taken out by a retailer of spirits, and the expression *beerhouse* licence means the on-licence to be taken out by a retailer of beer. *Fully-licensed* premises are premises to which a publican's licence is attached, and the expression *beerhouse* means premises to which a beerhouse licence is attached.

THE SCHEDULES

EXCISE LIQUOR LICENCES

A.—Manufacturers' Licences

Licence to be taken out annually.	Duty.	Corresponding existing Licence.
1. Spirits:—		
(*a*) By a distiller of spirits.	Duty specified in Scale 1.	Licence for manufacture of spirits under 6 Geo. IV. c. 81, s. 2.
(*b*) By a rectifier or compounder of spirits.	£15, 15s.	
2. Beer:—		
By a brewer of beer for sale.	Duty specified in Scale 2.	Licence on which duty is payable under 43 & 44 Vict. c. 20, s. 10.
By a brewer of beer other than a brewer for sale.	If he is the occupier of a house of an annual value exceeding ten pounds and not exceeding fifteen pounds, and brews solely for his own domestic use, 9s. In any other case, 4s.	Licence on which duty is payable under 43 and 44 Vict. c. 20, s. 10; 44 & 45 Vict. c. 12, s. 14; or 48 & 49 Vict. c. 51, s. 5.
3. Sweets:—		
By a maker for sale of sweets.	£5, 5s.	Licence on which duty is payable under 6 Edw. VII. c. 20, s. 7.

SCALE 1

Spirit Distiller's Licence

Number of gallons computed at proof of spirits distilled during the preceding year—

	Duty.
Not exceeding 50,000 gallons	£10 0 0
Exceeding 50,000 gallons—	
For the first 50,000 gallons	10 0 0
For every further 25,000 gallons or fraction of 25,000 gallons	10 0 0

SCALE 2

Licence to Brewer for Sale

Number of barrels brewed during the preceding year—

	Duty.
Not exceeding 100 barrels	£1 0 0
Exceeding 100 barrels—	
For the first 100 barrels	1 0 0
For every further 50 barrels or fraction of 50 barrels	0 12 0

For the purposes of this scale, barrels may be taken at the option of the brewer either to be bulk barrels or standard barrels, and a standard barrel shall be taken to be 36 gallons of beer of an original gravity of 1055 degrees.

Provisions applicable to Manufacturers' Licences

1. A manufacturer's licence, except in the case of a licence to a brewer not for sale, authorises not only the manufacture of the liquor to which it applies in accordance with the licence, but also wholesale dealing (subject in the case of a spirit manufacturer's licence to the provisions of the Spirits Act, 1880) in any liquor which is the produce of the manufacture of the holder of the licence at the premises where the liquor is manufactured, and elsewhere by the manufacturer or a servant or agent of the manufacturer if the liquor is supplied to the purchaser direct from the premises where it is manufactured.

2. The occupier of a house of an annual value not exceeding eight pounds may brew beer solely for his own domestic use without taking out a manufacturer's licence.

3. The duty on a manufacturer's licence granted in respect of a distillery or brewery in respect of which such a licence has not been in force at any time during the preceding year or in respect of which a licence has been in force but no spirits have been distilled or beer brewed under the licence during the preceding year, as the case may be, shall be the minimum duty payable under Scales 1 or 2, as the case may be, and where a manufacturer's licence has not been in force for a full year, the number of proof gallons distilled or the number of barrels brewed during the preceding year shall, or the purpose of payment of duty in the following year, be deemed to be a number bearing the same proportion to the number actually distilled or brewed as the whole year bears to the time for which the licence has been in force.

4. For the purpose of the duties under Scales 1 and 2 the preceding year shall be taken to be the year ending the thirtieth day of June or such other day as the Commissioners may fix either generally or as respects any particular manufacturer.

B.—WHOLESALE DEALERS' LICENCES

Licence to be taken out annually by a wholesale dealer in	Duty. £ s. d.	Corresponding existing Licence.
1. Spirits	15 15 0	Licence on which duty is payable under 6 Geo. IV. c. 81, s. 2.
2. Beer	10 10 0	
3. Wine	10 10 0	Licence on which duty is payable under 6 Geo. IV. c. 81, s. 2.
4. Sweets	5 5 0	Licence on which duty is payable under 23 & 24 Vict. c. 113, s. 1.

Provisions applicable to Wholesale Dealers' Licences

1. A wholesale dealer's licence authorises sale at any one time to one person of liquor in the following quantities, namely:—

(*a*) In the case of spirits, wine, or sweets in any quantity not less than two gallons, or not less than one dozen reputed quart bottles; and

(*b*) In the case of beer or cider in any quantity not less than four and a half gallons, or not less than two dozen reputed quart bottles;

but not in any less quantities.

2. A wholesale dealer's licence need not be taken out by the holder of a manufacturer's licence so far as respects the sale of liquor being the produce of the manufacture of the holder of the manufacturer's licence at the premises where the liquor is manufactured, and elsewhere by the manufacturer or a servant or agent of the manufacturer, if the liquor is supplied to the purchaser direct from the premises where it is manufactured.

3. A person holding the licence to be taken out by a wholesale dealer in wine may deal wholesale in sweets as well as wine without taking out any further wholesale dealer's licence.

4. Where a wholesale dealer's licence for the sale of any liquor is taken out by a person who is the holder of a licence authorising him to sell the same liquor by retail, the duty payable on the wholesale dealer's licence shall be reduced by fifty per cent. Provided that this provision shall not operate so as to reduce the total amount payable for the wholesale dealer's licence and the retailer's licence for any liquor below that payable for the wholesale dealer's licence alone.

C.—Retailers' Licences

I.—*On-Licences*

Licence to be taken out annually by a retailer of	Duty.	Corresponding existing Licence.
1. Spirits (publican's licence).	A duty equal to half the annual value of the licensed premises, subject to the minimum duty payable under Scale 3.	Licence on which duty is payable under 43 & 44 Vict. c. 20, s. 43 (1).
2. Beer (beerhouse licence).	A duty equal to a third of the annual value of the licensed premises, subject to the minimum duty payable under Scale 3.	Licence on which duty is payable under 43 & 44 Vict. c. 20, s. 41.
3. Cider	Half the duty specified in Scale 4.	
4. Wine	Duty specified in Scale 4.	
5. Sweets	Half the duty specified in Scale 4.	

SCALE 3

Minimum Duty payable for Publican's and Beerhouse Licences

There shall be a minimum duty payable on the publican's licence and the beerhouse licence respectively, as shown in the following scale and where the annual value of any licensed premises is less than the annual value to which the minimum duty corresponds, duty shall be charged as if the premises were of that annual value.

Population.	Minimum Duty.	
	Publican's Licence.	Beerhouse Licence.
In Great Britain—	£ s.	£ s.
In areas which are not urban areas, and in urban areas with a population of less than 2,000	5 0	3 10
In urban areas with a population of—		
2,000 and less than 5,000	10 0	6 10
5,000 „ „ 10,000	15 0	10 0
10,000 „ „ 50,000	20 0	13 0
50,000 „ „ 100,000	30 0	20 0
100,000 or above	35 0	23 10
In Ireland—		
In areas which are not urban areas, and in urban areas with a population of less than 10,000 . . .	5 0	3 10
In urban areas with a population of 10,000 or above .	7 10	4 0

For the purposes of this scale an urban area means any county borough, borough, or other urban district; and the administrative county of London shall be deemed to be a single urban area; and population shall be calculated according to the last published census for the time being. The boroughs of Burslem, Hanley, Longton, and Stoke-

upon-Trent, and the urban districts of Fenton and Tunstall, which, in pursuance of the Borough of Stoke-on-Trent Order, 1908, as confirmed by the Local Government Board's Provisional Order Confirmation (No. 3) Act, 1908, are, as from the thirty-first day of March nineteen hundred and ten, to form (subject to certain provisions as to differential rating and other matters to have effect for a period of twenty years) one borough to be called the borough of Stoke-upon-Trent, shall, notwithstanding anything contained in that Order, continue for the period of twenty years from the said date to be separate urban areas for the purposes of this scale.

SCALE 4

WINE RETAILER'S ON-LICENCE

Annual value of licensed premises—	Duty.
Under £30	£4 10 0
£30 and under £50	6 0 0
£50 „ £100	9 0 0
£100 and over	12 0 0

II.—*Off-Licences*

Licence to be taken out annually by retailer of	Duty.	Corresponding existing Licence.
1. Spirits	Duty specified in Scale 5.	As respects England the additional retail licence on which duty is payable under 24 & 25 Vict. c. 21, s. 1. As respects Scotland, licence on which duty is payable under 16 & 17 Vict. c. 67, s. 8. As respects Ireland, licence on which duty is payable under 6 Geo. IV. c. 81, s. 2, and 8 and 9 Vict. c. 64, s. 1. Additional liquor licence on which duty is payable under 11 & 12 Vict. c. 121, s. 10
2. Beer	Duty specified in Scale 6.	As respects England, the beer retailer's licence and the additional beer dealer's retail licence on which duty is payable under 43 and 44 Vict. c. 20, s. 41. As respects Scotland, licence on which duty is payable under 16 and 17 Vict. c. 67, s. 8. As respects Ireland, dealer's additional retail licence on which duty is payable under 43 & 44 Vict. c. 20, s. 41.
3. Cider	£2	Licence on which duty is payable under 43 & 44 Vict. c. 20, s. 41.
4. Wine	Duty specified in Scale 7.	As respects England and Ireland, licence on which duty is payable under 43 & 44 Vict. c. 20, s. 41. As respects Scotland, licence on which duty is payable under 39 and 40 Vict. c. 16, s. 4. Licence as a dealer in wine, on which duty is payable under 6 Geo. IV. c. 81, s. 2, so far as such a licence authorises sale by retail.
5. Sweets	£2	Licence on which duty is payable under 43 & 44 Vict. c. 20, s. 41.

SCALE 5

Spirit Retailer's Off-Licence

Annual value of licensed premises—	Duty.
Not exceeding £10	£10 0 0
Exceeding £10 and not exceeding £20	11 10 0
„ £20 „ „ £30	14 0 0
„ £30 „ „ £50	15 0 0
„ £50 „ „ £75	16 0 0
„ £75 „ „ £100	17 10 0
„ £100 „ „ £250	19 0 0
„ £250 „ „ £500	30 0 0
„ £500	50 0 0

SCALE 6

Beer Retailer's Off-Licence

Annual value of licensed premises—	Duty.
Not exceeding £10	£1 10 0
Exceeding £10 and not exceeding £20	2 0 0
„ £20 „ „ £30	2 10 0
„ £30 „ „ £50	3 0 0
„ £50 „ „ £75	3 10 0
„ £75 „ „ £100	4 0 0
„ £100 „ „ £250	4 10 0
„ £250 „ „ £500	7 0 0
„ £500	10 0 0

SCALE 7

Wine Retailer's Off-Licence

Annual value of licensed premises—	Duty.
Not exceeding £20	£2 10 0
Exceeding £20 but not exceeding £30	3 0 0
„ £30 „ „ £50	3 10 0
„ £50 „ „ £75	4 0 0
„ £75 „ „ £100	4 10 0
„ £100 „ „ £250	5 0 0
„ £250 „ „ £500	7 0 0
„ £500	10 0 0

Provisions applicable to Retailers' Licences

General

1. A retailer's licence authorises sale at any one time to one person of liquor in the following quantities, namely:—

(*a*) in the case of spirits, wine, or sweets, in any quantity not exceeding two gallons or not exceeding one dozen reputed quart bottles; and

(*b*) in the case of beer or cider, in any quantity not exceeding four and a half gallons or not exceeding two dozen reputed quart bottles;

but not in any larger quantities.

2. A retailer's off-licence shall not be granted to the holder of a retailer's on-licence if the off-licence authorises the sale of any liquor which the holder of the on-licence is not authorised to sell by retail under his on-licence, and any retailer's off-licence granted in contravention of this provision shall be void.

3. A person holding the licence to be taken out by a retailer of beer may sell by retail cider as well as beer without taking out any further retailer's licence.

4. A person holding the licence to be taken out by a retailer of wine may sell by retail sweets as well as wine without taking out any further retailer's licence.

Provisions applicable to Retailers' On-Licences

1. A retailer's on-licence authorises sale by retail of the liquor to which the licence extends for consumption either on or off the premises.

2. A person holding the on-licence to be taken out by a retailer of spirits may sell by retail beer, cider, wine, and sweets, as well as spirits, without taking out any further retailer's licence.

3. Where it is shown to the satisfaction of the Commissioners that the annual value of the premises exceeds five hundred pounds, a retailer's on-licence may be granted at the option of the licence holder on payment of an amount equal to one-third of the annual licence value as certified for the purposes of this Act, and where that amount has not been certified for the purpose of the register to be prepared under this Act, the licence holder may require that amount to be so certified:

Provided that—

(*a*) the duty payable in pursuance of this provision shall not be less than two hundred and fifty pounds in the case of fully-licensed premises, or in the case of a beerhouse one hundred and sixty-six pounds thirteen shillings and fourpence; and

(*b*) where the annual licence value has not been certified, the licence shall be granted on a provisional payment of the minimum duty payable under this provision, or of one-fifth of the full duty, whichever is the higher, and, upon the annual licence value being certified, the duty shall be adjusted by the return of any over-payment or by the recovery, as a debt to His Majesty, of any sum by which the amount paid falls short of the amount which is found to be payable.

This provision shall apply to premises, whatever their annual value, if they are structurally adapted for use as an hotel and are *bonâ fide* so used, and it is shown to the Commissioners that it is impracticable to obtain a reduction of duty in respect of the premises under the provisions of this Act enabling such a reduction to be obtained for hotels in certain cases, owing to the fact that visitors resort to the place where the premises are situated only during certain seasons of the year. In such a case, the minimum amount of duty payable shall instead of two hundred and fifty pounds be thirty pounds in the case of premises of an annual value not exceeding one hundred pounds, and in any other such case fifty pounds.

4. The maximum amount of duty payable in respect of a retailer's on-licence granted to the proprietor or occupier of premises adapted to be and *bonâ fide* used only for any of the following purposes, namely, for judicial or public administrative purposes or as a theatre or place of public or private entertainment, or as public gardens, picture galleries, or exhibitions, or for any similar purpose to which the holding of the licence is merely auxiliary, shall, in the case of a theatre the annual value of which does not exceed two thousand pounds, be twenty pounds, and in any other case be fifty pounds, but it shall be a condition of any such licence that intoxicating liquor is not sold under the licence except while the premises are open and being used, and to persons *bonâ fide* using the premises, for the said purposes.

5. The maximum amount of duty payable in respect of a retailer's on-licence granted to the proprietor or occupier of premises adapted to be and *bonâ fide* used as refreshment rooms at a railway station shall be fifty pounds.

6. Where any premises include a music hall or other similar place of public entertainment (hereinafter referred to as a place of entertainment), a retailer's on-licence may be granted, at the option of the licence holder, on payment of a duty of fifty pounds, together with such sum as would be payable as duty under this Act on the part of the premises not used as the place of entertainment if that part were a separate set of premises, but it shall be a condition of any such licence that intoxicating liquor is not sold under the licence in the place of entertainment except whilst that place is open and being used, and to persons *bonâ fide* using that place, as a place of entertainment.

Provisions applicable to Retailers' Off-Licences

1. A retailer's off-licence authorises the sale by retail of the liquor to which the licence extends for consumption off the premises only.

2. A person holding the off-licence to be taken out by a retailer of spirits may not sell spirits in open vessels, or in England in any quantity less than one reputed quart bottle.

3. A person holding the off-licence to be taken out by a retailer of wine may not sell wine in open vessels or in England or Ireland in any quantity less than one reputed pint bottle.

D.—Passenger Vessel Licences

1. Licence to be taken out annually in respect of a passenger vessel by the master or other person belonging to the vessel nominated by the owner of the vessel— Duty of £10.	Corresponding existing licence.
2. Licence to be taken out in respect of a passenger vessel by the master or other person belonging to the vessel nominated by the owner of the vessel, and to be in force for one day only— Duty of £2.	Licence on which duty is payable under 43 & 44 Vict. c. 20, s. 45

Provisions applicable to Passenger Vessel Licences

1. A passenger vessel licence granted in respect of any vessel authorises the sale by retail while the vessel is engaged in carrying passengers of any intoxicating liquor on the vessel to passengers for consumption on the vessel.

2. A passenger vessel licence authorises the sale of tobacco as well as the sale of intoxicating liquor.

3. In the event of any person to whom a passenger vessel's licence has been granted ceasing to be master of the vessel or to belong to the vessel, the licence may be transferred to any person who is for the time being master of the vessel or is for the time being a person belonging to the vessel and nominated by the owner of the vessel for the purpose.

4. In the event of the transfer of the vessel to some other owner, the licence granted under this section shall cease to have effect as respects that vessel, but may, in that event and in the event of the loss of the vessel, be transferred, on the application of the owner of the vessel, to the master of some other vessel belonging to him or to some person belonging to such other vessel and nominated by the owner for the purpose.

5. For the purpose of giving jurisdiction, any sale of liquor on a passenger vessel shall be deemed to have taken place either where it has actually taken place or in any place in which the vessel may be found.

E.—Railway Restaurant Car Licences

Licence to be taken out annually in respect of a railway restaurant car by the railway company or other person owning the car—
Duty of £1.

Provisions applicable to Railway Restaurant Car Licences

1. A licence for a railway restaurant car may be granted without the production of a justice's licence or certificate.

2. A railway restaurant car licence granted in respect of a car in which passengers can be supplied with meals authorises the sale by retail to passengers on the car of any intoxicating liquor for consumption on the car.

F.—Occasional Licences

Occasional licences granted under section thirteen of the Revenue Act, 1862 (25 & 26 Vict. c. 22), section twenty of the Revenue Act, 1863 (26 & 27 Vict. c. 33), and section five of the Revenue Act, 1864 (27 & 28 Vict. c. 18).

Duties:—

(*a*) Sale of any intoxicating liquor—per day, 10s.

(*b*) Sale of beer or wine only—per day, 5s.

Valuation of Licensed Premises.—The annual value of any premises for the purposes of licence duty is in England and Scotland—(*a*) the inhabited house duty value if there is such a duty applicable; and (*b*) in a case where there is no inhabited house duty value applicable, the income tax value if there is such a value applicable; and (*c*) if neither inhabited house duty nor income tax applicable by the Commissioners (Revenue Act, 1911, section 8). In the determination of that value the duty on the licence cannot be deducted.

Annual licence value, a register of which is kept by the Commissioners, is the amount by which the annual value of the premises as licensed premises exceeds the annual value which the premises would bear if they were not licensed premises. These values are calculated on the same basis as for compensation under the Licensing Act, 1904, in default of agreement and approval in cases where compensation is payable under that Act. But no amount on account of depreciation of trade fixtures can be included in the value of the premises as licensed premises. In the case of hotels or other premises used for purposes other than the sale of intoxicating liquor, no increased value arising from profits not derived from the sale of intoxicating liquor can be taken into consideration.

The annual licence value is fixed and certified by the Commissioners of Inland Revenue. They post a copy of the certificate to the licence holder. The certificate states the two annual values by reference to which the annual licence value has been arrived at. Any other person interested in the premises is also entitled to a copy of the certificate. Where corrections have been made in the valuation, corrected certificates must be sent. There is a like appeal from such a certificate as from a determination of compensation. Particulars as to the premises may be required by the Commissioners from the licence holders and any person interested therein. If these are not furnished within time, not less than thirty days, specified in the notice, a fine of £20 is incurred.

Reduction in case of Hotels or Restaurants.—An hotel, in order to qualify for a reduction of duty, must be structurally adapted to be used, and *bonâ fide* used, for the purpose of the reception of guests and travellers desirous to sleep on the premises. A restaurant must be structurally adapted for the use, and *bonâ fide* used, as such. Moreover, in the case of an hotel the receipts from the sale of intoxicating liquor in the preceding year must have been less than one-third of the total receipts in that year from the business of all descriptions carried on by the licence holder in the premises. In the case of a restaurant the like maximum liquor receipts are two-fifths. Receipts are in general calculated as for a year ending the 31st March, but the Commissioners have power to fix other terminal dates for particular areas or cases. Premises qualified in accordance with the foregoing conditions are entitled to a reduction of duty, which bears the same proportion to the full duty payable as the receipts from the sale of intoxicating liquor bear to the total receipts, provided that the reduced duty is not less than one-thirtieth of the annual value of the premises in the case of fully licensed premises, and in any other case one-fifteenth of the full duty. In a case, however, to which a minimum duty is applicable under Scale 3 in the schedule, the reduced duty cannot be less than that minimum. Where a licence is granted for the first time, or the annual licence value of the premises has not been certified, the licence may be granted on a provisional payment of one-fifth of the full duty to be finally adjusted after the licence has been in force for six months in accordance with the receipts during that period.

