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A Manual
of
Secretarial Practice

BY

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AND

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(*of Messrs. Wilson, Bigg & Co., Chartered Accountants*)

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FOREWORD

THE Council of the Corporation of Certified Secretaries has been concerned to obtain an authoritative work which it could recommend to its members and students as a text book for study by those seeking to attain full membership of the Corporation, and a work of reference for members already qualified and in actual practice of their Profession. After careful consideration the Council has now adopted as its standard text book this work, written by F. D. Head, B.A. (Oxon.), Barrister-at-Law, F. Porter Fausset, M.A. (Cantab.), LL.B., Barrister-at-Law, and H. A. R. J. Wilson, F.C.A., F.S.A.A., F.C.C.S.

This book seems to us to satisfy the requirements of the Council, and we confidently commend it to the attention of members and students.

IDDESLEIGH,
President.
J. ALLEN WATSON,
Chairman of the Council.
GEORGE R. DRYSDALE,
Secretary.

SECRETARIES' HALL,
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PREFACE

IT is a great satisfaction to the authors of this work that the first large edition has been exhausted so quickly, especially as it was written at a time when new company legislation was pending, and it might have been supposed that students would have been disinclined to purchase a text-book based upon the law as it then stood. Notwithstanding this drawback, it is clear that the work has amply satisfied the needs of students.

Since the book was first written, company law has been amended by the *Companies Act*, 1928, and still further amended and consolidated by the *Companies Act*, 1929. The passing of these Acts has necessitated a complete revision and re-setting of the book. This new edition, the second, which is practically a new book, is now offered to students in the confident hope that it will not only pilot them through their examinations, but prove also a valuable aid in their everyday secretarial work.

F. D. H.
F. P. F.
H. A. R. J. W.

July 16, 1930.

PREFACE TO THE FIFTH EDITION

THE continued popularity of this work having called for a new edition, we have reviewed the whole text, and have made such alterations as seemed to be advisable. In addition, we have brought the text up-to-date with the latest practice and legislation.

F. P. F.
H. A. R. J. W.

Sept. 30, 1939.

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A MANUAL OF SECRETARIAL PRACTICE

[*Note*—Throughout this book, the words "the Act" mean the *Companies Act*, 1929. All references in the text, except where otherwise stated, are references to that Act.]

CHAPTER I

INTRODUCTION

THE word "Secretary" is derived from the Late Latin word *Sēcrētārius*, signifying a notary, scribe, etc., a title that was applied to various confidential officers, and embraced, as part of the root meaning of the word, the idea of secrecy. The Oxford Dictionary gives the following definitions of the word:

(1) One who is entrusted with private or secret matters; a confidant; one privy to a secret.[1]

(2) One whose office it is to write for another; especially one who is employed to conduct correspondence, to keep records, and (usually) to transact various other business, for another person or for a society, corporation, or public body.

In early use, the term was applied only to the officer who conducted the correspondence of a king.

A private secretary is a secretary employed by a minister of state or other high official for the personal correspondence connected with his official position; also applied to a secretary in the employ of a particular person (as distinguished from the secretary to a society, company, or corporation).

The secretary of an embassy or legation; an official of an embassy or diplomatic mission ranking next to the ambassador or envoy, and empowered to some extent to supply his place in his absence.

(3) Used in the official designation of certain ministers

[1] The dictionary indicates that this use of the word is obsolete. Historically, this is so, but it is still indicative of one aspect of a secretary's duties.

presiding over executive departments of state; *e.g.* The Secretary of State for Foreign Affairs; for War, etc.

These definitions do little more than indicate what a wide diversity of tasks, similar in kind, are undertaken by the different classes of secretaries, each engaged in performing particular but analogous functions in the social order. Every association of persons, however significant or insignificant, from the smallest sports club right up to the State itself, has at least one person—a secretary—to whom is allotted the important task of seeing that the everyday routine activity of the society is properly carried on, the standard of attainment and efficiency required of that official differing only in degree with the particular sort of post he fills. A secretary's work is often hidden from the public eye. The precise functions, for example, of Secretaries of State are scarcely known to, and little appreciated by, the great mass of people, who would be astonished to be told that many an important Government decision, based upon the collation of multitudinous facts, was due, in the first place, less to the apparent omniscience of the Minister holding a particular portfolio than to the patient and skilled work of his Departmental Secretaries.

It has been said that the profession of Secretary is one of the oldest in the world, and that wherever there was a man of action there too was a man of the pen to record his deeds. Much of our knowledge of ancient times is derived from the Scribes, who were the secretaries of their day.

Scriba, in Roman times, was a general designation for any official concerned with writing or the keeping of accounts, and was used of various public functionaries performing secretarial duties. The *scribæ* were graded, the lower ranks performing merely clerkly duties. In a lower category were the *notarii*, or *actuarii*. These were slaves or freedmen attached to wealthy Romans for taking notes in the law courts, and for other purposes, some doubtless of a personal kind.[1]

[1] One such *notarius* is remembered in these days—Tullius Tiro, the freedman and friend of Cicero, who was in all probability the systematiser of the *Notæ Tironianæ*, a code of signs and abbreviations used as ciphers for shorthand writing, which for a thousand years served the purpose now filled by our modern shorthand systems. But Tiro was a man of exceptional talent, and probably it is to him that we owe, in great measure, the preservation of Cicero's orations, and other works. Under the Empire the term *notarius* was applied to the secretaries of the Emperors, and these were persons of rank.

The modern Secretary occupies just as honourable a position as his ancient brother. But the passage of time has added enormously to his importance. He is now indispensable to the conduct of industry, commerce and society, and not the less because his most important work may be carried on behind the scenes, and others receive the public credit primarily due to him.

By far the largest group of secretaries, and, with the possible exception of Secretaries of State, Embassies and Legations, by far the most important as a whole, is that comprising the secretaries to Joint Stock Companies, and it is with them that this work is concerned.

By way of introduction, nothing better perhaps could be given than the following digest of some remarks made by Sir Edwin Stockton at a Secretaries' Conference held at Buxton in 1927.

In the course of that paper, Sir Edwin said :

A good secretary endeavours to hide his employer's defects while allowing his virtues to appear in the full light of day. He shields him alike from the ubiquitous interviewer and the garrulous inventor who boasts a remedy for every ill. He keeps from him the things he need not know, and acquaints him only with such things as he ought to know. In short, he is a man of discernment, discretion and tact.

He must have sound education, and correct and extensive information of the right kind. No busy man of affairs can find out for himself all that he requires to know ; he is bound to be dependent on his secretary to keep him posted in the things that matter.

He should have specialised knowledge of the profession or business in which he is engaged, and, if that business be connected with a particular industry, be energetic enough and clever enough to master its technique, and to acquire from published statistics and other sources all that is to be known of similar businesses competing with his own. He should be quick to sense changing conditions, and to suggest appropriate means for meeting those changes, and keep himself abreast of all legislation that may affect or be likely to affect the industry.

He must be a man of decision and energy, have self-discipline, self-control, sympathy for others, and a strong, true

sense of justice, together with some personal charm, since these are the qualities required for the smooth control and management of a staff, and for securing its willing co-operation. In addition, he must possess the faculty of organisation and the habit of using it developed to a high degree, and a mind trained to deduce right conclusions from any given set of facts.

The secretary may have little to do with the determination of policy. That, in general, is the prerogative of his superiors. But he will have much to do with the carrying out of policy once it has been decided. And here those special qualities already mentioned, which in the aggregate make up that elusive thing called personality, will play a most important part. The directors of a large corporation have not the opportunities for personal intercourse with customers or with the staff that the secretary has. The secretary is the liaison officer between the directors and the staff and outside persons dealing with the company, and will ensure by his advice that no policy shall be adopted that will antagonise the one or offend the others.

Such a man as is here roughly sketched will perfect himself in all knowledge with which, as a business man, he ought to be acquainted. Particularly will he seek to master the intricacies of modern finance, and its bearings upon the financing of his own company. He will not be content to be a mere creature of routine, but will make his own openings for advancement. Slowly and discreetly he will win the esteem of his employers. His energy and initiative will diffuse itself throughout the whole organisation, bracing it up to full concert pitch, until by and by he will not only be the recipient of his superiors' orders, but their valued adviser as well, in whom an ever-growing trust and confidence is reposed. This is the ideal position to which every secretary should aspire; this is the position which, in a very large number of instances, the secretary attains.

As will be gathered from the above summary, the secretary to a limited company may be little more than a mere routine worker, practically a confidential clerk, or he may occupy the enviable and vastly more responsible position described by Sir Edwin Stockton as the proper goal at which every secretary should aim.

Legally, as will be seen in Chap. XIX, the company secretary is the confidential servant of the directors, doing

only such work as he is told to do. Practically, when applied to the executive secretary, there must be substituted for the words " as he is told to do " the phrase " as may be delegated to him." A world of difference separates these two phrases. This will be evident when the functions of the two broad classes of secretaries outlined above are contrasted.

It is not easy to enumerate the essential qualifications of the executive company secretary. To a sound general education as evidenced by a school leaving, or a matriculation certificate, or other recognised equivalent, there should be added :

(*a*) Knowledge of the English language. Unless the secretary has this, it will be difficult for him to prepare a good précis or report, or to conduct correspondence as it ought to be conducted. Unfortunately, badly composed letters are the rule rather than the exception in every walk of life, and a secretary who can, in all circumstances, dictate forceful, logical, persuasive letters, and so maintain and enhance friendly relationships with the company's correspondents, and inspire their respect, is invaluable to the company he serves. Précis writing, the drafting of reports, the preparation of minutes and agenda, and the framing of resolutions require a somewhat specialised use of English, and this use should be studied and practised until real facility is attained.

Further, the secretary should have a skilled and intimate acquaintance with the following subjects :

(*b*) Office organisation and the methods of conducting business. This will include practical knowledge of the best systems of filing, indexing and duplicating, and the most approved labour-saving office appliances ; methods of selecting, controlling and remunerating the staff, and dividing the work and responsibility among the members so as to secure smooth and efficient working, with the necessary checks and safeguards against error and fraud ; knowledge of factory legislation, particularly legislation affecting the industry in which he is engaged ; and the employer's liability under the *Workmen's Compensation Acts*, the *National Health Insurance Acts*, the *Widows, Orphans, and Old Age Contributory Pensions Act*, and the *Unemployment Insurance Acts* ; and, generally, practical acquaintance with the modes of carrying on trade, both at home and overseas, such as the modern man of business must have at his fingers' ends.

(*c*) Book-keeping and Accountancy, and such cognate subjects as Income Tax Law and Practice, Rating and Valuation, and the preparation and presentation of statistics in scientifically accurate form.

(*d*) Mercantile Law, *i.e.* the law relating to contract, agency, sale of goods, negotiable instruments, carriage by land, sea and air, insurance, patents, copyright, trade marks, bankruptcy and bills of sale.

(*e*) The Companies Act, 1929, together with a working acquaintance with the leading cases that have decided special points of procedure, or fixed the meaning of particular sections of the Act.

(*f*) The law relating to the conduct and procedure at meetings (*a*) generally, (*b*) the meetings of registered and statutory companies.

(*g*) Banking, the money market, foreign exchange, investment, and the methods of financing industry.

(*h*) General economics.

(*i*) Special subjects, a knowledge of which is essential to the secretary engaged in particular spheres of service, *e.g.* the law relating to Local Government and Municipalities, to Railways, Shipping, etc.

Finally, where a company has extensive foreign connections, as is the case with so many companies to-day, the secretary will greatly enhance his value to his company if he has had the wisdom to acquire such a knowledge of one or more foreign languages as will enable him to converse and correspond freely in them. The particular language or languages to be acquired will, obviously, depend upon circumstances, but next to English the languages of greatest commercial importance are French, German and Spanish.

Appointment of Secretary.—Subject to the Articles of Association, the directors have power to appoint and remove the secretary and to fix his remuneration. It is advisable when a company appoints a secretary for the directors to require him to enter into a contract of service with the company, in which his duties and remuneration are defined, and the mode of determining the contract is stated. But a secretary may be named as such in the articles of the company. An article naming a person as secretary does not, however, bind the company to employ that person, and he has no cause of action against the company if he is not so employed; for articles of association

constitute an agreement between the company and its members solely, and only with those members in their capacity as members. But where, in conformity with such an article, a person has in fact acted as secretary, and the company has entered into no written agreement with him, and he is afterwards dismissed, an action for damages may lie against the company. In that case the Court will presume a contract of employment, and will consider the wording of the article (and other evidence tendered) in order to determine the terms of that employment.

A limited company may be appointed as secretary, although the professional societies of secretaries rightly disapprove of these impersonal appointments, since the effect is to sub-delegate duties which are of a personal and confidential nature, and this in itself is undesirable (for an illustration of the unfortunate consequences which may follow from such an appointment see *Kleinworts* v. *Associated Automatic Machine Corporation* [1934], W.N. 65).

One person may act as secretary to many companies. But unless the companies are really part of one combination with unified control and interests, it is not usually possible for a single official to devote as much time and effort to each separate company as will enable him to perform the full executive duties that a whole-time secretary would normally carry out, except perhaps in small companies. It must, however, be said that the specialist organisation of a practising secretary, who is an expert in his profession, offers many advantages to the companies for whom he acts, particularly in the performance of routine secretarial duties. The duties in these multiple secretaryships though important are more or less formal, and this is recognised in a winding up, since a secretary is only entitled to rank as a preferential creditor for his salary if he is bound to attend at the company's offices in person at certain stated times.

The secretary's appointment is determined by dismissal within the terms of his agreement; by the appointment by the Court of a receiver and manager on behalf of debenture holders (*Reid* v. *Explosives Co.* [1887], 19 Q.B.D. 264); by an order for compulsory winding up (*Chapman's Case* [1866], 1 Eq. 346); and, if there has been a change in the corporate state of the company, probably by a resolution for voluntary winding up (*Reigate* v. *Union Manufacturing Co.* (*Ramsbottom*), [1918], 1 K.B. 592). But on this and other points see Chap. XIX, "The Legal Position of the Secretary."

CHAPTER II

THE JOINT STOCK COMPANY

THE evolution of the joint stock company from the sole trader and the association of traders in partnership is a most interesting study, and affords an accurate index by which to measure the progress of trade, industry and commerce during the last few centuries. The history of this progress, which may be found in standard works on company law and economics, scarcely comes within the scope of the present treatise. It is sufficient to say that the unincorporated company, or large common law partnership, which first appeared in the seventeenth century, at last acquired, after years, not to say centuries, of legal struggle, similar but not equal status in law to that already enjoyed by the few companies expensively created under charter of the Crown, or by special Act of Parliament; so that by simple registration, with the addition of the word " Limited " to its name, such a company could be incorporated, and its members enjoy the same privilege of limited liability as hitherto had been confined to members of chartered or parliamentary companies.

Registration with limited liability was first made possible by the Act of 1855. In 1862, the Acts relating to joint stock companies were consolidated. Between the years 1862 and 1908 some sixteen amending Acts were passed. The *Companies (Consolidation) Act* of 1908—the second great consolidating statute—again codified the existing law. Three other Acts were passed subsequent to 1908, viz. the *Companies Act*, 1913, the *Companies (Foreign Interests) Act*, 1917, and the *Companies (Particulars as to Directors) Act*, 1917. These four Acts were cited as " *The Companies Acts*, 1908–1917."

In 1918, and again in 1925, Committees were appointed to report upon the existing Companies Acts, and to make suggestions for preventing certain abuses of, and closing loopholes in, the Acts. An amending bill, based upon the recommendations of the Committee of 1925, was introduced to Parliament in 1927, and passed into law as the *Companies Act*, 1928.

Except as to two sections, the provisions of that Act did not become operative, but were embodied in a new Consolidation Act, the *Companies Act*, 1929, with the highly desirable object of obviating the countless cross references, and the difficulties which always arise from " incorporation of terms by reference."

The sections of the 1928 Act that came into separate operation were—(1) S. 92, which imposed restrictions on the offering of shares for subscription or sale (" Share hawking "), now S. 356 of the Act of 1929, and (2) S. 53, which repealed S. 45 of the Act of 1908 and amended S. 120 of that Act so as to include reorganisation of share capital by (*a*) consolidation of shares of different classes and (*b*) division of shares into shares of different classes—modes of reorganisation sanctioned by the repealed S. 45 of the Act of 1908. S. 53 of the Act of 1928 is now embodied in S. 153 of the Act of 1929.

The great Consolidation Act of 1908 was rightly characterised as a masterpiece of legislation, yet with such an intricate subject it is not surprising that the precise legal significance of many of its clauses had to be fixed by judgments in the extremely numerous cases that have come before the Courts. The *Companies Act*, 1929, has in turn been judicially described as a masterpiece, and it has cleared away many obscurities and loopholes, and so made obsolete certain of the judgments. Many of the decisions, however, are still as important as ever, and a knowledge of this case law is requisite to the due understanding of the Statute now in force.

The Courts have always shown, and rightly shown, a disinclination to interfere with the internal management of joint stock companies on merely technical grounds. In the view of the Courts, business is best carried on by business men following established business practice, without legal interference, and while the business of a joint stock company is necessarily conducted within the legal framework devised by Parliament, yet so long as commercial practice does not contravene the fundamental principles of the Act, or offend against the general law of the land, the less interference there is with it the better.

Lindley, L.J., defines a company as follows :

" A company is an association of many persons who contribute money or money's worth to a common stock and employ

it in some trade or business, and who share the profit or loss arising therefrom. The common stock so contributed is denoted in money, and is the capital of the company. The persons who contribute it, or to whom it belongs, are members. The proportion of capital to which each member is entitled is his shares. Shares are always transferable, although the right to transfer them is often more or less restricted."

A company formed for a temporary purpose, *e.g.* to promote a series of companies, is sometimes called a " Syndicate "; the term, however, has no precise meaning. It is common to form a syndicate for a particular project, such as to begin manufacture under a patent, etc., and then to float a limited company, and sell the assets of the syndicate to the company. The persons forming the syndicate may act in partnership, joint venture, or on a joint purse arrangement, or they may form themselves into a limited liability company, in which case they are subject to the same regulations as any other limited company. The persons or company forming the syndicate are usually the promoters of the limited company which takes over the business. But promoters need not necessarily form a syndicate. The position of promoters is dealt with in Chapter III, and *see* " Prospectus," at pp. 91 *et sqq.*

Certain associations of persons can, or must, be incorporated under special Statutes, *e.g.* Trade Unions, Friendly Societies, Building Societies, etc. It is proposed, however, to confine the main text to those concerns registered or incorporated under the Companies Act of 1929.

Prohibition of Large Partnerships.—It is laid down by SS. 357 and 358 as follows :—

> No company, association, or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any business (other than the business of banking) that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament, or of letters patent, or is a company engaged in working mines within the stannaries and subject to the jurisdiction of the court exercising the stannaries jurisdiction (S. 357).

The Companies last mentioned (companies engaged in working mines within the stannaries) are also known as Cost Book Companies.

No company, association, or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament, or of letters patent (S. 358).

Meaning of the Word "Company."—The word "company" is used, as in the Act, to include those companies registered under the Act, or registered under either of the earlier Acts of 1862 or 1908, but does not include a company registered under the said enactments in Northern Ireland or the Irish Free State (S. 380). The following is a summary of the various types :

(1) Companies Limited by Shares, *i.e.* "a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them" (S. 1, s.-s. (2) (*a*)).
(2) Companies Limited by Guarantee, *i.e.* "a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up" (S. 1, s.-s. (2) (*b*)).
(3) Companies with Unlimited Liability, *i.e.* "a company not having any limit on the liability of its members" (S. 1, s.-s. (2) (*c*)).

A Company Limited by Guarantee may be registered with or without share capital ; so may an Unlimited Company.

A Company Limited by Shares may, by having certain provisions in its articles (*see* p. 55, and S. 26), be a private company ; any other company is a public one. Public companies are further divided into those which issue a prospectus, and those which do not—the latter having to file a statement in lieu of prospectus (*see* p. 101).

Associations formed for furthering some religious, philanthropic, etc. object, *and not for the purpose of profit*, may be registered, and these generally take advantage of the provisions of S. 18 for dispensing with the word "Limited" as part of their name (*see* p. 38).

By Part IX of the 1929 Act, authorisation is given to certain existing corporations not formed under the Act of 1929 to register under the Act.

Provided the registrar of companies is satisfied that the association applying for registration is authorised to be registered under the Act, that its objects are apparently legal, and that all the requirements of the Acts have been duly fulfilled, and the fees paid, he must issue a certificate of incorporation, certifying that the company is duly incorporated and, in the case of a limited company, that it is limited. From the first moment of the day of incorporation mentioned in this certificate (*Jubilee Cotton Mills* [1923], 1 Ch. 1; [1924], A.C. 958) the persons who have subscribed the memorandum of association, and all persons who subsequently become members of the company, are a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, to sue and be sued in its own name; in fact, to exercise the same rights as an individual subject to certain statutory provisions (SS. 13 and 14). In effect, an incorporated company is a person artificially created by law, possessing an entity distinct from the members composing the company. The liability of each member to the company, except in an unlimited company, is limited to the amount which each has agreed to contribute to the capital of the company, and once this has been paid in full, no further liability can attach to him.

The certificate of incorporation is conclusive evidence that the requirements of the Act as to registration and matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under the Act (S. 15). But it is not conclusive that the company is not a Trade Union which, by the *Trade Union Act*, 1871, is incapable of registration under the Act (S. 382, s.-s. (7)). Nor is it conclusive as to the legality of the objects of the company (*Bowman* v. *Secular Society* [1917], A.C. 406).

The Companies Act deals with the constitution and incorporation of companies; the issue, increase, reduction and reorganisation of the share capital; the management, administration and winding up of companies; with supplemental provisions in respect of the application of the Act to companies registered under former Acts, companies incorporated abroad which establish a place of business in Great Britain, etc.

Table A of the First Schedule to the 1929 Act provides a model set of articles for a company limited by shares (*see* p. 666). Further schedules are appended showing model memorandums and articles of association for the various kinds of companies; forms for various statements, including the contents of the prospectus, etc.; the fees to be paid to the Registrar (Tenth Schedule); etc.

Limited Company Contrasted with Partnership.—A limited company has certain advantages which the sole trader or a partnership does not have, and the following contrasted summary of the respective positions in law may be useful to students :—

(*a*) In a limited company, the liability of the individual members is confined to the amount of money which each has agreed to contribute to the common capital fund. If, for example, in response to an invitation contained in a prospectus issued by the Practice Company, Limited, a person subscribes for ten ordinary shares of £1 each, as soon as he has paid to the company the sum of ten pounds his liability is at an end. If he purchases from a former holder ten shares of £1 on each of which ten shillings has been called up and paid, his liability to the company is restricted to the sum of £5. No member can be bound by any alteration in a memorandum or articles requiring him to take more shares unless he has agreed in writing before or after the alteration to be bound (S. 22). Moreover, where a person holding partly paid shares ceases to be a member he is not liable on the shares after the expiration of one year from the date when he ceased to be a member, and even during that year his liability is contingent only (*see* p. 519). But a sole trader who has risked a capital of, say, £1,000, or a person who has contributed in partnership the same sum, has no such assurance that his loss will be confined to the sum he has risked. Both are liable to their last penny for all the debts and obligations of the business, and these may greatly exceed the amount of capital at risk. And the period of their liability is not restricted as with members of a company, but is, generally speaking, co-extensive with the law of contract and of tort. An exception is to be noted, viz. where a partner is registered under the *Limited Partnerships Act*, 1907, as a limited partner. A limited partner is liable only for the sum he has agreed to contribute to the partnership assets, but, even

so, such a partner must be associated with one or more general partners who are fully liable for the whole debts of the firm. Limited partnerships are not common; the necessity for this kind of limitation has largely been destroyed by the immunity secured by registration as a private joint stock company.

(*b*) The individual members of a company cannot be sued or made bankrupt for the debts or obligations of the company. The company is a separate entity from the individual members. Members of a company, as already said, are liable only for the amount unpaid on the nominal value of the shares they hold, and no one but the company (or the liquidator) can sue them for payment of the unpaid balance. A sole trader or a partner can be sued for the debts of the business and made bankrupt, if he does not satisfy judgment obtained.

(*c*) To a person who desires to make provision for his family the limited company makes a special appeal. He may form his business into a private limited company, and at once, or by degrees, relinquish active participation in the business, while retaining control by means of his voting power. By the transfer of his shares, either into the names of his dependents or into the names of trustees for them, he may make such provision for them as he desires. Gifts *inter vivos* are not liable to estate duty if made irrevocably and more than three years before death, and this, in these days of high taxation, affords means for welcome relief.

(*d*) The death or bankruptcy of a member of a company does not affect the company's entity. The member's holding automatically devolves, in the first case, according to his will or the laws of intestacy; in the second case, upon the trustee in bankruptcy. On the other hand, the death, retirement, or bankruptcy of a partner, or the admission of a new partner, dissolves the partnership (apart from special provision to the contrary in the original contract of partnership), and a new partnership agreement must be entered into.

(*e*) By association of a large number of people in joint stock enterprise it is possible to gather together scattered units of capital, which separately would be negligible, but collectively are sufficient to set going and carry on a business of magnitude too great for the resources of any one person, or even of several

persons united in partnership. In a partnership, all or most of the partners will, in view of their separate and imponderable liabilities, desire to be actively engaged in the management of the business, but, in a company, the management of the business can be delegated to the most skilled directors, managers, and others that adequate remuneration will attract to the service of the company.

(*f*) The conversion of a private business into a limited company is probably the most certain and equitable way of realising the goodwill attaching to the business. Deferred shares can be issued in payment for the goodwill, and these will carry the right to the whole or the greater part of the profit remaining after prior rights of other classes of shareholders to dividend have been satisfied. The measure of the value of the goodwill of a business is its power to earn profits in excess of an adequate return on the capital of the company, having regard to the average yield on gilt-edged securities, the risks run by investors in the company, and so on. But *see* p. 72.

The following possible disadvantages ought, however, to be considered :

(*a*) Sur-tax payers may be liable to pay tax on undistributed profits in cases where a company comes within S. 21 of the *Finance Act*, 1922 (as amended) (*see* pp. 614 *et seq.*).

(*b*) The flotation expenses are heavy. There is not only the ten shillings per cent. capital duty to pay, but also the memorandum fees, deed stamps, filing fees, printing charges, legal expenses, etc.

(*c*) Credit may be adversely affected. This was commonly the case years ago when a private business was turned into a limited company, owing largely to the fraudulent intent which frequently dictated the manœuvre. But that species of fraud has been severely checked by the Courts, and, nowadays, so far from the credit of a business being lowered by its being floated as a company, it is far more likely to be enhanced by reason of the increase in its capital resources. The files at Bush House, London, or Exchequer Chambers, Edinburgh, afford a ready means of ascertaining with fair precision the financial standing of a company.

(*d*) All dividends are accounted " unearned " income for the purposes of assessment to income tax. But where the former proprietors of a partnership business would be prejudiced in this respect by reason of the conversion of the business into a company, this drawback can easily be overcome by allocating the greater part of their remuneration as directors' fees, which for income tax purposes are accounted as " earned " income.

(*e*) The restrictions on changes in the constitution, objects, and regulations of a company; the formalities attending its administration; and the publicity inseparable from observing the statutory requirements may be considered disadvantageous, but the fact that the aggregate capital of companies registered under the Acts in England and Scotland now exceeds the colossal sum of £5,500,000,000 would seem to show that these objections, if objections they be, are not serious.

Companies Limited by Guarantee.—Companies limited by guarantee are usually formed for carrying out some object—for example, to raise the status of secretaries and to further their professional interests—in which all the members of the company are mutually concerned, and to secure which they annually contribute fees, subscriptions or donations. Other objects have been mutual insurance against various kinds of risk, marine, accident, and so on. Such a company may or may not be registered with a capital divided into shares, although very few such companies have been registered with a share capital. But if power be taken to carry on a business as well as to carry out the mutual object, the appropriate course is to register with a share capital. A company limited by guarantee, having also a share capital, may be a private company, but not if it has no share capital. Every company limited by guarantee must file articles (S. 6). The contents of the memorandum of such a company are enumerated in S. 2 (*see* p. 33). It is to be noted that the fees payable on registration, if the guarantee company has no share capital, depend upon the number of members with which the company purposes to be registered (*see* p. 584).

At one time, companies limited by guarantee could be formed, which by their articles divided the undertaking of the

company into shares or interests of no nominal value. Such associations are forbidden by the following section of the Act, which first found a place in company legislation in the *Companies Act*, 1900.

(1) In the case of a company limited by guarantee and not having a share capital, and registered on or after the first day of January, nineteen hundred and one, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

(2) For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of a company limited by guarantee and registered on or after the date aforesaid, purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby (S. 21).

The form of—

(*a*) The memorandum and articles of a company limited by guarantee and having a share capital;

(*b*) The memorandum and articles of a company limited by guarantee and not having a share capital;

must respectively be in accordance with the forms set out in Tables D and C in the First Schedule of the Act (S. 11).

Where a guarantee company has a share capital it must keep the same books, make the same returns, and hold the same general meetings as a company limited by shares.

Where a guarantee company has no share capital, the statutory meeting is not required, but the same general meetings must be held as in the case of a company limited by shares The returns to be filed are dealt with under the appropriate headings hereafter. Where the company is controlled by an executive committee, the members of the committee are the managers of the company.

A guarantee company having a share capital, can reduce its capital, if it is so authorised by its articles, in the same way as a company limited by shares (S. 55). A guarantee company without a share capital can reduce the number of its members by following the procedure laid down by its articles.

Unlimited Companies.—Companies registered with unlimited liability have been registered in increasing numbers in recent years, mainly in connection with private estates and for similar private purposes. The members of an unlimited

company are liable for the company's debts in proportion to their respective interests in the company, and that liability continues for a period of one year from the date of their ceasing to be members. The provisions relating to unlimited companies are contained in SS. 1, 6, 7, 11, 16 and 53 of the Act.

The memorandum must state (*a*) the name of the company [the word " Limited " will not appear as part of the name], (*b*) the situation of the registered office, *i.e.* whether in England or Scotland, (*c*) the objects of the company (S. 2). Printed articles of association must be registered with the memorandum (S. 6). These, if the company has a share capital, must include a statement of the amount of the capital, and be based upon Table E, contained in the First Schedule of the Act. If the company has no share capital, the articles must then include a statement of the number of members with which the company proposes to be registered in order to enable the registrar to determine the registration fees (S. 7).

An unlimited company has not to pay capital duty on registration, and it need not file a statement of nominal capital, or a return of allotments, or contracts for the issue of shares for consideration other than cash. Apart from these exceptions, such a company must file the same returns as a company limited by shares.

Since the capital, if any, is fixed by the articles, it may be increased or reduced by special resolution, and, subject to the articles, may be repaid to the members without sanction of the court.

Registration of Unlimited Company as Limited.—SS. 16 and 53 of the Act provide as follows :

S. 16. (1) Subject to the provisions of this section, a company registered as unlimited may register under this Act as limited, or a company already registered as a limited company may re-register under this Act, but the registration of an unlimited company as a limited company shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of the company before the registration, and those rights or liabilities may be enforced in manner provided by Part IX of this Act in the case of a company registered in pursuance of that Part.

(2) On registration in pursuance of this section the registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company, but, save as aforesaid, the registration shall take place in

the same manner and shall have effect as if it were the first registration of the company under this Act, and as if the provisions of the Acts under which the company was previously registered and regulated had been contained in different Acts from those under which the company is registered as a limited company.

S. 53. An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Act, do either or both of the following things, namely :

(1) Increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up;

(2) Provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

In order to register as limited, the company must first hold a meeting and pass a special resolution that the company shall be registered under the *Companies Act*, 1929, as a company limited by shares by the name of .. .. Limited.

The application form for a certificate of incorporation as a limited company (Form No. 17) must then be filled up and signed by a director, secretary, or other officer of the company. This form must be accompanied by the following documents, in compliance with S. 323 of the Act :

(*a*) A copy of the instrument constituting the unlimited company. But by S. 16, s.-s. (2), the registrar may dispense with copies of any documents copies of which were furnished to him when the company was registered originally.

(*b*) List of the members, giving their names, addresses, and occupations, made up to a date not more than six clear days before the day of registration, with the addition of the shares or stock held by them respectively, distinguishing each share by its number, if the shares are numbered.

(*c*) Statement of the nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists, and the number of shares taken and the amount paid on each share.

(*d*) Copy of the special resolution assenting to its registration as a limited company, and adding the word " Limited " to its name.

(*e*) A statutory declaration signed by any two directors, or other principal officers of the company, verifying the

particulars set forth in the documents above mentioned (S. 325).

On payment of capital duty and registration fees, the registrar issues a certificate certifying that the company, previously registered as unlimited, is limited (S. 329).

The Seal.—Every company registered under the Act must, from the date of incorporation, have a common seal (S. 13, s.-s. (2)) on which its name must be engraven in legible characters (S. 93, s.-s. (1) (*b*)). Any director, manager, or officer of the company, or any person on its behalf, who uses or authorises the use of any seal, purporting to be a seal of the company, on which the full name (including the word Limited) is not so engraven, is liable to a fine (S. 93, s.-s. (4)).

The mode of using the seal is usually specified by the articles, or delegated by the articles to the directors. Table A, Art. 71, requires that it be affixed only by authority of a resolution of the board of directors, and in the presence of a director and of the secretary, or such other person as the directors may appoint for the purpose; and that those persons must sign every instrument to which the seal is affixed in their presence.

"In favour of a purchaser" a deed is deemed to have been duly executed by a company (and any other corporation aggregate) if its seal be affixed thereto in the presence of its secretary or other permanent officer or his deputy, and a member of its board of directors; and where a seal purporting to be the seal of the company has been affixed to a deed, attested by persons purporting to be persons holding such offices, the deed is deemed to be duly executed (*Law of Property Act*, 1925, S. 74, s.-s. (1)).

A Register of Sealed Documents should be kept to record particulars of all documents on which the seal is used, the date of the resolution authorising the sealing and the names of the attesting persons. The seal is kept under lock and key, the keys being in custody of the chairman, one other director, and the secretary.

The board of directors, council or other governing body of a corporation aggregate may, by resolution or otherwise, appoint an agent, either generally or in any particular case, to execute on behalf of the corporation any agreement or other instrument not under seal in relation to any matter within the

powers of the corporation (*Law of Property Act*, 1925, S. 74, s.-s. 2).

Where a person is authorised under a power of attorney or under any statutory or other power to convey any interest in property in the name or on behalf of a corporation sole or aggregate, he may as attorney execute the conveyance by signing the name of the corporation in the presence of at least one witness, and in the case of a deed by affixing his own seal, and such execution shall take effect and be valid in like manner as if the corporation had executed the conveyance (S. 74, s.-s. (3) *idem*).

Where a corporation aggregate is authorised under a power of attorney or under any statutory or other power to convey any interest in property in the name or on behalf of any other person (including another corporation), an officer appointed for that purpose by the board of directors, council or other governing body of the corporation, by resolution or otherwise, may execute the deed or other instrument in the name of such other person; and where an instrument appears to be executed by an officer so appointed, then in favour of a purchaser the instrument shall be deemed to have been executed by an officer duly authorised (S. 74, s -s. (4) *idem*).

Notwithstanding this section, any mode of execution or attestation authorised by law or by practice or by the statute, charter, memorandum or articles, deed of settlement or other instrument constituting the corporation or regulating the affairs thereof, shall (in addition to the modes authorised by this section) be as effectual as if this section had not been passed (S. 74, s.-s. (6) *idem*).

Execution of Deeds Abroad.—By Section 31 :

(1) A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in the United Kingdom.

(2) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the same effect as if it were under its common seal.

See p. 446 as to company having an official seal.

Contracts.—As to the making of contracts, SS. 29 and 36 provide as follows :

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

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

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

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

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

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

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

S. 36. (1) A company limited by shares or a company limited by guarantee and having a share capital shall not previously to the statutory meeting vary the terms of a contract referred to in the prospectus, or statement in lieu of prospectus, except subject to the approval of the statutory meeting.

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

In the special case of contracts by bill of exchange or promissory note, S. 30 says :

A bill of exchange or promissory note shall be deemed to have been made, accepted, or endorsed on behalf of a company if made, accepted, or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority.

See also pp. 38, 227, and 459 with regard to the use of the word " Limited," and the liability of those signing a bill or note.

CHAPTER III

INCORPORATION AND FLOTATION OF A COMPANY LIMITED BY SHARES

BEFORE a company can be registered under the Companies Act, 1929, the documents mentioned below must be deposited with the registrar of joint stock companies for registration,[1] and the prescribed fees paid. The steps to be taken prior to this naturally depend upon whether the company is formed to take over an existing business, or to commence an entirely new business.

The persons desiring to constitute themselves into a company must prepare and leave with the registrar the following documents :

(1) Memorandum of Association (*see* pp. 32 *et sqq.*).

(2) Articles of Association (these, as will be seen, may be dispensed with in certain cases) (*see* pp. 50 *et sqq.*).

(3) Statement of the Nominal Capital (*see* p. 25).

(4) List of persons who have consented to act as directors (*see* p. 25).

(5) Consent to act in writing of the directors appointed by the articles.

(6) Undertaking by the directors appointed by the articles to take up and pay for their qualification shares (if any) prescribed by the articles, unless they have signed the memorandum therefor (*see* p. 25).

(7) Statutory declaration that the requirements of the Act have been complied with (*see* p. 26).

The documents numbered (4), (5) and (6) above are *not* required when registering a private company; nor is that numbered (3) in the case of an unlimited company or a guarantee company without a share capital.

It is also advisable, when possible, to file at the same time a notice of the situation of the Registered Office (*see* p. 26).

[1] The word " registration " is used in the 1929 Act where " filing " was used in former Acts. The registrar satisfies himself that the documents are in order and places them upon the file which he keeps in respect of the company (*see* p. 24).

If it be desired that the company be domiciled in England (which includes Wales), the documents are deposited at Bush House, London; if in Scotland, at Exchequer Chambers, Edinburgh. On 1st January, 1922, the Irish Free State ceased to be part of the United Kingdom for the purposes of the Act. Companies registered in Northern Ireland are treated as foreign companies if they establish a place of business in Great Britain (*see* pp. 60 *et seq.*). The Companies Act, 1929, does not apply to Ireland.

The practical and typical procedure in England is as follows :

(1) The necessary documents are lodged at Bush House.

It is advisable that this be done by an agent who is in a position to answer any questions regarding them. He will usually be asked to call again on the following day. In the meantime, the officials inspect the documents, and on the second call they point out any defects. If the defects are of minor consequence, they may be remedied on the spot: if fundamental, the documents may have to be taken away to be amended and the amendments initialled by the subscribers.

(2) When the papers are approved, the fees must be paid, and on the second official day thereafter (unless subsequently discovered defects in the papers have to be put right) the Certificate of Incorporation is issued.

If the fees are paid by cheque, it is necessary for this to be cleared, causing a further delay of from two to three days. Where it is important to get the company registered quickly, *e.g.* in order to enter into service agreements or contracts, the fees should be paid in cash, or by banker's draft made payable to the Commissioners of Inland Revenue.

The documents thus lodged are filed by the registrar, and become open to public inspection at Bush House. Any person desiring to see them may attend at the Companies Registration Office and search the alphabetical list of companies for the name and number of the company. These particulars, together with the name, address and description of the applicant, must then be entered by him on a stamped form, for which he pays the fee of 1*s*. This form is then handed to one of the officials in the Search Department, who brings the file to the applicant. In this file appear all the documents required to be registered since the incorporation of the company,

and notes may be extracted in pencil. If copies are required, they may be obtained on payment of the prescribed fees (S. 314, s.-s. (1)).

Certified copies or extracts given and certified to be a true copy under the hand of the registrar are in all legal proceedings admissible in evidence as of equal validity with the original documents (S. 314, s.-s. (3)). It is not necessary to prove the official position of the registrar, but where the certificate or document is required for use abroad, the registrar's certificate is generally authenticated by a notarial certificate.

The Statement of Nominal Capital.—This needs little comment, being a straightforward statement showing the amount of the authorised capital. On this form is impressed a stamp for the Companies' Capital Duty at ten shillings per cent. on the entire nominal capital as stated in the memorandum.

List of Persons who have consented to act as Directors, etc.—With the exception of (*a*) private companies, (*b*) companies not having a share capital, (*c*) companies that before becoming public companies were private companies, and (*d*) a prospectus issued by a company after the expiration of one year from the date on which it was entitled to commence business, no person can be appointed director by the articles or be named as a director in any prospectus or statement in lieu unless he has fulfilled certain statutory requirements. These requirements are set out in S. 140 as follows :—

S. 140.—(1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in a prospectus issued by or on behalf of the company, or as proposed director of an intended company in a prospectus issued in relation to that intended company, or in a statement in lieu of prospectus delivered to the registrar by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or the delivery of the statement in lieu of prospectus, as the case may be, he has by himself or by his agent authorised in writing—

(*a*) signed and delivered to the registrar of companies for registration a consent in writing to act as such director; and

(*b*) either—

(i) signed the memorandum for a number of shares not less than his qualification, if any; or

(ii) taken from the company and paid or agreed to pay for his qualification shares, if any; or

(iii) signed and delivered to the registrar for registration an undertaking in writing to take from the company and pay for his qualification shares, if any; or

(iv) made and delivered to the registrar for registration a

statutory declaration to the effect that a number of shares, not less than his qualification, if any, are registered in his name.

(2) Where a person has signed and delivered as aforesaid an undertaking to take and pay for his qualification shares, he shall, as regards those shares, be in the same position as if he had signed the memorandum for that number of shares.

(3) On the application for registration of the memorandum and articles of a company the applicant shall deliver to the registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding fifty pounds.

(4) This section shall not apply to—

(*a*) a company not having a share capital; or

(*b*) a private company; or

(*c*) a company which was a private company before becoming a public company; or

(*d*) a prospectus issued by or on behalf of a company after the expiration of one year from the date on which the company was entitled to commence business.

The contract to take the shares must be unconditional, and if the nominal value of the shares exceeds £5, then the contract must bear a 6*d*. stamp, either adhesive or impressed.

Statutory Declaration of Compliance.—This must be made by a solicitor (in Scotland by an enrolled law agent) engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company (S. 15 s.-s. (2)). It is to be noted that the declaration must not bear a date earlier than that on the memorandum and articles. Moreover, the wording must be exact, *e.g.* the word " provisions " must not be used for " requirements." In both these cases the authors have seen this document sent back for amendment on this account. The declaration must be sworn before a Commissioner of Oaths.

If no solicitor is acting in the matter, it is necessary to name a person as director or as secretary in the articles, since under Table A the signatories are not deemed to be directors, and without such naming there would be no one eligible to make the necessary declaration.

Notice of Situation of Registered Office.—As mentioned later (*see* p. 40), a company is bound to declare in its memorandum the domicile of the company, *i.e.* the country—England and Wales, or Scotland—in which its registered office is to be situate. A company's registered office may be anywhere within the domicile, but it must have a registered office, and must declare its situation and any change in its situation.

This clearly is necessary in order that the statutory duties of a company *vis-à-vis* its members and such of the general public as have dealings with the company, may be properly carried out; also that notices, summonses, orders, etc. may with certainty be served on the company

By S. 92.—(1) A company shall, as from the day on which it begins to carry on business or as from the twenty-eighth day after the date of its incorporation, whichever is the earlier, have a registered office to which all communications and notices may be addressed.

(2) Notice of the situation of the registered office, and of any change therein, shall be given within twenty-eight days after the date of the incorporation of the company or of the change, as the case may be, to the registrar of companies, who shall record the same.

The inclusion in the annual return of a company of a statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this subsection.

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

The notice must be exact, giving the full postal address. It is advisable to deliver the notice with the memorandum, so that there is no possibility of incurring the penalties for default.

Other Details.—Within a period of fourteen days from the appointment of the first directors there must be made a return of particulars as to directors (*see* p. 218).

A private company can commence business immediately it is incorporated; a public company, on the other hand, must comply with certain statutory provisions (*see* pp. 143 *et sqq.*).

Acquisition of an Existing Business.—Where a public company is formed for the purpose of acquiring an existing business and placing the shares before the public for subscription, a great deal must be done before the company can be registered. The preliminaries may be carried out by the owners of the business themselves, or by their legal advisers and accountants, but frequently the whole of the operations are undertaken by promoters, who may or may not have formed themselves into a syndicate for the purpose. Since the intervention of promoters necessarily involves additional contracts, it is proposed to deal with such a case in some detail. Where no promoters are involved, the procedure is modified accordingly, and can readily be arrived at by anyone conversant with the more complicated case.

The promoters usually appoint experts to report upon the condition of, and to make a valuation of, any lands, works,

mines, plantations, factories, etc. that are to be taken over, the value of the stock-in-trade, plant, work-in-progress, uncompleted contracts, etc. Certificates will be obtained from the experts for inclusion in the prospectus For the purposes of the prospectus, it is also necessary to have prepared a report by an accountant to be named in the prospectus upon the profits earned in each of the three financial years immediately preceding the issue of the prospectus, or such less period as the business has been in existence (*see* p. 96). Where professional accountants are auditors to the business, they are usually called in for the last-named purpose, and to advise upon the value of the goodwill, although promoters frequently prefer to employ their own accountants, usually a firm whose name is widely known, and whose certificate will perhaps carry more weight with the investing public than the certificate of the usual auditors to the business.

The promoters are now in a position to consider the purchase price and the conditions of purchase. The price is a matter for negotiation with the vendors of the business, and where it is to be mainly or wholly in shares, may be rather more than would be paid in cash. The method and date of payment must then be considered. If part of the consideration is to be in shares or debentures, the class, rights and conditions of these must be decided, also whether they are to be issued as fully or partly paid. It may be desirable to attach certain conditions to the shares in respect of participation in profits, and to restrict the voting rights attaching to the shares. In order to ensure the continued interest of the vendors in the business, and also, it must be admitted, to impress the prospective investor, dealing in the shares allotted to the vendors as part of the purchase consideration is customarily prohibited by the conditions of sale for a period of six months or more. The vendors may be given further valuable rights, *e.g.* the right to call for the allotment of unissued shares at par or at a premium within a certain period. Where a company is very successful, this latter right may be of great value to the vendors.

The vendors will agree to make the transfer of the business and goodwill effective by undertaking not to compete with the company within a stated radius, or for a stated period of time, or by whatever other safeguards the nature of the particu-

lar business may make desirable. It may be necessary, in order to reap the full benefit of patents, inventions, trade-marks, secret processes, etc., for the vendors to agree to act as managers for a specified period.

Having thus reached an agreement as to the basis of the transfer, the promoters may have agreements drawn up :

(1) Between themselves, to define their respective rights, liabilities and powers, and contributions towards promotion expenses, and the method of sharing any profit made.

(2) Between themselves and the vendors, providing :

(*a*) That the promoters shall float the company upon a specified basis, and within a specified time ; and for

(*b*) The transfer of the assets, etc. stating the purchase price of the assets, and how it is to be settled ; the date and place for completion ; the date for the transfer of the business, and any such conditions as have already been indicated above ; and for

(*c*) Payment of the preliminary expenses ; and for

(*d*) Rescission of the contract in the event of the proposed company not becoming entitled to commence business within a specified period. If the contract is rescinded, it is usually provided therein that the deposit which is invariably made on the signing of such an agreement shall become forfeited to the vendors.

(3) Between either the promoters or the vendors, and a trustee for the proposed company, where the business is to be taken over as from a date before the company is actually incorporated. Power should always be given to the trustee to rescind this contract if the company does not become entitled to commence business within a specified period. Should the company not become entitled to do so, the trustee would be personally liable on the contract, since the company cannot ratify such an agreement (*Kelner* v. *Baxter* [1867], L.R. 2, C.P. 174). This contract is in similar terms to (2) above, but the purchase price will be stated at a higher figure in order to cover the expenses of promotion, and an additional sum to allow for the promoters' profit on the transaction.

The modern practice, however, is for this agreement to be dispensed with, the first object of the company stated in the memorandum and referred to in the articles being " to enter into

a contract for the acquisition of the business (which is named) in accordance with a draft which has been prepared, and initialled for identification," by the solicitors, accountants or one or more named directors or subscribers to the memorandum.

In all cases where a preliminary contract is entered into either between the vendors and the company or with a trustee on behalf of the company prior to incorporation of the company, a new contract must be entered into between the parties after incorporation of the company. The mere adoption of the preliminary contract by the board of the new company does not make it binding upon the company (*Northumberland Avenue Hotel Co.* [1886], 33 Ch. D. 16).

Contracts entered into before the company is *incorporated* must be distinguished from those entered into *after incorporation but before the company is entitled to commence business.* The latter contracts do not bind the company, but they bind the other party to them. S. 94, s.-s. (4) says : " Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding." This provision does not apply to private companies (S. 94, s.-s. (7)). To meet this position, it is necessary to take power in any such contract that either party may avoid or rescind it if the company does not become entitled to commence business within a specified time.

The promoters can now proceed to details of the proposed company. The name of the company will be discussed, and one or more secondary choices should be made, in case the first is not available for registration. A letter should be written to the registrar of joint stock companies inquiring whether the name chosen is available, or, if not, whether any of the secondary ones are available. This question is further discussed in Chapter IV.

The terms of the memorandum and articles of association must now be discussed and agreed. The objects should be made as comprehensive as legal skill can make them. The amount and divisions of the share capital require adequate discussion; if too high a figure is decided upon, there is an unnecessary expenditure in stamp duties; on the other hand, it is usually undesirable to have to increase the nominal capital soon after incorporation.

The capital must be sufficient to provide for the shares to be allotted as part of the purchase consideration, and for the shares to be issued to the public for cash to cover any additional working capital, and the cost of any alterations, capital expenditure, etc. to be incurred. The nature of the business may make it desirable to issue the shares as partly paid, leaving scope for the creation of reserve liability. The amount of the minimum subscription (*see* p. 118) must be decided upon, and arrangements be made for underwriting the capital, payment of preliminary expenses, etc.

The proposed directors must be approached, and their consent to act obtained, together with contracts to take up and pay for any qualification shares, unless they sign the memorandum for them.

Usually, at this stage, preliminary steps will be taken to ensure that the desired premises and officials will be available when required, unless already provided for in the contracts for the acquisition of the business.

In order to pave the way for the success of the public issue of the shares of the company, the promoters will now take steps for preliminary announcements and advertisements to be inserted in suitable newspapers. The prospectus is prepared (*see* Chapter V), and may, to save time, be delivered to the registrar for registration along with the memorandum and other documents.