Six-Day Licence and Early-Closing Licence.—In either of these cases the right to obtain the licence on payment of a reduced duty does not exist where a reduced duty is payable under the foregoing provisions. The full duty payable is the amount of that duty reduced in the case of a six-day licence or an early-closing licence by one-seventh, and in the case of a licence which is both a six-day and an early-closing licence by two-sevenths.

Tied Houses.—Any increase of the duty payable in respect of "tied" licenced premises occasioned by the Finance (1909-10) Act, 1910, may be recovered by the licence holder from the party to whom he is tied. It may be recovered as a debt due from the latter, or deducted from any sum due to him. If the amount cannot be agreed between the parties it will be determined by the Commissioners. Then it will be an amount proportionate to any increased rent of the licensed premises, or increased prices of intoxicating liquor supplied, or other benefit obtained by the party to whom the licence holder is tied by reason of the covenant, agreement, undertaking, or obligation constituting the tie.

Reduction of Monopoly Value Payments.—Such a reduction can be obtained where the amount of any annual payments to be made, or of any capital sum which has been paid, in pursuance of monopoly value conditions attached to a new on-licence under the Act of 1904 exceeds the amount which should reasonably be required, having regard to the increase in licence duty under the Finance Act. The Commissioners first give the justices by whom the conditions have been attached an opportunity to report on the matter. Then they will make such reduction as may be justified by the decrease, if any, of the monopoly value owing to the increase of the licence duty. The determination of the Commissioners is subject to a like appeal as on a determination of compensation.

Clubs.—In January in every year the secretary of every registered club must deliver to the Commissioners a statement of the purchases during the preceding calendar year of intoxicating liquor to be supplied in or to the club or on behalf of the club to its members. This statement is charged with an Excise duty of 6d. in the £ on the purchases shown therein. The secretary is liable to a fine for omitting to furnish this statement, and to imprisonment for delivering one which is in any material particular untrue. Duty in arrear on the 1st March may be levied by distress on the premises of the club, and the goods distrained will be sold by public auction after giving six days' previous notice of the sale. Before the distress can be levied written notice requiring payment must be served on the secretary by leaving the notice at the club premises, or by sending it to him by post addressed to the club. Whilst duty is in arrear after the 1st March, or whilst the secretary is at any time in default in supplying his statement, the supply of intoxicating liquor in the club will be deemed to be a sale of intoxicating liquor without a licence.

LLOYD'S (continuing article in Vol. IV.).—We will now set out the statutory requirements to be complied with by underwriters who are members of Lloyd's in respect of life assurance and fire accident, employers' liability, and bond investment business.

Life Assurance.—1. Every underwriter shall deposit, and keep deposited in such manner as the Board of Trade may direct, a sum of £2000. The Board of Trade may make rules as to the payment, repayment, investment of, and dealing with, a deposit, the payment of interest and dividends from any such investment, and for any other matters in respect of which they may make rules in relation to deposits made by assurance companies. The sum so deposited shall, so long as any liability under any policy issued by the underwriter remains unsatisfied, be available solely to meet the claims under such policies. 2. The underwiter shall furnish every year to the Board of Trade a statement in such form as may be prescribed by the Board, showing the extent and character of the life assurance business effected by him.

Fire and Accident Business.—1. Except as hereinafter provided, every underwriter shall comply with the following requirements:—(*a*) He shall deposit, and keep deposited in such manner as the Board of Trade may direct, a sum of £2000 in respect of each class of business. The Board of Trade may make rules as to payment, repayment, investment of, and dealing with, a deposit, the payment of interest and dividends from any such investment, and for any other matters in respect of which they may make rules in relation to deposits made by assurance companies. The sum so deposited shall, so long as any liability under policy issued by the underwriter remains unsatisfied, be available solely to meet claims under such policies. (*b*) He shall furnish every year to the Board of Trade a statement, in such form as may be prescribed by the Board, showing the extent and character of the fire or accident insurance business effected by him. 2. An underwriter who carries on fire insurance or accident insurance business may, in lieu of complying with the above requirements, elect to comply with the following conditions:—(*a*) All premiums received by or on behalf of the underwriter in respect of fire and accident insurance or re-insurance business carried on by him, either alone or in conjunction with any other insurance business for which special requirements are not laid down in the schedule, shall without any apportionment be placed in a trust fund in accordance with the provisions of a trust deed approved by the Board of Trade. (*b*) He shall also furnish security to the satisfaction of the Board of Trade (or, if the Board so direct, to the satisfaction of the committee of the association), which shall be available solely to meet claims under policies issued by him in connection with fire and accident business, and any other non-marine business carried on by him for which special requirements are not laid down in this schedule. The security may be furnished in the form

of either a deposit or a guarantee, or partly in the one form and partly in the other. The amount of security to be furnished shall never be less than the aggregate of the premiums received or receivable by the underwriter in the last preceding year in connection with such fire and accident and other non-marine business. (*c*) The accounts of every underwriter shall be audited annually by an accountant approved by the committee of the association, who shall furnish a certificate to the committee of the association and to the Board of Trade in a form prescribed by the Board of Trade. (*d*) For the purpose of these requirements "non-marine insurance business" means the business of issuing policies upon subject matters of insurance other than the following, namely: Vessels of any description, including barges and dredges, cargoes, freights, and other interests which may be legally insured by, in, or in relation to vessels, cargoes, freights, goods, wares, merchandise, and property of whatever description insured for transit by land or water or both, and whether or not including warehouse risks or similar risks in addition or as incidental to such transit.

Employers' Liability Insurance.—1. Every underwriter shall deposit and keep, deposited in such manner as the Board of Trade may direct, a sum of £2000. The Board of Trade may make rules as to the payment, repayment, investment of, and dealing with, a deposit, the payment of interest and dividends from any such investment, and for any other matters in respect of which they may make rules in relation to deposits made by assurance companies. The sum so deposited shall, so long as any liability under any policy issued by the underwriter remains unsatisfied, be available solely to meet the claims under such policies. 2. Where the person insured by any policy issued by an underwriter is liable to make a weekly payment to any workman during the incapacity of the workman and the weekly payment has continued for more than six months, the liability therefor shall, before the expiration of twelve months from the commencement of the incapacity, be redeemed by the payment of a lump sum in accordance with paragraph (17) of the first schedule to the Workmen's Act, 1906, and the underwriter shall pay the lump sum into the County Court and shall inform the Court that the redemption has been effected in pursuance of the provisions of this schedule. 3. The underwriter shall furnish every year to the Board of Trade a statement in such form as may be prescribed by the Board, showing the extent and character of the employer's business effected by him. 4. For the purpose hereof the word "policy" means a policy insuring any employer against liability to pay compensation or damages to workmen in his employment.

Bond Investment Business.—1. Every underwriter shall deposit, and keep deposited in such a manner as the Board of Trade may direct, £2000. The Board of Trade may make rules as to the payment, repayment, investment of, and dealing with, a deposit, the payment of interest and dividends from any such investment, and for any other matters in respect of which they may make in relation to deposits made by assurance companies. The sum so deposited shall, so long as any liability under any policy issued by the underwriter remains unsatisfied, be available solely to meet claims under such policies. 2. The underwriter shall furnish every year to the Board of Trade a statement in such form as may be prescribed by the Board, showing the extent and character of the bond of investment business effected by him.

MAIL SHIPS.—By the Mail Ships' Act, 1891, where a convention as to mail ships has been made with a foreign country, the King in Council can order that the Act shall apply to such convention, subject to any conditions, exceptions, or qualifications contained in the Order. The Order must recite the terms of the convention and may be revoked or altered by further Orders in Council, but it lasts only so long as the convention. These Orders in Council must be laid before both Houses of Parliament, and published in the *London Gazette* and by the Government publishers. *Crew, &c., carrying letters.*—Where there is a convention to which the Act applies, neither the master, crew, passengers, or any one on board a British or foreign mail ship under it shall convey for delivery to another person any letter, except those contained in the mail bags or the despatches sent by the British Government or the foreign State. *Penalties.*—If any one on board acts in contravention of, or refuses or fails to give up any letter conveyed by him to the postal officer or master of the ship, such person is liable, on summary conviction, to a fine not exceeding £5. The master has to see that the conditions are enforced, and if he wilfully neglects to do so or fails to report any breach to the authorities of the port, he is liable to a fine not exceeding £5. But this fine will not be enforced where the person liable has already been punished

by the law of the foreign State. Letters exempted from the exclusive privilege of the Postmaster-General under the Post Office Act of 1837 are outside the Act. These are (*a*) letters sent by a private friend and delivered by him to the person to whom they are directed; (*b*) letters sent by a private vessel not being a packet boat; (*c*) documents sent with goods and not paid for separately. Common carriers, crews of mail ships, or passengers on mail ships are expressly forbidden to carry letters, although they receive no reward therefor. *Security given by owners of mail ships.*—The owner of any ship, British or foreign, may apply to the High Court in England and produce (*a*) a certificate by a Secretary of State that the owner is subsidised for the postal service mentioned in the certificate; (*b*) evidence of the nature of such service and the number of and particulars respecting the ships engaged; and give notice to the Board of Trade of the application. The Court, after hearing the parties, shall fix the nature and amount of security required, and the maximum number and tonnage of ships which such security shall cover. The form of such security is by bond signed by the owner and guaranteed (*a*) by the personal security of a surety plus adequate real security given by the surety; (*b*) or by payment into Court of cash or British Government securities. If security is given and maintained to the satisfaction of the Court, the ships actually engaged in the postal service shall be deemed to be exempted mail ships. The Board of Trade shall give the prescribed notices for informing arresting authorities that they are exempted mail ships. Every further application must be notified to the Board of Trade, and if the security becomes insufficient from any cause, the Board of Trade can apply to the High Court, and the Court can order it to be increased to the satisfaction of the Court within a reasonable time; in default the ships cease to be mail ships, and the Board of Trade gives notice to the arresting authorities of such cesser. The security may be varied or withdrawn on application, according to rules of Court or as the Court thinks just, but, on withdrawal, the Court must be satisfied that (*a*) the notice of withdrawal has been given to the arresting authorities; (*b*) there is no claim pending which the security covered. *Arrest and execution.*—On an exempted mail ship in a British port no person shall be arrested without warrant, and before any process, civil or criminal, is executed against such person there must be (*a*) written notice, of the intention to arrest and the hour of search if necessary, left with the Consul of the State to which the ship belongs, if there is one at the port; (*b*) then it will be the duty of the master, if the person sought is on board, to enable the officer to arrest him; (*c*) if unable to arrest the officer may, after the interval for notice fixed in the convention, search the ship and arrest the person if found. The ship may be delayed for this purpose during the time specified in the convention. If the master refuses to permit a search, any officer of customs may detain the ship, and the master is liable to a fine of £500; and the master himself can be arrested, if he is the person sought. But an exempted mail ship cannot be arrested (*a*) to found jurisdiction in admiralty; (*b*) to enforce payment of any damages, fine, or debt; (*c*) to enforce any forfeiture arising from misconduct of master or crew, but the Court can proceed by service in the United Kingdom, as is prescribed by the rules of Court, and the High Court shall cause the security to be applied in discharge of such damages, &c. If the ship has been arrested, on proof that it is an exempted mail ship it shall be released. If the Commissioners of Customs under any Act or for waiving any forfeiture require a deposit to be made by an exempted mail ship, the amount shall be paid out of the security, to be paid and applied as the Commissioners direct. *Application to public ships.*—Where ships in the navy or other public service are employed as mail ships, the King can by agreement bring them under the provisions of the Act by Order in Council. Then the vessel is an exempted mail ship, and persons on board are liable to arrest, according to the provisions of the Act. *Legal proceedings.*—Fines over £50 are to be recovered in the High Court, and under that amount by summary conviction, with power of reducing the fine in each case by the Court. Offences entailing a higher fine than £50 may be prosecuted on summary conviction, but in such case the fine cannot exceed £50. Summary convictions can be appealed to Quarter Sessions or under the Summary Prosecutions Appeals (Scotland) Act, 1875. Service of the summons is sufficient if made on the master of the ship to which the defendant belongs. The Court may order where the fine against the master cannot otherwise be recovered, the levy of distress or poinding and sale on the ship, tackle, or furniture. The detention and release of a ship is to be governed by regulations made by the Commissioners of Customs. *Appli-*

cation to British Possessions.—This is done by Order in Council after the British Possession has adhered to the convention with the foreign State; and carried out, by rules to be made by the King in Council. If there is a duplicate law in the British Possession, the Act may be suspended by Order in Council, or the law held as part of this Act. In 1904 the Cunard Agreement (Money) Act made a new departure in regard to mail ships, and £2,600,000 were advanced on an agreement with the Cunard Line to build two special vessels and remain a British Line always. This followed on the attempts of the American Shipping Trust to get possession of the Atlantic trade routes. The Wireless Telegraphy Act, 1904, also forbade any British ship installing a wireless system on board, unless under licence granted by the Postmaster-General under certain penalties and conditions. The Shipowner's Negligence (Remedies) Act, 1905, provides that where damages are claimed for injury through negligence in connection with a ship in a British port or within the three mile limit, the ship can be detained, where the owners reside abroad, until security is given. The person giving security, is to be defendant in the action. The plaintiff may be an employer who has paid compensation, or against whom a claim has been made, under the Workmen's Compensation Acts, who can show he will probably be entitled to be indemnified under those Acts.

MARGARINE AND BUTTER.—*Margarine* is defined by the Butter and Margarine Act, 1907, as meaning "any article of food, whether mixed with butter or not, which resembles butter and is not milk-blended butter." *Milk-blended butter*, that is to say, "any mixture produced by mixing or blending butter with milk or cream other than condensed milk or cream," is dealt with under the same conditions as margarine with regard to those applicable to its sale and description, except that a name other than "margarine" may be applied to it if prescribed by the Board of Trade, and that on sale it is delivered in a wrapper on which is printed the prescribed name and such description of the article, setting out the percentage of moisture or water contained therein, as may be approved by the Board. It is a punishable offence to sell or expose or offer for sale, or have in possession for the purpose of sale, or to describe, any milk-blended butter contrary to the provisions of the law.

Registration of factories and consignments—In Vol. V. (p. 101) it has been noted that a margarine factory must be registered. Now registration is also necessary for—(*a*) Butter factories, that is to say, any premises on which by way of trade butter is blended, reworked, or subjected to any other treatment, but not so as to cease to be butter; and (*b*) any premises on which there is manufactured any milk-blended butter, or on which there is carried on the business of a wholesale dealer in milk-blended butter Consignments of milk-blended butter must be registered in the same manner as consignments of margarine. No premises can be used as a butter factory that form part of or communicate, otherwise than by a public street or road, with any other premises which require to be registered as a margarine or milk-blended factory. Registered premises are liable to inspection.

Adulterants and moisture.—The occupier of a butter factory is guilty of a punishable offence if any substance intended to be used for the adulteration of butter is found in his factory. If any oil or fat capable of being so used is found it will be deemed to be intended to be so used unless the contrary is proved. Neither butter nor margarine, when prepared for sale or consignment, must contain more than 16 per cent. of moisture. It is an offence to keep such in a factory or to consign it, and the occupier or consigner will be punished unless he can prove to the satisfaction of the Court that the butter or margarine was not made, blended, reworked, or treated in the factory. To manufacture, sell, or expose for sale, or have in possession for the purpose of sale, any milk-blended butter containing more than 24 per cent. of water is to be guilty of a punishable offence.

Importation.—The statute referred to at the commencement of this article, and the Sale of Food and Drugs Act, 1899, contain elaborate provisions intended to prevent the importation of butter substitutes insufficiently marked. If there is imported into the United Kingdom any of the following articles, namely—(*a*) Margarine or margarine-cheese, except in packages conspicuously marked "Margarine" or "Margarine-cheese," as the case may require; or (*b*) adulterated or impoverished milk or cream, except in packages or cans conspicuously marked with a name or description indicating that the milk or cream has been so treated; or (*c*) condensed, separated, or skimmed milk, except in tins or other receptacles which bear a label whereon the words "Machine-

skimmed Milk" or "Skimmed Milk," as the case may require, are printed in large and legible type; or (*d*) any adulterated or impoverished article of food specified by Order in Council, unless the same be imported in packages or receptacles conspicuously marked with a name or description indicating that the article has been so treated; or (*e*) butter containing more than 16 per cent. of water; or (*f*) margarine containing more than 16 per cent. of water, or more than 10 per cent. of butter fat; or (*g*) milk-blended butter containing more than 24 per cent. of water; or (*h*) milk-blended butter, except in packages conspicuously marked with a name approved by the Board of Agriculture; or (*i*) butter, margarine, or milk-blended butter which contains a prohibitive preservative, or an amount of a permissible preservative in excess of the prescribed limit;—the importer is liable, on conviction, to heavy penalties. The word "importer" here includes any person who, whether as owner, consigner, or consignee's agent or broker, is in possession of, or in anywise entitled to the custody or control of, the article. The fancy name may not be used in combination with the word "margarine," as, *e.g.*, "Karmo-Margarine" (*Williams* v. *Baker*).

Marking of wrappers.—A dealer in margarine commits a punishable offence if, in any wrapper inclosing margarine, or in any package containing margarine, or on any label attached to a parcel of margarine, or in any advertisement or invoice of margarine, he describes it by any name other than "margarine," or a name combining the word "margarine" with a fancy or other descriptive name approved by the Board of Agriculture and printed in type not larger than and in the same colour as the word "margarine." A name will not be approved by the Board if it refers to or is suggestive of butter or anything connected with the dairy interest, and no such name will be approved as a name under which milk-blended butter may be imported or dealt with. *See* DAIRIES.

MATCHES.—White phosphorus, that is to say, the substance usually known as white or yellow phosphorus, may not lawfully be used in the manufacture of matches. A factory in which it is so used is not a factory kept in conformity with the Factory and Workshops Act (White Phosphorus Matches Prohibition Act, 1908). A factory inspector is entitled to enter a match factory in order to analyse the materials used, the occupier having the right to have any samples taken divided into two parts, marked and sealed, one of which is to be delivered to him. It is now unlawful for a retail dealer to have in his possession for the purpose of sale any matches made with white phosphorus. Such matches may not be imported into this country.

MINERAL RIGHTS DUTY.—This duty, introduced by the Finance (1909–10) Act, 1910, is levied on the rental value of all rights to work minerals and of all mineral way-leaves. It is charged at the rate of 5 per cent., or 1s. for every £1, of that rental value. It is payable for each financial year from and including the year ending the 31st May 1910.

Definitions.—For the purposes of this duty the following expressions have the meanings assigned to them respectively. "Total value" means the amount which the fee simple of the minerals, if sold in the open market by a willing seller in their then condition, might be expected to realise. "Capital value" means the total value, after allowing a deduction for any works executed or expenditure of a capital nature incurred *bonâ fide* by or on behalf of any person interested in the minerals for the purpose of bringing the minerals into working, or where the minerals have been partly worked, a reduction proportionate to the amount of minerals which have not been worked. "Proprietor" means the person for the time being entitled in possession to the minerals, or to the rents and profits thereof, or any part of those rents and profits, but does not include a person entitled as lessee other than a person entitled to the possession of land comprised in a lease for any long term of years to which sect. 65 of the Conveyancing Act, 1881, applies. "Rent" includes yearly or other rent, and any fine, premium, or foregift, and any payment, consideration, or benefit in the nature of a fine, premium, or foregift. "Mining lease" means a lease, tenancy, or licence, by deed, parol, or otherwise, for mining purposes, *i.e.* for searching for, winning, working, getting, making merchantable, carrying away, or disposing of, mines and minerals, or purposes connected therewith. So "lessor" and "lessee" includes "licensor" and "licensee" respectively. A "working lessee" is the one who actually works or would have the right to actually work if the minerals were worked, or the person in actual enjoyment of a wayleave. "Working year" is the year ending 30th September, or such other day as may be approved by the Commissioners. "Last working year" is the working year completed immediately before the 1st January in any financial year for which the duty is paid "Mineral way-leave" means any way-leave, air-leave,

water-leave, or right to use a shaft granted to or enjoyed by a working lessee, whether above or under ground, for the purpose of access to or the conveyance of the minerals, or the ventilation or drainage of his mine or otherwise in connection with the working of the minerals.