The company can now be registered, in the manner already described, and the prospectus publicly issued and advertised. Copies will be posted to likely subscribers, and supplies will be delivered to leading stockbrokers, bankers, etc. for distribution amongst their clients and customers.

CHAPTER IV

THE MEMORANDUM. ARTICLES OF ASSOCIATION. FOREIGN COMPANIES

THE MEMORANDUM

THE memorandum duly subscribed and registered is the foundation of the company. It is, so to speak, the charter of the company, defining and limiting its powers. It sets forth the fundamental conditions upon which alone the company is allowed to be incorporated—conditions which are introduced alike for the benefit of creditors and the outside public as for the shareholders (*Guinness* v. *Land Corporation of Ireland* [1883], 22 Ch. D. 381). The memorandum may be altered but only to the extent and in the manner laid down by the Act; apart from these statutory powers of alteration, it is unalterable (S. 4), except by special Act of Parliament.

The articles of association set forth the regulations for the internal management of the company. They define the rights, duties and powers of the persons governing the company and of its members. the manner of carrying on the business, and the method of varying the regulations. The articles are subsidiary to and are governed by the memorandum. Whatever is required by the Act to be stated in the memorandum cannot be changed or modified by the articles; the memorandum prevails (*Wedgwood Coal and Iron Co.* [1877], 7 Ch. D. 75). But where there is an ambiguity in the memorandum on a matter not required by the Act to be stated therein, the articles may be looked at in order to resolve the ambiguity. Any act done outside the scope of the memorandum is beyond the powers both of the directors and of the company, and is void and incapable of ratification. On the other hand, an act done that is within the powers of the memorandum but not within the powers conferred by the articles, while it is beyond the powers of the directors, is within the com-

petence of the company, and capable of being ratified by the company (*Ashbury Railway Co.* v. *Riche* [1875], 7 H.L. 653).

Any seven or more persons associated for a lawful purpose may by subscribing their names to a memorandum of association, and otherwise complying with the Act in respect of registration, form a public incorporated company, and, similarly, any two or more persons may form a private incorporated company (S. 1, s.-s. (1)).

Private companies, companies limited by guarantee, and unlimited companies must deliver for registration articles of association with the memorandum, but a public company limited by shares may or may not deliver articles at the same time as the memorandum (SS. 6, and 26 s.-s. (1)). If a public company limited by shares is registered without articles, then the model set of articles known as Table A, contained in the first schedule to the Act, are deemed to be the articles of the company (S. 8).

The memorandum and articles bind the company and its members, and the members *inter se* in their relationship as members, just as if they had been signed and sealed by each individual member, and each had covenanted to be bound by them (S. 20, s.-s. (1)). But they do not bind either the company or its members to persons who are not members; or the company to its members (*Eley* v. *Positive, etc. Co.* [1876], 1 Ex. D. 88), or member to member in their individual capacities. For the company to be bound to an outsider, or to a member in his capacity as an individual, or for member to be bound to member other than as members, there must be a contract between them. But in certain cases, for example, where a person has acted as director, secretary, or solicitor to a company, no express agreement having been entered into with the company, the articles may be referred to in order to determine the precise terms of the employment (*Ex parte Beckwith* [1898], 1 Ch. 324). *See* p. 7.

Contents of Memorandum.—This is dealt with in S. 2 of the Act as follows:—

(1) The memorandum of every company must state—

(*a*) The name of the company, with "Limited" as the last word of the name in the case of a company limited by shares or by guarantee:

(*b*) Whether the registered office of the company is to be situate in England or in Scotland:

(*c*) The objects of the company.

(2) The memorandum of a company limited by shares or by guarantee must also state that the liability of its members is limited.

(3) The memorandum of a company limited by guarantee must also state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges, and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(4) In the case of a company having a share capital—

(*a*) The memorandum must also, unless the company is an unlimited company, state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;

(*b*) No subscriber of the memorandum may take less than one share;

(*c*) Each subscriber must write opposite to his name the number of shares he takes.

Form of Memorandum.—The memorandum is usually printed, and it is advisable that it should be, since, once it has been filed, corrections can be made only by following the troublesome statutory procedure. Moreover, when printed, additional copies can be run off for future use, and all will be alike, thus avoiding the trouble of making additional copies when required, and the danger of copyists' errors. When the copies are being printed, two " pulls " should be obtained so that one can be filed after being subscribed, and the other be used for duplication. When the registrar's certificate is received (all corrections will then have been made) the duplicate can be completed with the date of incorporation, signatories' names, etc., and the printer be instructed to run off the balance of copies ordered. In the case of private companies it is short-sighted to print too few copies, since, even though there be few members, additional copies will be required for the company's solicitors, bankers, and auditors, to replace lost copies, to issue to new shareholders, and in the event of litigation, etc.

The memorandum may, however, be written, or typewritten. Although it is not a deed, it must be stamped with a ten-shilling deed stamp (S. 3), and with companies registration fee stamps calculated on the amount of the nominal capital in accordance with the Tenth Schedule of the Act. The memorandum must be headed " The Companies Act, 1929. Company Limited by Shares " (or as the case may require). It must be signed by each subscriber in the presence of at least

one witness who must attest the signature (S. 3); and if it is registered without articles, the fact must be stated on the back of the memorandum, and then Table A becomes the company's articles (S. 8, s -s. (2)).

Name of Company.—The creditors of a limited company can look only to the company for payment or redress. Hence the legislature has taken care that, where the liability of a company is limited, that fact shall be impressed upon all non-members of the company who have dealings with it. The means adopted to this end are (*a*) the provision that every company shall have a distinctive name, (*b*) the continuous publication of the name outside the company's registered office and all places where the company carries on its business, and also on all its notices, stationery, instruments of credit, etc., (*c*) the addition to the company's name of the word "Limited," (*d*) heavy penalties in the case of a company's default in observing these provisions.

S. 17.—(1) No company shall be registered by a name which—

(*a*) is identical with that by which a company in existence is already registered, or so nearly resembles that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires; or

(*b*) contains the words "Chamber of Commerce," unless the company is a company which is to be registered under a licence granted in pursuance of the next following section of this Act without the addition of the word "Limited" to its name; or

(*c*) contains the words "Building Society."

(2) Except with the consent of the Board of Trade no company shall be registered by a name which—

(*a*) contains the words "Royal" or "Imperial" or in the opinion of the registrar suggests, or is calculated to suggest, the patronage of His Majesty or of any member of the Royal Family or connection with His Majesty's Government or any department thereof; or

(*b*) contains the words "Municipal" or "Chartered" or in the opinion of the registrar suggests, or is calculated to suggest, connection with any municipality or other local authority or with any society or body incorporated by Royal Charter; or

(*c*) contains the word "Co-operative."

The legal principle underlying the prohibitions contained in s.-s. (1*a*) above is not confined to companies. Neither company nor firm may by its name represent itself to the public as carrying on another's business contrary to fact. The Courts will interfere in the interests of a foreign

company. Thus in *Société Anonyme des Anciens Établissements Panhard et Levassor* v. *Panhard Levassor Motor Co.* [1901], 2 Ch. 513, the French firm succeeded in securing the removal of the English firm's name from the register; and an injunction may be obtained against the use by a company of a name which, though spelt differently from another company's name, is pronounced in the same way, and so calculated to mislead. A company may not monopolise a merely descriptive word by incorporating it in its registered title. In *Aerators, Ltd.*, v. *Tollit* [1902], 2 Ch. 319, the plaintiffs failed to restrain the registration of "Automatic Aerators Patent Co., Ltd." The registrar may refuse to register a name which in his judgment offends against S. 17, s.-s. (1) (*a*), and the Court will not interfere with his discretionary power, if he has exercised it properly (*Rex* v. *Registrar of Companies* [1912], 3 K.B. 23).

The use of the name of an existing company is allowable in the following circumstances:

(1) Where the company is in course of being dissolved, and the liquidator gives his consent in writing (S. 17, s.-s. (1) *supra* and Companies Official Form No. 14).

(2) On a reconstruction, where the new company is to be registered before the old is wound up. In this case, the registrar will pass the name provided some such distinction is made as, *e.g.* the inclusion of the year in the name, and there is lodged with the registrar the assent under seal of the existing company, the draft contract for the sale, and an undertaking to wind up within a specified period. The contract is required only for inspection, and will be returned.

Certain words other than those enumerated in S. 17 may not form part of a company's registered name without consent:

(1) The words "Red Cross" and "Geneva Cross" are protected by the *Geneva Convention Act*, 1911, and their use requires the consent of the Army Council; and the trade use of the word "Anzac" is practically forbidden by the *Anzac (Restriction on Trade Use of Word) Act*, 1916; the use of the words "Patent Agent" requires the sanction of the Comptroller of the Patent Office.

(2) By the *Moneylenders Act*, 1911 (S. 2), no person shall be registered as a moneylender under a name which includes the word " bank," or which implies that such a person is conducting a banking business. The *Veterinary Surgeons Act*, 1881, prohibits the use of the words " Veterinary Surgeon." " Public Trustee," " Bank of England," " Friendly or Provident Society," or words implying connection with the Government, may not form part of a company's name, nor may the word " Dentist " be used in such a connection unless all the operating staff and the majority of the directors are registered dentists, and the company's business is confined to dentistry, and things ancillary to dentistry (*Dentists Act*, 1921).

If a company, through inadvertence or otherwise, is, without such consent as is mentioned in paragraph (*a*) of subsection (1) of S. 17 [*i.e.* the consent of an existing company in the course of being dissolved], registered by a name which is identical with that by which a company in existence is previously registered, or so nearly resembling that name as to be calculated to deceive, the first-mentioned company may change its name with the sanction of the registrar (S. 19, s.-s. (2)). It is thought that in this case an ordinary resolution passed after having obtained the registrar's consent is sufficient.

Any company may, by special resolution and with the approval of the Board of Trade signified in writing, change its name (S. 19, s.-s. (1)).

The procedure is as follows :

(1) Write to the registrar to ascertain that the proposed new name is available.

(2) Write to the Board of Trade giving reasons for the change, and requesting the Board's sanction.

(3) On receipt of the necessary sanction, pass and file a special resolution changing the name. This resolution must be definite—it must not contain alternative names.

An uncommon, and usually too expensive, method of changing the name, is by a Private Act of Parliament.

Where a company changes its name, the registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case (S. 19, s.-s. (4)).

The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name (S. 19, s.-s. (5)).

As to publication of a company's name *see* p. 41.

The Use of the Word "Limited."—Except in the case of an unlimited company, the word "Limited" must form the last word in the name of the company, unless there has been obtained from the Board of Trade a licence to dispense with the word. Abbreviations of the word "Limited" may be used, *e.g.* "Ltd.," "Ld.," or "Lim." (*F. Stacey & Co.* v. *Wallis* [1912], 106 L.T. 544), but not in the memorandum itself, where the word must be spelt in full.

Licence to Dispense with Word "Limited."—The Board of Trade is empowered in certain cases to license the use by limited companies of a name to which the word "Limited" is not added. The provisions governing the exercise of this power are set out in S. 18, and in S. 19, s.-s. (3) of the Act as follows:—

S. 18.—(1) Where it is proved to the satisfaction of the Board of Trade that an association about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity, or any other useful object, and intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Board may by licence direct that the association may be registered as a company with limited liability, without the addition of the word "Limited" to its name, and the association may be registered accordingly.

(2) A licence by the Board of Trade under this section may be granted on such conditions and subject to such regulations as the Board think fit, and those conditions and regulations shall be binding on the association, and shall, if the Board so direct, be inserted in the memorandum and articles, or in one of those documents.

(3) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word "Limited" as any part of its name, and of publishing its name, and of sending lists of members to the registrar of companies.

(4) A licence under this section may at any time be revoked by the Board of Trade, and upon revocation the registrar shall enter the word "Limited" at the end of the name of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by this section:

Provided that, before a licence is so revoked, the Board shall give to the association notice in writing of their intention, and shall afford the association an opportunity of being heard in opposition to the revocation.

(5) Where the name of the association contains the words "Chamber of Commerce," the notice to be given as aforesaid shall include a statement of the effect of the provisions of subsection (3) of the next following section of this Act [*i.e.* S. 19, s.-s. (3)].

S. 19, s.-s. (3) reads as follows:—

Where a licence granted in pursuance of the last foregoing section of this Act to a company the name of which contains the words "Chamber of Commerce" is revoked, the company shall, within a period of six weeks from the date of the revocation or such longer period as the Board of Trade may think fit to allow, change its name to a name which does not contain those words.

If a company makes default in complying with the requirements of this subsection, it shall be liable to a fine not exceeding fifty pounds for every day during which the default continues.

Procedure: Apply to the Board of Trade in writing for the licence, enclosing a draft in duplicate of the proposed memorandum and articles of association, a list of the promoters and proposed governing body, and any report or statement of its previous proceedings as an unincorporated body. If the Board is satisfied that the application may be entertained, it will furnish a notice of the application to be inserted in a local newspaper for the information of the public. A specimen advertisement appears below. If, after the expiration of a limited time, there appears to be no sufficient reason why the licence should not be granted, the Board accepts the memorandum and articles, with such amendment (if any) as may be necessary, and grants the licence. The licence must be obtained before the company is registered; permission to dispense with the word "limited" cannot be obtained after incorporation.

The Board requires the memorandum and articles to be settled on their behalf by counsel, at the expense of the applicants, and a fee of £7 12*s.* must accompany the application. The Board, of course, accepts no responsibility for the documents being so framed as to safeguard the interests of the association. That is the promoters' business.

Any subsequent proposal to alter the memorandum or articles must be submitted for approval to the Board of Trade.

APPLICATION FOR A LICENCE OF THE BOARD OF TRADE.

Notice is hereby given that in pursuance of the 18th Section of the Companies Act, 1929, APPLICATION has been made to the Board of Trade for a LICENCE directing an Association about to be formed under the name of

"THE PRACTITIONERS' MISSION AND HOMES,"

to be REGISTERED with LIMITED LIABILITY without the addition of the word "Limited" to its name.

The objects for which the Association is proposed to be established are :—

(i) To meet and provide.....etc.
(ii) To house, maintain and care for.....etc.
(iii) To render assistance.....etc.
(iv) To receive into Homes.....etc.
(v) To visit the sick.....etc.
(vi) To provide and maintain Homes and Orphanages.....etc.

The other objects of the Association are set out *in extenso* in the Memorandum of Association, a copy of which may be inspected at the office of Messrs. .....

Notice is hereby further given that any Person, Company, or Corporation objecting to this application may bring such objection before the Board of Trade on or before the ..... day of ..... next, by a letter addressed to the Comptroller of the Companies Department, Board of Trade, Great George-Street, London, S.W. 1.

Dated this ..... day of ....., 19.....

C. C. Ess, Secretary.

Licence to Hold Land.—

A company formed for the purpose of promoting art, science, religion, charity or any other like object not involving the acquisition of gain by the company or by its individual members, shall not, without the licence of the Board of Trade, hold more than two acres of land, but the Board may by licence empower any such company to hold lands in such quantity, and subject to such conditions, as the Board think fit (S. 14, s.-s. (1)).

A licence given by the Board of Trade under this section shall be in accordance with the form set out in the Second Schedule to this Act, or as near thereto as circumstances admit (S. 14, s.-s. (2)).

The form of licence referred to above is as follows :—

FORM OF LICENCE TO HOLD LANDS.

The Board of Trade hereby license the to hold the lands hereunder described (*insert description of lands*) [*or* to hold lands not exceeding in the whole acres].

The conditions of this licence are (*insert conditions, if any*).

The Domicile of the Company.—The Act requires that the memorandum shall state whether the registered office of the company is to be situated in England (which includes Wales), or in Scotland, and according to the statement made, so the company must be registered in London or in Edinburgh. A company cannot change its registered domicile except by special Act of Parliament, and, if it is desired to change it, the

most practical method would be to reconstruct the company. A company is bound to have a registered office (S. 92, *see* p. 27, *ante*). The registered office may be situated anywhere within the domicile, unless the memorandum definitely limits it to a particular area, *e.g.* to London; and the exact postal address of the office must be stated in the notice sent to the registrar for filing within 28 days after the date of incorporation, and thereafter within 28 days after any change of address.

Publication of Company's Name.—Every limited company shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraven in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of the company, and in all bills of exchange, promissory notes, indorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts, and letters of credit of the company (S. 93, s.-s. (1)) [and presumably also on the company's vehicles].

Service of Documents.—The service of documents on a company is regulated as follows :—

> S. 370.—(1) A document may be served on a company by leaving it at or sending it by post to the registered office of the company.
>
> (2) Where a company registered in Scotland carries on business in England, the process of any court in England may be served on the company by leaving it at or sending it by post to the principal place of business of the company in England, addressed to the manager or other head officer in England of the company.
>
> (3) Where process is served on a company under subsection (2) of this section, the person issuing out the process shall send a copy thereof by post to the registered office of the company.

"Document" includes summons, notice, order and other legal process, and registers (S. 380).

The Objects Clause.—A company's objects must be legal; they must not conflict with the Act, or offend against the general law. Subject to this, they may be whatever the subscribers to the memorandum determine that they shall be. But they must be clearly stated in the memorandum, and in sufficient detail to confer upon the company power to engage in all such business as the company desires to engage

in. Under the Act a company has implied power not only to do what is necessary for the attainment of its objects as stated in the memorandum, but also to do all such things as may legitimately be held to be incidental to, or arise out of those objects (*Kingsbury Collieries, Moore's Contract* [1907], 2 Ch. 259). But even so, experience has shown that it is best for a company not to rely entirely upon this general power, but to take express power in its objects clause to do all such things as it is conceived it may possibly have to do in pursuance of its objects. The objects clause of the memorandum, therefore, requires very careful drafting. No secretary would be justified in passing the draft of a memorandum unless, at least, this clause had been drawn up by a competent solicitor, or had been approved by one, or had been settled by some person fully cognisant of the purpose for which the company was to be formed, and skilled in the construction of such clauses, and the principles that guide the Courts when interpreting their meaning.

A company cannot legally undertake any business unauthorised by its objects clause. Thus in *Ashbury Railway, etc. Co.* v. *Riche* [1875], 7 H.L., 653, it appears that, amongst other things, the objects of the company were " to make and sell, or lend on hire, railway carriages and waggons, and all kinds of railway plant, fittings, machinery and rolling stock, and to carry on the business of mechanical engineers and general contractors." When the company, in what it supposed was the proper carrying out of its objects, entered into a contract connected with railway construction, it found that, in the view of the Courts (both the Courts below and the House of Lords), the contract was *ultra vires* the company, and altogether void—the term " general contractors " not authorising the company to enter into any sort of contracts, but those contracts only that were of the same kind as indicated by the context, viz. contracts connected with the making, selling, and lending on hire of railway plant, which, on this principle of interpretation, clearly did not include contracts for the construction of the permanent way of a railway.

It is very common nowadays for a company to set out its objects in the memorandum in a series of separate paragraphs, and not, as in the case cited above, in one long paragraph composed of several detached sentences separated by semi-

colons. A somewhat different principle of interpretation then applies. In such cases, one paragraph usually contains the main object for which the company is formed, and the other paragraphs are then construed as containing objects auxiliary to the main object and dependent upon it. But this rule of interpretation may be excluded by words showing a clear intention to exclude it. For example, where it is stated in the memorandum that, unless a contrary intention is expressed, each paragraph (or specified paragraphs) is to be treated as an independent paragraph setting forth independent objects not limited by the subject-matter of any other paragraph. And Lord Parker observed in *Cotman* v. *Brougham* [1918], A.C. 514: "For the purpose of determining whether a company's substratum has gone, it may be necessary to distinguish between power and object, and to determine what is the main or paramount object, but I do not think this is necessary where a transaction is impeached as *ultra vires*."

Where the objects clause concludes with some such general words as "to do all such other things as the company may deem expedient," the best opinion is that such words add nothing to the powers already taken in other parts of the memorandum, but must be construed as being limited to the doing of such things as are legitimately necessary to the attainment of the objects previously specified. Words of general import in the memorandum are always held to be subsidiary to those setting forth the company's primary objects. In determining what are a company's primary objects, the Courts may refer to the company's prospectus. Thus, a company formed for an express financial purpose which fails cannot on the strength of general words in its memorandum employ the remnant of its capital in the transaction of other financial business (*In re Amalgamated Syndicate* [1897], 2 Ch. 600).

The intention of the Act obviously is that the objects clause shall set forth clearly to the members the exact purposes to which the money subscribed by them is to be put, and to enable those who may enter into contracts with the company, to know whether or not they can safely do so. Provided any particular contract is *intra vires* the company, the other party to the contract is not affected if the contract is irregularly entered into by the company, for such party is

entitled to assume that the directors have acted regularly (*Royal British Bank* v. *Turquand* [1856], 6 E. & B. 327). A contract *ultra vires* the memorandum is void, and cannot be ratified (*Pacific Coast Coal Mines* v. *Arbuthnot* [1917], A.C. 607).

The following objects may be specially noted: A shipping company cannot take power to run vessels under a foreign flag (*Merchant Shipping Act*, 1921). If an object of the company is to carry on insurance business other than those branches of insurance for which a statutory cash deposit is required to be made by the *Assurance Companies Act*, 1909, the following paragraph must be included: "Provided that nothing herein contained shall empower the company to carry on the business of assurance or to grant annuities within the meaning of the *Assurance Companies Act*, 1909, as extended by the *Industrial Insurance Act*, 1923, or to reinsure any risks under any class of insurance business to which those Acts apply." The classes of insurance for each of which a deposit must be made are life, fire and accident, employers' liability, and bond investment.

A trade union cannot be registered under the Act (*Trade Union Act*, 1871, and S. 382, s.-s. (7)), hence, if any object has trade union characteristics, the following paragraph must be inserted: "Provided always that the objects of the company shall not extend to any of the purposes mentioned in Section 16 of the *Trade Union Act Amendment Act*, 1876." (As to Dentists, *see* p. 37.)

Alteration of Objects.—A company may, by special resolution, confirmed on petition by the Court, alter its objects so far as may be required to enable it—

(*a*) To carry on its business more economically or more efficiently; or

(*b*) To attain its main purpose by new or improved means; or

(*c*) To enlarge or change the local area of its operations; or

(*d*) To carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or

(*e*) To restrict or abandon any of the objects specified in the memorandum; or

(*f*) To sell or dispose of the whole or any part of the undertaking of the company; or

(*g*) To amalgamate with any other company or body of persons (S. 5, s.-ss. (1) and (2)).

Procedure: Draft the resolution for the alteration, with a concise summary of the reasons; submit resolution to the Board of Directors; on instructions from the Board, issue notices to members, and hold the meeting to pass the necessary resolution. Petition the Court for confirmation. Before confirming the alteration, the Court must be satisfied that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the Court, be affected by the alteration; and that, with respect to every creditor who in the opinion of the Court is entitled to object and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Court: provided that the Court may, in the case of any person or class, for special reasons, dispense with the notice required by this section (S. 5, s.-s. (3)). Care should therefore have been taken to circularise notices to all such persons.

The Court has a discretion, and may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit (S. 5, s.-s. (4)). The Court shall, in exercising its discretion, have regard to the rights and interests of the members of the company or any class of them, 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 may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement: provided that no part of the capital of the company may be expended in any such purchase (S. 5, s.-s. (5)).

Deliver to the registrar for registration an office copy of the order of the Court confirming the alteration, together with a *printed* copy of the memorandum as altered, within fifteen days from the date of the order. The registrar must certify

the registration, and his certificate is conclusive that the requirements of the Act with regard to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum as so altered is the memorandum of the company. The Court may extend the time for delivery for registration (S. 5, s.-s. (6)).

A very broad interpretation is placed upon the section by the Courts, *e g.* in *In re Parent Tyre Co.* [1923], 2 Ch. 222, P. O. Lawrence, J., said that the fact that the new businesses were a new departure was not fatal, and the question whether or not an additional business was one which might conveniently or advantageously be combined with the business of the company was one which could best be determined by the persons engaged in the business of the company, so long as the new business was not destructive of or inconsistent with the existing business. In *In re Cyclists Touring Club* [1907], 1 Ch. 269, the proposed alteration of objects was held to be inconsistent with the company's business, and leave to alter was refused. Leave to alter will also be refused where the wishes of the majority of the members cannot be ascertained (*In re Jewish Colonial Trust* [1908], 2 Ch. 287). In that case the proposed alteration also involved a fundamental change in objects.

Only members or creditors have a right to be heard on the petition (*Hearts of Oak Life Assurance Co.* [1920], 1 Ch. 544). Unless the opposition to such a petition is merely frivolous or vexatious the Court will allow costs in the action, even if unsuccessful (*In re Parent Tyre Co., supra*).

A company formed under a Deed of Settlement, and registered under Part IX of the Act, may utilise the powers conferred by S. 334 of the Act, and by special resolution alter its constitution by substituting a memorandum and articles for its deed of settlement. The procedure is the same as for an alteration of objects, except that, in place of registering the altered memorandum, a printed copy of the substituted memorandum and articles must be registered. Such an alteration of constitution may be effected with or without at the same time an alteration of objects. The expression " deed of settlement " includes any contract of co-partnery or other instrument constituting or regulating the company, not being an Act of Parliament, a royal charter, or letters patent (S. 334, s.-s. (4)).

Limitation of Liability.—The fourth clause in the memorandum states that "The liability of the members is limited." This means, in the case of a company limited by shares, that no member is under any greater liability to the company or its creditors than for the unpaid balance of the nominal value of the shares registered in his name. But a former member may be contingently liable on shares, where the company goes into liquidation within one year after he has ceased to be a member, to such extent as may be necessary to discharge debts of the company contracted while he was a member. But no contribution shall be required from any member exceeding the amount unpaid on the shares in respect of which he is liable (S. 157). And notwithstanding anything in the memorandum or articles of a company, no member can be bound by any alteration made in the memorandum or articles after the date on which he became a member requiring him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way to increase his liability to contribute to the share capital of, or otherwise to pay money to the company, unless he agrees in writing before or after the alteration is made to be bound thereby (S. 22).

The memorandum may provide that the liability of the directors or managers, or of the managing director, shall be unlimited. In that case the directors or managers of the company, and the member who proposes a person for election or appointment to such office, shall add to the proposal a statement that the liability of the person holding such office will be unlimited, and the promoters, directors, managers, and secretary (if any) of the company, or one of them, shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited (S. 146, s.-ss. (1) and (2)).

If the articles so allow, the memorandum may be altered by special resolution to render unlimited the liability of its directors, managers or of any managing director (S. 147, s.-s. (1)).

If at any time the number of members of a public company is reduced below seven, or of a private company below two, and the company carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business *after* such six months, and is cognisant of the fact

of the insufficiency of members, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor (S. 28).

The Capital Clause.—The amount of the company's capital, the denomination(s) of the shares, and their division into classes are usually determined by the promoters. A company's capital should be adequate either to acquire an existing business, or to found and set going a new business; to pay all the expenses incidental to the formation of the company; to provide working capital, and also a margin for contingencies. What shall be the denomination(s) of the shares, and what the classes of shares, if they are divided into classes, are questions of financial expediency. Some investors are quite ready to subscribe for ordinary shares, deeming the prospect of large dividends to be sufficient compensation for assuming full trading risks; while others, more cautious, prefer a comparatively modest return with greater capital security (*e.g.* preference shares). Again, shares of low nominal value, 2*s.*, 5*s.*, etc., may mean a large number of shareholders, and in the case of a company formed to market some commodity of almost universal use this is an undoubted advantage, since it at once secures a wide market for the commodity, each shareholder not only being a consumer himself, but also an unofficial but potent advertising agent for the commodity. One-pound shares are the most popular, but many different denominations are met with in practice.

Where a company's capital is divided into various classes of shares, *e.g.* preference, ordinary, deferred ordinary, etc., it is usual to specify the division, and the rights and privileges attaching to each class of share, either in the memorandum, or, preferably, in the articles. Where the rights attaching to the shares are set forth in the memorandum, the holders of the shares are more fully protected against any alteration in their status as shareholders than they are where this matter is dealt with in the articles, because once rights are unconditionally conferred by the memorandum they are unalterable (*Ashbury* v. *Watson* [1885], 30 Ch. D. 376). But, as already remarked, the articles are the more appropriate place for dealing with such matters, and it is best to confine the capital clause to the bare statement required by the Act, *e.g.* "The share capital of the company is two hundred thousand pounds,

divided into one thousand shares of two hundred pounds each " (*see* Table B, First Schedule to the Act).

The Association Clause and the Signatories.—The clause reads : " We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names." The words beginning " and we . . . respective names," are not required if the company has no share capital.

As already indicated, if the company is to be a private one, two or more persons may subscribe, otherwise seven is the minimum. Each subscriber must take at least one share, and *write* opposite his name the number of shares he takes. If there are more classes of shares than one, the class must be specified.

An agent may sign for a subscriber, provided he produces to the registrar a power of attorney, or an authority in writing. A limited company may be a subscriber, in which case it may either affix its seal or authorise one of its officers to act as its agent; but the company must itself have power to hold shares in another company. It should be noted that where a company is one of the signatories, there must be, in addition, two individual signatories, in the case of a private company, or seven, if the company is a public one.

Contrary to general belief, it is *not* necessary for the subscribers to sign their full names; their usual signatures (if legible) are sufficient, and either their business or private addresses may be given. Illiterate persons may make their mark, authenticated in the usual manner by a witness; a married woman signs as such; unless the articles forbid, an infant may sign (*Laxon & Co.* No. 2 [1892], 3 Ch. 555). The registrar does not inquire into the ages of the signatories, but he would refuse to register if he had reason to believe that a signatory was not of full age.

A foreigner may sign, whether resident in Great Britain or not (*Princess of Reuss* v. *Bos* [1871], 5 H.L. 176). Or all the signatures may be those of foreigners (*General Company for the Promotion of Land Credit* [1870], 5 Ch.D. 363).

The occupation of each subscriber must be stated precisely; if of no occupation, this fact must be stated. The date of the

signing, and the signature of the witness or witnesses, must be appended. Whilst it is usual for all to sign at one time, and for the signatures to be witnessed by one witness, it is sometimes necessary to get the signatures at different times, in which case a separate attestation clause for each signature is necessary. One subscriber may not witness and attest the signature of another subscriber.

Since the company has not yet acquired an existence when the signatories subscribe the memorandum, no signatory may, after registration, rescind his contract to take the shares written by him opposite his name on the ground that he was induced to sign the memorandum by misrepresentation of a promoter (*Metal Constituents, Lord Lurgan's Case* [1902], 1 Ch. 707).

A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requirements of the Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under the Act. A statutory declaration by a solicitor of the Supreme Court, and in Scotland by an enrolled law agent, engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company, of compliance with all or any of the said requirements, shall be produced to the registrar, and the registrar may accept such a declaration as sufficient evidence of compliance (S. 15).

Articles of Association

A public company limited by shares *may*, and a private company, or a company limited by guarantee, or unlimited *must* deliver articles of association for registration (S. 6). These may be (*a*) the model set known as Table A; (*b*) Table A with additions and/or modifications; (*c*) specially framed articles, as circumstances and the nature of the company may require. The authors of this book strongly advise that where Table A is found unsuitable, extensive alterations and/or additions having to be made to meet requirements, the company should frame complete articles of its own. Composite articles are common, but there is grave danger of inconsistency in such patchwork, and the consequences may prove far more expensive

than would the initial expense of having drawn up by a competent hand, and printed, a complete set of articles.

In the case of an unlimited company the articles, if the company has a share capital, must state the amount of share capital with which the company proposes to be registered; and in the case of an unlimited company or a company limited by guarantee, the articles, if the company has not a share capital, must state the number of members with which the company proposes to be registered (S. 7, s.-ss. (1) and (2)). These provisions are necessary in order to enable the registrar to determine the fees payable on registration. A company limited by shares (unless a private company) need not register articles, in which case Table A contains the company's articles. Table A also applies to all companies limited by shares in so far as the articles registered do not exclude or modify those regulations (S. 8). An article in Table A cannot be excluded by implication (*Fisher* v. *Black and White Publishing Co.* [1901], 1 Ch. 174). If no articles are registered with the memorandum, the latter must be endorsed with the words, "Registered without Articles." As to the articles of private companies, *see* p. 55.

Articles must be signed by the subscribers to the memorandum, and the same formalities must be observed when signing the articles as when signing the memorandum. They *must* be printed, be divided into paragraphs, numbered consecutively, and be stamped with a ten-shilling stamp as if they were contained in a deed (S. 9). Lithographed articles are accepted.

Alteration of Articles.—Subject to the provisions of the Act and the conditions contained in its memorandum, a company may by special resolution alter or add to its articles, and any alteration or addition so made in the articles shall, subject to the provisions of the Act (*e.g.* S. 22, *see* p. 47), be as valid as if contained in the original articles, and be subject in like manner to alteration by special resolution (S. 10). So, a company registered without articles and governed by Table A can in like manner alter or add to Table A.

Procedure: Draft the alterations or additions and submit them to a duly constituted Board meeting. Usually, it is advisable first to take legal advice on the proposed changes. The Board, having approved the proposed changes, call the

necessary meeting for passing the special resolution required to validate it. The notices must specify the material alterations effected by the proposed new articles (*Normandy* v. *Ind Coope & Co.* [1908], 1 Ch. 84). The meeting having been held, and the resolution duly passed, deliver to the registrar for registration a printed copy of the resolution signed by the chairman, and insert a printed copy in every copy of the articles subsequently issued.

The power to alter articles given by S. 10 is of the widest scope. Any alteration or addition to articles validly made in accordance with the section is binding upon the members, so long as it does not violate any statutory provision or rule of law. Articles cannot empower a company to pay dividends out of capital, or to purchase its own shares (*Trevor* v. *Whitworth* [1887], 12 App. Cas. 409), or to apply its profits in contravention of a provision in the memorandum. They cannot relieve a member of his obligation to pay for his shares in full (*Welton* v. *Saffery* [1897], App. Cas. 299), or deprive him of his statutory right to apply for a winding-up order, or, if he be a dissentient, of the rights conferred upon him by S. 234, or impose additional liability upon him without his written consent (S. 22). No provisions contained in Table A can be *ultra vires* (*Lock* v. *Queensland Mortgage Co.* [1896], App. Cas. 461). A company cannot deprive itself of the right to alter its articles (*Walker* v. *London Tramways Co.* [1879], 12 Ch.D. 705). But where a company has created reserve liability under S. 49 (*see* p. 151) the articles creating it cannot be altered.

The statute requires a three-fourths majority in voting power to effect an alteration in or addition to the articles, but, notwithstanding, the Courts will intervene to prevent the majority from perpetrating a fraud on the minority, or oppressing the minority. The alterations or additions must be made for the benefit of the company as a whole. A company may not alter its articles, and so justify a breach of contract with an outsider, one of the terms of which was that the articles should not be altered (*British Murac Syndicate* v. *Alperton Rubber Co.* [1915], 2 Ch. 186). Nor may it do so in order to deprive a minority of their rights (*Brown* v. *British Abrasive Wheel Co.* [1919], 1 Ch. 290). A company was held to have acted *bona fide* in altering its articles to give power to

compel a member who was in competition with the company to transfer his shares (*Sidebottom* v. *Kershaw, Leese & Co.* [1920], 1 Ch. 154). But not so another company which sought by alteration of its articles to assume a general power to expropriate (*Dafen Tinplate Co.* v. *Llanelly Steel Co.* [1920], 2 Ch. 124). The question whether any particular alteration or addition is for the benefit of the company as a whole is one for the members acting *bona fide* rather than for the Courts (*Shuttleworth* v. *Cox Brothers & Co.* [1927], 2 K.B. 9).

The Position of Third Parties.—An article stating that the company will pay the preliminary expenses is merely an undertaking to the members; it does not give a promoter the right to recover them from the company (*Melhado* v. *Porto Alegre Railway Co.* [1874], L.R. 9 C.P. 503). There is not even an obligation on the company to reimburse a promoter his expenditure on registration fees (*Re National Motor Mail Co.* [1908], 2 Ch. 515).

An article appointing a person as secretary or as solicitor gives such person no right to sue on the contract, since he is not a party to the contract (*Eley* v. *Positive Life Assurance Co.* [1876], 1 Ex. D. 88). The same remarks apply to a director (*Browne* v. *La Trinidad* [1887], 37 Ch.D. 1). But, where such a person has *acted* in the capacity mentioned, the Courts may look to the articles for the purpose of supplying the terms, where a contract has been established between the company and such person (*Boston Deep Sea Fishing Co.* v. *Ansell* [1888], 39 Ch.D. 339, and *Ex parte Beckwith* [1898], 1 Ch. 324). From all points of view it is most advisable in such cases for a written contract to be entered into in order to prevent any dispute. Persons dealing with the company are deemed to know the contents of the articles, but are not bound to see that they are carried out, *e.g.* if the dealings come within the powers conferred by the articles upon the directors, the persons concerned are entitled to assume that the directors are acting within those powers (*Land Credit Co. of Ireland* [1869], 4 Ch. App. 469), provided, of course, that they have no notice to the contrary.

All money payable by any member to the company under the memorandum or articles is a debt due from him to the company, and in England is of the nature of a specialty debt (S. 20, s.-s. (2)). Consequently, the Statute of Limitations does

not bar proceedings for recovery until twenty years after the debt has become payable or was last acknowledged in writing.

The articles of a company generally follow Table A as closely as the circumstances will allow. The following is an outline of the usual provisions contained in articles :

(*a*) The extent to which Table A is to be excluded (but *see* p. 50);

(*b*) If a business is being acquired, as described in Chapter III, a provision that the directors shall enter into the agreement for purchase;

(*c*) Provisions regarding the issue of shares, rights to be attached to new issues and classes, terms of issue, rights of members to certificates and duplicates;

(*d*) A declaration that no part of the funds of the company shall directly or indirectly be employed in purchasing or lending money upon the company's shares, otherwise than is sanctioned by the Act, in the proviso to S. 45 (1); [viz. (*a*) lending money where the lending of money is part of the company's ordinary business, (*b*) providing money for the purchase of fully paid shares in the company to be held in trust for the benefit of the company's employees, including any director holding a salaried employment or office in the company, (*c*) making loans to persons (other than directors) *bona fide* in the employment of the company to enable such persons to purchase fully paid shares in the company to be held by them by way of beneficial ownership].

Provisions as to :—

(*e*) Underwriting commission;

(*f*) Lien on shares, extent of the lien, and how enforceable;

(*g*) Calls on shares, how to be made, and the restrictions on the amount and time of calls; liability of joint holders; interest on calls; calls in arrear and in advance;

(*h*) Method and regulations for transfers and transmissions of shares, forfeiture of shares, conversions into stock, share warrants, and alterations of capital;

(*i*) Holding and calling general meetings, proceedings at meetings, votes of members;

(*j*) Number, powers and duties, disqualification, rotation and proceedings of the directors; borrowing powers; the use of the seal; dividends and reserve; accounts and audit; how and to whom notices are to be given.

Reference should be made to Appendix IV for the requirements of the Stock Exchange where an Official Quotation is sought.

Copies of Memorandum and Articles.—Every member of a company is entitled, on request and payment of the prescribed fee, to receive a copy of the company's memorandum, and of the articles, if the company has registered articles. If any alteration is made in the memorandum of a company, or in its registered articles, then every copy of these documents sent out after the date of the alteration must accord with the alteration. If a company has not registered articles, but has subsequently passed a special resolution altering Table A, a copy of the resolution must be sent.

> A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles, if any, and a copy of any Act of Parliament which alters the memorandum, subject to payment, in the case of a copy of the memorandum and of the articles, of one shilling or such less sum as the company may prescribe, and, in the case of a copy of an Act, of such sum not exceeding the published price thereof as the company may require (S. 23, s.-s. (1)).
>
> Where an alteration is made in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration (S. 24, s.-s. (1)).

Private Companies.—A private company, as defined in S. 26, s.-s. (1), is one which, by its articles:

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

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

(*c*) Prohibits any invitation to the public to subscribe for any shares or debentures of the company.

Joint holders of shares are, for this purpose, treated as a single member (S. 26, s.-s. (2)). Directors are not employees for the purposes of s.-s. (1) (*b*) (*Normandy* v. *Ind Coope & Co.* [1908], 1 Ch. 84). A company by its articles may restrict the number of members to less than fifty, and be a private company.

Usually a private company is one limited by shares only, but so long as it is a company with a share capital, it may be a guarantee or an unlimited company. Associations not for

[*cont. on p. 58*]

The Third Schedule referred to in S. 27, s.-s. (1) quoted on p. 58 is as follows:—

THIRD SCHEDULE

FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO REGISTRAR BY A PRIVATE COMPANY ON BECOMING A PUBLIC COMPANY.

THE COMPANIES ACT, 1929.

Statement in lieu of Prospectus
delivered for registration by

[*Insert the name of the Company.*]

Pursuant to section 27 of the Companies Act, 1929.

Delivered for registration by	
The nominal share capital of the Company.	£
Divided into	Shares of £ each. " " " " " "
Amount (if any) of above capital which consists of redeemable preference shares.	Shares of £ each.
The date on or before which these shares are, or are liable, to be redeemed.	
Names, descriptions and addresses of directors or proposed directors.	
Amount of shares issued . . .	Shares.
Amount of commissions paid in connection therewith.	
Amount of discount, if any, allowed on the issue of any shares, or so much thereof as has not been written off at the date of the statement.	
Unless more than one year has elapsed since the date on which the Company was entitled to commence business:—	
Amount of preliminary expenses.	£
Amount paid to any promoter .	Name of promoter. Amount £ .
Consideration for the payment .	Consideration:—
If the share capital of the Company is divided into different classes of shares, the right of voting at meetings of the Company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	
Number and amount of shares and debentures issued within the two years preceding the date of this statement as fully or partly paid up otherwise than for cash or agreed to be so issued at the date of this statement.	1. shares of £ fully paid. 2. shares upon which £ per share credited as paid.
Consideration for the issue of those shares or debentures.	3. debenture £ 4. Consideration:—

Names and addresses of Vendors of Property (1) purchased or acquired by the Company within the two years preceding the date of this statement or (2) agreed or proposed to be purchased or acquired by the Company.

Amount (in cash, shares or debentures) paid or payable to each separate vendor.

Amount paid or payable in cash, shares or debentures for any such property, specifying the amount paid or payable for goodwill.

Total purchase price £

Cash	. £	
Shares	. £	
Debentures	. £	
Goodwill	. £	

Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of business or entered into more than two years before the delivery of this statement).

Time and place at which the contracts or copies thereof may be inspected.

Names and addresses of the auditors of Company.

Full particulars of the nature and extent of the interest of every director in any property purchased or acquired by the Company within the two years preceding the date of this statement or proposed to be purchased or acquired by the Company or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become or to qualify him as, a director, or otherwise for services rendered or to be rendered to the Company by him or by the firm.

Rates of the dividends (if any) paid by the Company in respect of each class of shares in the Company in each of the three financial years immediately preceding the date of this statement or since the incorporation of the Company whichever period is the shorter.

Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years.

If any of the unissued shares or debentures are to be applied in the purchase of any business the amount, as certified

by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement, provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year the above requirement shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on.

(Signatures of the persons above-named as directors or proposed directors or of their agents authorised in writing.)

Date .

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

profit, companies limited by guarantee not having a share capital, and unlimited companies not having a share capital cannot be registered as private companies.

In certain circumstances, a private company ceases to be such, and, in other circumstances, it ceases to enjoy the privileges of a private company. These circumstances are detailed in S. 27 of the Act as here follows :—

(1) If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under the last foregoing section of this Act, are required to be included in the articles of a company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company and shall, within a period of fourteen days after the said date, deliver to the registrar of companies for registration a prospectus or a statement in lieu of prospectus in the form and containing the particulars set out in the Third Schedule to this Act.

(3) Where the articles of a company include the provisions aforesaid but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies under the provisions contained in section twenty-eight [which allows a private company to carry on business unless the number of members is less than two, instead of

seven as in the case of a public company], subsection (3) of section one hundred and ten [which exempts a private company from filing its balance sheet annually], subsection (1) of section one hundred and thirty [which exempts a private company from circulating copies of balance sheets and auditors' reports to its members] and paragraph (4) of section one hundred and sixty-eight [which exempts a private company from compulsory winding up on the grounds of decreased membership so long as there are two members] of this Act, and thereupon the said provisions shall apply to the company as if it were not a private company :

Provided that the court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other person interested and on such terms and conditions as seem to the court just and expedient, order that the company be relieved from such consequences as aforesaid.

Advantages of a Private Company.—A private company has the following privileges :

It may consist of two members (S. 1); and can commence business immediately it is incorporated (S. 94); and need not hold the statutory meeting nor prepare, circulate or file the statutory report (S. 113); and is exempt from the provision that every company registered after the commencement of the Act (1st November, 1929) must have at least two directors (S. 139); and does not have to file consent of the directors to act, or contract to take qualification shares (S. 140); and need not, so long as it remains a private company, file a statement in lieu of prospectus (S. 40); and requires no minimum subscription (S. 39); and need not circulate balance sheets among its members (S. 130); or file a balance sheet with the Annual Return (S. 110).

On the other hand, a private company cannot authorise the issue of share warrants, and must certify on every Annual Return that no issue of shares or debentures has been made to the public, and also, where the number of members exceeds fifty, that the excess is composed entirely of employees or ex-employees who were members when employed and have continued so to be (S. 111). Private companies can pay a commission for underwriting their shares, but would then have to file with the registrar a " statement in the prescribed form " duly signed in the same manner as a " statement in lieu " would have to be (S. 43, s.-s. (1) (*c*)).

Any member of a private company is entitled to be furnished, within seven days after he has made a request in that behalf to the company, with a copy of the balance sheet and auditors' report at a charge not exceeding sixpence for every hundred words (S. 130, s.-s. (2)).

Conversion of a Private Company to a Public Company.—A private company may, subject to anything contained in the memorandum, turn itself into a public company by altering its articles in such a manner that they no longer include the provisions of S. 26 (*see* above). The provisions of S. 27, s.-s. (1), must then be complied with (*see* p. 56).

Conversion of a Public into a Private Company.—The procedure is to pass special resolutions authorising the conversion, and altering the articles so as to add the necessary restrictions and to delete any inappropriate clauses. A copy of each special resolution must, as usual, be filed, and included with every copy of the memorandum and articles subsequently issued. The company must be in a position to give the certificate required by S. 111 (*see* p. 59).

Statutory Regulations for Foreign Companies.—Part XI of the Act, consisting of SS. 343–353, provides the following regulations for companies incorporated outside Great Britain which carry on business within Great Britain :—

COMPANIES INCORPORATED OUTSIDE GREAT BRITAIN CARRYING ON BUSINESS WITHIN GREAT BRITAIN.

By S. 343. This Part of this Act shall apply to all companies incorporated outside Great Britain which, after the commencement of this Act, establish a place of business within Great Britain, and to all companies incorporated outside Great Britain, which have, before the commencement of this Act, established a place of business within Great Britain and continue to have an established place of business within Great Britain at the commencement of this Act.

A place of business within the section is established by opening any premises for carrying on the business, and includes a share transfer or registration office. Merely carrying on business through an agent is not sufficient (*Grant* v. *Anderson & Co.* [1892], 1 Q.B. 108), although carrying on through an attorney would, probably, be sufficient to bring the company within the section. Many cases are on the border-line, and, where doubt exists, the secretary should apply to the registrar, in writing, for direction, setting out the exact circumstances of his company.

By S. 344.—(1) Companies incorporated outside Great Britain which, after the commencement of this Act, establish a place of business within Great Britain, shall within one month from the establishment of the place of business, deliver to the registrar of companies for registration—

(*a*) a certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof;

(*b*) a list of the directors of the company, containing such particulars with respect to the directors as are by this Act required to be contained with respect to directors in the register of the directors of a company (*see* p. 218);

(*c*) the names and addresses of some one or more persons resident in Great Britain authorised to accept on behalf of the company service of process and any notices required to be served on the company.

(2) The following companies, namely:

(*a*) companies incorporated outside Great Britain which, before the first day of April, nineteen hundred and nine, established a place of business and at the commencement of this Act continue to have a place of business within Great Britain;

(*b*) companies incorporated in Northern Ireland before the first day of January, nineteen hundred and twenty-two, which at the commencement of this Act have a place of business within Great Britain;

(*c*) companies incorporated in the Irish Free State which, before the twenty-seventh day of March, nineteen hundred and twenty-three, established a place of business and at the commencement of this Act continue to have a place of business within Great Britain;

shall, within one month from the commencement of this Act, deliver to the registrar for registration the documents and particulars specified in the last foregoing subsection.

(3) Companies to which this Part of this Act applies, other than the companies mentioned in subsections (1) and (2) of this section, shall, if at the commencement of this Act they have not delivered to the registrar the documents and particulars specified in paragraphs (*a*), (*b*) and (*c*) of subsection (1) of section two hundred and seventy-four of the Companies (Consolidation) Act, 1908, as amended by the Companies (Particulars as to Directors) Act, 1917, continue subject to the obligation to deliver those documents and particulars in accordance with the said Acts.

The provisions referred to in subsection (3) above were the same as those contained in S. 344, s.-s. (1) above.

By S. 345. A company incorporated in a British possession which has delivered to the registrar of companies—

(1) in the case of a company to which subsection (1) or subsection (2) of the last foregoing section applies, the documents and particulars specified in paragraphs (*a*), (*b*) and (*c*) of subsection (1) of that section;

(2) in the case of any other company to which this Part of this Act applies, the documents and particulars specified in paragraphs (*a*), (*b*) and (*c*) of subsection (1) of section two hundred and seventy-

four of the Companies (Consolidation) Act, 1908, as amended by the Companies (Particulars as to Directors) Act, 1917;

shall have the same power to hold lands in the United Kingdom as if it were a company incorporated under this Act:

Provided that nothing in this section shall affect the power of a company to hold lands by virtue of registration in Northern Ireland.

By S. 346. If in the case of any company to which this Part of this Act applies any alteration is made in—

(1) the charter, statutes, or memorandum and articles of the company or any such instrument as aforesaid; or

(2) the directors of the company or the particulars contained in the list of the directors; or

(3) the names or addresses of the persons authorised to accept service on behalf of the company;

the company shall, within the prescribed time, deliver to the registrar for registration a return containing the prescribed particulars of the alteration.

Alterations in the constitution of a foreign company must be filed within twenty-one days after the date on which the documents would, by the exercise of ordinary diligence, reach this country.