Minerals are "being worked" if they are being won to be immediately worked. They are comprised in a lease if the right to work them is the subject of a mining lease, or if they are being worked under the terms of such a lease although the lease has expired. Where any minerals are being worked by a colliery, quarry, or other working, all the minerals belonging to the same proprietor, if worked by him, and which would, in the ordinary course of events, be worked by the same colliery, quarry, or other working, are deemed to be minerals which are being worked at that date. So with minerals which the lessee has power to work if they are being worked by a lessee. Where it is impracticable to fix a sum satisfactorily representing a rent customary in a district, the rent which would be paid under similar circumstances and ordinary conditions elsewhere is substituted for the customary rent.

What are Minerals?—The word "minerals" is not defined by the statute. It is provided, however, by sect. 20 (5) that the duty shall not be charged in respect of common clay, common brick clay, common brick earth, or sand, chalk, limestone or gravel.

Rental Value.—It is upon the rental value of mineral rights that the duty is charged, and consequently it is important to note what is to be taken as the rental value in particular cases. Where the right to work the minerals is the subject of a mining lease no difficulty can arise, as then the amount of rent paid by the working lessee in the last working year in respect of that right will be the rental value. So, too, in the case of a mineral way-leave. There the amount of rent paid by the working lessee in the last working year in respect of the way-leave is the measure of the rental value. But the minerals may be worked by the proprietor. In this case the rental value is an amount determined by the Commissioners of Inland Revenue. This amount should be the sum which would have been received as rent by the proprietor in the last working year if the right to work the minerals had been leased to a working lessee for a term and at a rent on conditions customary in the district, and the minerals had been worked to the same extent and in the same manner as they have been worked by the proprietor in that year. The proprietor is entitled to a copy of the valuation made by the Commissioners.

If the rent paid by a working lessee exceeds the rent customary in the district, and partly represents a return for expenditure by the proprietor which should have been borne by the lessee, the Commissioners may substitute as the rental value such rent as would have been the customary rent if the expenditure had been borne by the lessee.

Valuation.—For this purpose all minerals are treated as a separate parcel of land. Where, however, the minerals are not comprised in a mining lease or being worked, they will be treated as having no value as minerals, unless the proprietor of the minerals, in his return, specifies the nature of the minerals and his estimate of their capital value. Minerals which are comprised in a mining lease or are being worked are treated as a separate parcel of land, not only for the purposes of valuation, but also for the purpose of the assessment of duty. These provisions as to valuation do not apply to minerals which were, on the 30th April 1909, either comprised in a mining lease or being worked by the proprietor, so long as they are for the time being either comprised in a mining lease or being worked by the proprietor. Nor do they apply to any minerals which cease, for a temporary period not exceeding two years, to be comprised in a mining lease or to be worked.

Assessment.—Every proprietor of minerals and every person to whom any rent is paid in respect of any right to work minerals or of any mineral way-leave must furnish the Commissioners with particulars of the amount he receives. A proprietor who is working his minerals himself must furnish particulars of the minerals worked. These particulars should be sent in on receipt of notice from the Commissioners within the time specified by the notice (not less than thirty days), and in the form required. Default herein is met by a penalty of £50, to be recovered in the High Court. The duty is assessed some time after the 1st January in the year for which it is charged.

By whom Duty is Paid and Borne.—The duty is recoverable as a debt due to the Crown from the proprietor of the minerals where he works them. In any other case it is the immediate lessor of the working lessee who is liable for payment. As between

the latter parties the immediate lessor cannot, by any contract whatever, evade the burden of the duty.

Deductions.—There are three cases in which deductions may be claimed:—(1) Where an immediate lessor pays duty, and is himself a lessee of the right to work the minerals or of the way-leave in respect of which the duty is paid; (2) where the duty has been charged on a rental value based on a rent which has been substituted for the rent actually payable; and (3) where the rental value with reference to which increment value duty is charged has been reduced for the purposes of the collection of that duty.

In the first case the immediate lessor may deduct from the rent payable by him to his lessor a sum equal to the duty on a rental value of the same amount as the rent payable. Any person from whose rent any such deduction is made may make a similar deduction from any rent paid by him. The person receiving the rent from which a deduction may be made must allow the deduction, and the person making the deduction will be discharged from the payment of an amount of rent equal to the amount deducted. A contract for the payment of rent without allowing such deduction is void. A penalty of £50 is imposed upon any one who refuses to allow a deduction. In the second and third cases the Commissioners, on the application of a lessor from whose rent a deduction may be made in respect of this duty or increment value duty, as the case may be, will make a corresponding substitution or deduction as regards that rent, if they consider that the grounds for the substitution or deduction, as the case may be, are applicable in the case of the rent with respect to which the application is made.

Special Provisions as to Increment Value Duty and Reversion Duty.—Reversion duty is not charged on the determination of a mining lease. No increment value duty is charged on the grant of such a lease, or in respect of minerals comprised in a mining lease, or being worked, except as a duty payable annually as hereafter set out. Nor is the increment value duty charged in the case of minerals which were, on the 30th April, 1909, either comprised in a mining lease, or being worked by the proprietor, so long as the minerals are for the time being either comprised in such a lease or being worked by the proprietor. The foregoing exemption applies although the minerals cease, for a period not exceeding two years, to be comprised in a mining lease or to be worked.

Increment value duty is charged annually, and not as a capital sum, where it is charged on minerals comprised in a mining lease or being worked. It is taken as the sum (if any) by which, in each year during which the lease continues or the minerals are being worked, as the case may be, the rental value on which mineral rights duty is charged in respect of the right to work the minerals exceeds the annual equivalent of the original capital value of the minerals, or the capital value of the minerals on the last preceding occasion on which increment value duty has been collected otherwise than as an annual duty, if increment value duty has been so collected before the minerals have become comprised in a mining lease or have commenced to be worked. The annual equivalent of any such capital value of the minerals is to be two twenty-fifth parts of that capital value.

If in any case the rental value on which the mineral rights duty is charged represents in part a return for money expended within fifteen years by a lessor in boring or otherwise proving the minerals, the rental value will be reduced for the purposes of the collection of increment value duty by the amount which represents that return. Increment value duty payable annually is recoverable in the same manner as mineral rights duty, with the same right of deduction. Payment of increment value duty as above entitles the proprietor or lessor to relief in any year from mineral rights duty, as such proprietor or lessor, up to the amount paid by him in that year in respect of increment value duty. A deduction from rent is equivalent to a payment by a lessor. Where minerals cease to be comprised in a mining lease or to be worked, their capital value at the time will be specially ascertained, and that capital value will be treated as the original capital value of the minerals. *And see* **Land Values Duties.**

MONEY-LENDERS.—*Assignees of Void Contracts.*—By the Money-Lenders Act of 1900 a contract with a money-lender, in respect of a money-lending transaction, was rendered illegal and void as against the money-lender, as we have already seen, if the money-lender had failed to comply with the requirements of Section 2 of the Act, *e.g.*, had entered into the contract in a name other than that registered by him under the Act. So the law stands to-day. But it was held by the Courts, in 1910, that the contract would be equally illegal and void as against an assignee thereof, though he may have taken the assignment without notice of the circumstances giving rise to its illegality. So an assignee of such securities, though for value and without notice, was in no better position than the actual money-lender and could obtain no benefit from the securities. In practice it was

soon discovered that this interpretation of the law was inevitably not only the cause of great hardship to innocent assignees, but tended unreasonably to restrict and imperil any sort of *bona fide* dealings with securities which may have had their genesis with money-lenders in respect of money-lending transactions. This state of affairs was remedied by an amending new Money-Lenders Act—that of 1911. By that statute it was enacted that—(*a*) any agreement with, or security taken by, a money-lender shall be, and shall be deemed always to have been, valid in favour of any *bona fide* assignee or holder for value *without notice* of any defect due to the operation of Section 2 of the Act of 1900, and of any person deriving title under him; and (*b*) any payment or transfer of money or property made *bona fide* by any person (see below under *Notice*) whether acting in a fiduciary capacity or otherwise, on the faith of the validity of any such agreement or security, *without notice* of any such defect, shall, in favour of that person, be, and be deemed to be always to have been, as valid as it would have been if the agreement or security had been valid. But in either of these cases the money-lender is liable to indemnify the borrower or any other person who is prejudiced by virtue of this enactment of the statute of 1911. And nothing in such enactment renders valid an agreement or security in favour of an assignee or holder for value who is himself a money-lender.

Notice.—A perusal of the above shows that in order that an assignee may obtain the advantage conceded by the statute he must have taken his assignment without notice of any defect in the contract, *e.g.* that the money-lender was unregistered. Whether or no he will be held to have had such notice depends upon the circumstances of the particular case. It may be that he will be fastened with constructive notice. It is important therefore to deal carefully with this question of constructive notice, for where there is express notice no real difficulty can arise. In the first place it should be noted that he will not be deemed to have had notice of a defect in an agreement or security by reason only that a search in the money-lenders' Register would have disclosed the defect, or shown that the agreement or security was effected with a money-lender. This is an express provision of Section 1 (2) of the Act of 1911.

Our next duty is to note that Section 1 (2) of the Act of 1911 provides that for the purposes of that Act and the one of 1900, the assignee, or in the terms of the statute, "a person paying or transferring money" on the faith of the validity of a contract between a money-lender and a third party, is included in the expression "purchaser" within the meaning of the Conveyancing Act 1882, Section 3, the provisions of which are expressly made applicable to him. This section of the Conveyancing Act 1882, which deals with "constructive notice," must therefore be dealt with.

The expression "purchaser" includes (Conveyancing Act, 1882, Section 1 (4) (ii.)) a lessee or mortgagee, or an intending purchaser, lessee, or mortgagee, or other person, who, for valuable consideration, takes or deals for property, and purchase has a meaning corresponding with that of purchaser.

"A purchaser shall not be prejudicially affected by notice of any instrument, fact, or thing, unless" (declares Section 3 of the Conveyancing Act, 1882), "(i). It is within his own knowledge, or would have come to his knowledge if such enquiries and inspectors had been made as ought reasonably to have been made by him; or (ii.) In the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel, as such, or of his solicitor, or other agent, as such, or would have come to the knowledge of his solicitor, or other agent, as such, if such enquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent." But, subject to a purchaser's right to indemnity from the money-lender as above set out, this section does not exempt him from any liability under, or any obligation to perform or observe, any covenant, condition, provision, or restriction contained in any instrument under which his title is derived, mediately or immediately; and such liability or obligation may be enforced in the same manner and to the same extent as if this section had not been enacted. And a purchaser is not, by reason of anything in this section, affected by notice in any case where he would not have been so affected if it had not been enacted.

Money-lenders cannot be registered as Bankers.—No person can be registered as a money-lender under any name including the word "bank," or under any name implying that he carries on banking business, nor may a limited company carrying on business as money-lenders be registered as a company, or remain on the register of companies, under a title including the word "bank." Where a money-lender is registered under any such name, the name will be removed from the register and a notification to that effect sent to the money-lender. Nor may a money-lender, in the course of carrying on the money-lending business, issue or publish, or cause to be issued or published, any circular, notice,

advertisement, letter, account, or statement of any kind containing expressions which might reasonably be held to imply that he carries on banking business. Should he do so he will be liable on summary conviction to the like penalties as if he had failed to comply with Section 2 of the Act of 1900 (for which see Vol. IV., pp. 185–6).

MOTOR CARS (*see* also article on Light Locomotives in Vol. IV.).—The provisions of the Acts of 1896 and 1903 are contained in this and the previous article. So, too, will be found here the Registration Order, 1903, as to registration and licences; the Heavy Motor Car Order, 1904, in regard to motor omnibuses and such heavy vehicles of a weight between two and five tons, or with a vehicle attached up to six and a half tons. The Act of 1903 makes it an offence for a person to drive a motor car on a public highway, recklessly or negligently, or to the danger of the public, taking into consideration the traffic actually on or "that which might reasonably be expected to be on the highway." A police constable can apprehend without warrant the driver of a car whom he sees committing an offence under the Acts, if the driver refuses to give his name and address, or to produce his licence, or where the car does not bear marks of identification. Should the driver refuse to give his name and address, or give a false one, the owner is bound to do all he can to help the police to find the driver, otherwise the owner is liable. If a car is used on the public highway without being registered, or the registration mark is not affixed, or obscured, or not easily distinguishable, the driver is liable. But this liability is excluded where the driver proves he did all he could to prevent the registration mark from being obscured; or that he had no reasonable opportunity of having the car registered, and was driving it on the highway for that purpose. The registration fee is 20s. for a car and 5s. for a motor cycle. Motor car dealers and makers can, for £3, obtain a general identification mark for use on cars being tried. Registration is not the only requisite for the lawful driving of a car on a public highway. The person driving must be licensed at a fee of 5s. This licence requires to be renewed every twelve months, and must be produced to a police constable on demand, under a penalty up to £5. The applicant for a licence must be over seventeen years of age for a car, and over fourteen years for a motor bicycle. Only one licence can be granted to each person, to be in force at one time. The Court, on a conviction, can suspend the licence, disqualify the person for a period, and also indorse the licence. There is an appeal in cases of imprisonment without a fine, or disqualification from being licensed.

It is an offence for a disqualified person to apply for a licence, or, where a licence has been indorsed, to apply without disclosing the indorsement; so is it for any one to forge identification marks or licences. Refusal to stop when an accident takes place, and, if required, give name and address of the driver, and of the owner, and the registered mark of the car, is punishable with a fine of £10; second offence, £20; third offence, £20 or one month. On roads under sixteen feet in width, the Local Government Board can prohibit motor traffic. The rate of speed under the Act of 1903 is raised to twenty miles an hour, except in scheduled districts, where the speed is restricted to ten miles an hour; the fines for exceeding these speeds are first offence, £10; second, £20; third, £50; but for a conviction on speed only, there must be more than one witness, and the defendant must be warned of the prosecution at the time of the offence, or notice must be sent to the defendant or the owner of the car within a reasonable time, not exceeding twenty-one days. Notice boards are to be set up showing restricted speed limits, dangerous places, and corners. Any offence under the Act for which no special penalty is provided, is punishable on summary conviction by a fine not exceeding £20, or, in the case of a subsequent offence, to a fine not exceeding £50 or three months imprisonment.

THE MOTOR CAR (REGISTRATION AND LICENSING) ORDER, 1903.

PART I.—*Registration of Motor Cars.*

I.—The Council of every County and of every County Borough shall establish and keep a Register (hereinafter referred to as "the Register of Motor Cars") for the registration of motor cars. The index mark distinguishing the Council of the County or County Borough with which a motor car is registered shall, as respects the Council of each County or County Borough, be the letter or letters shown opposite to the name of that Council in Part I. of the First Schedule to this Order. The Register of Motor Cars shall be in the form set out in the Second Schedule to this Order, or in a form to the like effect. The Council of any County or County Borough may, if they think fit, keep the Register of Motor Cars in two parts, one part relating to

motor cars not being motor cycles, and the other part relating to motor cycles. II.—The owner of a motor car who desires to register it with the Council of any County or County Borough shall apply to the Council, and shall furnish them with the particulars set out in the form in the Third Schedule to this Order. A fee of Twenty Shillings in the case of a motor car not being a motor cycle, or of Five Shillings in the case of a motor cycle, being the fee prescribed by the Act of 1903, shall be paid before the motor car can be registered. III.—The Council, on receipt of any such application, and the particulars and fee above referred to, shall forthwith assign a separate number to the motor car, and register it by making the required entries in the Register of Motor Cars. The Council, on the registration of a motor car, shall forthwith furnish the owner of the motor car with a copy of the entries in the Register relating to the motor car. IV.—If the ownership of a motor car is changed, notice of the change shall be given either by the new or the old owner to the Council with whom the motor car is registered, and an application shall also be made either to cancel the registration of the car or to continue the existing registration under the new ownership. If an application is so made to cancel the registration of the motor car, and no application is made to continue the existing registration of the car, the registration of the car shall be cancelled accordingly, but if an application is made to continue the existing registration of the car, the new owner shall furnish the necessary particulars as to ownership, and on receipt of a fee of Five Shillings in the case of a motor car not being a motor cycle, or of One Shilling in the case of a motor cycle (which fees the Council are hereby authorised to charge), the Council shall cause the necessary alterations to be made in the Register of Motor Cars, and shall furnish the new owner with a copy of the altered entries in the Register. Any notice may be given or application or alteration made under this Article before the date of the actual change of ownership so as to take effect from that date. If the provisions of this Article as to notice and application are not complied with, the registration of the motor car shall be void. V.—If any circumstance (other than a change of ownership dealt with in the preceding Article) occurs in relation to any motor car which affects the accuracy of any particulars entered as respects that car in the Register of Motor Cars, the owner of the motor car shall forthwith inform the Council with whom it has been registered, and on receipt of such information the Council shall forthwith cause the entries respecting that motor car in the Register of Motor Cars to be amended accordingly, and shall furnish the owner with a copy of the entries as so amended. No fee shall be charged by the Council in respect of any amendment of entries or transmission of a copy of entries under this Article. VI.—If the Council are satisfied that a motor car which has been registered with them is destroyed, broken up, or permanently removed from the United Kingdom, or registered with another registering authority under the Act of 1903, or if the owner of a registered motor car by application in writing requests them to cancel the registration thereof (except where in the case of a change of ownership there is an application to continue the existing registration) they shall cause the entries in the Register of Motor Cars with respect to the motor car to be cancelled, and may, if they think fit, assign the registered number of the motor car to any other motor car whether belonging to the same or any other owner. VII.—The mark to be carried by a registered motor car, in pursuance of Section 2 of the Act of 1903 (in this Order referred to as the identification mark), shall consist of two plates which must conform as to lettering, numbering, and otherwise with the provisions set out in the Fourth Schedule to this Order. Designs, painted or otherwise, shown upon the motor car may, if it is desired, be used instead of plates, and any reference to plates in this Order shall be construed to include a reference to such designs, and any reference to the fixing of plates to include a reference to the painting or other delineation of the designs. VIII.—The plates forming the identification mark shall be fixed one on the front of, and the other on the back of, the motor car, in an upright position, so that every letter or figure on the plate is upright and easily distinguishable, in the case of the plate placed on the front of the motor car, from in front of the car, and, in the case of the plate placed on the back of the motor car, from behind the car. In the case of a motor tricycle or motor bicycle of a weight unladen not exceeding three hundredweights, the plate fixed on the front of the cycle may, if it is a plate having duplicate faces conforming with the Fourth Schedule to this Order, be fixed so that from whichever side the cycle is viewed the letters or figures on one or other face of the plate are easily distinguishable, though they may not be distinguishable from the front of the cycle. Subject to the provisions of this Article, the plates forming the identification mark shall be fixed on the motor car in the position indicated in the particulars given on the application for the registration of the motor car, or

subsequently furnished to the registering Council, or if that Council are not satisfied with the position so indicated, in such a position as they direct. So long as the provisions of this Order are complied with, different identification plates may be used on a motor car by day and night or on different occasions. IX.—When another vehicle is attached to a motor car, either in front or behind, the plate required to be fixed on the front or on the back of the motor car, or a duplicate of such plate, shall be fixed on the front or on the back of the vehicle attached, as the case requires, in the same manner as the plate is required to be fixed upon the motor car. X.—A Council with whom a motor car is registered may, if they think fit, supply to the owner of the car, if he so desires, the plates forming the identification mark on the car, and make a charge for them. XI.—Whenever during the period between one hour after sunset and one hour before sunrise a motor car is used on a public highway, a lamp shall be kept burning on the car, so contrived as to illuminate by means of reflection, transparency, or otherwise, and render easily distinguishable every letter or figure on the identification plate fixed on the back of the motor car or of any vehicle attached to the back of the motor car, as the case may be. In the application of this Article to a motor tricycle or motor bicycle of a weight unladen not exceeding three hundredweights, the plate fixed on the front of the motor car may, if desired, be substituted for the plate fixed on the back of the motor car. XII.—If the Council of any County or County Borough assign to a manufacture or dealer a general identification mark under proviso (*b*) to Sub-section 4 of Section 2 of the Act of 1903, the mark shall be such as the Council direct in each case. Provided that—(*a*) it shall consist of two plates, each bearing the index mark of the Council and some other distinguishing letter or letters; and each having placed thereon or annexed thereto some distinguishing number; and (*b*) the colouring of the plates shall be different from that used for the plates forming the ordinary identification mark; and (*c*) the lettering and numbering of the plates shall, so far as possible, be similar to those required in the case of the plates forming the ordinary identification mark. On every occasion on which the general identification mark is used on a motor car, the manufacturer or dealer shall keep a record of the distinguishing number placed on or annexed to the identification plates on that occasion, and of the name and address of the person driving the motor car on that occasion, and that record shall be open to inspection by the Council or by any superior officer of police or constable authorised by such an officer. If the general identification mark is used at the same time on more than one motor car, the distinguishing number placed on or annexed to the plates must be different on each motor car. The provisions of this Order which relate to the fixing and illumination of identification plates shall apply to the plates forming the general identification mark as they apply to the plates forming the ordinary identification mark. The Council shall keep a Register of any general identification marks so assigned by them which shall contain the following particulars:—(*a*) the name of the manufacturer or dealer to whom the general identification mark is assigned; (*b*) the place of business of the manufacturer or dealer; and (*c*) a description of the general identification mark assigned to him. XIII.—The Council shall, upon application being made to them by any other registering authority under the Act of 1903, or by any police authority, or by any superior officer of police or constable authorised by such an officer, forthwith provide, free of charge, a copy of the entries in their Register of Motor Cars relating to any specified motor car, or of the entries in their Register of general identification marks relating to any specified manufacturer or dealer. The Council shall also supply to any other person applying for a copy of the entries relating to any specified motor car, a copy of those entries on payment of a fee of One Shilling, if he shows that he has a reasonable cause for requiring such a copy. An officer of the Inland Revenue Department may, without charge, at all reasonable times inspect the Register of Motor Cars and take copies of any entries in it.