By S. 347.—(1) Every company to which this Part of this Act applies shall in every calendar year make out a balance sheet in such form, and containing such particulars and including such documents, as under the provisions of this Act it would, if it had been a company within the meaning of this Act, have been required to make out and lay before the company in general meeting, and deliver a copy of that balance sheet to the registrar for registration.

(2) If any such balance sheet is not written in the English language, there shall be annexed to it a certified translation thereof.

The registrar of companies has informed the authors that he is advised that, even if the regulations of the foreign company are such that, if the company were registered in Great Britain, it would be a private company, the balance sheet must be delivered to him for registration. In all cases, the document must be audited, unless the law of the country of incorporation does not require an audit, in which case the official responsible for the accounts must sign thereon. If the accounts are in a foreign currency, the English equivalent must be shown.

By S. 348 Every company to which this Part of this Act applies shall—

(1) in every prospectus inviting subscriptions for its shares or debentures in Great Britain state the country in which the company is incorporated; and

(2) conspicuously exhibit on every place where it carries on business in Great Britain the name of the company and the country in which the company is incorporated; and

(3) cause the name of the company and of the country in which the company is incorporated to be stated in legible characters in all bill-heads and letter paper, and in all notices, advertisements, and other official publications of the company; and

(4) if the liability of the members of the company is limited, cause notice of that fact to be stated in legible characters in every such prospectus as aforesaid and in all bill-heads, letter paper, notices, advertisements and other official publications of the company in Great Britain, and to be affixed on every place where it carries on its business.

By S. 349. Any process or notice required to be served on a company to which this Part of this Act applies shall be sufficiently served if addressed to any person whose name has been delivered to the registrar under this Part of this Act and left at or sent by post to the address which has been so delivered:

Provided that—

(1) where any such company makes default in delivering to the registrar the name and address of a person resident in Great Britain who is authorised to accept on behalf of the company service of process or notices; or

(2) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company, or for any reason cannot be served;

a document may be served on the company by leaving it at or sending it by post to any place of business established by the company in Great Britain.

By S. 350.—(1) Any document, which any company to which this Part of this Act applies is required to deliver to the registrar of companies, shall be delivered to the registrar at the registration office in England or Scotland according as the company has established a place of business in England or Scotland, and if it has established or establishes a place of business both in England and in Scotland, the document shall be delivered at the registration office both in England and in Scotland, and references to the registrar of companies in this Part of this Act shall be construed accordingly:

Provided that nothing in this Part of this Act shall operate to require any document to be delivered at any registration office if it has been delivered at that office before the commencement of this Act.

(2) If any company to which this Part of this Act applies ceases to have a place of business in either part of Great Britain, it shall forthwith give notice of the fact to the registrar of companies for that part, and as from the date on which notice is so given the obligation of the company to deliver any document to the registrar shall cease.

By S. 352. For the purposes of this Part of this Act—

The expression "certified" means certified in the prescribed manner to be a true copy or a correct translation;

The expression "director" in relation to a company includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

The expression "place of business" includes a share transfer or share registration office;

The expression "prospectus" has the same meaning as when used in relation to a company incorporated under this Act.

Special Provisions as to Companies incorporated in Channel Islands or Isle of Man.

By S. 353. Where a company incorporated in the Channel Islands or Isle of Man—

(*a*) after the commencement of this Act establishes a place of business in England or Scotland; or

(*b*) has before the commencement of this Act established and at the commencement of this Act continues to have a place of business in England or Scotland;

all the provisions of this Act requiring documents to be forwarded or delivered to, or filed with, the registrar of companies (other than provisions requiring the payment of a fee in respect of the registration of a company) shall apply to the company in like manner as if it were a company registered in England or Scotland, as the case may be, and if the company establishes places of business both in England and in Scotland the said provisions shall so apply as if the company were registered both in England and in Scotland:

Provided that, in the case of a company which has established a place of business before the commencement of this Act, the time within which documents must be forwarded or delivered to, or filed with, the registrar shall run from the commencement of this Act.

Prospectuses of Foreign Companies.—Sections 354 and 355 contain restrictions on the issue, circulation, or distribution in Great Britain of any prospectus offering for subscription or sale shares in or debentures of a foreign company, or any application form for shares or debentures in such companies. The text of these sections is as follows:—

PROVISIONS WITH RESPECT TO PROSPECTUSES OF FOREIGN COMPANIES INVITING SUBSCRIPTIONS FOR SHARES OR OFFERING SHARES FOR SALE.

S. 354.—(1) It shall not be lawful for any person—

(*a*) to issue, circulate or distribute in Great Britain any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Great Britain, whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain, unless—

(i) before the issue, circulation, or distribution of the prospectus in Great Britain a copy thereof, certified by the chairman and two other directors of the company as having been approved by resolution of the managing body, has been delivered for registration to the registrar of companies;

(ii) the prospectus states on the face of it that the copy has been so delivered;

(iii) the prospectus is dated;

(iv) the prospectus otherwise complies with this Part of this Act; or

(*b*) to issue to any person in Great Britain a form of application for shares in or debentures of such a company or intended company as aforesaid, unless the form is issued with a prospectus which complies with this Part of this Act:

Provided that this provision shall not apply if it is shown that the form of application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(2) This section shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(3) Where any document by which any shares in or debentures of a company incorporated outside Great Britain are offered for sale to the public would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section thirty-eight of this Act [*see* p. 110] to be a prospectus issued by the company, that document shall be deemed to be, for the purposes of this section, a prospectus issued by the company.

(4) An offer of shares or debentures for subscription or sale to any person whose ordinary business or part of whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this section.

(5) Section thirty-seven of this Act shall extend to every prospectus to which this section applies [*see* p 107].

(6) Any person who is knowingly responsible for the issue, circulation or distribution of any prospectus, or for the issue of a form of application for shares or debentures, in contravention of the provisions of this section shall be liable to a fine not exceeding five hundred pounds.

(7) In this and the next following section the expressions "prospectus," "shares," and "debentures" have the same meanings as when used in relation to a company incorporated under this Act.

S. 355.—(1) In order to comply with this Part of this Act, a prospectus in addition to complying with the provisions of sub-paragraphs (ii) and (iii) of paragraph (*a*) of subsection (1) of the last foregoing section must—

(*a*) contain particulars with respect to the following matters—

(i) the objects of the company;

(ii) the instrument constituting or defining the constitution of the company;

(iii) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;

(iv) an address in Great Britain where the said instrument, enactments or provisions, or copies thereof, and if the same are in a foreign language a translation thereof certified in the prescribed manner, can be inspected;

(v) the date on which and the country in which the company was incorporated;

(vi) whether the company has established a place of business in Great Britain, and, if so, the address of its principal office in Great Britain:

Provided that the provisions of sub-paragraphs (i), (ii), (iii) and (iv) of this paragraph shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

(*b*) subject to the provisions of this section, state the matters specified in Part I of the Fourth Schedule to this Act (other than those specified in paragraph 1 of the said Part I) and set out the reports specified in Part II of that Schedule, subject always to the provisions contained in Part III of the said Schedule [*see* pp. 93 *et sqq.*]:

Provided that—

(i) where any prospectus is published as a newspaper advertisement, it shall be a sufficient compliance with the requirement that the prospectus must specify the objects of the company if the advertisement specifies the primary object with which the company was formed; and

(ii) in paragraph 3 of Part I of the said Fourth Schedule a reference to the constitution of the company shall be substituted for the reference to the articles; and

(iii) paragraph 1 of Part III of that Schedule shall have effect as if the reference to the memorandum were omitted therefrom.

(2) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void

(3) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

(*a*) as regards any matter not disclosed, he proves that he was not cognisant thereof; or

(*b*) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or

(*c*) the non-compliance or contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph 15 of Part I of the Fourth Schedule to this Act, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(4) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act, apart from this section.

CHAPTER V

CAPITAL. SHARES. DEBENTURES. PROSPECTUS. UNDERWRITING. ETC.

THE capital clause of the memorandum of a company limited by shares must state the amount of the capital and division thereof into shares of a fixed amount. There is no legal limit to the amount of the nominal capital. A company has been registered with a capital of one halfpenny divided into two shares of one farthing each; others with a capital running into many millions of pounds. The capital can be altered by the statutory procedure described later in the chapter.

It should be borne in mind that a share, although given a nominal value, and paid for in money, or money's worth, is not definitely an exact sum of money; it is an interest in the company, measuring the right to an aliquot part of the whole undertaking, and other rights given by the contract to take the shares, and impressed with the contractual liabilities contained in the articles (*Borland's Trustee* v. *Steel Bros.* [1901], 1 Ch. 279).

In America, this fact is more clearly recognised by issuing shares of no par value; *i.e.* the undertaking is expressed to be divided into a stated number of shares, which the company sells for what they are worth at the time of issue. The result is the same as if a nominal value was attached to the shares, for a share of, say, £1 is rarely worth exactly that sum at any time; even a few days after issue it may be worth more or less. Consider the case of a company which issues a share of the nominal value of £1 for 25*s.* (*i.e.* at a premium of 5*s.*) with an American shareholder who purchases a share of "no par value" for 25*s.*; subject to the rights in winding up being the same, neither of the two is any better or worse situated. Both may transfer their shares at the market price on the day of sale. The Company Law Amendment Committee of 1925 came to the conclusion, however, that there was no reason to introduce the principle of "no par value" into the Companies Act.

Shares.—The capital may be divided simply into shares all of one class, or there may be shares of two or more classes carrying different rights.

The particulars of the different classes, if there are different classes, may be stated either in the capital clause in the memorandum, or in the articles, preferably in the latter. Unless the memorandum expressly forbids, a company can take power in its articles, or may alter or add to its articles to give the power if the original articles do not do so, to issue shares with special privileges (*Andrews* v. *Gas Meter Co.* [1897], 1 Ch. 361; *Ashbury* v. *Watson* [1885], 30 Ch.D. 376). Sometimes the memorandum refers to a certain article as conferring the particular rights. If that reference is exclusive, such article may be considered part of the memorandum, and so be subject to S. 153 (*see* pp. 395 *et sqq.*).

The usual classes of shares are :

(a) *Preference Shares*, carrying some preferential rights over the remaining classes of shares;

(b) *Ordinary Shares*, carrying the bulk of the rights and dividends, subject to the prior rights attaching to the preferential shares; and

(c) *Deferred, Management or Founders' Shares*, which usually carry very valuable rights, either in voting power, or in dividends, or both, after prior rights have been satisfied.

Preference shares may be divided into one or more classes, of which one class may rank prior to another, *e.g.* pre-preference, or first preference. The preference usually carries the right to a fixed rate of dividend in preference to all other shares. This dividend may or may not be cumulative (termed Cumulative Preference, or Non-cumulative Preference respectively). If the divisible profits appropriated as dividend in any period are insufficient to meet the whole of the dividend on such shares, then, if they are cumulative, the divisible profits in succeeding periods must be applied in meeting arrears of such dividends and paying the fixed rate up to date before any subsidiary class of share receives any dividend. If they are non-cumulative, payments in respect of previous years need not be made. In the absence of contrary provisions, preference shares carrying a preferential dividend are *prima facie* cumulative (*Webb* v. *Earle* [1875], 20 Eq. 556), but this

is rebuttable if the language of the clause is susceptible of a different construction (*Staples* v. *Eastman Photographic Materials Co.* [1896], 2 Ch. 303). The preference may be simply directed to dividend, or to voting power, or to return of capital in the event of a winding up, or to all of these rights. Special voting or other rights conferred by the *articles* are alterable.

Redeemable Preference Shares.—The relevant provisions governing this class of shares are contained in S. 46, which reads as follows :

(1) Subject to the provisions of this section, a company limited by shares may, if so authorised by its articles, issue preference shares which are, or at the option of the company are to be liable, to be redeemed :

Provided that—

(*a*) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption ;

(*b*) no such shares shall be redeemed unless they are fully paid ;

(*c*) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividend be transferred to a reserve fund, to be called " the capital redemption reserve fund," a sum equal to the amount applied in redeeming the shares, and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company ;

(*d*) where any such shares are redeemed out of the proceeds of a fresh issue, the premium, if any, payable on redemption, must have been provided for out of the profits of the company before the shares are redeemed.

(2) There shall be included in every balance sheet of a company which has issued redeemable preference shares a statement specifying what part of the issued capital of the company consists of such shares and the date on or before which those shares are, or are to be liable, to be redeemed.

If a company fails to comply with the provisions of this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred pounds.

(3) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.

(4) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purposes of any enactments relating to stamp duty be deemed to be increased by the issue of shares in pursuance of this subsection :

Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp

duty, be deemed to have been issued in pursuance of this subsection unless the old shares are redeemed within one month after the issue of the new shares.

(5) Where new shares have been issued in pursuance of the last foregoing subsection, the capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company, up to an amount equal to the nominal amount of the shares so issued, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

The provisions of this section are especially valuable where a company requires money for expansion of its fixed assets, since the money raised by redeemable preference shares will thus carry interest against the company only for the period during which the shares are outstanding. The company can, therefore, out of the profits earned by the new assets, set aside funds for the repayment of the shares, with the result that the permanent members will thereafter reap the benefit of the increased earning capacity. This is much more to the permanent members' advantage than the issue of irredeemable shares, which would participate in all dividends until the company was wound up.

Further classes of shares are met with, viz.—

Participating Preference Shares, which give, in addition to the fixed preference dividend, the right to share in the surplus profits after all the other shareholders have received a specified dividend. Specific provisions are necessary to confer this right on any class of preference shares.

Guaranteed Preference Shares. These are occasionally met with, and indicate that the dividend on the shares has been guaranteed by the vendors, or by some third party. They may be guaranteed for a stated period only and then revert to mere preference shares. Such shares are not uncommonly issued where a private business is turned into a limited company; or on the sale of one company to another company; the vendor or an interested third party undertaking to guarantee a specified rate of dividend over a limited number of years. Where such a guarantee is contemplated it is well to see that precise terms are arranged before the agreement is entered into. A guarantee of 7 per cent. for three years may or may not give the guarantor a right to set off a surplus in the second against a deficiency in the third year, *e.g.* thus, first year, 7 per cent.; second, 9 per cent.; third, 4 per cent. Has the guarantor to pay 3 per cent. in the third year or 1 per cent.? Where the guarantor holds shares in the company,

the agreement should give the specific right to pay him his dividends net, *i.e.* after deduction of the sum required (if any) to bring up the dividend to the rate guaranteed. Such an agreement should only be entered into under advice of the company's solicitor.

In order that any of these classes of preference shares shall, in a winding up, have priority to a return of capital out of the surplus assets over the other shareholders, the right must be declared in the memorandum or articles. It is also to be noted that if the memorandum or articles state that arrears of preference dividend are to be paid in the event of a winding up, this appears to be out of profits, so that if there are no profits *before* winding up, the preference shareholders' right is defeated (*Espuela Land and Cattle Co.* No. 2 [1909], 2 Ch. 187). This view is, however, uncertain, for in *New Chinese Antimony Co.* [1916], 2 Ch. 115, where the assets appreciated *after* the liquidation, the judge held that the preference shareholders were entitled to arrears of dividend; and in *Springbok Agricultural Estates* [1920], 1 Ch. 563, that, where articles give priority, arrears are payable notwithstanding that there are no profits. They are payable without deduction for income tax (*Dominion Tar and Chemical Co.* [1929], 2 Ch. 387). But if the articles speak only of arrears due, and no dividends have been declared, none is payable (*Roberts & Cooper* [1929], 2 Ch. 383). (*See* also *Collaroy Co.'s case* [1928], 1 Ch. 144.)

Ordinary Shares, in turn, may be divided into preferred and deferred ordinary. Usually, however, the ordinary shares are entitled, subject to the rights of any deferred shareholders, to the whole of the profits available for distribution after the preference shareholders have been satisfied. They may also be entitled to the whole of the capital remaining on a winding up. This depends entirely on the wording of the capital clause, but it may here be stated that *prima facie* every shareholder is entitled to share rateably in the surplus remaining after all capital has been repaid; preference shareholders are only precluded from sharing where the construction of the memorandum or articles negatives the right to do so (*Metcalfe & Sons, Ltd.* [1933], Ch. 142).

Deferred, Management or Founders' Shares are usually allotted to the vendors or promoters, although the public may be allowed to subscribe for a proportion as an added inducement to subscribe for other shares, usually preference.

The issue of such shares in payment for goodwill is probably the most scientific method of paying for the goodwill, the value of which depends upon the profits of the company that remain over and above a profit sufficient to reward the proprietors of the company, not alone for their capital invested, but for the additional risk undertaken in the particular kind of business. Such shares are frequently allotted the whole of the profits after the ordinary shareholders have received a certain maximum. Shares so issued are not favourably regarded by the investing public, since, if the goodwill is sold for deferred shares, the vendors taking the bulk or the whole of the issue, it amounts to the vendors purporting to sell the goodwill, but in fact retaining the whole or majority of the future benefit to be derived from it, and this may be most unfair to the rest of the shareholders, as goodwill is not static, but continually renews itself. The goodwill which existed at the date of sale of the business will gradually disappear, while the purchasers will build up their own goodwill. The vendors, therefore, are not entitled to a reward in perpetuity for their goodwill. Moreover, where deferred shares control the effective voting power, those shareholders who risk the cash capital may be prejudiced. But these objections are overcome if the issue is equitably apportioned between the vendors and subscribers, and the latter retain a reasonable proportion of the voting power. The issue of deferred shares in payment of goodwill can be used to avoid the heavy capitalisation of the asset, and so to effect a saving in stamp duties.

Special stock exchange regulations are in force in regard to such shares to which reference should be made (*see* Appendix IV).

The following example of the capital clause in a memorandum may assist the student:

"The capital of The Practice Company, Limited, is £120,000, divided into 80,000 Preference shares of £1 each, 120,000 Ordinary shares of five shillings each, and 100,000 Deferred shares of two shillings each. The [1] preference shares shall be entitled to a cumulative preferential dividend at the rate of 6 per centum per annum, and, in the event of the company

[1] It is usually more desirable for the remainder of this clause to appear in the articles rather than the memorandum, thus facilitating alterations.

being wound up, to the return of the capital paid up thereon in preference to all other existing classes of shares, but shall not be entitled to any further share in the assets of the company, even in a winding up, nor shall the holders thereof be entitled to vote at any general meeting until, and then only for so long as, their dividends are more than six months in arrear. The ordinary shares shall be entitled to the whole of the divisible profits of the company, which the company in general meeting shall determine to be divisible, after the dividends on the preference shares, for the time being issued, shall have been satisfied; but subject as is hereinafter provided to the rights of the holders of the deferred shares. The ordinary shares shall in the event of a winding up be entitled to the whole of the assets of the company remaining after the repayment as above provided of the preference share capital. The deferred shares shall carry the rights to two votes per share, and shall be entitled to the whole of the profits declared as dividend in any year after the ordinary shares shall have been paid in that year a dividend at the rate of 20 per centum per annum."

Assuming the divisible profits to amount to £15,800 and the share capital to be fully issued and paid up, the dividends would be apportioned as follows :

6% on	80,000	Preference Shares of	£1 each	£4,800
20% ,,	120,000	Ordinary do.	5*s.* ,,	6,000
50% ,,	100,000	Deferred do.	2*s.* ,,	5,000
				£15,800

Deferred shares frequently become of considerable market value in successful companies.

The following terms in regard to capital must be noted before proceeding further :

Nominal or Authorised capital.—The amount with which the company is registered, and upon which stamp duty is paid. As will be seen, this can be altered by following the statutory procedure.

Issued capital.—That part of the nominal capital which has been taken up by the members, whether in exchange for cash or services. The term *subscribed capital* means that portion of the issued capital for which cash has been or will be paid.

Called-up capital.—That part of the issued capital which the company has called up or credited as paid.

Paid-up capital.—That part of the called-up capital upon which all calls due to date have been paid, or credited as paid, if issued for a consideration other than cash.

Uncalled capital.—That portion upon which calls have not yet been made.

Example.—The Practice Company, Limited, is registered with a capital of £50,000 divided into 50,000 shares of £1 each, of which 20,000 are issued as fully paid to the vendors. Of the remainder, 15,000 are subscribed by the directors and the public. The amounts due on application, allotment, and first call amount to 10*s.* per share. The holder of 200 shares failed to pay the first call of 5*s.* per share.

The position is thus: Nominal capital £50,000; Issued capital £35,000; Subscribed capital £15,000; Called-up capital £27,500; Unissued capital £15,000; Uncalled capital £7,500; Paid-up capital £27,450.

Working capital.—This term is often given diverse meanings, but its most common meaning is the amount of the floating assets of the company that remains available, after providing for the floating liabilities, for the carrying on of the business and the earning of profits.

The proper capitalisation of a company is of great importance. Where the secretary is concerned with a new venture, he should be able to give sound advice as to the sufficiency or insufficiency of the working capital proposed to be provided. Such considerations as the usual credit period for purchases, the average credit to be given to debtors, and its average total amount, average stocks to be carried, amount of capital required to be employed on work in progress, average monthly outgoings for salaries, wages, and overhead charges, etc., call for the most serious consideration. Many ventures have come to an untimely end through too optimistic promoters under-estimating the amount of liquid capital necessary for efficiently carrying on the company's business. Or, worse still, new additional capital has had to be obtained at a price, the price being in some respects worse than liquidation, viz. loss of control of the company.

"The shares or other interest of any member in a company shall be personal estate, transferable in manner provided by the articles of the company, and shall not be of the nature of real

estate. Each share in a company having a share capital shall be distinguished by its appropriate number " (S. 62).

Methods of Raising Capital.—Before seeking the company's sanction to an issue of shares or debentures, the directors must consider adequately the respective merits of the various classes of shares or debentures, in order to obtain the necessary capital on the best possible terms, and also to protect the existing shareholders, and the company's financial stability and credit. The rights attached, or to be attached, to the shares or debentures will require to be carefully considered, for these will largely determine the decision. But bearing in mind that in any concrete case special features may be present, it is thought that the following comparison of the relative merits of the various methods of raising capital may prove useful.

Preference Shares

An issue at a fixed cumulative dividend attracts those investors who desire a fixed return on their capital, combined with limited risk; particularly where a preferential right of repayment of capital in a winding up is given. On the other hand, a cumulative dividend prevents distribution to ordinary shareholders until all arrears on the preference dividends have been met.

Non-cumulative preference shares will only be taken up where a relatively high rate of dividend is attached or where valuable rights are given to subscribe for other shares at par, *e.g.* in cases where such shares stand at a considerable premium.

An additional inducement may be offered by attaching the right to participate in profits after the ordinary shares have had a specified minimum dividend in any year (participating preference shares).

A large cumulative preference issue may hamper the company in the future, when fresh capital is required. But this disadvantage may be overcome to some extent by the issue of redeemable preference shares (*see* pp. 69 and 76).

Ordinary Shares

The holders of these shares bear the real risk of the success of the company, as they can receive dividend only when divisible profits remain after payment of dividends on all prior

classes of shares. In effect, they are the proprietors of the company.

Capital can only be raised on ordinary shares where the business is earning good profits consistently, and shows every sign of expanding.

Ordinary members are more likely to exert themselves to influence business for the company, and, if persons with whom the company deals can be induced to subscribe, the company is likely to benefit substantially.

If the profits are insufficient to provide a reasonably high rate of dividend, there are small prospects of an issue of ordinary shares being successful.

Where the company falls on a non-profit-earning period, there is no accumulation of arrears, as in the case of cumulative preference shares.

Debentures

The various classes of debentures are discussed in Chapter XIII.

Debentures issued with some charge over the company's assets are very attractive, and can be issued at a lower rate of interest than preference shares. Moreover, unlike shares, other than redeemable preference shares, debentures are loans repayable according to the terms of issue, and the company may reserve the right to redeem by purchases in the open market, which may be very valuable where the market rate of interest increases and the debentures fall below par.

Debentures will attract subscribers even where shares would not, and where a floating charge is given over the assets, the company may still deal with those assets in the ordinary way of business.

A lower annual rate of interest may be provided for by issuing debentures at a discount. The actual *cost* to the company is not normally altered, however, since the excess of par over issue price is really deferred interest.

Where the company is successful and money is required for temporary purposes only, *e.g.* to finance an exceptionally large contract not likely to be repeated, it is better to issue either debentures or redeemable preference shares, rather than any other shares, since the debentures or redeemable preference shares can be repaid after the deal is completed, whereas other

shares cannot. Redeemable preference shares are at a disadvantage compared with debentures in that there must be raised and *maintained* a Capital Redemption Reserve Fund when they are repaid out of profits; the profits are thus permanently capitalised.

Interest, however, is payable on debentures whether there are profits or not, whereas dividends can only be paid out of profits (except as provided in S. 54—*see* p. 343).

A company may have difficulty in finding the necessary funds to meet capital repayments on the due dates. The institution of a sinking fund to provide for repayment may be a strain on the company's working capital. In the event of default on the company's part, the debenture holders may appoint a receiver and manager, or otherwise protect their interests to the prejudice of the shareholders.

The effect on the company's credit must also be considered.

The student may be reminded that the mere fact that a company has issued debentures is not, in itself, a sign of financial weakness. It may be sound financial policy to issue debentures, where, for example, extra capital is required for temporary purposes only, since, in such a case, it probably means that the profit-earning capacity of the company will be increased but temporarily. Clearly, it would be unwise for shareholders permanently to burden their concern by an issue of fresh capital, which cannot, in the future, be profitably employed, but which would rank for dividend, to be paid out of practically the same fund of profits as was available for division on the original and smaller capital. Redeemable preference shares have a further advantage in this respect, inasmuch as they carry only the rights to dividends, whereas debenture holders must be paid their interest whether there are profits or not.

Various expedients may be adopted to overcome the disadvantages of debentures. Thus income bonds are sometimes issued providing that interest shall be payable only out of profits; debentures may be made redeemable only at the company's option, or convertible into shares.

The relative merits of raising capital by the issue of debentures, preference shares, redeemable preference shares, and ordinary shares may be exemplified as follows:

The Practice Company, Limited, has an issued capital of 15,000 6 per cent. Preference shares and 15,000 Ordinary shares of £1 each, fully paid. The average divisible profits each year are £2,550. By the employment of a further £12,000 it is anticipated that the profits can be increased to £4,500 per annum.

(*a*) The effect of raising £12,000 by an issue of, say, 5 per cent. debentures would be :

Anticipated profits	£4,500
Deduct : Interest on debentures .	600
Leaving divisible profits of . .	£3,900
Deduct : Preference dividend . .	900
Leaving available for ordinary shareholders	£3,000

This would enable a maximum dividend of 20 per cent. to be paid on the ordinary shares, as against a previous maximum of 11 per cent. An increased ordinary dividend could, therefore, be paid without dividing the whole of the profits, so increasing the working capital.

Alternatively, the surplus could be set aside for the redemption of the debentures at a future date, so that a fund would be available to redeem the debentures out of profits earned by the money raised thereon. This may at first sight seem far-fetched, but when it is remembered that the ability to use the debenture money so profitably is really the outcome of the company's " goodwill," it is surely not too much to expect the company to be able to take the benefit of the difference between " trading profits " and mere interest rates, especially where such interest and loaned money are fully secured. Naturally, the difference between the issue price and the redemption price of the debentures will affect the real profit accruing to the company. In determining if a debenture venture is worth while, all such considerations must be taken into account.

The rate of interest on the debentures depends on the stability and nature of the business, and on the conditions of issue, *e.g.* redemption at a premium, or issue at a discount, " rights of conversion," and so forth.

(*b*) If preference shares, ranking *pari passu* with the existing shares, are issued :

Divisible profits	£4,500
Preference dividend	1,620
Available for ordinary shareholders	£2,880

Maximum dividend 19 per cent.

(*c*) If redeemable preference shares are issued, ranking for dividend *pari passu* with the existing preference shares, sufficient profits would have to be retained year by year to build up a Capital Redemption Reserve Fund for their redemption (since redeeming them out of a new issue would have the same effect as (*b*)).

The following scheme would suggest itself :

Divisible profits		£4,500
Preference dividend :		
Original shares	900	
Redeemable shares	720	
	—	1,620
		£2,880
Pay ordinary shareholders, as before, a maximum of 11 per cent..		1,650
Take to Capital Redemption Fund		£1,230

On this basis, ten[1] years would be the period of issue of the redeemable preference shares. Thereafter, the balance sheet would show :

Issued capital :	
15,000 6% preference shares, fully paid	£15,000
15,000 ordinary shares, fully paid	15,000
	30,000
Capital Redemption Reserve Fund	12,000

and the original shareholders would receive the benefit of the whole profits subsequently earned.

(*d*) If ordinary shares are issued :

Divisible profits	£4,500
Preference dividend	900
Available for ordinary shareholders	£3,600

Maximum dividend 13 per cent.

[1] Compound interest on the fund investments has been ignored for simplicity.

In (*b*) and (*d*) above, unless the additional capital could *continue* to be so employed, over-capitalisation would result, to the detriment of the members who were shareholders at the time the new capital was raised.

Alterations of Share Capital.—A company limited by shares or limited by guarantee if it has a share capital, has power under S. 50 to alter its share capital in one of six ways. This, however, must be exercised by resolutions passed by the company in general meeting. The wording of S. 50 is as follows :

S. 50.—(1) A company limited by shares, or a company limited by guarantee and having a share capital, if so authorised by its articles, may alter the conditions of its memorandum as follows, *i.e.* it may—

(*a*) Increase its share capital by new shares of such amount as it thinks expedient,

(*b*) Consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(*c*) Convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination;

(*d*) Subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

(*e*) Cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section must be exercised by the company in general meeting.

(3) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

The particular resolution to be employed by the company is not stipulated, and is therefore dependent upon the articles. If the articles are silent on the matter, it would appear that an ordinary resolution is sufficient. Table A lays down that an increase of capital may be effected by sanction of an ordinary resolution (Art. 34), that consolidation and division of share capital, subdivision of shares, and cancellation of unissued share capital may also be effected by ordinary resolution (Art. 37), as also may the conversion of paid-up shares into stock (Art. 30). But articles need not follow Table A. They may require any one of the three resolutions, special, extraordinary, or ordinary, to effect these purposes, but *cannot* delegate the powers to the directors.

Procedure.—The procedure is simple. After due consideration of the proposals by the board of directors, the necessary

notices are circulated, the meeting held, and the resolution passed. If a special or an extraordinary resolution is passed, this must be filed within fifteen days (S. 118). If the articles do not contain power to alter share capital, however, they must first be altered by special resolution to give the power. The resolution for alteration can then be passed at the same meeting as that at which the special resolution is passed.

If a company having a share capital has—

(*a*) consolidated and divided its share capital into shares of larger amount than its existing shares; or
(*b*) converted any shares into stock; or
(*c*) re-converted stock into shares; or
(*d*) subdivided its shares or any of them; or
(*e*) redeemed any redeemable preference shares; or
(*f*) cancelled any shares, otherwise than in connection with a reduction of share capital under section fifty-five of this Act (*see* p. 84),

it shall within one month after so doing give notice thereof to the registrar of companies, specifying, as the case may be, the shares consolidated, divided, converted, sub-divided, redeemed or cancelled, or the stock re-converted (S. 51, s.-s. (1)).

Notice of an increase in share capital must be given to the registrar within fifteen days after the passing of the resolution, and must include such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued; and there must also be delivered for registration a printed copy of the resolution authorising the increase (S. 52, s.-ss. (1) and (2)).

The prescribed particulars (Companies Form No. 10) are :— amount of increase; number of shares; class of share; nominal amount of each share; the conditions subject to which the new shares have been or are to be issued, *e.g.* voting rights, dividends, etc.; and whether any preference shares are redeemable (*Companies* (*Forms*) *Order*, 1929).

In the case of an increase, the capital duty and the memorandum fees required by the Tenth Schedule must also be paid within fifteen days. In default of delivery of the statement of the amount of any increase within fifteen days, the duty with interest thereon at the rate of 5 per cent. per annum *from the passing of the resolution*, is a debt recoverable from the company (*Revenue Act*, 1903, S. 5).

Unless the memorandum forbids, the increase of capital may be effected by an issue of preference or other shares (*Andrews* v. *Gas Meter Co.* [1897], 1 Ch. 361); but *see* S. 153 (pp. 395 *et sqq.*).

In the case of a consolidation of share capital, *e.g.* the consolidation of 2*s.* shares into £1 shares—the holders receiving one £1 share for every ten 2*s.* shares held—the share certificates for the issued shares affected must be recalled and amended, or replaced by new ones. The register of members must also be amended accordingly. Notice must be given to the registrar of the consolidation on Form 28.

Stock must result from the conversion of shares; it cannot be issued originally, and only fully paid-up shares can be converted into stock. Except where stock warrants to bearer are issued, the same rights attach to the stock as attached to the shares converted. The share certificates must be replaced by stock certificates, and the register of members altered to correspond with the new situation. Subject to the provisions of the articles, stock may be bought and sold in any convenient multiples or subdivisions, although articles of limited companies under the Act rarely allow dealings in fractions of a pound.

It should be noticed that in subdivision of shares no alteration can be made in the proportion which the unpaid capital bears to the paid-up capital. So, if £10 shares, £5 paid, are each subdivided into £1 shares, these new shares must be credited with 10*s.* paid. The share certificates must be called in and amended or replaced, and the register of members be altered to correspond to the new conditions.

Cancellation can apply only to shares which have not been issued, and means simply that a resolution is passed depriving the company of a part of its authorised capital. Thus, if The Practice Company, Limited, has an authorised capital of £10,000 in shares of £1 each, of which 8,000 shares have been issued, and, by passing the resolution named in its articles, resolves that the remaining 2,000 shares be cancelled, the company's authorised capital then becomes £8,000 only, for all purposes. If the company subsequently increases its capital to the original figure, it must pay capital duty and memorandum fees on the amount of the increase. For that reason, it is usual, on a cancellation, to pass a resolution for an increase *at the same time*, since the registrar does not then require the

capital duty to be paid (although the memorandum fees required by the Tenth Schedule must be paid). Since cancellation is rarely resorted to except to get rid of unissued shares carrying burdensome rights specified as unalterable by the memorandum, this simultaneous cancellation and increase is the practical procedure, for the new capital can be given the exact rights desired.

In the case of any of the above alterations of capital, every copy of the memorandum and articles issued thereafter must be in accordance with the alteration.

Variation of Shareholders' Rights.—A company's share capital may be divided into different classes of shares, and it may, in cases, be necessary to vary, or even to abrogate, the rights attaching to a particular class of share. Where the memorandum or articles authorise the rights attaching to a particular class of share to be varied by a resolution of the holders of shares of that class, or by a majority of their assents (*see* Table A, Art. 3), and those rights are varied in conformity with the company's regulations, a minority of members holding those shares and not consenting to or voting for the variation, if in the aggregate the minority represents not less than fifteen per cent. of the issued shares of that class, may apply to the Court to have the variation cancelled. The application must be made within seven days after the date on which consent to vary was given, or the resolution to vary was passed, and it may be made by one or more of the dissentients appointed, in writing, by the whole body of dissentients to act on their behalf. As soon as the application is made, the variation cannot have effect until it is confirmed by the Court. After the Court has heard the application it either disallows or confirms the variation. The Court's order is final, and a copy of the order must be forwarded to the registrar within fifteen days after the making of the order. S. 61, which deals with this matter, is given below :—

> S. 61.—(1) If in the case of a company, the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorising the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than fifteen per cent. of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the Court to have the variation cancelled, and, where any such application is made, the variation shall not have effect unless and until it is confirmed by the Court.

(2) An application under this section must be made within seven days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(3) On any such application the Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.

(4) The decision of the Court on any such application shall be final.

(5) The company shall within fifteen days after the making of an order by the Court on any such application forward a copy of the order to the registrar of companies, and, if default is made in complying with this provision, the company and every officer of the company who is in default shall be liable to a default fine.

(6) The expression " variation " in this section includes abrogation and the expression " varied " shall be construed accordingly.

Reduction of Capital.—Subject to confirmation by the Court, a company limited by shares or a company limited by guarantee and having a share capital may, if so authorised by its articles, by special resolution reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, may—

(*a*) Extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or

(*b*) Either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or

(*c*) Either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company,

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly. A special resolution under this section is called " a resolution for reducing share capital " (S. 55).

A cancellation of shares that have not been taken or agreed to be taken under S. 50 is not a reduction of capital as contemplated by S. 55.

A reduction of capital under S. 55 must be authorised by the articles. If articles do not give the power, they must be altered to do so by special resolution. The articles having first been altered, the special resolution authorising reduction must

subsequently be passed (*Patent Invert Sugar Co.* [1886], 31 Ch.D. 166). Lastly, the resolution must be confirmed by order of the Court.

The following sections of the Act, SS. 56 and 57, should be read carefully in the light of the comments made in subsequent paragraphs :

S. 56.—(1) Where a company has passed a resolution for reducing share capital, it may apply by petition to the Court for an order confirming the reduction.

(2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs, the following provisions shall have effect, subject nevertheless to the next following subsection :

(*a*) Every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction :

(*b*) The Court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction :

(*c*) Where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the Court may direct, the following amount :—

(i) If the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;

(ii) If the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.

(3) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the Court may, if having regard to any special circumstances of the case it thinks proper so to do, direct that subsection (2) of this section shall not apply as regards any class or any classes of creditors.

S. 57.—(1) The Court, if satisfied, with respect to every creditor of the company who under the last foregoing section is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

(2) Where the Court makes any such order, it may—

(*a*) if for any special reason it thinks proper so to do, make an order directing that the company shall, during such period, commencing on or at any time after the date of the order, as is specified in the order, add to its name as the last words thereof the words "and reduced"; and

(*b*) make an order requiring the company to publish as the Court directs the reasons for reduction or such other information in regard thereto as the Court may think expedient with a view to giving proper information to the public, and, if the Court thinks fit, the causes which led to the reduction.

(3) Where a company is ordered to add to its name the words "and reduced," those words shall, until the expiration of the period specified in the order, be deemed to be part of the name of the company.

Under S. 55, most diverse schemes of reduction may be, and have been, confirmed. So long as the provisions of the Act for reduction under this section have been complied with, and, in the opinion of the Court, the scheme is fair to all classes of shareholders, and no injustice is likely to result either to a minority of the shareholders or to the company's creditors (where creditors' claims are involved), the Court will not withhold its confirmation from the scheme. Where the scheme does not involve either a diminution of liability in respect of unpaid share capital, or repayment of paid-up capital, the procedure is brief, for the Court will not hear creditors except in very special circumstances (*In re Meux Brewery Co.* [1919], 1 Ch. 28). But where diminution of liability or repayment of capital is involved, the procedure is much more protracted and involved, being designed for full consideration by the Court of the claims of creditors, and the proceedings may take any time from six to eight months or even longer before the sanction of the Court is obtained to the scheme.

Procedure.—The procedure in the two cases is as follows :— When the scheme has been adequately considered by the Board of Directors, and, as a rule, by the company's legal advisers and accountants, it is advisable, if the scheme is likely to be opposed, to consult the largest shareholders in order to ensure their assent to the scheme. If the unpaid share capital is to be reduced, or paid-up capital is to be repaid, the largest creditors should be consulted, and their assent be provisionally obtained.

When it has been ascertained that the scheme is reasonably likely to go through, the necessary notices may then be issued (accompanied, usually, by an explanatory circular), the meeting

be held, and the special resolution for reduction be passed (*see* SS. 117 and 118 at pp. 268–270).

The procedure necessary to obtain sanction of the Court for reduction of capital is laid down in SS. 55–58 of the Act and Order LIII B of the Rules of the Supreme Court.

The special resolution for reduction having been passed, a petition is presented to the Court having jurisdiction to wind up the company (*see* p. 505) for an order confirming the resolution.

If there is more than one class of shares, the petition must state whether any class has priority in respect of a return of capital, since, if this is so, it would seem that on a deficiency of assets being disclosed, the reduction should be suffered by the ordinary or deferred shareholders and not by the preference shareholders (*In re Mackenzie & Co.* [1916], 2 Ch. 450).

After presentation of the petition, an *ex parte* application is made by Summons in Chambers for directions as to the proceedings to be taken preliminary to the hearing of the petition or otherwise with reference thereto.

(A) If the reduction involves no reduction of liability in respect of unpaid share capital or payment to any shareholder of any paid-up share capital and creditors of the company are therefore not affected, the Court will make the order, which will be duly advertised. The Court may order the words " and reduced " to be added to the name of the company for a period (*see* S. 57, s.-s. 2).

(B) Where the rights of creditors are affected, the judge may order an inquiry as to debts and a list of creditors must then be settled. This list may, however, be dispensed with under S. 56, s.-s. 3. If not, the company through one of its officers must make an affidavit with the names and addresses of all creditors and the amounts due to them. This should be filed within seven days after the order for inquiry. Notice should be given by the company to each of the creditors in this list as to the presentation of the petitions. The creditors can then come in and prove their debts. The registrar then makes a certificate giving the result of the settlement of the list of creditors or distinguishing debts allowed and disallowed, as well as debts disputed. The petition is heard not less than ten days after the filing of the certificate. The form of the order is to be found in Appendix L (No. 30), and also that of the affidavit (No. 31). The petition

must be advertised at such times and in such newspapers as the judge directs (Form 36).

If the order is made on the petition, the order must be advertised and the Court may order the words " and reduced " to be added to the name of the company, if there are reasons for so doing (S. 57, s.-s. 2).

The company must present to the Court, supported by an affidavit, an explanation of the cause of the proposed reduction and evidence of the financial position of the company. Evidence of loss of capital is not always required (*Louisiana Mortgage Co.* [1909], 2 Ch. 552), but it is usually given, and should be available (see *Caldwell* v. *Caldwell & Co.* [1916], S.C. 120). The affidavit must exhibit the memorandum, articles, certificate of incorporation, minute book, and (usually) the last balance sheet. If the petition is sanctioned, the Order, and a Minute approved by the Court showing the new amount of the share capital, the number of shares into which it is divided, the amount of each share and the amount (if any) credited as paid on each share, must be filed with the registrar of companies, and on its being so filed, the resolution for the reduction takes effect as from that date.

Notice of the registration must be published in such manner as the Court directs. The registrar's certificate of registration is conclusive evidence that all the requirements of the Act have been complied with and that the share capital of the company is such as is stated in the minute.

The minute must be embodied in every copy of the memorandum subsequently issued (S. 58).

Thereafter, members are liable only for such calls as may be made in respect of the unpaid capital on the shares as reduced. But if any creditor, past or present, entitled in respect of any debt or claim to object to the reduction, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and, after the reduction, the company is unable within the meaning of the provisions of this Act with respect to winding up by the Court, to pay the amount of his debt or claim, then (*a*) every person who was a member of the company at the date of the registration of the order for reduction and minute, is liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced

to be wound up on the day before the registration; and (*b*) if the company is wound up, the Court on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up (S. 59).

If any director, manager, secretary or other officer of the company—

(1) wilfully conceals the name of any creditor entitled to object to the reduction; or
(2) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or
(3) aids, abets or is privy to any such concealment or misrepresentation as aforesaid,

he shall be guilty of a misdemeanour (S. 60).

The register of members, share certificates and financial books must be amended to correspond with the new position.

If the shares are quoted on the Stock Exchange, notice of the reduction should be sent to the secretary of the Share and Loan department at once.

If the scheme provides for a return of surplus capital, cheques must be drawn and issued, accompanied by an appropriate notice with a receipt form attached for signature by the member, to be returned to the company for filing.

General Notes on Reduction. The Court will always watch closely the interests of a minority; but, as has been seen, the fact that the reduction affects the rights of classes of shareholders is not fatal, provided the scheme is fair to all. Stock may be reduced in the same way as shares, but the Court will not sanction any scheme which is merely an expedient for contravening the Act by issuing shares at a discount otherwise than as provided by S. 47 (*see* p. 91). The Court may sanction a scheme involving the surrender of shares, or for the company buying its own shares (*In re White Pass and Yukon Railway* [1918], W.N. 323). If the scheme has been fully explained to shareholders and approved by the classes concerned, it will be confirmed by the Court. The principles are discussed in (*Carruth* v. *Imperial Chemical Industries* [1936], 1 Ch. 587 and affirmed by the H. of L. [1937], 53 T.L.R. 524).

It is thought that the persons entitled to unclaimed

dividends are creditors for the purposes of S. 56 (*see Arizona Copper Co.* [1926], S.C. 315).

The capital redemption reserve fund created on the redemption of redeemable preference shares may be reduced in the same manner as share capital (S. 46, s.-s. (1) (*c*)). If capital has been converted into stock, a proportion thereof may be cancelled without reconversion into shares (*In re House Property, etc. Co.* [1912], W.N. 110).

Where a reduction of nominal capital is to be followed by an increase of capital, the position regarding stamp duty is the same as that on a cancellation (*see* p. 82), and, for that reason, in order to retain the benefit of the duty already paid, it is expedient, by a resolution for increase passed at the same time as the resolution for reduction, to create nominal capital to an amount equivalent to the reduction.

The affidavits mentioned are usually sworn by the chairman of the company; the secretary, however, generally swears as to the calling of meetings and similar matters.

The following are forms of the Minute appropriate (*a*) in a simple case of reduction of capital, (*b*) where the reduction is followed by consolidation or other alterations of share capital:

(*a*) The capital of The Practice Company, Limited and Reduced, henceforth is £ divided into shares of £ each instead of the former capital of £ divided into shares of £ each. At the time of the registration of this minute shares Nos. to have been issued on each of which the sum of £ has been and is to be deemed to be paid up and the remaining shares are unissued.

(*b*) The capital of The Practice Company, Limited and Reduced, was by virtue of a special resolution and with the sanction of an order of the High Court of Justice dated the . . . reduced from the former capital of £650,000 divided into 650,000 shares of £1 each, to £537,497 4*s*. divided into 562,514 shares of 16*s*. each, and 87,486 shares of £1 each, of which at the date of the registration of this minute (*a*) 560,014 shares of 16*s*. each had been issued and the full amount of 16*s*. had been and was to be deemed to be paid up thereon; (*b*) 2,500 shares of 16*s*. each had been issued and the amount of 6*s*. a share had been and was to be deemed to be paid up thereon; and (*c*) none of the said 87,486 shares of £1 each had been issued.

A special resolution of the company has been passed to the effect that on such reduction taking effect the

capital of the company as so reduced be subdivided into 2,687,486 shares of 4*s*. each, of which 2,240,056 shares numbered 1 to 2,240,056 inclusive are fully paid; 10,000 shares numbered 2,240,057 to 2,250,056 inclusive are paid up to the extent of 1*s*. 6*d*. a share, and 437,430 shares are unissued.

Issue of Shares at a Discount.—Prior to the coming into operation of the 1929 Act, the issue of shares at a discount was illegal; but by S. 47 of that Act a limited right to issue shares at a discount is given. The section reads as follows:

> S. 47.—(1) Subject as provided in this section, it shall be lawful for a company to issue at a discount shares in the company of a class already issued:
> Provided that—
>
> (*a*) the issue of the shares at a discount must be authorised by resolution passed in general meeting of the company, and must be sanctioned by the Court;
> (*b*) the resolution must specify the maximum rate of discount at which the shares are to be issued;
> (*c*) not less than one year must at the date of the issue have elapsed since the date on which the company was entitled to commence business;
> (*d*) the shares to be issued at a discount must be issued within one month after the date on which the issue is sanctioned by the Court or within such extended time as the Court may allow.
>
> (2) Where a company has passed a resolution authorising the issue of shares at a discount, it may apply to the Court for an order sanctioning the issue, and on any such application the Court, if, having regard to all the circumstances of the case, it thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit.
> (3) Every prospectus relating to the issue of the shares and every balance sheet issued by the company subsequently to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the document in question.
> If default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

The procedure involved is clearly stated in the section, and calls for no further comment. It is considered unlikely that the powers here given will be much used, as they are too circumscribed.

Capitalisation of Reserve Funds.—This matter is dealt with in Chapter XII at pp. 341 *et sqq*. If the proposal involves the issue of shares beyond the amount of the authorised capital, the capital must be increased.

The Prospectus.—The definition of the term "prospectus" is contained in S. 380, where it is described as meaning "any

prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company." It would appear that to constitute an "offer to the public" the offer must be of such a kind that *any* person could accept it, and that the mere distribution of a few copies of a circular or prospectus by promoters or directors to their friends with a view to those friends subscribing for shares in the company is not an "offer to the public."

By S. 35, s.-s. (5), a circular or notice inviting existing members or debenture holders of a company to subscribe either for shares or debentures, whether with or without the right to renounce in favour of other persons, is not a prospectus. In *Nash* v. *Lynde* [1929], A.C. 158, directors of a company prepared a document which was found by the jury to be "an offer of shares to the public." The document was not advertised, but was shown to one person with a view to his joining the company as director. The document did not disclose the number of shares issued for a consideration other than cash. The House of Lords held that the document had not been "issued" as a prospectus to the public.

Had there been such an issue it is presumed that the directors would have been liable in damages, but this point did not arise in the House of Lords.

By S. 34, every prospectus issued by or on behalf of a company or in relation to an intended company must be dated, and that date, unless the contrary is proved, is taken to be the date of its publication. A copy, signed by every person named therein as a director or proposed director of the company, or by his agent authorised in writing, must be delivered to the registrar of companies for registration on or before the date of publication, otherwise the prospectus may not be issued. Every prospectus must state on its face that a copy has been duly delivered for registration.

In order to save time, it is the common practice to deliver for registration the prospectus offering a first issue of shares or debentures on, or as soon as may be after, incorporation of the company.

Where a promoter delivers for registration a prospectus, he should accompany it with a statement that it is presented for registration by a person engaged or interested in the for-

mation of the company. But this gives the promoter no right to the name selected for the company, neither does the registrar's intimation that the name is available. In both cases, a company could be registered under the same name, and the promoter would then have to change the name and re-deliver his prospectus for registration.

The registrar will not accept for registration a prospectus bearing date anterior to that on which it is presented unless also the company makes a statement in writing that the prospectus has not been issued.

The secretary is sometimes named in the prospectus, but he should remember that such naming does not constitute a legal contract between himself and the company, and that a contract after incorporation between him and the company is necessary to establish legally his position in that office, apart, that is, from inferences in his favour that may be drawn from the circumstances of the particular case. A secretary so named and acting comes within S. 37, s.-s. (1), and may be liable for misrepresentations contained in the prospectus as one who has authorised its issue. It behoves every person engaging in, or about to engage in, the flotation of a company and the issue of a prospectus, either as secretary, or director and secretary, to familiarise himself exactly with the duties and liabilities of his office.