PART II.—*Licences.*

XIV.—A person who desires to obtain the grant or renewal of a licence to drive a motor car or of a licence limited to driving motor cycles under the Act of 1903 shall apply to the Council of the County or County Borough in which he resides, and furnish them with the particulars set out in Form A. or Form B. in the Fifth Schedule to this Order as the case requires. The fee of Five Shillings prescribed by the Act of 1903 shall be paid before the applicant is entitled to receive the licence or renewal. Applications for the grant or renewal of a licence may be received and dealt with at any time within one month before the date on which the grant or renewal of the licence is to take effect. XV.—The licence and renewal of a licence shall respectively be in the form set out for the purpose in the Sixth Schedule to this Order or in a form to the like effect. XVI.—If any person applies to the Council of a County or County Borough for the grant of a licence, and the

Council are satisfied that he has no residence in the United Kingdom, the Council shall, if the applicant is otherwise entitled, grant him a licence, notwithstanding that he is not resident within their County or County Borough. XVII.—If a person to whom a licence has been granted by the Council of a County or County Borough satisfies that Council that his licence or any renewal of it has been lost or defaced, the Council shall, on payment of a fee of One Shilling, issue to him a duplicate licence, or renewal (including, in the case of a duplicate licence, any particulars indorsed or entered upon the original licence under the Act of 1903 or this Order), and the duplicate so issued shall have the same effect as the original licence or renewal, as the case may be. XVIII.—The Council of every County and County Borough shall establish and keep a Register of Licences in the form set out in the Seventh Schedule to this Order, or in a form to the like effect. XIX.—Any registering Council shall, upon application being made to them by any other licensing authority under the Act of 1903, or by any police authority, or by any superior officer of police or constable authorised by such officer, forthwith provide, free of charge, a copy of the particulars in their Register of Licences relating to any licence granted by them. Upon receiving from any Court in pursuance of Section 4 of the Act of 1903 particulars of any conviction of the holder of a licence granted by the Council, and of the Order of the Court in the case, the Council shall cause a copy of such particulars and Order to be sent, free of charge, to the police authority for the area in which the holder of the licence resides.

PART III.—*Supplemental*

XX.—The clerk of the Council and any other officer authorised by the Council are respectively empowered to perform any duty or exercise any power of the Council for the purpose of carrying this Order into effect. XXI.—The provisions of this Order shall apply in the case of a roadway to which the public are granted access in the same manner as they apply in the case of a public highway. Except where the contrary intention appears, the expression "motor car" in this Order includes a motor cycle. In calculating for the purpose of this Order the weight of a motor car or motor cycle unladen, the weight of any water, fuel, or accumulators used for the purpose of propulsion shall not be included. The Interpretation Act, 1889, applies for the purpose of the interpretation of this Order as it applies for the purpose of the interpretation of an Act of Parliament. The particulars to be given by the person registering a car are (1) name of owner; (2) address of usual residence; (3) type of car, such as 12 h.p. car, steam lorry, electric brougham, &c.; (4) type of colour of body, such as tonneau body painted yellow or dog cart body painted black picked out with red, &c.; (5) weight unladen; (6) whether intended for private use, trade purposes, or as a public conveyance; (7) the position where the identification plates will be fixed. The identification plates must be rectangular and bear the index mark and number of the County or Borough where registered. The figure must be white on a black ground and 3½ inches high, and every part ⅜ of an inch broad, and, except for the figure 1, 2½ inches distance for each letter, with ½ inch between adjoining letters or figures, ½ inch between these and the top and bottom of the plate, and 1 inch between the letters or figures and the sides of the plate; if in two lines, ¾ of an inch between the lines, and 1½ inches between letters and figures. In the case of a motor tricycle or bicycle weighing unladen up to 3 cwts., these distances may be halved.

The applicant for a licence must give—(1) his name; (2) address; (3) whether the licence is for motor cars, or limited to motor cycles; (4) whether he is less than seventeen for a car, or fourteen for a bicycle; (5) whether he holds a licence or has held one; (6) particulars of any such licence; (7) particulars of any indorsement; (8) whether he was disqualified at any time, with particulars of the Court, the date, and the period of disqualification. When renewing he must give the number of his licence, his address, and whether he has been disqualified since the last renewal.

IDENTIFICATION MARKS FOR ENGLAND.

A–LC–, LN–LB } London County
B. Lancashire
C. Yorkshire (W.R.)
D. Kent
E. Staffordshire
F. Essex
H. Middlesex
J. Durham
K. Liverpool
L. Glamorganshire
M. Cheshire
N. Manchester
O. Birmingham
P. Surrey
R. Derbyshire
T. Devonshire
U. Leeds
W. Sheffield
X. Northumberland
Y. Somerset
AA. Southampton
AB. Worcestershire
AC. Warwickshire

ENGLAND—*continued.*

AD. Gloucestershire
AE. Bristol
AF. Cornwall
AH. Norfolk
AJ. Yorkshire (N.R.)
AK. Bradford (Yorks.)
AL. Nottinghamshire
AM. Wiltshire
AN. West Ham
AO. Cumberland
AP. East Sussex
AR. Hertfordshire
AT. Kingston-upon-Hull
AU. Nottingham
AW. Salop
AX. Monmouthshire
AY. Leicestershire
BA. Salford
BB. Newcastle
BC. Leicester
BD. Northamptonshire
BE. Parts of Lindsey
BH. Bucks
BJ. East Suffolk
BK. Portsmouth
BL. Berks
BM. Bedfordshire
BN. Bolton
BO. Cardiff
BP. West Sussex
BR. Sunderland
BT. Yorkshire (E R.)
BU. Oldham
BW. Oxfordshire
BX. Carmarthenshire
BY. Croydon
CA. Denbighshire
CB. Blackburn
CC. Carnarvonshire
CD. Brighton
CE. Cambridgeshire
CF. West Suffolk
CH. Derbyshire
CJ. Herefordshire
CK. Preston
CL. Norwich
CM. Birkenhead
CN. Gateshead
CO. Plymouth
CP. Halifax
CR. Southampton
CT. Parts of Kesteven
CU. South Shields
CW. Burnley
CX. Huddersfield
CY. Swansea
DA. Wolverhampton
DB. Stockport
DC. Middlesbrough
DE. Pembrokeshire
DF. Northampton
DH. Walsall
DJ. St. Helens
DK. Rochdale
DL. Isle of Wight
DM. Flintshire
DN. York
DO. Parts of Holland
DP. Reading
DR. Devonport
DU. Coventry
DW. Newport (Mon.)
DX. Ipswich
DY. Hastings
EA. West Bromwich
EB. Isle of Ely
EC. Westmoreland
ED. Warrington
EE. Grimsby
EF. West Hartlepool
EH. Hanley
EJ. Cardiganshire
EK. Wigan
EL. Bournemouth
EM. Bootle
EN. Bury
EO. Barrow-in-Furness
EP. Montgomeryshire
ET. Rotherham
EU. Brecknockshire
EW. Huntingdonshire
EX. Great Yarmouth
EY. Anglesey
FA. Burton-on-Trent
FB. Bath
FC. Oxford (Town)
FD. Dudley
FE. Lincoln
FF. Merionethshire
FH. Gloucester
FJ. Exeter
FK. Worcester
FL. Peterborough
FM. Chester
FN. Canterbury
FO. Radnorshire
FP. Rutlandshire
FR. Blackpool
FX. Dorsetshire

SCOTLAND—*Counties.*

SA. Aberdeen
SB. Argyll
SD. Ayr
SE. Banff
SH. Berwick
SJ. Bute
SK. Caithness
SL. Clackmannan
SM. Dumfries
SN. Dumbarton
SO. Elgin
SP. Fife
SR. Forfar
SS. Haddington
ST. Inverness
SU. Kincardine
SV. Kinross
SW. Kirkcudbright
V. Lanark
SX. Linlithgow
SY. Midlothian
AS. Nairn
BS. Orkney
DS. Peebles
ES. Perth
HS. Renfrew
JS. Ross and Cromarty
KS. Roxburgh
LS. Selkirk
MS. Stirling
NS. Sutherland

SCOTLAND—*Towns.*

RS. Aberdeen
TS. Dundee
S. Edinburgh
G. Glasgow
US. Govan
VS. Greenock
WS. Leith
XS. Paisley
YS. Partick

IRELAND—*Counties.*

IA. Antrim
IB. Armagh
IC. Carlow
ID. Cavan
IE. Clare
IF. Cork
IH. Donegal
IJ. Down
IK. Dublin
IL. Fermanagh
IM. Galway
IN. Kerry

IRELAND—*Counties* (*continued*).

IO. Kildare	IY. Louth	FI. Tipperary (N.R.)
IP. Kilkenny	IZ. Mayo	HI. Tipperary (S.R.)
IR. Kings County	AI. Meath	JI. Tyrone
IT. Leitrim	BI. Monaghan	KI. Waterford
IU. Limerick	CI. Queens County	LI. West Meath
IW. Londonderry	DI. Roscommon	MI. Wexford
IX. Longford	EI. Sligo	NI. Wicklow

IRELAND—*Towns*.

OI. Belfast	RI. Dublin	UI. Londonderry
PI. Cork	TI. Limerick	WI. Waterford

THE HEAVY MOTOR CAR (USE AND CONSTRUCTION) ORDER, 1904,

Dated 27th December, 1904.

TO THE COUNTY COUNCILS . . . AND TO ALL OTHERS WHOM IT MAY CONCERN

I. The Regulations in this Order (hereinafter referred to as "the Regulations") shall come into operation on the First day of March, One thousand nine hundred and five, and that date is hereinafter referred to as the commencement of the Regulations. II. In the Regulations the expression "heavy motor car" means a motor car exceeding into two tons in weight unladen. The expression "trailer" means a vehicle drawn by a heavy motor car. The expression "registering authority" means, in relation to a heavy motor car, the Council of a County, or the Council of a County Borough, by whom the heavy motor car has been, or can be, registered, in pursuance of the Motor Car Act, 1903, and of the Motor Car (Registration and Licensing) Order, 1903. The expression "axle-weight" means, in relation to an axle of a heavy motor car, or of a trailer, the aggregate weight transmitted to the surface of the road or other base whereon the heavy motor car or the trailer moves or rests, by the several wheels attached to that axle when the heavy motor car or the trailer is loaded. The expression "registered axle-weight" means, in relation to an axle of a heavy motor car, the axle-weight of that axle, as registered by the registering authority in pursuance of the Regulations. The expression "width," in relation to the tire of a wheel, means the distance measured horizontally and in a straight line across the circumference of the wheel and between the two points in the outer surface of the tire which are farthest apart. The expression "diameter," in relation to a wheel, means the diameter measured between the two opposite points in the outer surface of the tire which are farthest apart. The expression "weight," in relation to a heavy motor car or trailer when unladen, means the weight of a vehicle exclusive of the weight of any water, fuel, or accumulators used for the purpose of propulsion. III. Notwithstanding anything in the Motor Car Acts, 1896 and 1903, and except as is otherwise provided in the Regulations, a heavy motor car may be used on a highway if the weight of the heavy motor car unladen with the weight of an unladen vehicle drawn by it does not exceed six and a half tons. IV. (1) On every application to a registering authority for the registration of a heavy motor car, the owner shall declare—(*a*) The weight of the heavy motor car unladen; (*b*) the axle weight of each axle; and (*c*) the diameter of each wheel. (2) (*a*) Before a heavy motor car is registered, the weight of the car unladen, and, if the registering authority so direct, the axle-weight of each axle of the car shall be ascertained by or in the presence of an officer of the registering authority. That officer shall certify the weight or weights so ascertained, and shall make any necessary correction in the statement of weights declared by the owner. (*b*) The officer of the registering authority shall also satisfy himself that the tires of the wheels of the car, if the tires are not pneumatic, or are not made of a soft or elastic material, are of the dimensions required by the Regulations. (c) The owner of a heavy motor car shall, for the purpose of this condition, cause the motor car to be driven or brought to any such place as the registering authority appoint. (3) Upon the registration of a heavy motor car—(*a*) the weight of the heavy motor car unladen, as certified as aforesaid; (*b*) the axle-weight of each axle; (c) the diameter of each wheel; (*d*) the width and material of the tire of each wheel; and (*e*) the highest rate of speed at which, in conformity with the Regulations, the heavy motor car may be driven without a trailer, shall be entered in the Register of motor cars. (4) Upon receiving from the registering authority a copy of the entries made in the register relating to a heavy motor car, the owner of the heavy motor car shall cause—(i) the regis-

tered weight of the heavy motor car unladen; (ii) the registered axle-weight of each axle; and (iii) the highest rate of speed at which, in conformity with the Regulations, the heavy motor car may be driven without a trailer, to be painted, or otherwise plainly marked, in the first and second case, upon some conspicuous part of the right or off side of the heavy motor car, and, in the third case, upon some conspicuous part of the left or near side of the heavy motor car. The owner of the heavy motor car shall cause the aforesaid particulars to be painted or marked in letters and figures not less than one inch in height, and of such shape and colour as to be clearly legible and clearly distinguishable from the colour of the ground whereon the letters and figures are painted or marked; and he shall cause all the paint or marking to be from time to time repaired or renewed, as often as may be necessary to keep the said letters and figures clearly legible and clearly distinguishable. (5) The owner of a heavy motor car which has been registered before, and which is in use at, the commencement of the Regulations, shall, within six months thereafter, either cause the heavy motor car to be registered anew, or shall cause the heavy motor car to be brought before an officer of the registering authority with whom the heavy motor car has been already registered. In either case the procedure prescribed by this Article shall be followed with respect to the heavy motor car, as if it were a heavy motor car the owner whereof is for the first time an applicant for registration; but in the latter case no registration fee shall be charged by the registering authority in respect of the heavy motor car, or in respect of the procedure prescribed by this Article; and in the case of a heavy motor car the weight of which, when unladen, exceeds five tons but does not exceed seven tons, and which has been registered before the First day of September, One thousand nine hundred and four, compliance with the procedure prescribed by this Article shall, notwithstanding any other provision of the Regulations, have effect as a sufficient authority for the use of the heavy motor car on a highway. The registering authority shall furnish the owner of a heavy motor car with a certificate in an appropriate form, to the effect that the procedure prescribed by this Article has been followed, and that the heavy motor car may be used on a highway without further registration. On the expiration of six months from the commencement of the Regulations, a heavy motor car which has been registered before the commencement of the Regulations, and in respect of which the procedure prescribed by this Article has not been followed shall not, except for the purpose of being registered, be used on any highway until the heavy motor car has been registered anew; and all previous registration of the heavy motor car shall cease to have effect. (6) Nothing in the Regulations shall have effect so as to require the registering authority to register a heavy motor car which does not in all particulars satisfy each condition rendered applicable by the Regulations to the heavy motor car or in respect of which there has been a failure to comply with the procedure prescribed by this Article. V. (1) The axle-weight of an axle of a heavy motor car shall not exceed the registered axle-weight. (2) The registered axle weight of an axle of a heavy motor car shall not exceed eight tons, and the sum of the registered axle-weights of all the axles of a heavy motor car shall not exceed twelve tons. VI. (1) The tire of each wheel of a heavy motor car shall be smooth, and shall, where the tire touches the surface of the road or other base whereon the heavy motor car moves or rests, be flat; provided that the edges of the tire may be bevelled or rounded to the extent in the case of each edge of not more than half an inch; provided also that, if the tire is constructed of separate plates, the plates may be separated by parallel spaces which shall be disposed throughout the outer surface of the tire so that nowhere shall the aggregate extent of the space or spaces in the course of a straight line drawn horizontally across the circumference of the wheel exceed one-eighth part of the width of the tire. (2) The width of the tire of each wheel of a heavy motor car shall be determined by such of the following conditions as may apply to the circumstances of the case; that is to say—(*a*) the width shall in every case be not less than five inches; (*b*) the width shall be not less than that number of half inches which is equal to the number of units of registered axle-weight of the axle to which the wheel is attached. The unit of registered axle-weight shall vary according to the diameter of the wheel, and the rules set forth in the subjoined scale; that is to say—(i) if the wheel is three feet in diameter, the unit of registered axle-weight shall be seven and a half hundredweights; (ii) if the wheel exceeds three feet in diameter, the unit of registered axle-weight shall be seven and a half hundredweights, with an addition of weight in the proportion of one hundredweight for every twelve inches by which the diameter is increased beyond three feet; and in the same proportion for any increase which is greater or less than twelve inches; and (iii) if the wheel is less than three feet in diameter, the unit of registered axle-weight shall be seven and a half hundredweights, with a deduction of weight in the proportion of one hundredweight for every six inches by which the diameter is reduced below three feet; and in the same proportion for any reduction which is greater or less than