Contents of Prospectus.—This matter is governed by S. 35, s.-s. (1) of the Act, which says that every prospectus *issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company*, must state the matters specified in Part I of the Fourth Schedule to the Act, and set out the reports specified in Part II of that Schedule, and the said Parts I and II shall have effect subject to the provisions contained in Part III of the said Schedule. The Schedule is as follows :

PART I

MATTERS REQUIRED TO BE STATED IN PROSPECTUS

1. Except where the prospectus is published as a newspaper advertisement, the contents of the memorandum, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively.

2. The number of founder's or management or deferred

shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company.

3. The number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors.

4. The names, descriptions, and addresses of the directors or proposed directors.

5. Where shares are offered to the public for subscription, particulars as to—

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

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

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

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

(*d*) working capital; and

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

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

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

shares or debentures have been issued or are proposed or intended to be issued.

8. The names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares, or debentures, to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor.

9. The amount, if any, paid or payable as purchase money in cash, shares, or debentures, for any such property as aforesaid, specifying the amount if any, payable for goodwill.

10. The amount, if any, paid within the two preceding years, or payable, as commission (but not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission.

11. The amount or estimated amount of preliminary expenses.

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

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

14. The names and addresses of the auditors, if any, of the company.

15. Full particulars of the nature and extent of the interest, if any, of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm

in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or, otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.

16. If the prospectus invites the public to subscribe for shares in the company and the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

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

Part II

Reports to be set out in Prospectus

1. A report by the auditors of the company with respect to the profits of the company in respect of each of the three financial years immediately preceding the issue of the prospectus, and with respect to the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the said three years, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years, and, if no accounts have been made up in respect of any part of the period of three years ending on a date three months before the issue of the prospectus, containing a statement of that fact.

2. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by accountants who shall be named in the prospectus upon the profits of the business in respect of each of the three financial years immediately preceding the issue of the prospectus.

Part III

Provisions applying to Parts I and II of Schedule

1. The provisions of this Schedule with respect to the memorandum and the qualification, remuneration and interest

of directors, the names, descriptions and addresses of directors or proposed directors, and the amount or estimated amount of the preliminary expenses, shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

2. Every person shall for the purposes of this Schedule be deemed to be a vendor who has entered into any contract, absolute or conditional for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

(*a*) the purchase money is not fully paid at the date of the issue of the prospectus;

(*b*) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus;

(*c*) the contract depends for its validity or fulfilment on the result of that issue.

3. Where any property to be acquired by the company is to be taken on lease, this Schedule shall have effect as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

4. For the purposes of paragraph 8 of Part I of this Schedule where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.

5. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than three years, the accounts of the company or business have only been made up in respect of two years or one year, Part II of this Schedule shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years.

6. The expression "financial year" in Part II of this Schedule means the year in respect of which the accounts of the company or of the business, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts of the company or business have been made up for a period greater or less than a year, that greater or less period

shall for the purpose of the said Part of this Schedule be deemed to be a financial year.

By S. 35, s.-s. (2) : A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

By S. 35 s.-s. (3) : it shall not be lawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of this section :

Provided that this subsection shall not apply if it is shown that the form of application was issued either—

(*a*) in connection with a bonâ fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or

(*b*) in relation to shares or debentures which were not offered to the public.

If any person acts in contravention of the provisions of this subsection, he shall be liable to a fine not exceeding five hundred pounds.

By S. 35, s.-s. (4) : in the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

(*a*) as regards any matter not disclosed, he proves that he was not cognisant thereof; or

(*b*) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or

(*c*) the non-compliance or contravention was in respect of matters which in the opinion of the Court dealing with the case were immaterial or was otherwise such as ought, in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused :

Provided that in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 15 of Part I of the Fourth Schedule to this Act, no director or other person shall incur any liability in respect of

the failure unless it be proved that he had knowledge of the matters not disclosed.

By S. 35, s.-s. (5) : this section shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but subject as aforesaid, this section shall apply to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently.

By S. 35, s.-s. (6) : nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

The most important requirements mentioned in the above onerous provisions are (*a*) that relating to the number of founders' or management or deferred shares, and the nature and extent of the interest of the holders in the property and profits of the company ; (*b*) that relating to vendors ; (*c*) that relating to material contracts ; (*d*) that relating to directors' interests in the company ; and (*e*) those relating to Reports.

But in addition to the contents specified in the section, examination of an actual prospectus as issued will show that many other particulars must necessarily be given. Since the object of the prospectus is to induce the public to subscribe for shares, it must be demonstrated that the company has a reasonable prospect of earning sufficient profits to make public investment in its shares attractive. Accordingly there will be given the name of the company and its registered office ; the total share capital authorised, the division of the shares into classes, their nominal value, and the amount of the shares of each class which it is proposed to issue ; the arrangements for future calls on the shares ; the amount of debentures, or debenture stock, if any, proposed to be issued and the terms of issue and repayment, together with particulars of the assets on which they are secured ; the purpose of the company, and estimates drawn up by experts, based upon actual facts, or the past history of the business, of its probable power to earn profits ; the names of the officers of the company—secretary, manager, etc., and of the bankers, brokers, and solicitors to the company.

The obvious purpose of SS. 34 and 35 is to safeguard the

public by securing full and frank disclosure of the exact objects for which the public are invited to subscribe funds; the terms on which they are asked to subscribe; the value of the assets which the funds publicly subscribed are to purchase; the extent to which the purchase price of those assets has been increased by the profits of vendors and promoters; and, finally, to make the issuers of the prospectus fully responsible for the statements made or omitted to be made in the prospectus.

The legal view of the nature and function of the prospectus is stated at its highest by Kindersley, V.C., as follows:

"Those who issue a prospectus . . . are bound to state everything with strict and scrupulous accuracy, and not only to abstain from stating as fact that which is not so, but to omit no one fact within their knowledge, the existence of which might in any degree affect the nature, or extent, or quality of the privileges and advantages which the prospectus holds out as inducements to take shares."

But it is now the accepted legal view that, while there must be nothing in the way of actual misstatement in the prospectus, mere non-disclosure of facts, so long as the non-disclosure is not of a material fact as to which there is a statutory duty to disclose, and the non-disclosure does not have the effect of falsifying facts that are disclosed, affords no ground for either of the two remedies open to a person who has been induced on the faith of a prospectus to subscribe for shares when had he known the true facts he would not have subscribed, viz. an action against the company for rescission of the contract to take the shares, or an action against the persons who have authorised the issue of the prospectus for damages.

By the Larceny Act, 1861, S. 84, it is provided that: "Whosoever, being a director, manager, or public officer of any body corporate or public company, shall make, circulate, or publish, or concur in making, circulating, or publishing, any written statement or account which he shall know to be false in any material particular, with intent to . . . induce any person to become a shareholder . . . therein . . . shall be guilty of a misdemeanour . . ." In *R.* v. *Bishirgian* ([1936], 154 L.T.R. 499), a prospectus which invited investment in a company carrying on an old-established business of metal

dealers and brokers stated that the company, with a view to obtaining additional capital, the inadequacy of which had in the past retarded the successful development of the company's business, desired to acquire two other companies carrying on a similar business. The prospectus omitted to state that one of the businesses proposed to be acquired had large future commitments arising out of a gambling speculation (the object of which was to " corner " the pepper market). There was no reference whatever to pepper in the prospectus, and it was held that the above omission rendered the prospectus false in a material particular within the meaning of the above section.

The prospectus should be printed to ensure that the copy filed is an exact replica of those issued to the public, and it is understood that it is the registrar's practice to require a printed copy for filing purposes. As with the memorandum, the prospectus must be left with the registrar for two or three days for examination. A proof copy should therefore be lodged, copies in their final form not being run off until the filed copy is passed. The registrar's examination is particularly directed to such details as the signatures, date, minimum subscription, and directors' qualification, but it is not to be supposed that his acceptance of the copy presented for registration signifies either that the documents are in order, or that the requirements of the Act have been satisfied; his acceptance means no more than that certain formalities have been complied with. Hence, it is unwise to print off the bulk of the copies until after an interval of two or three days from the time of lodging the prospectus, since the copy lodged may be returned for amendment.

Statement in Lieu of Prospectus.—By S. 40 :

(1) A company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least three days before the first allotment of shares or debentures there has been delivered to the registrar of companies for registration a statement in lieu of prospectus, signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing,

[*cont. on p.* 104

Certificate No ....

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

THE COMPANIES ACT, 1929.

STATEMENT IN LIEU OF PROSPECTUS, DELIVERED FOR REGISTRATION BY

....

....LIMITED

(*Pursuant to Section* 40 *of the Companies Act*, 1929)

The nominal share capital of the Company.....	£
Divided into.....	Shares of £ each.
	,, ,,
	,, ,,
Amount (if any) of above capital which consists of redeemable preference shares.	,, ,,
The date on or before which these shares are, or are liable, to be redeemed.	
Names, descriptions and addresses of directors or proposed directors.	
If the share capital of the Company is divided into different classes of shares, the right of voting at meetings of the Company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	
Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.	1. Shares of £ fully paid. 2. Shares upon which £ share credited as paid. 3 Debenture £
The consideration for the intended issue of those shares and debentures.	4. Consideration :—
Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the Company.	
Amount (in cash, shares, or debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.	Total purchase price £ Cash ..... £ Shares ..... £ Debentures ..... £ Goodwill..... £

Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the Company, or	Amount paid ,, payable
Rate of the commission . .	Rate per cent.
The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.	
Estimated amount of preliminary expenses.	£
Amount paid or intended to be paid to any promoter.	Name of promoter
	Amount £
Consideration for the payment .	Consideration :—
Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the Company or entered into more than two years before the delivery of this statement).	
Time and place at which the contracts or copies thereof may be inspected.	
Names and addresses of the auditors of the Company (if any).	
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the Company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the Company.	
If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year the above requirement shall have	

effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on.

Signatures of the persons above-named as directors or proposed directors, or of their agents authorised in writing.	....

a return of the money he has paid in performance of the contract. And he has the same rights where the misrepresentation is made not in a prospectus, but orally or in writing by a person authorised to act as agent for the company.

Where a statement in lieu of prospectus is registered and the applicant is deceived through reliance on this document he may rescind (*Blair Open Hearth Co.* [1914], A.C. 390). But he cannot claim compensation under S. 37. The directors may, however, be criminally liable under S. 362.

In order to exercise this right of rescission, an allottee of shares, etc. must act promptly, within a reasonable time of his discovering the fact of misrepresentation, or of his being informed that there has been misrepresentation. Delay is fatal, and the only safe rule would appear to be that the allottee should issue a writ against the company immediately upon discovery of the misrepresentation. It is fatal also, if, on becoming aware of the misrepresentation, the allottee does anything that can be construed as affirming the contract, *e.g.* by (*a*) attempting to sell or transfer the shares, (*b*) paying calls upon them, (*c*) attending and voting at meetings of the company, unless, in the case last mentioned, he has previously taken definite action to rescind. Finally, the allottee's right to rescission is gone if he delays action until after liquidation proceedings have commenced, for on a winding up the allottee's position as registered member and contributor to the assets of the company is subject to the rights of the company's creditors.

An allottee who succeeds in an action for rescission is entitled to have his name removed from the register of members, and to recover the amount paid on the shares, together with interest, as in *Karberg's Case* [1892], 3 Ch. 1, at four per cent. per annum. But a purchaser from an original allottee has no right of action unless the prospectus was directly communicated to him by the company (*Peek* v. *Gurney* [1873], 6 H.L. 377). Neither has an original allottee who has sold and afterwards repurchased the shares (*Croom's Case* [1873], 16 Eq. 417), or a subscriber to the memorandum, since the company does not exist at the time he subscribes (*Lord Lurgan's Case* [1902], 1 Ch. 707).

Where in a prospectus omission is made of some matter required by the Act to be stated therein, and the omission is of

such a kind that it does not have the effect of rendering untrue other facts that are stated, it would appear that the omission gives no right to rescission, and indeed it has been so held by the Courts. As we have seen, it is otherwise where there is a misstatement of a material fact required by S. 35 to be stated in the prospectus. But the omission of a material fact may at least give a right to recover damages from the persons responsible, even if there is no right to rescind (*S. of England Gas Co.* [1911], 1 Ch. 573).

Where a company includes in its prospectus expert reports, the facts contained therein will form a material part of the contract to take shares, unless the company indicates in unequivocal terms in the prospectus that it accepts no responsibility for the reports (*In re Pacaya Rubber Co.* [1914], 1 Ch. 542). All such reports should be founded upon ascertained facts and not upon more estimates, and the company should in its own interests take all necessary steps to verify the truth of the reports and the competency of the persons making them.

Pending an action for rescission, the Court may restrain forfeiture of a plaintiff's shares for non-payment of calls (*Lamb* v. *Sambas Rubber Co.* [1908], 1 Ch. 845).

Apart from the right of an allottee to sue the company for rescission, which is a common law right, he has a statutory right under S. 37, and also a right at common law, to a personal remedy in damages against any director, promoter, or other person who has authorised the issue of a prospectus containing an untrue statement of a material kind, upon which he relied when he agreed to subscribe for shares, and in consequence of which he has sustained damage; and he may bring such an action after winding-up proceedings have commenced. The distinction should be noted that, as against the company, a plaintiff is entitled to rescission of his contract to take the shares, but that in an action (under the common law or the statute) against directors and other authorisers of the prospectus, he is entitled to damages but not to rescission.

Again, in an action for rescission, the thing to be proved by the plaintiff is misrepresentation of a material fact in the prospectus upon which he relied when he agreed to take the shares, and it matters nothing whether the misrepresentation was innocently or fraudulently made. In an action for damages at common law against directors, etc., it is essential for plaintiff

to prove that defendants acted fraudulently. If the action is brought under S. 37, plaintiff need do no more than show that a material statement made in the prospectus is untrue, and that in agreeing to take the shares he relied upon the untrue statement and sustained damage, and if he can establish all three facts he is entitled to compensation. The only possible answers of defendant directors, promoters, etc., in such an action, entitling them to judgment in their favour, are set out in S. 37, s -s. (1) (*see infra*).

In a common law action for deceit (*see*, e.g., *Derry* v. *Peek* [1889], 14 App. Cas. 337), it is necessary for a plaintiff to show that the issuers or authorisers of a prospectus have acted with fraudulent intent. Under S. 84 of the Act of 1908, now, with modifications, S. 37 of the 1929 Act, it is enough to show that the statements relied upon in the prospectus are untrue; it is for defendants to show that they believed them to be true, etc. It will thus be seen that the burden of proof was, by S. 84 of 1908, shifted from the plaintiff to the defendant, and that that section extended the liability of directors and other issuers of a prospectus, so that persons who might have escaped liability at common law, by reason of the difficulty of proving actual fraud, would find it less easy to do so under the statute. Actions for deceit under the common law have to a great extent given way to the more convenient action under the statute.

Where damage is proved, the amount to be recovered is the difference between the actual value of the shares at the time of allotment and the amount paid for them (*Arnison* v. *Smith* [1889], 41 Ch.D. 348), and this at the highest may be the total sum paid; for, at the time of issue, despite the market price, the shares may have been worthless.

S. 37 reads as follows:

(1) Where a prospectus invites persons to subscribe for shares in or debentures of a company—

(*a*) every person who is a director of the company at the time of the issue of the prospectus; and

(*b*) every person who has authorised himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time; and

(*c*) every promoter of the company; and

(*d*) every person who has authorised the issue of the prospectus,

shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved

(i) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(ii) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or

(iii) that after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason therefor; or

(iv) that—

(*a*) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true; and

(*b*) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation; and

(*c*) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document:

Provided that a person shall be liable to pay compensation

as aforesaid if it is proved that he had no reasonable ground to believe that the person making any such statement, report or valuation as is mentioned in paragraph (iv) (*b*) of this subsection was competent to make it.

(2) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any action or legal proceedings brought against him in respect thereof.

(3) Every person who, by reason of his being a director or named as a director or as having agreed to become a director, or of his having authorised the issue of the prospectus, becomes liable to make any payment under this section may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(4) For the purpose of this section—

The expression " promoter " means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company :

The expression " expert " includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him.

Offers for Sale.—In order to avoid the exacting requirements imposed upon the issuer of a prospectus by the provisions of the Companies (Consolidation) Act, 1908, requirements which in some particulars it was not easy strictly to satisfy, a

practice arose whereby a company issued its shares through an intermediary. Thus, the A company might enter into a private agreement with the B company to allot, either to the B company or its nominees, the whole or a specified part of its shares, either unconditionally or subject to the application and allotment moneys being paid within a specified time. The B company then offered these shares for public subscription, and the offer, not being an invitation to subscribe for its own shares, exempted the B company from having regard to the provisions of S. 81 of the Act of 1908, which section governed the contents of prospectuses. The abuses to which this practice was open were abundantly disclosed as time went on, and were effectively met by S. 38 of the Companies Act, 1929. That section declares that any document that is issued to the public offering for sale shares or debentures which a company has allotted or agreed to allot for that purpose shall for all purposes be deemed to be a prospectus *issued by the company itself*, and all the enactments and rules of law relating to the contents of prospectuses, and liability in respect of statements in and omissions from prospectuses issued by or on behalf of a company (*see* SS. 35, 37), shall apply to any such document; and the persons issuing the document to the public shall be deemed to be persons named in a prospectus as directors of the company. S. 38 reads as follows :—

> S. 38.—(1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and all enactments and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of mis-statements contained in the document or otherwise in respect thereof.
>
> (2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown—
>
> (*a*) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or
>
> (*b*) that at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) Section thirty-four of this Act [*see* p 92] as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company, and section thirty-five of this Act [*see* p. 93] as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—

(*a*) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; and

(*b*) the place and time at which the contract under which the said shares or debentures have been or are to be allotted may be inspected.

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by two directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent authorised in writing.

The matter of the irregular offering of shares or debentures to the public is further dealt with in Part XII of the Act of 1929, viz. SS. 354, 355 and 356 of the Act.

"*Share Hawking.*"—S. 356 prohibits the practice of what has come to be known as "share hawking," *i.e.* the peddling of shares (usually worthless) from door to door. But the section does more; it prohibits offers of shares in writing, unless the offer is accompanied by a written statement signed by the person making the offer, and dated, and containing such particulars as are required to be furnished by the section, and otherwise complying with the provisions of the section. The section does not apply to (*a*) shares that are quoted on, or in respect of which permission to deal has been granted by, any recognised stock exchange in Great Britain, (*b*) shares allotted or agreed to be allotted, which matter is dealt with in S. 38, (*c*) where the offer is made to persons with whom the person offering the shares has been in the habit of doing regular business in the purchase or sale of shares. S. 356 reads as follows :—

S. 356.—(1) It shall not be lawful for any person to go from house to house offering shares for subscription or purchase to the public or any member of the public.

In this subsection the expression "house" shall not include an office used for business purposes.

(2) Subject as hereinafter provided in this subsection, it shall not be lawful to make an offer in writing to any member of the public (not being a person whose ordinary business or part of whose ordinary business it is to buy or sell shares, whether as principal or agent) of any shares for purchase, unless the offer is accompanied by a statement in writing (which must be signed by the person making the offer and dated) containing such particulars as are required by this section to be included therein and otherwise complying with the requirements

of this section, or, in the case of shares in a company incorporated outside Great Britain, either by such a statement as aforesaid, or by such a prospectus as complies with this Part of this Act :

Provided that the provisions of this subsection shall not apply—

(*a*) where the shares to which the offer relates are shares which are quoted on, or in respect of which permission to deal has been granted by, any recognised stock exchange in Great Britain and the offer so states and specifies the stock exchange; or

(*b*) where the shares to which the offer relates are shares which a company has allotted or agreed to allot with a view to their being offered for sale to the public; or

(*c*) where the offer was made only to persons with whom the person making the offer has been in the habit of doing regular business in the purchase or sale of shares.

(3) The written statement aforesaid shall not contain any matter other than the particulars required by this section to be included therein, and shall not be in characters less large or less legible than any characters used in the offer or in any document sent therewith.

(4) The said statement shall contain particulars with respect to the following matters :

(*a*) whether the person making the offer is acting as principal or agent, and if as agent the name of his principal and an address in Great Britain where that principal can be served with process;

(*b*) the date on which and the country in which the company was incorporated and the address of its registered or principal office in Great Britain;

(*c*) the authorised share capital of the company and the amount thereof which has been issued, the classes into which it is divided and the rights of each class of shareholders in respect of capital, dividends and voting;

(*d*) the dividends, if any, paid by the company on each class of shares during each of the three financial years immediately preceding the offer, and if no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect;

(*e*) the total amount of any debentures issued by the company and outstanding at the date of the statement, together with the rate of interest payable thereon;

(*f*) the names and addresses of the directors of the company;

(*g*) whether or not the shares offered are fully paid up, and, if not, to what extent they are paid up;

(*h*) whether or not the shares are quoted on, or permission to deal therein has been granted by, any recognised stock exchange in Great Britain or elsewhere, and, if so, which, and, if not, a statement that they are not so quoted or that no such permission has been granted;

(*i*) where the offer relates to units, particulars of the name and addresses of the persons in whom the shares represented by the units are vested, the date of and the parties to any document defining the terms on which those shares are held, and an address in Great Britain where that document or a copy thereof can be inspected.

In this subsection the expression " company " means the company by which the shares to which the statement relates were or are to be issued.

(5) If any person acts, or incites, causes or procures any person to act, in contravention of this section, he shall be liable to imprisonment

for a term not exceeding six months or to a fine not exceeding two hundred pounds or to both such imprisonment and fine, and in the case of a second or subsequent offence to imprisonment for a term not exceeding twelve months or to a fine not exceeding five hundred pounds, or to both such imprisonment and fine.

(6) Where a person convicted of an offence under this section is a company (whether a company within the meaning of this Act or not), every director and every officer concerned in the management of the company shall be guilty of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent.

(7) In this section, unless the context otherwise requires, the expression "shares" means the shares of a company, whether a company within the meaning of this Act or not, and includes debentures and units, and the expression "unit" means any right or interest (by whatever name called) in a share, and for the purposes of this section a person shall not in relation to a company be regarded as not being a member of the public by reason only that he is a holder of shares in the company or a purchaser of goods from the company.

(8) Where any person is convicted in England of having made an offer in contravention of the provisions of this section, the court before which he is convicted may order that any contract made as a result of the offer shall be void, and, where it makes any such order, may give such consequential directions as it thinks proper for the repayment of any money or the retransfer of any shares.

Where the court makes an order under this subsection (whether with or without consequential directions) an appeal against the order and the consequential directions, if any, shall lie to the High Court.

The following is a statement accompanying an offer of shares, as published in the press, to conform with the requirements of S. 92 of the Act of 1928, now S. 356 of the Act of 1929:—

Statement Accompanying the Offer for Sale. Pursuant to Section 92 *of* 18 *and* 19 *Geo. V, Cap.* 45.

22ND SEPTEMBER, 1928.

THE DECCA GRAMOPHONE COMPANY, LIMITED.

THE OFFER FOR SALE OF FULLY-PAID SHARES IN THE DECCA GRAMOPHONE COMPANY LIMITED (HEREINAFTER CALLED "THE COMPANY") IS MADE BY THE ADAMANT INVESTMENT CORPORATION LIMITED ACTING AS PRINCIPAL.

THE COMPANY (WHOSE REGISTERED OFFICE IS AT 73, BASINGHALL STREET, LONDON, E.C.2) WAS INCORPORATED IN ENGLAND ON THE 6TH SEPTEMBER, 1901.

THE AUTHORISED SHARE CAPITAL OF THE COMPANY IS £200,000, OF WHICH £185,000 HAS BEEN ISSUED. THE SHARE CAPITAL IS DIVIDED INTO ORDINARY SHARES, ALL OF ONE CLASS.

THE RIGHTS OF THE ORDINARY SHAREHOLDERS IN RESPECT OF CAPITAL DIVIDENDS AND VOTING ARE AS FOLLOWS:—THE ORDINARY SHARES RANK PARI PASSU IN RESPECT OF CAPITAL AND PARI PASSU FOR DIVIDEND IN PROPORTION TO THE AMOUNTS FOR THE TIME BEING PAID ON THE SHARES (OTHER THAN AMOUNTS PAID IN ADVANCE OF CALLS), AND EVERY MEMBER PERSONALLY PRESENT AT A MEETING HAS ONE VOTE UPON A SHOW OF HANDS, AND EVERY MEMBER PRESENT IN PERSON OR BY PROXY HAS, UPON A POLL, ONE VOTE IN RESPECT OF EACH SHARE HELD BY HIM.