six inches. (3) This Article shall not apply to any tire which is pneumatic or which is made of a soft or elastic material. VII. The speed at which a heavy motor car is driven on any highway shall not exceed eight miles an hour; provided that (*a*) if the weight of the heavy motor car unladen exceeds three tons; or (*b*) if the registered axle-weight of any axle exceeds six tons; or (*c*) if the heavy motor car draws a trailer, the speed shall not exceed five miles an hour. Provided also that if the heavy motor car has all its wheels fitted with pneumatic tires or with tires made of a soft or elastic material, the speed at which the heavy motor car may be driven on any highway shall not exceed (*a*) twelve miles an hour where the registered axle-weight of any axle does not exceed six tons; and (*b*) eight miles an hour where the registered axle-weight of any axle exceeds six tons. VIII. The diameter of a wheel of a heavy motor car, if the wheel is fitted with a tire which is not pneumatic or is not made of a soft or elastic material, shall be not less than two feet. IX. Notwithstanding anything in the Motor Car (Use and Construction) Order, 1904, a heavy motor car, if its weight unladen is three tons or exceeds three tons, and any trailer drawn by any such heavy motor car may, when measured between its extreme projecting points, be of a width not exceeding seven feet six inches. X. Every heavy motor car shall be constructed with suitable and sufficient springs between each axle and the frame of the heavy motor car. XI. (1) The owner of a trailer shall cause to be painted, or otherwise plainly marked, upon some conspicuous part of the right or off side of the trailer, in letters and figures not less than one inch in height, and of such shape and colour as to be clearly legible and clearly distinguishable from the colour of the ground whereon the letters and figures are painted or marked—(*a*) the weight of the trailer unladen; and (*b*) the axle-weight of each axle of the trailer, if the weight of the trailer exceeds one ton. He shall cause the paint or marking to be from time to time repaired or renewed, as often as may be necessary to keep the said letters and figures clearly legible and clearly distinguishable. (2) The Regulations so far as they relate to the width of the tires and the size of the wheels of a heavy motor car, the wheels whereof are fitted with tires which are not pneumatic or are not made of a soft or elastic material, shall with the necessary modifications apply and have effect with respect to a trailer exceeding one ton in weight unladen, with the substitution in the Regulations of three inches for five inches as the minimum width of the tires, and of references to the axle-weights painted or marked upon the trailer in pursuance of this Article for reference to registered axle-weights. (3) The axle-weight of an axle of a trailer shall not exceed four tons. (4) Every trailer shall be constructed with suitable and sufficient springs between each axle and the frame of the trailer. (5) A heavy motor car which is used either as a stage carriage or otherwise for the conveyance of passengers for gain or hire, shall not draw a trailer. XII. If a heavy motor car is upon a highway within a distance not exceeding half a mile by road from a public weighing machine, or other weighing machine which is conveniently accessible, and which belongs to or is subject to the control, or may be used for any purposes of a registering authority or of any other Council having control of the highway, and a duly authorised officer of the registering authority or other Council has reasonable ground for ascertaining whether the axle-weight for the time being of any axle of the heavy motor car, or of the trailer drawn by the heavy motor car exceeds the registered or marked axle-weight of that axle, the officer may require the person driving or in charge of the heavy motor car to drive the heavy motor car with or without the trailer, or to cause the heavy motor car to be driven with or without the trailer to the weighing machine, and the said officer may then cause the axle-weight for the time being of any axle to be ascertained; and the person driving or in charge of the heavy motor car shall comply with any such requirement, and shall, to the best of his ability, afford all such facilities as may be reasonably necessary for the purpose of ascertaining the axle-weight as aforesaid. XIII. No person shall cause or permit to be used on any highway, or shall on any highway drive or have charge of, a heavy motor car or a trailer which is not in all respects in accordance with the Regulations so far as they relate to the use and construction of heavy motor cars or trailers, as the case may be, or which is so used or driven as to contravene the Regulations, provided that during a period of six months after the commencement of the Regulations any failure to comply with the Regulations so far as they relate to the use or construction of heavy motor cars or trailers shall not be deemed to be a breach or contravention of the Regulations, if the failure occurs solely in relation to a heavy motor car registered before, or to a trailer which is in use at, the commencement of the Regulations. "XIV., substituted in 1907. (1) With respect to the use of a heavy motor car on a bridge forming part of a highway the following regulations, subject to the conditions set forth in sub-division 2 of this Article, shall apply and have effect; that is to say—where the person who is liable to the repair of the bridge states in a prescribed notice—(*a*) that the bridge is insufficient to carry a heavy motor car the registered axle-weight of any axle of which exceeds three

tons, or the registered axle-weights of the several axles of which exceed in the aggregate five tons, or any greater weight specified in the prescribed notice; or (*b*) that the bridge is insufficient to carry a heavy motor car drawing a trailer if the registered axle-weights of the several axles of the heavy motor car and the axles-weights of the several axles of the trailer exceed in the aggregate five tons, or any greater weight which is specified in the prescribed notice, the owner of any such heavy motor car shall not cause or suffer the heavy motor car to be driven, and the person driving or in charge of the heavy motor car shall not drive the heavy motor car upon the bridge except with the consent of the person liable to the repair of the bridge. (2) The conditions, subject to which the regulations in sub-division 1 of this Article apply and have effect, are the following; that is to say—(i) where a dispute or difference arises in relation to the insufficiency of the bridge to carry a heavy motor car, and, on a reference by the person liable to the repair of the bridge and the owner of the heavy motor car, the award or determination of an arbitrator or arbitrators or umpire adjudges the bridge to be sufficient to carry the heavy motor car, this Article shall cease to apply to have effect as regards any such heavy motor car and the use of the bridge by that heavy motor car, and the person liable to the repair of the bridge shall forthwith remove every prescribed notice affecting the heavy motor car and the bridge. (ii) If, within a period of one month, after a request in writing by the owner of a heavy motor car, the person liable to the repair of the bridge neglects or refuses to become a party to the submission to arbitration of any such dispute or difference as aforesaid, or having become a party to the submission, neglects or refuses to concur in the appointment of an arbitrator, or to appoint an arbitrator or an umpire or third arbitrator according as the submission or any agreement between the parties may require, this Article shall cease to apply or have effect as regards any such heavy motor car and the use of the bridge by that heavy motor car; and the person liable to the repair of the bridge shall forthwith remove every prescribed notice affecting the heavy motor car and the bridge. (iii) The person liable to the repair of the bridge may at any time by a prescribed notice specify with respect to a heavy motor car, with or without a trailer, a greater weight than that specified in a prescribed notice which in pursuance of this article has been removed; and thereupon this article shall apply and have effect with respect to the prescribed notice so substituted, and with respect to any other matter or thing to which this Article refers as it has applied and had effect with respect to a prescribed notice of earlier date, and with respect to any such other matter or thing, prior to the date of the prescribed notice substituted as aforesaid. (3) For the purposes of this Article the expression 'prescribed notice' means a statement which contains all such particulars as are required to be shown for the purposes of the regulations and conditions in this Article, and also the name and address of the person liable to the repair of the bridge, which is printed or painted in legible letters or figures of such a colour as to be clearly distinguishable from the colour of the ground whereon the letters and figures are printed or painted, which is attached to or forms part of a suitable board, plate or tablet of wood, iron, or other durable material, and which is affixed or set up in a suitable and conspicuous position at each end of a bridge. (4) The owner of a heavy motor car the registered axle-weights of the several axles of which, with the axle-weights of the several axles of any trailer drawn by the heavy motor car, exceed in the aggregate six tons shall not cause or suffer the heavy motor car to be driven, and the person driving or in charge of the heavy motor car shall not drive the heavy motor car upon a bridge forming part of a highway at any time when another heavy motor car, or a locomotive to which the Locomotives Act, 1898, applies, is on the bridge. (5) Nothing in this Article shall apply to Menai Bridge, any bridge which crosses the River Thames, and any part of which is in the City of London or County of London, and any bridge—(*a*) whereof the use is subject, for the time being, to any such condition, restriction, or prohibition imposed by or by virtue of a Local and Personal Act, or by or by virtue of an Act confirming a Provisional Order, or by or by virtue of any bye-law, regulation, rule, order, notice, or other means authorised by the said Act, as is inconsistent with the use on the bridge of any such heavy motor car as is described in this Article; and (*b*) whereon, for the time being, the effect of the condition, restriction, or prohibition is stated in a prescribed notice." XV. (1) The Motor Car (Registration and Licensing) Order, 1903, shall, with the necessary modifications, apply and have effect so as to provide that for the purpose of the registration of heavy motor cars there shall be a separate part in the Register of Motor Cars, and that the separate part shall be in Form A. set out in the Schedule to this Order, or in a form to the like effect; and that to the form of particulars to be furnished by an applicant for registration of a heavy motor car, there shall, for the purpose of enabling the applicant to declare—(*a*) the weight of the heavy motor car unladen; (*b*) the axle-weight of each axle; and (*c*) the diameter of each wheel; be added the particulars shown in the Form B.

set out in the said Schedule. (2) In every case in which, after prior registration, the procedure prescribed by Article IV. in relation to such a case has been followed, the registering authority shall cause the entry of prior registration to be erased, and such entries as are required in compliance with the procedure prescribed by Article IV. to be made in the appropriate columns of the separate part in the Register of Motor Cars. XVI. As regards matters which are not hereinbefore expressly mentioned in relation to heavy motor cars, the Motor Car (Registration and Licensing) Order, 1903, and the Motor Cars (Use and Construction) Order, 1904, shall apply and have effect subject to the Regulations; and any provisions of either Order which are inconsistent with the Regulations shall cease to apply and have effect in relation to a heavy motor car. XVII. The Regulations in relation to any heavy motor car which belongs to His Majesty the King, and is used for the time being, under the care, superintendence, or control of a Secretary of State, for military purposes, shall apply and have effect—(*a*) as if, in Article III. of this Order, "six tons" were substituted for "five tons," and "eight tons" were substituted for "six and a half tons"; and (*b*) as if, to sub-division 1 of Article VI. of this Order, there were added the following words; that is to say—"Provided further that if the tire is constructed, shod or fitted with diagonal crossbars, the conditions of this Article shall for the purpose of determining the width of the tire, apply subject to the substitution throughout those conditions of five hundredweights for seven and a half hundredweights as the unit of registered axle-weight."

MOTOR CAR DUTIES.—A motor car, which is a carriage within the meaning of the Customs and Inland Revenue Act, 1888, is now, under the Finance (1909–10) Act, 1910, subject to duty on the following scale:—

Motor bicycles and motor tricycles of whatever horse-power									£1	0	0
Motor cars—not exceeding 6½ horse-power									2	2	0
,,	exceeding 6½, but not exceeding				12	horse-power			3	3	0
,,	,,	12	,,		16				4	4	0
,,	,,	16	,,	,,	26	,,			6	6	0
,,	,,	26	,,	,,	33	,,			8	8	0
,,	,,	33	,,	,,	40	,,			10	10	0
,,	,,	40	,,	,,	60	,,			21	0	0
,,	,,	60	horse-power						42	0	0

The expression "motor car," in this connection, means any vehicle which is for the time being a light locomotive within the meaning of the Locomotives on Highways Act, 1896, as amended by any other Act, and includes a motor bicycle and a motor tricycle, but does not include a vehicle drawn by a motor car. Horse-power is calculated in accordance with a Treasury regulation.

The above duties do not apply so as to increase the duty payable, prior to the Finance Act, in respect of a motor cab, motor omnibus, or other vehicle, being a hackney carriage. Duty is not payable in respect of a motor fire-engine or ambulance. An allowance is made in the case of a motor car used by an officer in the Army Motor Reserve; and a medical practitioner is entitled to an allowance of half the duty on a car kept for the purpose of his profession. Cars brought into this country by persons making only a temporary stay here may be totally or partially exempted, for a limited period, from the duty.

MOTOR SPIRIT.—This expression is defined by the Finance (1909–10) Act, 1910, as meaning "any inflammable hydrocarbon (including any mixture of hydrocarbons and any liquid containing hydrocarbon) which is capable of being used for providing reasonably efficient motive power for a motor car." Regulations may be made by the Commissioners for Customs and Excise prescribing tests for the purpose of determining whether any inflammable hydrocarbon or mixture of hydrocarbons, or liquid containing hydrocarbon, is motor spirit within the foregoing meaning. Motor spirit is now subject to a Customs and Excise duty of 3d. per gallon. A manufacturer of motor spirit must take out annually a licence subject to a duty of £1, and a dealer is required to be similarly licensed at a duty of 5s. But a person may sell motor spirit in a quantity not exceeding one pint at one time to one person without a licence. A manufacturer—a term which includes a refiner and a person otherwise preparing motor spirit—is not bound to obtain any further licence than the foregoing in respect of any still kept or used by him solely for the purpose of the manufacture or refinement of motor spirit. The regulations already referred to may also prescribe conditions of manufacture, and provide for the sale and delivery by duly licensed persons of motor spirit from vans at the premises of persons who are dealers therein, and buy it to sell again.

Allowances and Exemptions from Duty.—Much motor spirit is used for purposes other than supplying motive power for motor cars. A person using spirit for such purposes

is entitled to an allowance or repayment of the duty paid on the spirit used. Half the amount of the duty paid may be recovered back in respect of motor spirit used for the purpose of supplying motive power—(1) To a motor car constructed for or adapted for use, and used, solely for the conveyance of goods or burden in the course of trade or husbandry, provided there is legibly and visibly painted thereon, in letters of not less than one inch in length, the Christian name and surname and place of abode or business of the person, or the name or style and principal or only place of business of the company or firm keeping the same; (2) to a hackney motor cab or omnibus while standing or plying for hire; (3) to a motor car constructed and used partly for each of the two foregoing purposes; (4) to a motor car kept by a duly qualified medical practitioner while it is being used by him for the purposes of his profession.

Application should be made to the Commissioners for the return of any duty recoverable under the above allowances and exemptions. It can be recovered, however, only when the quantity of spirit used during the six months immediately preceding the application exceeds five gallons. With the approval of the Commissioners spirit may be delivered without payment of duty or on payment of only half the duty.

MUSICAL COPYRIGHT (*see* also article in Vol. IV.).—Owing to the enormous increase in pirated music and the difficulty in stopping the sale by individual prosecutions, the law with regard to Musical Copyright, as it stood prior to the Musical Copyright Act, 1906, was found practically ineffective and useless. That act, however, provided that every person who should print, reproduce, sell, expose, offer, or have in his possession for sale any pirated music, or have in his possession the plates for printing or reproducing pirated music, unless he could prove that he acted innocently, was to be guilty of an offence punishable on summary conviction. For a first offence there is a fine of £5, and on a second or subsequent conviction, £10 or imprisonment with or without hard labour, for two months. If, on a first offence, the defendant proves that the copies had printed on the title-page a name and address purporting to be that of the printer or publisher, he is not liable, unless it is proved that he knew they were pirated copies. A constable now has power to take into custody, without a warrant, any one selling, exposing, or offering, or having in his possession for sale, in a street or public place, any pirated copies of a musical work which has been specified in a general written authority to the chief of police, signed by the apparent owner of the copyright or his agent, authorised in writing. This authority must request the arrest, at the risk of the owner, of all persons acting as above, or who offer such copies by canvassing or delivering advertisements or circulars. A copy of the authority is open for inspection, and any person without fee may inspect, take copies, or make extracts. The Defendant may appeal to Quarter Sessions, or, in Scotland, under the Summary Prosecutions Appeals (Scotland) Act, 1875. *Search warrant.*—In any case in which a court of summary conviction is satisfied by information on oath, that there is reasonable ground for suspicion of an offence under the Act, it may grant a search warrant authorising the constable to enter the premises named between 6 A.M. and 9 P.M. The constable can use force, if necessary, by breaking open doors and seize any suspected copies or plates. These copies and plates are to be brought before the Court, and, on proof of piracy, are to be forfeited and destroyed or otherwise dealt with. Under the Act "pirated copies" are copies of a musical work written, printed, or reproduced without the consent of the owner of the copyright. "Musical work" is one in which there is a subsisting copyright duly registered. "Plates" include stereotype or other plates, stone, matrices, transfers, or negatives for printing or reproducing. But the definitions "pirated copies" and "plates" are not to include perforated music rolls for mechanical instruments or records for the reproduction of sound waves or the matrices for making such.

NATIONAL INSURANCE.—Notwithstanding the considerable progress made in the direction of national or popular thrift during recent years, it is a remarkable fact that before the introduction of compulsory insurance not one-half of the workpeople of this country had made any sort of provision for sickness, and not one-tenth for unemployment. Of the many reasons for the existence of such a state of affairs there were two which stood out prominently as chief. The first was that wages were too low to allow for such insurance without outside assistance. The second was that during a period of sickness or unemployment, when nothing is being earned, the working classes were unable to keep up their premiums to friendly and insurance societies. That insurance of this character was absolutely necessary for the well-being not only of the working class but also of the whole community, would seem to have been accepted as a social and political axiom. So the National Insurance Act, 1911, was introduced with a view to a compulsory insurance associated with State aid, an amending Act being passed subsequently, in 1913.

The subject matter and benefits of the legislation the subject of this article are, mainly, the insurance of the working classes against sickness and unemployment. In this article only insurance against sickness is dealt with. Unemployment is dealt with in the

article on **UNEMPLOYMENT INSURANCE.** The Acts go farther, however, than the establishment only of a system of insurance. They seek also to prevent and cure sickness. The benefits provided are:—(*a*) Medical Benefit, *i.e.*, treatment and medicine and the supply of medical and surgical appliances—a voluntary contributor with an income exceeding £160 is not entitled to this benefit; (*b*) Sanatorium Benefit, *i.e.*, treatment in sanatoria or other institutions, or otherwise, for tuberculosis or other specified diseases; (*c*) Sickness Benefit, *i.e.*, periodical payments whilst rendered incapable of work by some specific disease or by bodily or mental disablement of which notice has been given, commencing on the fourth day of such incapacity, and continuing for not more than twenty-six weeks; (*d*) Disablement Benefit, *i.e.*, a benefit to continue after the determination of sickness benefit so long as there is incapacity for work by reason of the disease or disablement; (*e*) Maternity Benefit, *i.e.*, a payment of 30s. on a confinement; (*f*) Additional Benefits under Part II. of the first schedule set out below. Subject to the fulfilment of the conditions imposed by the Regulations, the Medical benefit and the Sanatorium benefit may be obtained by persons exempt from insurance. The following two schedules set out these benefits in detail, and the reductions in benefits where contributions are in arrear.

FIRST SCHEDULE

BENEFITS RELATING TO HEALTH INSURANCE,

PART I

RATES OF BENEFITS

Table A.—Ordinary Rates

Sickness benefit: for men the sum of 10s. a week throughout the whole period of twenty-six weeks; for women the sum of 7s. 6d. a week throughout the whole period of twenty-six weeks.

Disablement benefit: the sum of 5s. a week for men and women alike.

Table B.—Reduced Rates in the case of Unmarried Minors

Sickness Benefit—for males, the sum of 6s. a week during the first thirteen weeks and the sum of 5s. a week during the second thirteen weeks.
for females, the sum of 5s. a week for the first thirteen weeks and the sum of 4s. a week for the second thirteen weeks.

Disablement Benefit—for females, the sum of 4s. a week.

* *Table D.—Rates and Conditions for Married Women*

Sickness benefit: during the first thirteen weeks, the sum of 5s. a week; during the second thirteen weeks, 3s. a week.

Disablement benefit: the sum of 3s. a week.

Sickness and disablement benefit shall not be payable during the two weeks before and four weeks after confinement, except in respect of a disease of disablement neither directly nor indirectly connected with childbirth.

PART II

ADDITIONAL BENEFITS

(1) Medical treatment and attendance for any persons dependent upon the labour of a member.

(2) The payment of the whole or any part of the cost of dental treatment.

(3) An increase of sickness benefit or disablement benefit in the case either of all members of the Society or of such of them as have any children or any specified number of children wholly or in part dependent upon them.

(4) Payment of sickness benefit from the first, second, or third day after the commencement of the disease or disablement.

(5) The payment of a disablement allowance to members though not totally incapable of work.

* Table C was repealed by the Act of 1913. In this article the expression "Act" should be read as including the amending Act of 1913 in addition to the principal Act.

(6) An increase of maternity benefit.
(7) Allowances to a member during convalescence from some disease or disablement in respect of which sickness benefit or disablement benefit has been payable.
(8) The building or leasing of premises suitable for convalescent homes and the maintenance of such homes.
(9) The payment of pensions or superannuation allowances, whether by way of addition to old age pensions under the Old Age Pensions Act, 1908, or otherwise.
(10) The payment, subject to the prescribed conditions, of contributions to superannuation funds in which the members are interested.
(11) Payments to members who are in want or distress, including the remission of arrears whenever such arrears may have become due.
(12) Payment for the personal use of a member who, by reason of being an inmate of a hospital or other institution, is not in receipt of sickness benefit or disablement benefit.
(13) Payments to members not allowed to attend work on account of infection.
(14) Repayment of the whole or any part of contributions thereafter payable under Part I. of the principal Act by members of the Society or any class thereof.

PART III

BENEFITS FOR MARRIED WOMEN WHO DO NOT BECOME VOLUNTARY CONTRIBUTORS AT REDUCED RATES

Payments of the sum of 5s. a week on confinement during a period not exceeding four weeks on any one occasion.
Payments during any period of sickness or distress, subject to regulations made by the Insurance Commissioners and to the discretion of the Society or Committee administering the benefit.

SECOND SCHEDULE

REPRODUCTION OR POSTPONEMENT OF SICKNESS BENEFIT AND WHERE CONTRIBUTIONS ARE IN ARREAR

TABLE

(1) Where the arrears amount to		(2) Rates of Sickness Benefit.	
		Men.	Women.
		s. d.	s. d.
4 contributions a year on average		9 6	7 3
5	" " "	9 0	7 0
6	" " "	8 6	6 9
7	" " "	8 0	6 6
8	" " "	7 6	6 3
9	" " "	7 0	6 0
10	" " "	6 6	5 9
11	" " "	6 0	5 6
12	" " "	5 6	5 3
13	" " "	5 0	5 0
For both Men and Women.		5s. 0d., commencing 5th day after commencement of illness.	
	" " 6th "	"	"
	" " 7th "	"	"
	" " 8th "	"	"
	" " 9th "	"	"
	" " 10th "	"	"
	" " 11th "	"	"
	" " 12th "	"	"
	" " 13th "	"	"
	" " 14th "	"	"

NOTES

Where the insured person is by virtue of any of the provisions of Part I. of this Act, other than those relating to arrears, entitled to sickness benefit at a lower rate than the full rate, this Table shall have effect as if the entries in the first column were so shifted down that the first entry therein was set opposite the entry in the second column next below the entry specifying the rate of sickness benefit to which the insured person is entitled.

When the rate of sickness benefit during the first thirteen weeks to which the insured person is entitled is by virtue of any of the provisions of this Act, other than those relating to arrears, less than 5s. a week, this Table shall have effect as if such lower rate were therein substituted for the rate of 5s. a week.

It should be noted in connection with the above schedules that sickness and disablement benefits cease at the age of seventy, except that a person who is sixty-five years of age or upwards at the time of entering into insurance is entitled to medical benefit after he attains the age of seventy years if his weekly contributions have exceeded twenty-six. The following subsections (4 to 9) of section 8 of the Act are also of great importance.

(4) No insured person shall be entitled to any benefit during any period when he is resident either temporarily or permanently outside the United Kingdom:

Provided that if a person is temporarily resident in the Isle of Man or the Channel Islands he shall not, whilst so resident, be disentitled to benefits other than medical benefit, and that if with the consent of the society or committee by which the benefit is administered, a person is temporarily resident outside the United Kingdom elsewhere than in the Isle of Man or the Channel Islands, the society or committee may allow him, while so resident, to continue to receive sickness or disablement benefit, and that a person resident out of the United Kingdom shall not be disentitled to maternity benefit in respect of the confinement of his wife, if his wife at the time of her confinement is resident in the United Kingdom.

(5) Where an insured person, having been in receipt of sickness benefit, recovers from the disease or disablement in respect of which he receives such benefit, any subsequent disease or disablement, or a recurrence of the same disease or disablement, shall be deemed to be a continuation of the previous disease or disablement, unless in the meanwhile a period of at least twelve months has elapsed.

(6) Where a woman confined of a child is herself an insured person, and is a married woman, or, if the child is a posthumous child, a widow, she shall be entitled to sickness benefit or disablement benefit (as the case may be) in respect of her confinement in addition of the maternity benefit to which she or her husband may be entitled, but, save as aforesaid, a woman shall not be entitled to sickness benefit or disablement benefit for a period of four weeks after her confinement unless suffering from disease or disablement not connected directly or indirectly with her confinement.

Medical benefit shall not include any right to medical treatment or attendance in respect of a confinement.

(7) Where a person or superannuation allowance is payable by an approved society in whole or in part as an additional benefit under this Part of this Act or out of any fund to which contributions have been made in accordance with paragraph (10) of Part II. of the Fourth Schedule to this Act, it may be made a condition of the grant of the pension or allowance that a member of the society shall, whilst in receipt of such pension or allowance, be excluded in whole or in part from his right to sickness benefit or disablement benefit, or to either of such benefits.

(8) Notwithstanding anything in this Part of this Act, no insured person shall be entitled—

(*a*) to medical benefit during the first six months after the commencement of this Act;

(*b*) to sickness benefit unless and until twenty-six weeks have elapsed since his entry into insurance, and at least twenty-six weekly contributions have been paid by or in respect of him;

(*c*) to disablement benefit unless and until one hundred and four weeks have elapsed since his entry into insurance, and at least one hundred and four weekly contributions have been paid by or in respect of him;

(*d*) to maternity benefit unless and until twenty-six, or in the case of a voluntary contributor fifty-two weeks have elapsed since his entry into insurance, and at least twenty-six, or in the case of a voluntary contributor fifty-two weekly contributions have been paid by or in respect of him.

(9) As soon as the sums credited to approved societies as reserve values in respect of persons who enter into insurance within one year after the commencement of this Act have been written off in manner provided by this Part of this Act, the benefits payable to insured persons under this Part of this Act shall be extended in such manner as Parliament may determine.

Benefits, as a consequence of *Arrears* in contributions, are reduced as specified in the second of the above schedules. But no reduction is made in the case of a member of an

approved society who can prove that one or more of his family are dependent on him. And where the rate of benefit exceeds two-thirds of an insured's wages it may be reduced and an equivalent additional benefit given. There are also reductions in certain cases of employed contributors of fifty years of age who have paid less than five hundred contributions, and also in certain cases of employed contributors of seventeen years of age or upwards. Where a contributor, a member of a society, is in arrears, for more than thirteen weekly contributions a year on the average, his sickness and invalidity benefits will be suspended. If his arrears average twenty-six such weekly contributions his medical sanatorium and maternity benefits are suspended also. And a voluntary contributor who is in arrears may suffer a reduction of benefits. The foregoing, however, is subject to the regulations made under the Act of 1913, and to the general principle that any reduction shall be approximately the equivalent of the loss occasioned by the arrears.

Maternity Benefit, it should be noted, is in every case the mother's benefit. When it is payable under the husband's insurance it can be received by him only on her receipt, or his receipt with her authority. And it must be administered in the interests of the mother and child in cash or otherwise by the approved society of which the husband is a member.

The Act also provides for reduction in benefits where the contributor is entitled to compensation for injuries. And where a contributor is an inmate of a hospital his benefits may go to his dependents or to the institution.

Insured Persons.—Every person, whatever sex or nationality he or she may be, of sixteen years of age and upwards, who is employed within the meaning of the Act, is compulsorily insured. Aliens, however, are subject to the operation of special provisions, to which women of British nationality married to aliens are not subject. Certain other persons who have the requisite qualification may be insured as "voluntary contributors." The compulsory class are termed "employed contributors." A person may become a voluntary contributor if, provided his total income per annum does not exceed £160 or he has been insured for at least five years, he is engaged in some regular occupation and is wholly or mainly dependent on it for his livelihood; or has been compulsorily insured for at least five years; or, being sixty years of age or upwards, shows to the Commissioners that he has ceased to be insurable as an employed contributor—in this case his contribution continues at the employed rate. The following table explains who is a person employed within the meaning of the Act as above mentioned:

TABLE

PART I

EMPLOYMENTS WITHIN THE ACT RELATING TO HEALTH INSURANCE

(*a*) Employment in the United Kingdom under any contract of service or apprenticeship, written or oral, whether expressed or implied, and whether the employed person is paid by the employer or some other person, and whether under one or more employers, and whether paid by the time or by the piece or partly by time or partly by the piece or otherwise, or, except in the case of a contract of apprenticeship, without any money payment.

(*b*) Employment under such a contract as aforesaid as master or a member of the crew of any ship registered in the United Kingdom or of any other British ship or vessel of which the owner, or, if there is more than one owner, the managing owner or manager, resides or has his principal place of business in the United Kingdom. The mercantile marine are subject to the special provisions of section 48 of the principal Act and section 23 of the Act of 1913.

(*c*) Employment as an outworker (that is to say, a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired, or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the articles or materials for the purposes of the trade or business of the last-mentioned person), unless excluded by a special order made by the Insurance Commissioners, and any such order may exclude outworkers engaged in work of any class, or outworkers of any class or description specified in the order, or may defer the commencement of this Act as respects all outworkers, and the person who gave out the articles or materials shall in relation to the person to whom he gave them out be deemed to be the employer, or may particularly specify the person to be deemed to be the employer.

(*d*) Employment in the United Kingdom in plying for hire with any vehicle or vessel the use of which is obtained from the owner thereof under any contract of bailment (or in Scotland any contract of letting to hire) in consideration of the payment of a fixed sum or a share in the earnings or otherwise, in which case the owner shall for the purposes of Part I. of this Act be deemed to be the employer.

(*e*) Employment under any local or other public authority except such as may be excluded by a special order.

PART II

EXCEPTIONS

(*a*) Employment in the naval or military service of the Crown, including service in Officers' Training Corps, except as otherwise provided in Part I. of this Act. Every warrant officer of marines, except Royal Marine Gunners, is included in the term "marine." The term "soldier" does not include a soldier who has not been finally accepted for service.

(*b*) Employment under the Crown or any local or other public authority where the Insurance Commissioners certify that the terms of the employment are such as to secure provision in respect of sickness and disablement on the whole not less favourable than the corresponding benefits conferred by Part I. of this Act.

(*c*) Employment as a clerk or other salaried official in the service of a railway or other statutory company, or of a joint committee of two or more such companies where the Insurance Commissioners certify that the terms of employment, including his rights in such superannuation fund as is hereinafter mentioned, are such as to secure provision in respect of sickness and disablement, on the whole, not less favourable than the corresponding benefits conferred by Part I. of this Act, and the person so employed is entitled to rights in a superannuation fund established by Act of Parliament for the benefit of persons in such employment, or in Ireland is entitled to rights in any such superannuation fund or in any railway superannuation fund which may be approved by the Insurance Commissioners.

(*d*) Employment as a teacher to whom the Elementary School Teachers' Superannuation Act, 1898, or a scheme under Section 14 of the Education (Scotland) Act, 1908, or the National School Teachers (Ireland) Act, 1879, applies, or in the event of any similar enactment being hereafter passed as respects teachers or any class of teachers (other than teachers in public elementary schools), as a teacher to whom such enactment applies.

(*e*) Employment as an agent paid by commission or fees or a share in the profits, or partly in one and partly in another such ways, where the person so employed is mainly dependent for his livelihood on his earnings from some other occupation, or where he is ordinarily employed as such agent by more than one employer, and his employment under no one of such employers is that on which he is mainly dependent for his livelihood.

(*f*) Employment in respect of which no wages or other money payment is made where the employer is the occupier of an agricultural holding and the employed person is employed thereon, or where the person employed is the child of, or is maintained by, the employer.

(*g*) Employment otherwise than by way of manual labour and at a rate of remuneration exceeding in value one hundred and sixty pounds a year, or in cases where such employment involves part time service only at a rate of remuneration which, in the opinion of the Insurance Commissioners, is equivalent to a rate of remuneration exceeding one hundred and sixty pounds a year for whole-time service.

(*h*) Employment of a casual nature otherwise than for the purposes of the employer's trade or business, and otherwise than for the purposes of any game or recreation where the persons employed are engaged or paid through a club, and in such cases the club shall be deemed to be the employer.

(*i*) Employment of any class which may be specified in a special order as being of such a nature that it is ordinarily adopted as subsidiary employment only and not as the principal means of livelihood.

(*j*) Employment as an outworker where the person so employed is the wife of an insured person and is not wholly or mainly dependent for her livelihood on her earning in such employment.

(*k*) Employment as a member of the crew of a fishing vessel where the members of such crew are remunerated by shares in the profits or the gross earnings of the working of such vessel in accordance with any custom or practice prevailing at any port, if a special order is made for the purpose by the Insurance Commissioners, and the particular custom or practice prevailing at the port is one to which the order applies.

(*l*) Employment in the service of the husband or wife of the employed person.

Exemptions.—An employed person may obtain a certificate of exemption if he can prove that he is either (*a*) in receipt of a pension or income of £26 per annum or upwards not dependent upon his personal exertions; (*b*) is ordinarily and mainly dependent for his livelihood upon some other person; or (*c*) ordinarily and mainly dependent for his livelihood on the earnings derived by him from an occupation which is not an employment within the meaning of Part I. of the Act.

Contributions.—The funds for providing the benefits conferred by the Act and defraying the expenses of administration are derived—as to seven-ninths (or, in the case of women, three-fourths) thereof from contributions made by or in respect of the contributors by themselves or their employers; and as to the remaining two-ninths (or, in the case of women, one-quarter) thereof from moneys provided by the State. Regulations have been

made for the payment of contributions by stamps on books or cards. A fine of £10 is incurred by any one who buys, takes in exchange, or takes in pawn an insurance book or card from an insured person or any person acting on his behalf. Here follow the Rates of Contributions and the rules as to payment.

RATES OF CONTRIBUTION UNDER THE ACT RELATING TO HEALTH INSURANCE

PART I

Employed Rate

In the case of men ... ... 7d. a week.
„ „ women ... ... 6d. „

Contributions by Employers and Employed Contributors

To be paid by the contributor ... ... { Men, 4d. a week. / Women, 3d. „
„ „ employer ... ... 3d. „

In the case of employed contributors of either sex of the age of 21 or upwards whose remuneration does not include the provision of board and lodging by their employer, and the rate of whose remuneration does not exceed 2s. 6d. a working day, the following shall be the rates of contribution:—

Where the rate of remuneration does not exceed 1s. 6d. a working day—

To be paid by the employer ... ... { Men, 6d. a week. / Women, 5d. „
„ out of moneys provided by Parliament ... ... 1d. „

Where the rate of remuneration exceeds 1s. 6d. but does not exceed 2s. a working day—

To be paid by the employer ... ... { Men, 5d. a week. / Women, 4d. „
„ „ „ contributor ... ... 1d. „
„ out of moneys provided by Parliament ... ... 1d. „

Where the rate of remuneration exceeds 2s. but does not exceed 2s. 6d. a working day—

To be paid by the employer ... ... { Men, 4d. a week. / Women, 3d. „
„ „ „ contributor ... ... 3d. „

PART II

Employed Rate in Ireland

In the case of men ... ... 5½d. a week.
„ „ women ... ... 4½d. „

Contributions by Employers and Employed Contributors

To be paid by the contributor ... ... { Men, 3d. a week. / Women, 2d. „
„ „ „ employer ... ... 2½d. „

In the case of employed contributors of either sex of the age of 21 or upwards whose remuneration does not include the provision of board and lodging by their employer, and the rate of whose remuneration does not exceed 2s. 6d. a working day, the following shall be the rates of contribution:—

Where the rate of remuneration does not exceed 1s. 6d. a working day—

To be paid by the employer ... ... { Men, 4½d. a week. / Women, 3½d.
out of moneys provided by Parliament ... ... 1d.

Where the rate of remuneration exceeds 1s. 6d. but does not exceed 2s. a working day—		
To be paid by the employer	Men,	4d. a week.
	Women,	3d. „
„ „ „ contributor		½d. „
„ out of moneys provided by Parliament		1d. „
Where the rate of remuneration exceeds 2s. but does not exceed 2s. 6d. a working day—		
To be paid by the employer	Men,	3½d. a week.
	Women,	2½d. „
„ „ „ contributor		2d. „

RULES AS TO PAYMENT AND RECOVERY OF CONTRIBUTIONS PAID BY EMPLOYERS ON BEHALF OF EMPLOYED CONTRIBUTORS UNDER THE ACT RELATING TO HEALTH INSURANCE

(1) A weekly contribution shall be payable for each calendar week during the whole or any part of which an employed contributor has been employed by an employer: Provided that where one weekly contribution has been paid in respect of an employed contributor in any such week no further contribution shall be payable in respect of him in the same week, and that where no remuneration has been received and no services rendered by an employed contributor during any such week, or where no services have been rendered by an employed contributor during any such week and the employed contributor has been in receipt of sickness or disablement benefit during the whole or any part of that week, the employer shall not be liable to pay any contribution either on his own behalf or on behalf of the contributor in respect of that week.

An employer who fails or neglects to pay his contributions is liable to a penalty of £10 for each offence, but the proceedings must be commenced within one year from the date of the commission of the offence. Evidence may be given of the non-payment by the employer of other contributions in respect of the same employed contributor.

(2) The employer shall, except as hereinafter provided, be entitled to recover from the employed contributor the amount of any contributions paid by him on behalf of the employed contributor.

(3) Except where the employed contributor does not receive any wages or other pecuniary remuneration from the employer, the amounts so recoverable shall, notwithstanding the provisions of any Act or any contract to the contrary, be recoverable by means of deductions from the wages or other remuneration, and not otherwise; but no such deductions may be made from any wages or remuneration other than such as are paid in respect of the period or part of the period in respect of which the contribution is payable, or in excess of the sum which represents the amount of the contributions for the period (if such period is longer than a week) in respect of which the wages or other remuneration are paid.

(4) Where a contribution paid by the employer on behalf of an employed contributor is recoverable from the contributor but is not recoverable by means of deductions as aforesaid, it shall (without prejudice to any other means of recovery) be recoverable summarily as a civil debt, but no such contribution shall be recoverable unless proceedings for the purpose are instituted within three months from the date when the contribution was payable.

(5) Where the contributor is employed by more than one employer in any calendar week, the first person employing him in that week or such other employer or employers as may be prescribed shall be deemed to be the employer for the purposes of the provisions of Part I. of this Act relating to the payments of contributions and of this Schedule.

(6) Regulations of the Insurance Commissioners may provide that in any cases or any classes of cases where employed contributors work under the general control and management of some persons other than their immediate employer, such as the owner, agent or manager of a mine or quarry, or the occupier of a factory or workshop, such person shall, for the purposes of the provisions of Part I. of this Act relating to the payment or contributions and of this Schedule, be treated as the employer, and may provide for allowing him to deduct the amount of any contribution (other than employers' contributions) which he may become liable to pay from any sums payable by him to the immediate employer, and for enabling the immediate employer to recover from the employed contributors the like sums and in the like manner as if he were liable to pay the contributions.

(7) Where the contributor is not paid wages or other money payments by his employer or any other person, the employer shall be liable to pay the contributions payable both by himself and the contributor, and shall not be entitled to recover any part thereof from the contributor.

(8) Notwithstanding any contract to the contrary, the employer shall not be entitled to deduct from the wages of or otherwise to recover from the contributor the employer's contribution. To so deduct or attempt to deduct the contribution of an employed contributor is a punishable offence.

(9) Any sum deducted by any employer from wages or other remuneration under this Schedule shall be deemed to have been entrusted to him for the purpose of paying the contribution in respect of which it was deducted.

(10) The Insurance Commissioners may by regulations provide that in the case of out-workers the contributions to be paid may be determined by reference to the work actually done, instead of by reference to the weeks in which work is done, and any such regulations may apply to all trades or to any specified classes or branches of trades, and may determine the conditions to be complied with by employers who adopt such a system of payment of contributions.

(11) For the purposes of this Schedule the expression "calendar week" means the period from midnight on one Sunday to midnight on the following Sunday.

The employed contributors' rates, above mentioned, are payable weekly or at other prescribed intervals. The employer pays both his own and his employee's, and deducts the latter's from the wages or otherwise recovers in accordance with the above rules. There are no contributions payable after the age of seventy.

Voluntary Rates.—Tables will be prepared by the Commissioners setting out the rates of the voluntary contributions. If under forty-five years of age and joining within six months from the commencement of the Act the voluntary rate will be the same as the compulsory rate. Over forty-five the rate is settled by the Commissioners. A voluntary insurer who has contributed compulsorily for five years may continue at the employed rate. Voluntary contributions cease at seventy, A change may be made from the voluntary rate to the employed rate and *vice versa*. A voluntary contributor with an income of over £160 pays a contribution reduced by one penny per week, as he is not entitled to medical benefit.

Administration.—The benefits are administered either through the **INSURANCE COMMITTEES** (*q.v.*) or **APPROVED SOCIETIES** (*q.v.*).

Special Provisions.—The Act contains special provision with respect to married women, aliens, persons in the military and naval services of the Crown, cases where an employer is liable to pay wages during sickness, the mercantile marine, men over sixty-five at the commencement of the Act, seasonal trades and intermittent employment, inmates of charitable homes, certificated teachers, and Crown servants generally.

State Organisation.—A National Health Insurance Fund under the control of the Insurance Commissioners is created by the Act. In and out of this fund go all the moneys, including State subsidies, necessary for financing and administering the scheme. Insurance commissioners are appointed, who not only control this fund but, through inspectors, valuers, auditors, and other officers, regulate and supervise the work of the insurance committees and approved societies. An advisory committee is also appointed by them for the purpose of assisting in making regulations.

Supplemental Provisions.—The Act also makes provision for the erection and making grants in aid of sanatoria, the settlement of disputes, the punishment of offences, civil proceedings against employers for neglect in payment of contributions, and the repayment of benefits improperly paid. *Disputes* between approved societies and insured persons, whether members or not, or between approved societies, or between an approved society and an insurance committtee, or between committees, are decided by the commissioners. So the commissioners determine (subject to appeal to the Courts) questions as to rates of contributions, whether employment is employment within the Act, or whether a person is entitled to become a voluntary contributor. One provision, that which grants a *protection against distress and execution* in certain cases, is of such great practical importance that the section (68) is worth verbatim reproduction. It runs as follows:—

68—(1) Where the medical practitioner attending on any insured person in receipt of sickness benefit certifies that the levying of any distress or execution upon any goods or chattels belonging to such insured person and being on premises occupied by him, or the taking of any proceedings in ejectment or for the recovery of any rent or to enforce any judgment in ejectment against such person, would endanger his life, and such certificate has been sent to the Insurance Committee and has been recorded in manner hereinafter provided, it shall not be lawful during any period named in the certificate for any person to levy any such distress or execution or to take any such proceedings or to enforce any such judgment against the insured person:

Provided that, if any person desirous of levying any such distress or execution or taking such proceedings or enforcing such judgment disputes the accuracy of the certificate, he may apply to the registrar of the county court, who, if he is of opinion that the certificate should be cancelled or modified, may make an order cancelling or modifying it, and no appeal shall lie against any such order or a refusal to make any such order.

(2) A certificate granted for the purpose of this section shall continue in force for one week or such less period as may be named in the certificate, but may be renewed from time to time for any period not exceeding one week, up to but not beyond the expiration of three months from the date of the grant of the original certificate, but no such renewal shall have effect unless sent to the Insurance Committee and recorded as aforesaid:

Provided that the protection conferred by this section shall not extend beyond the expiration of one month from such date if on demand being made by the person desirous of levying such distress or execution, or taking such proceedings, or enforcing such judgment proper security is not given for payment of rent thereafter to become due from the insured person or the amount of the judgment debt, as the case may be, and any dispute as to the sufficiency of the security shall be determined by the registrar of the county court whose decision shall be final and not subject to appeal.

(3) If any person knowingly levies or attempts to levy any such distress or execution or takes any such proceedings or enforces or attempts to enforce any such judgment in contravention of this section, he shall be liable on summary conviction to a fine not exceeding fifty pounds.

(4) A certificate or renewal thereof granted under this section shall forthwith be sent to the Insurance Committee, and the Committee shall, unless it has reason to suspect its genuineness, record it in a special register without fee, and such register shall at all reasonable times be open to inspection; and where so recorded its genuineness shall not be questioned in any proceedings against a sheriff or other officer for failure to levy any distress or execute any warrant.

(5) Where the time within which a warrant may be executed is limited any period during which the warrant cannot be executed by reason of the provisions of this section shall be disregarded in computing the time within which the warrant may be executed.

OLD AGE PENSIONS.—Every person in whose case the statutory conditions are fulfilled is now entitled, under the Old Age Pensions Act, 1908-11, to receive an old age pension so long as such conditions continue to be fulfilled, and so long as he is not disqualified. The receipt of a pension does not deprive the pensioner of any franchise right or privilege or subject him to any disability. A pension cannot be assigned or charged; nor does the pensioner lose it by bankruptcy. It is paid weekly in advance, through the Post Office. The rates of pension are as follows:—

Means of Pensioner.	Rate of Pension per week.
Where the yearly means of the pensioner as calculated under the Act	*s.* *d.*
Do not exceed £21	5 0
Exceed £21 0 0 but do not exceed £23 12 6 . .	4 0
„ £23 12 6 „ „ £26 5 0 . .	3 0
„ £26 5 0 „ „ £28 17 6 . .	2 0
„ £28 17 6 „ „ £31 10 0 . .	1 0
„ £31 10 0 „ „	No pension

No money could be paid on account of a pension to a person absent from the United Kingdom, or where payment is not obtained within three months after it has become due.

Calculation of Means.—In calculating the means of a claimant for a pension, account must be taken of (*a*) the yearly value of any property belonging to him (not being property personally used or enjoyed by him) which is invested, or is otherwise put to profitable use by him, or which, though capable of investment or profitable use, is not so invested or put to profitable use by him, the yearly value of that property being taken to be one-twentieth part of the capital value thereof; (*b*) the income which that person may reasonably expect to receive during the succeeding year in cash, excluding any sums receivable on account of a pension under the Old Age Pensions Acts, and excluding any sums arising from the investment or profitable use of property (not being property personally used or enjoyed by him), that income, in the absence of other means for ascertaining the income, being taken to be the income actually received during the preceding year; (*c*) the yearly value of any advantage accruing to that person from the use or enjoyment of any property belonging to him which is personally used or enjoyed by him, except furniture and personal effects in a case where the total value thereof does not exceed £50; and (*d*) the yearly value of any benefit or privilege enjoyed by that person. Where, under paragraph (*a*), the yearly value of any property is taken to be

one-twentieth of its capital value, no account is to be taken under any other of the foregoing provisions of any appropriation of that property for the purpose of current expenditure. In calculating the means of a person being one of a married couple living together in the same house, the means are to be taken as being half the total means of the couple. If it appears that any person has directly or indirectly deprived himself of any income or property in order to qualify either for a pension or for one at a higher rate than he would otherwise be entitled to, that income or the yearly value of that property must nevertheless be taken to be part of his means.

The Statutory conditions for the receipt of an old age pension by any person are :—(1) He must have attained the age of seventy. That age is attained on the commencement of the day previous to the seventieth anniversary of the day of his birth.

(2) He must satisfy the pension authorities that for at least twenty years up to the date of the receipt of any sum on account of a pension he has been a British subject. This condition need not be fulfilled however, in the case of certain British women who have married aliens, and so lost their nationality. It is sufficient if a woman would, but for her marriage with an alien, have fulfilled the condition, and that, at the date of the receipt of any sum on account of a pension, the alien is dead, or the marriage with the alien has been dissolved or annulled, or she has, for a period of not less than two years up to the said date, been legally separated from, or deserted by the alien.

(3) For at least twelve years in the aggregate out of the twenty years up to the date of the receipt of any sum on account of a pension he has had his residence in the United Kingdom. For the purpose of computing such twelve years' residence (*a*) any periods spent abroad in any service under the Crown, the remuneration for which is paid out of moneys provided by Parliament, or as the wife or servant of a person in any such service so remunerated ; and (*b*) any periods spent in the Channel Islands or the Isle of Man by a person born in the United Kingdom; and (*c*) any period spent abroad by any person during which that person has maintained or assisted in maintaining any dependent in the United Kingdom ; and (*d*) any periods of absence spent in service on board a vessel registered in the United Kingdom by a person who before his absence on that service was living in the United Kingdom ; and (*e*) any periods of temporary absence not exceeding three months in duration at any one time ; are counted as periods of residence in the United Kingdom. "Residence" here means actual presence in the United Kingdom, uninterrupted otherwise than by temporary absences. A "claimant" is deemed to have been temporarily absent– (i.) If before the absence he was living in the United Kingdom and throughout the absence he was employed in the service of the Crown as a soldier, sailor, or otherwise, or was in the service of anyone so employed, and provided remuneration is paid out of moneys provided by the Imperial Parliament ; or (ii.) If before the absence he was living in the United Kingdom and throughout the absence was serving on board a vessel registered there ; or (iii.) If throughout the absence his home was in the United Kingdom, but he will not be taken to have had such a home during any absences (other than those to which (i). and (ii.) above apply,) which occurred wholly or partly within the period of twenty years prescribed above. If the aggregate of those absences since the beginning of the earliest of them exceeds eight years. A "pensioner" is deemed to have been temporarily absent if absent for any period not exceeding three months at any one time.

(4) He must satisfy the pension authorities that his yearly means as calculated under the Act do not exceed £31 10s.

Disqualifications.—A person is disqualified for receiving or continuing to receive a pension, notwithstanding fulfilment of the statutory conditions—(*a*) while he is in receipt of poor relief. The following are not considered as poor relief from the point of view of this disqualification :—(i.) medical or surgical assistance (including food or comforts) supplied by, or on the recommendation of, a medical officer ; or (ii.) relief given by maintenance of a dependent in a lunatic asylum, infirmary, or hospital, or the payment of expenses of the burial of a dependent ; or (iii.) relief (other than medical or surgical assistance, or relief hereinbefore specifically exempted) which by law is expressly declared not to be a disqualification for the parliamentary franchise, or a reason for the deprivation of any franchise, right, or privilege. (*b*) If, before he becomes entitled to a pension, he has habitually failed to work according to his ability, opportunity, and need, for the maintenance or benefit of himself and those legally dependent upon him. But no one is so disqualified if he has continuously for ten years up to attaining (the calculation here is the same as for seventy, above) the age of sixty, by means of payments to friendly, provident, or other societies, or trade unions, or other approved steps, made such provision against old age, sickness, infirmity or want, or loss of employment as may be recognized as proper by the regulations

Such provision, when made by the husband in the case of a married couple living together, is treated, as respects any right of the wife to a pension, as provision made by the wife as well as by the husband. A person is regarded by the Regulations as having made such "proper provision" if he has continuously for ten years up to attaining the age of 60, by means of payments to friendly, provident, or other societies, or trade unions, or other approved steps, made provision to secure for himself free from any deductions or encumbrances any of the following benefits:—(i) the right to receive during any period of sickness, not less than 7*s*. 6*d*. per week during the first twenty-six weeks (or alternatively not less than 15*s*. a week for the first thirteen weeks) of the period, and not less than 2*s*. a week for the remainder of the period: (ii.) the right to receive not less than 5*s*. a week during want or loss of employment: (iii.) the right to receive not less than 3*s*. a week for life either on becoming permanently incapacitated or upon the attainment of any specified age not exceeding seventy: (iv.) the right to receive not less than 5*s*. a week upon the attainment of any age not exceeding sixty-five until the attainment of the age of seventy: (v.) the right to receive not less than 2*s*. a week upon the attainment of any age not exceeding sixty until the attainment of the age of seventy: (vi.) the right to receive a capital sum of not less than £50 upon the attainment of any specified age not exceeding seventy: (vii.) the possession upon the attainment of the age of sixty, of accumulated savings, or of property purchased out of accumulated savings, to the value of not less than £50; (*c*) While he is detained in a lunatic asylum, or in any place as a pauper or criminal lunatic; (*d*) During the continuance of any period of disqualification arising or imposed in pursuance of these provisions in consequence of conviction for an offence; (*e*) Conviction and imprisonment without the option of a fine, or any greater punishment—here the disqualification operates during the detention in prison and ten years after the date of release, or two years where the imprisonment is not for more than six weeks; (*f*) A person of sixty years of age or upwards convicted under the Inebriates Act, 1898, and is liable to have a detention order made against him, may be disqualified by order of the Court for a period not exceeding ten years. (*g*) A pensioner convicted of an offence mentioned in, or deemed to be mentioned in the first schedule to the Inebriates Act, if not otherwise disqualified, is disqualified for six months unless the Court otherwise directs. By the Act of 1911 (section 4 (1)) it is provided that any rule of law and any enactment, the effect of which is to cause relief given to or in respect of a wife or relative to be treated as relief given to the person liable to maintain the wife or relative, is not to have effect for the purposes of disqualification.

Administration.—The old age pension scheme is administered by the Local Government Board, as Central Pension Authority, through local pension committees and pension officers. Such a committee is appointed for every borough and urban district having a popluation of 20,000 or over, and for every county (excluding the area of any such borough or district), by the council of the borough, district, or county, as the case may be. The committees, with the assistance of pension officers, orginally determine all claims for, and questions relative to the grant or continuance of pensions, subject to appeal to the Local Government Board.

Local Pension Committees.—A committee consists of such number of persons, not less than seven nor more than the number of the appointing council itself, as the council may determine. Quorum, proceedings, and place of meeting, may be regulated by that council. Subject to any such regulations the committee determine these matters. The quorum, however, cannot be less than three; and the term of office of a member of the committee cannot be for more than three years, though he may be reappointed.

Making Claims.—A person desiring to make a claim should properly make it within four months before attaining seventy years of age. A form of claim can be obtained at a post office and it is the duty of the postmaster, if so required, to assist the claimant in filling it in. When filled up, the form is left with the postmaster, who forwards it to the authorities.

Investigation and Determination of Claims.—Upon receipt of the claim by the committee or pension officer, the latter must take all necessary steps for investigating the claim for the purpose of ascertaining whether the claimant is entitled to a pension, and if he is so entitled, to what rate of pension. Where, however, a claim previously made by the claimant within four months of his present claim has been disallowed, and the claimant does not satisfy the officer that there is *prima facie* reason to believe that the ground on which the former claim was disallowed is no longer in operation, the officer is not bound to investigate the claim. So also where a claim, on the face of it, discloses that the claimant does not fulfil the statutory conditions. But although the officer does

not investigate a claim he must make a special report on it to the committee stating his reasons for not investigating. A report must also be sent by him to the committee on all claims he does investigate, stating the enquiries he has made, their results, and, unless he is satisfied that the yearly means of the claimant do not exceed £21—this to be stated in the report—a summary of the income, property, and other yearly means of the claimant.

The committee hold meetings to consider these claims and have power to require the officer to make such further enquiries as may be thought proper. Where the report is in favour of allowing the claim, and the committee agree with it, and fix as they must, the weekly rate of the pension, nothing remains but for the claimant to be notified of their decision and of the rate allowed. Where however, the committee consider that a claim should be decided adversely to the claimant the latter is entitled to attend and be heard before the committee. Notice must be given to the claimant of the meeting at which he may be heard. Where in the end, a claim is disallowed a notice is required to be sent to the claimant stating the grounds of such disallowance, and that the claimant is entitled to appeal to the Local Government Board. In order to appeal an aggrieved claimant must, within seven days after the date of the decision or receipt of the notice, send notice of appeal, in the prescribed form, to the Local Government Board. Notification that he has so appealed must also be sent by him to the committee. Thereupon the Board hold such enquiry or take such other steps as they think necessary to determine the question. Forms of notice of appeal and notification to the committee are supplied gratis to the appellant by the clerk to the committee. The Board may also be approached in any case where a committee refuses or neglects to consider a claim.

Penalties are imposed for false statements made for the purpose of obtaining or continuing pensions, and provision is made for repayment where a pensioner is found not to have been entitled to a pension.

OPEN SPACES.—The Open Spaces Act, 1906, gives increased facilities to local authorities to create or retain open spaces so as to further the health of the communities. The "local authority" under the Act is: any Council of any county or district, or of any municipal or metropolitan borough; the Common Council of the City of London; or any Parish Council invested with powers under the Act by the County Council of the district in which the parish is situated. *Transfer to the local authority.*—The trustees under any local or private Act of Parliament who have the management of open spaces, can, on special resolution and with the consent, by special resolution, of the householders interested, with or without consideration (*a*) convey their interest to the local authority who are to preserve and maintain the open space for the public; (*b*) grant to the local authority a term of years or an easement; (c) make an agreement with the local authority as to the opening and management of the open spaces; (*d*) and notwithstanding the conditions of their Act, admit other persons besides the householders entitled, at all or specified times and on such terms as they think proper. If there is a freeholder of the open space and of the houses or most of them adjoining, his consent must be got before the trustees can act. If the trustees are a corporation, it grants under its common seal, and, if not, the trustees sign up to the number of five. Any act done under the powers of the section is to be a valid carrying out of their trusts, and if they convey the whole of their interest to the local authority, the trustees are relieved from their trusts. Any money received by them is to be held for the benefit of those formerly interested or to pay the rates formerly charged on the open space, but they will be relieved from any special rate made after they have conveyed, altogether or during the term granted. Trustees holding for the purposes of public recreation can also convey by special resolution as a free gift, or by granting a limited term. The local authority then holds under the same terms as the trustees, unless fresh conditions are agreed between the trustees, the local authority, and the Charity Commissioners. If the local authority continue to use the space for recreation purposes they can also use it as an open space. Charity trustees can also, by a majority and where the space is no longer required for the purposes of the trust or where it will advantage the trust, convey to the local authority. They act by special resolution, or under the Charitable Trust Acts, 1853–1894, where the trust is under those Acts, or under the Order of Court. The local authority holds the space on terms agreed upon or ordered by either the High Court or the County Court, on application by the trustees and after inquiry or otherwise. Owners of open spaces, subject to rights of user for exercise and recreation, can, with the consent by special resolution of the householders having the user, convey the whole to, for a term of years, or make an agreement with the local authority as to opening, care, and management of such open space. An owner of a term of years or the householders having the user can also convey their interests to the local authority. Owners of disused burial-grounds can convey or grant a term of years

or make an agreement with the local authority, so as to treat it as an open space and arrange for the opening, laying out, and improving of such space. A corporation (not a municipal corporation) or those having power to sell with or without the consent of any corporation can with consent convey, with or without consideration, to the local authority any land as an open space. The local authority can then accept or refuse. The local authority, if they are the holders, can appropriate for this purpose, and every Parish Council is an authority and can act under this section. A special resolution for the above purposes is one passed by two-thirds of those present and confirmed by a resolution of two-thirds present at a meeting one month later. The trustees are to have a month's notice of the meetings; the householders are also to have a month's notice, which is to be advertised three times in local newspapers. If the meeting rejects the proposal, no fresh meeting for this purpose is to be held for three years. The meeting of owners or occupiers is only to take place between March and July both inclusive.

Powers of the local authority.—The local authority can (*a*) acquire by agreement, with or without consideration, the freehold, a term of years or other limited interest or an easement, over any open space or burial-ground whether within or without their district; (*b*) undertake the management or upkeep of such open spaces although they may have no interest in the land; (*c*) make agreements with those interested in such open spaces or burial-grounds. The local authority then holds the property in trust for the use of the public and for no other purpose, and has to maintain and keep it in a proper state, by enclosing, draining, levelling, or otherwise as may be necessary. If the burial-ground has been consecrated, a faculty or licence from the bishop is required before the ground can be managed by the local authority, or if games are to be allowed. If the burial-ground has not been consecrated, leave must be had from the person conveying before games can be played. If the burial-ground is disused and the local authority desires to move any stones or monuments, it must have a statement with the particulars on the stones prepared and give notice by advertising three times in local papers, by affixing a copy on the door of the church (if any) and posting a copy to any known relative of the person buried. If the disused burial-ground has been consecrated, a licence or faculty is also required from the bishop, on application made at least one month after the last required advertisement has appeared. The bishop may refuse the licence if he thinks that insufficient steps have been taken to acquaint the relatives of the deceased with the intention of removal; or he may add restrictions in the licence. The powers of the Act apply to any open spaces or burial-grounds already in the hands of the local authority. Any compensation to be paid for any interest injuriously affected by the powers in the Act is to be settled under the Lands Clauses Acts. The County Council may purchase or lease land for public walks and pleasure grounds, and lay out and maintain the same, or it may support or contribute where such grounds are provided by any person.

Bye-laws.—The local authority may make bye-laws for the regulation of such open spaces as to admission thereto, for the preservation of order, and the prevention of nuisance, and provide for penalties and the removal of any person infringing. Such bye-laws shall be made (*a*) for a County Council (except the London County Council) under Section 16 of the Local Government Act, 1888; (*b*) for the London County Council under Sections 202, 203 of the Metropolis Management Act, 1853, as modified by the London County Council (General Powers) Acts, 1890 and 1898; (*c*) for the Common Council of the City of London under the Corporation of London (Open Spaces) Act, 1878; (*d*) for the council of a metropolitan borough under Sections 202, 203 of the Metropolis Management Act, 1855; (*e*) for a municipal borough, or district, or parish council under Sections 182 to 186 of the Public Health Act, 1875. The trustees of an open space who under the Act admit strangers, are to have the same powers of making bye-laws as the committee of inhabitants of a square under Section 4 of the Town Gardens Protection Act, 1863.

Expenses and borrowing.—Two or more local authorities may act jointly in carrying out the Act and make an agreement to pay part or the whole of the expenses incurred. Such expenses are to be paid out of the county fund for a County Council; under the Public Health Acts for Boroughs or Rural District Councils; and under the Local Government Act, 1894, for a Parish Council. The borrowing powers are similarly for a County Council under the Local Government Act, 1888; for a Metropolitan Borough Council under the Metropolis Management Acts, 1855 to 1893; for a Municipal Borough or under a Rural District Council, under the Public Health Acts; and for a Parish Council under the Local Government Act, 1894.

The Act does not apply to (*a*) the royal parks; (*b*) Crown lands or those under the Duchy of Lancaster; (*c*) lands under the Commissioners of Works or the Commissioners of the Crown Estate Paving Act, 1851; (*d*) any common within the meaning of the Metropolitan Commons Acts, 1866 to 1898; (*e*) land belonging to the Societies of the

Inner and Middle Temples; (*f*) land under the Commissioners of Public Works in Ireland or the benchers of the King's Inns in Dublin.

The Act does not extend to Scotland, and came into force on the 1st of January, 1907.

PARTNERSHIP, LIMITED.—A limited partnership is a partnership consisting of two classes of partners. One of these classes is composed of one or more persons called "general partners," who are liable for all debts and obligations of the firm, the other class being composed of one or more persons called "limited partners," who at the time of entering into the partnership have contributed thereto a sum or sums as capital or property valued at a stated amount, and who are not liable for the debts and obligations of the firm beyond the amount so contributed. Shortly, the liability of the general partners for the debts of the firm are, as in the ordinary form of partnership, unlimited, while the similar liability of the limited partners is limited. A limited partnership cannot lawfully consist, in the case of a banking firm, of more than ten persons, and, in any other case, of more than twenty persons. Four points may be usefully noted: (i) A body corporate may be a limited partner. (ii) Subject to the provisions of the Limited Partnerships Act, 1907, which are set out in this article, the Partnership Act, 1890, and the rules of equity and common law applicable to partnerships, as set out in the article of PARTNERSHIP, which should be read with this article, apply to limited partnerships. (iii) A limited partnership must be registered, or in default thereof it will be deemed a general partnership, and every limited partner will be deemed a general partner. (iv) A limited partner may not during the continuance of the partnership, either directly or indirectly, draw out or receive back any part of his contribution; if he should do so he will render himself liable for the debts and obligations of the firm up to the amount so drawn out or received back.

Registration, fees, &c.—A limited partnership is registered with the Registrar of Joint Stock Companies, the forms requisite being obtainable at Somerset House, for England and Wales, or any law stationer. On completion of registration a certificate is issued to the firm. The fees payable are:—

	£	*s.*	*d.*
On the original registration	2	0	0
On registration of a change	0	5	0
For inspecting file	0	1	0
For certificate	0	2	0
For certified copies, per folio of 72 words, or, in Scotland, per sheet of 200 words	0	2	0

In addition to the above:—

Registration of statement of contribution by limited partner, for every £100 of the contribution and fraction thereof.	0	5	0

Registration can be effected by post, all necessary forms being duly filled up and forwarded to the registrar through this medium. Of these forms the "statement" must contain the following particulars: (*a*) The firm name; (*b*) the general nature of the business; (*c*) the principal place of business; (*d*) the full name of each of the partners; (*e*) the term, if any, for which the partership is entered into, and the date of its commencement; (*f*) a statement that the partnership is limited, and the description of every limited partner as such; (*g*) the sum contributed by each limited partner, and whether paid in cash or how otherwise. Any change during the continuance of a limited partnership must also be registered, if it is made or occurs in: (*a*) The firm name; (*b*) the general nature of the business; (*c*) the principal place of business; (*d*) the partners or the name of any partner; (*e*) the term or character of the partnership; (*f*) the sum contributed by any limited partner; (*g*) the liability of any partner by reason of his becoming a limited instead of a general partner, or a general instead of a limited partner. A statement, signed by the firm, specifying the nature of the change, must within seven days be sent by post or delivered to the registrar, under penalty of a fine, in case of default, not exceeding £1 for each day during which the default continues. Where a general partner becomes a limited partner, or the share of a limited partner is assigned, a statement of the fact must be forthwith advertised in the *Gazette*, and until such advertisement the arrangement or transaction is of no effect, except, perhaps, as between the parties themselves. The registrar files all statements and returns, and keeps an indexed register thereof, which may be inspected by the public. It is a misdemeanour to send a false statement to the registrar.

Modifications of the general law in the case of limited partnership.—A limited partner must not take part in the management of the partnership business, and has no power to bind the firm; but he may by himself or his agent at any time inspect the books of the

firm, and examine into the state and prospects of the business, and advise with the partners thereon. A limited partner who takes part in the partnership business is liable for all debts and obligations of the firm incurred while he so takes part in the management as though he were a general partner. Death or bankruptcy of a limited partner does not dissolve the partnership, and the lunacy of such a partner is a ground for dissolution by the Court only when the lunatic's share cannot otherwise be ascertained and realised. In the event of the dissolution of a limited partnership its affairs must be wound up by the general partners unless the Court otherwise orders. Application to the Court to wind up a limited partnership proceeds on the lines of a petition to wind up a company, the general partners being substituted for directors. Subject to any agreement expressed or implied between the partners: (*a*) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the general partners; (*b*) a limited partner may, with the consent of the general partners, assign his share in the partnership, and upon such an assignment the assignee becomes a limited partner with all the rights of the assignor; (*c*) the other partners are not entitled to dissolve the partnership by reason of any limited partner suffering his share to be charged for his separate debt; (*d*) a person may be introduced as a partner without the consent of the existing limited partners; (*e*) a limited partner cannot dissolve the partnership by notice.

PISTOLS.—So great was the number of accidents caused by the careless use of pistols and other firearms, especially by young persons, that in 1903 the Pistol Act was passed to regulate the sale and use of such weapons. Under this Act the term "pistol" means a firearm or other weapon from which any shot, bullet, or other missile can be discharged and of which the barrel is not longer than nine inches. An "antique pistol" is not to include any pistol with which ammunition is sold or which is capable of being effectively used. It is now unlawful to sell by retail or by auction, or let or hire a pistol to any one, unless (1) a valid gun or game licence is produced; (2) proof is given that the purchaser is entitled to carry a gun without a licence under the Gun Licence Act, 1870; (3) that he is a householder and intends to use the pistol only in his house or on his premises; (4) that he is about to proceed abroad for a period of not less than six months, and produces a statement to that effect signed by himself and by an inspector of police or higher officer of the district within which he resides, or by himself and a Justice of the Peace. The seller or hirer of a pistol must enter in a book kept for that purpose (1) the description of the pistol sold, whether it is single barrel, magazine, revolver, pin, rim, or centre fire; (2) the date of the transaction; (3) the name and address of the purchaser or hirer; (4) the office from which the purchaser's or hirer's gun licence was issued; (5) the date of such licence or the circumstances exempting him from having a licence. This book is to be produced for inspection to any officer of police or of the Inland Revenue.

Penalties.—(1) Any one who contravenes any of the above provisions or knowingly makes or causes to be made any false entry or statement while filling up the necessary entries is liable to a penalty not exceeding £5. (2) Persons under eighteen, who are not exempt from carrying a gun licence under the Act of 1870, who buy, hire, use, or carry a pistol are liable to a fine of forty shillings, and the person knowingly selling or delivering a pistol to such a young person not so exempt, is liable to a fine not exceeding £5. (3) Any person knowingly selling a pistol to an insane or drunk purchaser is liable to a fine up to £25 or imprisonment, with or without hard labour not exceeding three months. The proceedings may take place under the Summary Jurisdiction Acts. The Act applies to England and Scotland, but not to Ireland. The Act does not apply in cases where antique pistols are sold as ornaments or curiosities.

POULTRY, now, by virtue of the Poultry Act, 1911, come within the Diseases of Animals Acts, 1904–9, the object of which is to protect animals from unnecessary suffering. The expression "poultry" includes, in this connection, domestic fowls, turkeys, geese, ducks, guinea-fowls, and pigeons. The protection is afforded by the orders made under the Diseases of Animals Acts, and which must now have effect as if they included the following requisitions:—(*a*) that live poultry should be protected from unnecessary suffering while being conveyed by land or water, and in connection with their exposure for sale and their disposal after sale; (*b*) receptacles or vehicles used for the conveyance of live poultry should be cleansed or disinfected. An inspector, for the purpose of enforcing an order, may examine any live poultry under any circumstances to which the order relates and any receptacle or vehicle used for their conveyance. He also has power to enter any vessel or premises in which he has reasonable grounds for supposing that there are live poultry in course of conveyance or packed for conveyance.

PROBATION OF OFFENDERS.—The problem of staying the development of the criminal and criminal class has now for some years been the subject of attention by the public, the administrators of the law, and the legislature. Several attempts at solution

have been made, as, for instance, by the Youthful Offenders Act, 1901; but the most serious practical effort is found in the Probation of Offenders Act, 1907, the main provisions of which are indicated in this article.

Probation officers.—Petty-sessional Courts have now power to appoint, for their respective divisions, certain officers, male or female, known as probation officers, and, for the purpose of dealing with offenders under the age of sixteen years, special children's probation officers. The duty of a probation officer, subject to the directions of the Court, is—(*a*) To visit or receive reports from the person under supervision at such reasonable intervals as may be specified in the probation order or, subject thereto, as the officer may think fit; (*b*) to see that he observes the condition of his recognisance; (*c*) to report to the Court as to his behaviour; (*d*) to advise, assist, and befriend him, and, when necessary, to endeavour to find him suitable employment.

The probation of an offender, in its conditions, depends upon which of two cases he comes under, whether—(i) he is charged before a Court of summary jurisdiction with an offence punishable by such Court, and the Court thinks that the charge is proved; or (ii) he has been convicted on indictment of any offence punishable with imprisonment. In either case, however, before the Court may act under the statute it must have regard to certain elements in the case, *i.e.* to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed. Having had due regard to such elements of the case the Court, in the first of the above cases, if of opinion that it is inexpedient to inflict any punishment other than a nominal punishment, or that it is inexpedient to release the offender on probation, may make an order either—(*a*) dismissing the information or charge; or (*b*) discharging the offender conditionally on his entering into a recognisance, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called on at any time during such period, not exceeding three years, as may be specified in the order. In the second of the above cases the Court, having had the same regard as in the other case, if of opinion that it is inexpedient to inflict any punishment other than a nominal punishment, or that it is expedient to release the offender on probation, may, in lieu of imposing a sentence of imprisonment, make an order discharging the offender conditionally on his entering into a recognisance, with or without sureties, to be of good behaviour and to appear for sentence when called on at any time during such period, not exceeding three years, as may be specified in the order. In addition to the foregoing, the offender may be ordered to pay damages (not exceeding £10 in a Court of summary jurisdiction unless a higher sum is fixed by statute) for injury or compensation for loss, together with costs; and if he is under sixteen years of age, and it appears to the Court that his parent or guardian has conduced to the offence, the damages and costs may be ordered to be paid by parent or guardian.

The recognisance to be entered into contains a condition that the offender be under the supervision of a probation officer, or such other person as the Court may order, and also conditions, at the discretion of the Court—(*a*) prohibiting the offender from associating with thieves and other undesirable persons, or from frequenting undesirable places; (*b*) requiring abstention from intoxicating liquor, where the offence was drunkenness or an offence committed under the influence of drink; (*c*) generally for securing that the offender should lead an honest and industrious life.

PUBLIC TRUSTEE.—The office of public trustee is now, by the Public Trustee Act, 1906, established as a corporation sole, with perpetual succession and a common seal. Instruments sealed with the seal are not liable to a higher stamp duty than if they were signed by an individual. He is appointed as stated below.

The Act is an attempt to meet the great difficulty of getting private trustees to act. In all ranks and conditions of life it has been found that few persons care to undertake the troublesome and unsatisfactory duties of trustee. Among the poorer classes it is hopeless to get people to administer properties thoroughly, which though small, are of the utmost importance to the families of the testators. There is also the trouble of dishonest trustees; the temptation is great, where they act as sole trustee and find themselves in financial difficulty, to convert the trust funds to their own uses. This has caused a great amount of distress in many cases, and it is hoped the Act will go far to give security and justice to helpless dependants of all classes of trustees.

Powers and duties.—The public trustee can (*a*) act in the administration of estates of small value; (*b*) act as custodian trustee; (*c*) act as an ordinary trustee; (*d*) be appointed to be a judicial trustee; and (*e*) be appointed to be the administrator of the property of a convict under the Forfeiture Act, 1870, either alone or jointly with other persons. He is to have the same powers, duties, liabilities, rights, and immunities as a private trustee. He can decline to act or make conditions before acting in any trust, but

cannot refuse the trust on the ground only of the small value of the trust property. He cannot undertake any trust (*a*) which involves carrying on a business, except where authorised by the rules made under this Act; (*b*) under a deed of arrangement with creditors; (*c*) of estate known or which he believes to be insolvent; (*d*) exclusively for religious or charitable purposes. But nothing in the Act affects or abridges the powers and duties of the official trustees of charity lands or funds.

Administration of small estates.—Where the value of the estate is under £1,000 and the public trustee is of opinion that the party is entitled to go to the Court for administration, such party may apply to the public trustee, who, if he believes the claimants are of small means, shall administer the estate. Nevertheless he may refuse if he sees good reason for so doing. The trust must be undertaken in writing signed and sealed by the public trustee. The property vests in him, as also does the right to transfer or call for the transfer of any stock as if a vesting order had been made by the High Court under the Trustee Act, 1893. The former trustees are discharged from liability thenceforth except as to acts done by them before the vesting of the estate. The public trustee cannot himself transfer the stock without the leave of the Court, but he can transfer any copyhold land. He can exercise any powers given him by the rules, and can take the opinion of the Court on any point arising without the necessity of an action. The Court can order the public trustee to administer the estate in any case where an action has been brought, and the estate is small, or for some other reason it is expedient.

Custodian trustee.—The public trustee can be appointed custodian trustee (*a*) by order of the Court on the application of a party who has the right to apply for a new Trustee; (*b*) by the testator, settlor, or creator of a trust; (*c*) by any person having power to appoint new trustees. The former trustees in such cases are the managing trustees. The provisions as to custodian trustees apply to any banking or insurance company or other body corporate acting as such trustee and the salary or remuneration is to be the same. The estate is conveyed to the custodian trustee as sole trustee, and vesting orders for this purpose may be made under the Trustee Act, 1893. He has the custody of all securities and documents of title, but the managing trustees are entitled to freely inspect and copy. He must concur in and perform all acts necessary to enable the managing trustees to carry out their powers and duties (including payment of money or securities into Court), unless the act would be a breach of trust or involve personal liability as to calls. Unless he so concurs he is not liable for any act or default of such managing trustees. He is also to make all payments and receive all monies; but he can allow the income to be paid to the managing trustees or to their agent or bank, and he is then exonerated from seeing to the application of such monies or from liability for the loss or misapplication thereof. In counting the number of Trustees for the purposes of the Trustee Act, 1893, he is not to be counted, and, if acting in good faith, he is not liable for taking the written statements of the managing trustees as correct in reference to such matters as births, deaths, marriages, pedigree, or relationship, in regard to the title of the estate or for acting on legal opinions obtained by the managing trustees. The managing trustees retain the management of the trust property, and the exercise of any power or discretion. They appoint new trustees (where necessary); but the custodian trustee has an equal power with them of applying to the Court to appoint trustees. They, the custodian trustee or a beneficiary can apply to the Court to terminate the custodian trusteeship, on proof that it is the wish of all the beneficiaries or on the ground of expediency; and the Court then can terminate the office.

As a trustee, executor, etc.—The public trustee may be appointed under the name of public trustee or any other sufficient description as a trustee of a Will, Settlement, or any deed creating a trust, or to perform any of the duties allowed by the Act, whether the deed was made before or after the date of the Act, and either as an original or as a new trustee. He is equal to a private trustee, except that he may be sole trustee, although two or more trustees were originally appointed. Where he has been appointed a co-trustee may retire although there are not more than two trustees, and that without the consents required by the Trustee Act of 1893. If the trust deed contains a direction against the appointing of a public trustee, he cannot be appointed, unless the Court order his appiontment. Notice of the appointment of a public trustee must be given to all the beneficiaries resident in Great Britain, or to the guardians of infant beneficiaries. The beneficiary is entitled within twenty-one days to apply to the Court, and if the Court thinks it expedient an Order will be made prohibiting the appointment. The failure to give notice to a beneficiary does not invalidate any appointment made. Should the rules allow the public trustee being appointed to act under probates of Wills or letters of administration, the Court can grant such probate to him as public trustee. He is to act equally with any other person appointed, but need not be cited if a grant is made to such other person. The widower, widow or next of kin is to be preferred to the public trustee,

unless good reason is shown to the contrary. An executor or administrator who has been appointed, and although he has already acted, can, with the sanction of the Court, and after such notice to the beneficiaries as the Court directs, transfer the estate to the public trustee, who then acts solely or jointly with the executors or administrator. The public trustee has the same powers as the executors or administrator, and is only liable for his own act or default or those for whom he is responsible.

Consolidated fund.—This fund is liable for all sums for which the public trustee, as a private trustee, would be personally liable, except for such as neither he nor his officers were responsible or could have averted by reasonable diligence, nor is he personally liable in such a case.

Appointment and officers.—The Lord Chancellor appoints the public trustee, who is removable at pleasure. His salary is fixed by the Treasury. Officers to assist him are also appointed, subject to the sanction of the Treasury, which fixes the salaries and terms of holding office. The officers may be persons already in the public service. The Treasury fixes a scale of fees to be charged by the public trustee. Any expenses which a private trustee could charge to the estate will be charged in addition to this scale. The scale is fixed so as to cover the cost of the department and any loss to the consolidated fund, and no more. The public trustee determines the incidence of the fees and expenses as between the capital and income of the estates.

Actions.—Any person aggrieved by an act, omission, or decision of the public trustee can appeal by applying to a Judge in Chambers of the Chancery Division of the High Court. The public trustee can employ solicitors, bankers, accountants, brokers, and other persons as he may deem necessary, but he must consider the wishes of the creator of the trust and the other trustees and beneficiaries where practicable, either expressed or implied by the practice of the creator of the trust or the previous management thereof. Neither he nor his officers must act under this Act for reward except as therein provided.

Delegation.—He may delegate his duties to any person except where the act could only lawfully be done by a barrister or duly certified solicitor. He need not give a security bond if appointed as administrator, but is subject to the same liabilities and duties as if he had done so. His name can be entered on the books of a company, but this is not to constitute notice of a trust, and in dealing with property the same is to apply.

Investigation and audit of accounts.—Subject to the rules, any trustee or beneficiary can apply to have the condition and accounts of the trust investigated. This must be done by a solicitor or public accountant appointed by the applicant and the trustees, or, in default, by the public trustee or his delegate. There must be a limit of twelve months between each investigation or audit unless with leave of the Court, and a trustee or beneficiary is not to be appointed for this purpose. The auditor has access to all books, accounts, and vouchers of the trustees, and any securities or documents of title held by them. The trustees must give all necessary information and explanation. On completion of the audit a certified copy of the accounts and a report thereon will be sent to the applicant and to every trustee. Every beneficiary is entitled to inspect and copy such accounts, and, on payment, to copies or extracts. A new auditor can be appointed in the case of death, removal, or otherwise before completion of the audit. The public trustee can order the expenses of the audit to be paid out of the trust fund or by the applicant or trustees personally, or partly by each of them. The auditor can apply to the Judge in Chancery Chambers where any one refuses to produce documents or obstructs him in his duties; and the Court can make such orders as it thinks fit. The penalties for wilfully making a false statement of accounts, report, or certificate are (*a*) up to two years imprisonment; (*b*) on summary conviction, six months, with or without hard labour; (*c*) or a fine in lieu or in addition to such imprisonment. The penalty for any untrue declaration under the Act is punishment as a misdemeanour.

Rules.—The Lord Chancellor makes Rules as to (*a*) establishing the office, fixing the trusts and duties and the amount of security, if any; (*b*) transfer of property; (*c*) accounts and audit; (*d*) bank offices; (*e*) exclusion of any trusts; (*f*) the classes of corporate bodies to be custodian trustees; (*g*) form and manner of notices under the Act. The Rules are then laid before Parliament.

The Act came into operation on the 1st of January 1908, and applies to the Courts Palatine, but not to Scotland or Ireland.

Mr. C. J. Stewart, formerly an Official Receiver, has been appointed Public Trustee under the Act. His offices are at Clement's Inn, Strand W.C., and upon the receipt of an application he will forward, free of charge, a pamphlet giving full particulars of the nature of the trusts he is prepared to undertake and the procedure and costs. He is prepared, also, to advise, free of charge, any person who contemplates creating a trust.

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