ON THE CLASSES OF SHARES IN WHICH THE SHARE CAPITAL OF THE COMPANY WAS DIVIDED PRIOR TO THE 21ST SEPTEMBER, 1928, THE COMPANY PAID THE FOLLOWING DIVIDENDS DURING EACH OF THE THREE FINANCIAL YEARS PRECEDING THE OFFER FOR SALE, NAMELY:—

Class of Shares.	Dividend paid during the year to 30th April, 1926.	Dividend paid during the year to 31st March, 1927.	Dividend paid during the year to 31st March, 1928.
PREFERENCE	5% FREE OF TAX	5% FREE OF TAX	5% FREE OF TAX
INTERMEDIATE	NO DIVIDEND	NO DIVIDEND	6% FREE OF TAX
ORDINARY	100% FREE OF TAX	150% FREE OF TAX	165% FREE OF TAX

THE NAMES AND ADDRESSES OF THE DIRECTORS ARE AS FOLLOWS:—EDWARD DUNCAN BASDEN, 73, BASINGHALL STREET, E.C.2; SIR ALFRED JAMES HAWKEY, J.P., KEBLES, BROOMHILL WALK, WOODFORD GREEN; WILLIAM FRANCIS LLOYD, 36, BUCKINGHAM GATE, S.W.1; ERNEST TERRY, OAK LODGE, ROUNDHAY, LEEDS; SAMUEL JACK AVIDON, JAMES GILL, ALBERT WILLIAM HOY, ALL OF 32, WORSHIP STREET, E.C.2.

THE SHARES ARE NOT QUOTED ON, NOR HAS PERMISSION TO DEAL IN THE SHARES BEEN GRANTED BY, ANY RECOGNISED STOCK EXCHANGE IN GREAT BRITAIN OR ELSEWHERE.

FOR ADAMANT INVESTMENT CORPORATION LIMITED.
W. P. HAMMOND, SECRETARY.
65, LONDON WALL, LONDON, E.C.2.

Offers of Shares or Debentures in Foreign Companies.—SS. 354 and 355 contain regulations governing the issue, circulation, or distribution to the public in Great Britain of

prospectuses of foreign companies inviting subscriptions for shares or debentures or offering shares or debentures for sale, or issuing application forms for shares or debentures in such companies. Before any such prospectus can be issued (*a*) a certified copy must be delivered to the registrar of companies for registration, (*b*) the prospectus must state on its face that such a copy has been delivered, (*c*) it must be dated, and (*d*) must otherwise comply with the requirements of Part XII of the Act. No application form may be issued unless it is accompanied by such a prospectus as complies with Part XII. These regulations do not apply where the prospectus or application form is issued to existing members or debenture holders of the company, or to persons, *e.g.* stock-jobbers or brokers, whose ordinary business it is to buy or sell shares. The wording of SS. 354 and 355 has already been given *in extenso* at pp. 64–66.

Underwriting.—Before issuing the prospectus, the promoters or directors will usually take steps to ensure that the capital required shall be raised. The usual method of doing so is by entering into an underwriting agreement. Underwriting is practically a mode of insurance. The commission paid to the underwriters is in the nature of a premium to secure the company's shares being taken up, and so to enable it to commence business. The essence of an underwriting contract is that in consideration of the commission paid to the underwriters by the company, the underwriters agree to take up and pay for such of the shares offered for subscription as may not be taken up by the public.

Commission may also be paid by the underwriters to sub-underwriters for placing blocks of the underwriting, or to brokers and others for placing shares. The commission paid for placing underwriting is known as an " overriding " commission.

The provisions as to underwriting, etc., are contained in SS. 43 and 44 of the Act :

Commissions and Discounts

S. 43.—(1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if—

(*a*) the payment of the commission is authorised by the articles; and

(*b*) the commission paid or agreed to be paid does not exceed ten per cent. of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is the less; and

(*c*) the amount or rate per cent. of the commission paid or agreed to be paid is—

(i) in the case of shares offered to the public for subscription, disclosed in the prospectus; or

(ii) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and delivered before the payment of the commission to the registrar of companies for registration, and, where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice; and

(*d*) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in manner aforesaid.

(2) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount, or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company, or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.

(4) A vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission,

the payment of which, if made directly by the company, would have been legal under this section.

(5) If default is made in complying with the provisions of this section relating to the delivery to the registrar of the statement in the prescribed form, the company and every officer of the company who is in default shall be liable to a fine not exceeding twenty-five pounds.

S. 44.—(1) Where a company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, or so much thereof as has not been written off, shall be stated in every balance sheet of the company until the whole amount thereof has been written off.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

Where an underwriting contract is entered into on the terms of a preliminary draft prospectus, and the prospectus as issued differs materially from the draft, underwriters may obtain relief upon the grounds of misrepresentation (*Warner International Co.* [1914], W.N. 61).

The brokerage must be at a reasonable rate. In *Metropolitan Coal Consumers' Association* v. *Scrimgeour* [1895], 2 Q.B. 604, 2½ per cent. was approved on the facts of that case.

It is to be noted that S. 43, s.-s. (2) does not prohibit payment of commission out of profits. Unless articles prohibit that course, such payments are lawful. But in order to pay commission out of capital, there must be positive provision in the articles. If the articles, as originally framed, do not give the power, they can be altered by special resolution to do so.

Commission paid to underwriters must be disclosed in the prospectus, or statement in lieu, etc. (S. 43, s.-s. (1)). Even a private company must deliver for registration a statement as regards commission payable in respect of shares (*Andreæ* v. *Zinc Mines, Ltd.* [1918], 2 K.B. 454).

A distinction is to be drawn between commission paid in consideration of taking shares, and the issue of shares at a discount. Commission is paid for a service rendered; the issue of shares at a discount, except where sanctioned by the court under S. 47 (*see* p. 91), is an unlawful reduction of

capital, and a shareholder taking up shares at a discount, otherwise than under S. 47, is liable to pay for them in full (*In re Pitkin & Co.* [1916], 114 L.T. 673).

The Underwriting Agreement.—The usual clauses in an underwriting agreement provide that :

(1) The underwriter shall underwrite a certain number of shares.

(2) The whole of the shares are to be offered to the public on the terms of a specified prospectus.

(3) The underwriter shall take up such of the shares as are not taken up by the public.

(4) The underwriter authorises the company to allot to him or to his nominees such balance of shares.

(5) The company agrees to pay to the underwriter a commission of so much per share on all the shares underwritten, whether the underwriter has to take them up or not.

In view of recent abuses, it behoves everyone connected with underwriting to assure himself that the underwriters are substantial persons, who can meet their obligations if called upon to take up the shares, as their failure so to do may, as indeed it has in many recent instances, prevent the company from commencing business. Moreover, the underwriters should be called upon to guarantee their sub-underwriters, unless the company is satisfied that the latter can also meet their obligations.

The company should take care that the agreement also provides for the payment of the application money. Frequently, the underwriters are required to deposit a cheque for the application money on the whole of the shares underwritten. The cheque will be cashed only if it is necessary to do so to meet the minimum subscription (*see* below) or pay for shares taken up.

Underwriters sometimes apply " firm " for a block of shares, *i.e.* they agree to take up this amount as ordinary subscribers. Where this is so the agreement usually provides for a " firm " allotment.

An underwriting contract is enforceable against the deceased underwriter's legal representatives (*In re Worthington* [1914], 2 K.B. 299).

Minimum Subscription.—In the case of the first allotment of shares, a public company must issue either a prospectus or a

statement in lieu of prospectus before it proceeds to allot any of its shares, and if it issues a prospectus it may not allot any of its shares offered to the public for subscription unless a minimum amount of the share capital, known as the "minimum subscription," has been subscribed. The object of fixing a minimum subscription is to inform prospective members of the amount of capital upon which the directors are prepared to commence business, and to enable prospective subscribers to form their own opinion of its adequacy, and so to prevent directors from going to allotment on a subscribed capital insufficient to do much more than pay the flotation expenses. Until the safeguard of the minimum subscription was introduced by the *Companies' Act*, 1900, directors had unfettered freedom to proceed to allotment. Prior to the 1929 Act, however, the provisions usually failed to secure their object, for commonly a nominal amount only was fixed as the minimum. The Fourth Schedule to that Act remedies the defect to a large extent by stating exactly what the directors must take into account in fixing the minimum subscription (*see* p. 94). In the case of companies of any importance, however, the issue is underwritten, or arrangements are made whereby directors and their friends subscribe the required working capital.

The relevant sections of the Act are SS. 39 and 41. Section 39 says :

> S. 39.—(1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the [1] prospectus as the minimum amount which, in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matters specified in paragraph 5 in Part I of the Fourth Schedule to this Act [*see* p. 94] has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company.
>
> For the purposes of this subsection, a sum shall be deemed to have been paid to and received by the company if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the cheque will not be paid.
>
> (2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Act referred to as "the minimum subscription."
>
> (3) The amount payable on application on each share shall not be less than five per cent. of the nominal amount of the share.
>
> (4) If the conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus, all

[1] This must be the actual prospectus on the basis of which the applicant subscribed for the shares (*Roussel* v. *Burnham* [1909], 1 Ch. 127).

money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within forty-eight days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per centum per annum from the expiration of the forty-eighth day :

Provided that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6) This section, except subsection (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

By S. 41 :

(1) An allotment made by a company to an applicant in contravention of the provisions of the last two foregoing sections of this Act (*see supra*, and p. 101) shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, or in any case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) If any director of a company knowingly contravenes, or permits or authorises the contravention of, any of the provisions of the said sections with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages, or costs which the company or the allottee may have sustained or incurred thereby :

Provided that proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment.

There is no need to state the minimum subscription in the memorandum or articles. If it is named in the memorandum it is unalterable, but it may be altered by special resolution if it is named in the articles. It will be noted that cheques may now be reckoned as part of the minimum subscription money, if taken in good faith, but directors would in the ordinary course take care to see that all cheques had been honoured before proceeding to allotment. It is worth noting that although the minimum subscription must be stated in every prospectus, the restrictions on allotment laid down by S. 39 do not apply to allotments subsequent to those on the first public issue.

The provisions of S. 39, s.-s. (4) as to interest, only apply before allotment. If the directors proceed to allotment, then S. 41 provides the remedy (*Burton* v. *Bevan* [1908], 2 Ch. 240).

By S. 41, an allotment made in contravention of S. 39 is voidable at the instance of the allottee at any time within one

month after the holding of the statutory meeting, or of allotment, if later, or if no statutory meeting is required. It is not, however, imperative that an action for rescission should actually be begun within that time. If the allottee gives notice of his intention to rescind within the period allowed, and actively pursues his legal remedy, that is sufficient (*National Motor Mail Coach Co.* [1908], 2 Ch. 228).

Company may not Acquire Own Shares.—A company's funds must be applied to carrying out the objects set out in its memorandum. A company may not purchase its own shares (*Trevor* v. *Whitworth* [1887], 12 App. Cas. 409), since that never can be one of its objects, and, moreover, such a proceeding would be tantamount to a reduction of capital, which can be effected only by leave of the Court. A voluntary transfer of shares in a company to a trustee for the benefit of the company is not invalid, however, and the trustee may vote in respect of such shares as the company may direct (*Kirby* v. *Wilkins* [1929], 2 Ch. 444). Loans made by a company to enable persons to subscribe and pay for its shares have long been suspect as probably *ultra vires*. Now, by S. 45, all doubt is removed, and with three exceptions, every such transaction is declared to be unlawful.

By S. 45.—(1) Subject as provided in this section, it shall not be lawful for a company to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase made or to be made by any person of any shares in the company:

Provided that nothing in this section shall be taken to prohibit—

(*a*) where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business;

(*b*) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase by trustees of fully-paid shares in the company to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company;

(*c*) the making by a company of loans to persons, other than directors, bona fide in the employment of the company with a view to enabling those persons to purchase fully-paid shares in the company to be held by themselves by way of beneficial ownership.

(2) The aggregate amount of any outstanding loans made under the authority of provisos (*b*) and (*c*) to subsection (1) of this section shall be shown as a separate item in every balance sheet of the company.

(3) If a company acts in contravention of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred pounds.

CHAPTER VI

MEMBERSHIP OF A COMPANY. PAYMENT FOR SHARES. APPLICATION AND ALLOTMENT OF SHARES. CALLS. ANNUAL RETURN. DOMINION REGISTER. SHARE WARRANTS. LIEN. ETC.

ANY person is capable of becoming a member of a company who is *sui juris* (= of his own right), *i.e.* not subject to any legal disability. But a company's memorandum and articles may provide that certain persons or classes of persons shall not be eligible for membership, or, alternatively, may confine membership to a specific class (or classes) of persons.

A married woman may be a member, so also a foreigner, so, too, a limited company if, by its constitution, it is authorised to hold another company's shares. A firm should be registered in the names of the individual partners, but, in *Weikersheim's Case* [1873], 8 App. Cas. 831, it was held that a firm might be registered, each partner being liable on the shares. In Scotland, a firm is recognised as a person and the firm's name may be entered on the register, but the better practice is to enter the names of the partners individually.

An infant may be a member, but he may repudiate the shares during his minority and after attaining full age (*re Laxon & Co.* [1892], 3 Ch. 555). There is no point in refusing to register an infant as a holder of fully paid shares, unless some additional obligation is attached to the holding, *e.g.*, an obligation to take up and pay for further shares. But a company may decline to register an infant, and should decline so to do, where there is an uncalled liability on the shares. So long as an infant is the registered holder of shares, he is entitled to the benefits and liable for the obligations thereon (*re Laxon & Co., supra*). If he repudiates shares, he cannot recover money paid on them unless they were worthless and he has received no benefit from them (*Steinberg* v. *Scala* (*Leeds*) [1923], 2 Ch. 452).

There is a distinction between persons who become members by subscribing to a memorandum and those who become members by application and allotment, or by transfer, etc.

Subscribers to the memorandum are deemed to have agreed to become members (S. 25, s.-s. (1)). Consequently, no formal allotment is required in their case to make them members (*In re London and Provincial Coal Co.* [1877], 5 Ch.D. 525). They are members whether entered upon the register or not (*Alexander* v. *Automatic Telephone Co.* [1900], 2 Ch. 56). A subscriber to the memorandum may be relieved of his obligation to take the shares subscribed only if all the shares are allotted to others (*Evans's Case* [1867], 2 App. Cas. 427). He cannot avoid his agreement to take the shares on the ground of misrepresentation (*In re Metal Constituents Co., Lurgan's Case* [1902], 1 Ch.D. 707). He is bound to take and pay for his shares just as any other member is, but need not pay for them until called upon to do so (*Alexander* v. *Automatic Telephone Co., supra*), and on registration of the company his name must be entered upon the register (S. 25, s.-s. (1)). A person who signs and delivers to the registrar an undertaking in writing to take from the company and pay for his qualification shares as director is as regards those shares in the same position as if he had signed the memorandum for that number of shares (S. 140, s.-s. (2)).

Every other person who agrees to become a member of a company, and whose name is entered upon its register of members, shall be a member of the company (S. 25, s.-s. (2)).

An agreement to take shares, and entry upon the register of members in consequence thereof, is therefore the test of membership. Except in the case of subscribers to the memorandum, entry upon the register is the sole evidence of membership. But by S. 97, s.-s. 5—

> Subject to the provisions of this Act, the bearer of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles.

[*See* p. 128 as to rectification of the register.]

Persons other than those who have subscribed to the memorandum become registered members :—

(*a*) By applying for and being allotted shares.

(*b*) By signing the undertaking to take and pay for his qualification shares as a director on the registration of the company (S. 140, s.-s. (2)).

(*c*) By a valid transfer; or by valid transmission on the death, lunacy, or bankruptcy of a member, where the

legal representative of the deceased, or the committee of the lunatic, or the trustee in bankruptcy takes the shares into his own name and becomes a registered member.

(*d*) By surrendering a share warrant for cancellation and applying for entry upon the register.

(*e*) By estoppel, as when a person's name is improperly entered upon the register, and he does nothing to have his name removed from it, or constructively agrees to his name remaining thereon by exercising the rights of a member; and

(*f*) In certain other unusual and technical instances, which it would seem unnecessary to detail in a work of this kind.

Share Register; Share Warrants.—By S. 95 (1) Every company shall keep in one or more books a register of its members, and enter therein the following particulars :—

(*a*) The names and addresses, and the occupations, if any, of the members, and in the case of a company having a share capital a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member;

(*b*) The date at which each person was entered in the register as a member;

(*c*) The date at which any person ceased to be a member :

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the registrar of companies, the register shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares specified in paragraph (*a*) of this subsection.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

By S. 70—

(1) A company limited by shares, if so authorised by its articles, may, with respect to any fully-paid-up shares, issue under its common seal a warrant stating that the bearer of the

warrant is entitled to the shares therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares included in the warrant.

(2) Such a warrant as aforesaid is in this Act termed a "share warrant."

(3) A share warrant shall entitle the bearer thereof to the shares therein specified, and the shares may be transferred by delivery of the warrant.

By S. 97—

(1) On the issue of a share warrant the company shall strike out of its register of members the name of the member then entered therein as holding the shares specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely—

(*a*) The fact of the issue of the warrant;
(*b*) A statement of the shares included in the warrant, distinguishing each share by its number; and
(*c*) The date of the issue of the warrant.

(2) The bearer of a share warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members.

(3) The company shall be responsible for any loss incurred by any person by reason of the company entering in the register the name of a bearer of a share warrant in respect of the shares therein specified without the warrant being surrendered and cancelled.

(4) Until the warrant is surrendered, the particulars specified in subsection (1) of this section shall be deemed to be the particulars required by this Act to be entered in the register of members, and, on the surrender, the date of the surrender must be entered.

(5) Subject to the provisions of this Act, the bearer of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles.

The register of members is commonly called the "share ledger," in view of the fact that additional columns are provided to show the transfer particulars, *e.g.*, the name and folio

of the transferor or transferee, transfer number, etc., and balance.[1] Where dealings are numerous, however, the tendency is to show only the minimum information prescribed by law.

Index to Register of Members.—By S. 96.—(1) Every company having more than fifty members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index of the names of the members of the company and shall, within fourteen days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.

(2) The index, which may be in the form of a card index, shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

The need for the index is dispensed with where the register is in loose-leaf form. If bound registers are kept, then the following is a suitable ruling for a card index :—

Surname	Christian Name(s)	Address	Payee, Bank, etc.	Preference Shares		Redeemable Preference Shares		Ordinary Shares		Deferred Shares		Debentures	
				Folio.	No.	Folio	No.	Folio.	No	Folio.	No	Folio.	Amt.

It tends to minimise the occasions on which the register itself is referred to, if all notes regarding stop notices, dividend instructions, etc. are made on the card. Some companies also obtain on the card a specimen signature of the member, the card being sent to him for this purpose when first opened.

As a separate part of the Register of Members there must appear the Annual Return (*see* p. 157).

The Register of Members shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein (S. 102).

[1] The practice of marking-off the "shares transferred" against the "shares acquired" is to be recommended; the shares constituting the balance are then readily identified.

Inspection of Register; Copies.—The register of members, commencing from the date of the registration of the company, and the index of the names of members, must be kept at the registered office of the company, and be open for inspection during business hours, subject to reasonable restrictions imposed by the company in general meeting, but so that not less than two hours each day is allowed for inspection. Members are allowed to inspect the register free; any other person, on payment of one shilling, or such less sum as the company may prescribe, for each inspection. Any member or other person may obtain a copy of the register, or any part thereof, on payment of sixpence, or such less sum as may be prescribed by the company, per hundred words or fractional part thereof. The company must cause any copy so required by any person to be sent to that person within a period of ten days commencing on the day next after the day on which the requirement is received by the company (S. 98, s.-s. (1) and (2)); but no person may himself make a copy of the register or part thereof (*Balaghât Gold Mining Co.* [1901], 2 K.B. 665). A company cannot refuse inspection because the person desirous of inspecting is hostile to the company (*Davies* v. *Gas Light and Coke Co.* [1909], 1 Ch. 248). But there is no right of inspection when winding-up proceedings are begun (*In re Kent Coalfields Syndicate* [1898], 1 Q.B. 754), although the Court may make an order for inspection in favour of creditors and contributories by virtue of S. 212 and S. 252 of the Act.

Closing the Register.—A company may, on giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members for any time or times not exceeding in the whole thirty days in each year (S. 99). Companies customarily close their registers for preparation of dividend warrants for fourteen days each half-year, and during that time no transfers are registered. It is often expedient to close the registers for some days prior to a meeting of shareholders, particularly when a poll is to be taken, in order to settle the voting list.

Notice of Trust may not be Entered.—No notice of any trust, expressed, implied, or constructive, shall be entered on the register, or be receivable by the registrar, in the case of companies registered in England (S. 101). The entry of the

Public Trustee under that name is not notice of a trust (*Public Trustee Act*, 1906).

Rectification of Register.—By S. 100 :—

(1) If—

(*a*) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or

(*b*) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,

the person aggrieved, or any member of the company, or the company, may apply to the Court for rectification of the register.

(2) Where an application is made under this section, the Court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

(3) On any application under this section the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand; and generally may decide any question necessary or expedient to be decided for rectification of the register.

(4) In the case of a company required by this Act to send a list of its members to the registrar of companies, the Court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the registrar.

When Person ceases to be Member.—A person ceases to be a member :—

(*a*) If he is a subscriber to the memorandum, by all the shares being allotted to others (*see supra*, p. 123).

(*b*) By transfer of his shares.

(*c*) By forfeiture of his shares, or by the company accepting a surrender of the shares as a short cut to forfeiture.

(*d*) Where the company sells the shares to enforce a lien.

(*e*) By transmission on his death, lunacy, or bankruptcy and registration as a member of a person entitled by transmission.

(*f*) Where the company is wound up, or is struck off the register of companies.
(*g*) By rescission of his contract to take the shares.
(*h*) By repudiation, as by an infant, or by disclaimer, as by the trustee in bankruptcy, followed by removal of the bankrupt member from the register.
(*i*) By his being struck off the register, where, *e.g.*, he exchanges his share certificate for a share warrant.
(*j*) By compulsory sale under S. 155 (*see* pp. 397 *et sqq.*).
(*k*) If he holds redeemable preference shares only, by redemption of the shares.

Joint Holders.—Articles usually contain the conditions under which persons may be registered as joint holders of shares, and commonly provide that not more than four persons shall be so registered. Since only the first named of joint holders is, by most articles, entitled to receive notices, etc., and to vote in respect of the shares, joint holders may divide their holding into two or more accounts, arranging the names in different order so as to preserve the maximum voting power, etc.; and it is usual and reasonable for this to be permitted. It is particularly convenient from the point of view of executors and others who hold in a fiduciary capacity, since the company cannot recognise a trust. Legal personal representatives, on becoming registered in their own names (*see* p. 202) are entitled to dictate the order in which their names are to appear (*In re T. H. Saunders* [1908], 1 Ch. 415); and, if they desire the holding to be divided into several accounts, the company may require a transfer to be executed. Where joint holders hold different classes of shares, they may have one first named in one class and another first named in some other class (*Burns and Hambro* v. *Siemens Bros., Ltd.* [1919], 1 Ch. 225).

Where articles contain no provisions on the point, the secretary should obtain written instructions from the holders as to whom to send notices, certificates, dividends, etc.

Certificates and share warrants are made out in the names of all the joint holders, and articles usually provide that transfers must be executed by all, except in Scotland, where execution by a majority is sufficient.

In the event of the death of a joint holder, the company should require the production of the same evidence as is required

on the death of any other member. Some companies require a further certificate from a person of standing identifying the deceased with the person named in the death or burial certificate.

On the death of one joint holder, the beneficial interest which he enjoyed passes to his kindred or assigns (*Law of Property Act*, 1925, S. 36); but, so far as the company is concerned, the survivor only is recognised.

A body corporate may be a joint holder (*Bodies Corporate (Joint Tenancy) Act*, 1899, S. 1). Unless the articles provide for joint and several liability, joint holders are only liable jointly for payment of instalments and calls.

Where a transfer is lodged for certification or registration, the precautionary notice (*see* p. 180) should be sent to every one of joint holders.

Payment for Shares.—Shares may be paid for in money or money's worth, as, for example, by property made over, or by services rendered, or other valuable consideration given, to the company. The expression "money" includes both payment in actual money, and payment made by setting-off a debt presently payable by the company to the member or prospective member against the latter's present liability on the shares. In other words, payment in cash may be effected by "such a transaction as would, in an action at law for calls, support a plea for payment."

In *Larocque* v. *Beauchemin* [1897], A.C. 358, Lord Macnaghten, citing James, L.J., said: "If a transaction resulted in this, that there was on the one side a *bonâ fide* debt payable in money *at once* for the purchase of the property, and on the other side a *bonâ fide* liability to pay money *at once* on shares, so that, if bank notes had been handed from one side of the table to the other in payment of calls, they might legitimately have been handed back in payment of the property, it appears to me that the Act does not make it necessary that the formality should be gone through of the money being handed over and taken back again."

Discount.—Except in the circumstances set out in S. 47 (*see* p. 91), shares cannot be issued either directly or indirectly at a discount, although, where property is taken over by the company at more than its market value in exchange for shares, the practical effect is that the shares are issued at a discount. Thus, if a company attempts (except under S. 47) to issue a £1

share for nineteen shillings, the allottee remains liable to pay the balance of one shilling (*Ooregum Gold Co.* v. *Roper* [1892], App. Cas. 125). In *Mosely* v. *Koffyfontein Mines* [1904], 2 Ch. 108, the company proposed to issue debentures at a discount (in itself a legal proceeding) and to give debenture holders forthwith the right to receive in satisfaction of the debentures a fully paid £1 share for every £1 worth of debentures held. But since the exercise of such a right would be tantamount to the unauthorised issue of shares at a discount, the proceeding was held to be illegal.

There would, however, be no bar to such an exchange on the day that the debentures were redeemable at par or at a premium; nor to a company issuing debentures at a discount, say £100 debenture for £95, carrying the right :—

(*a*) To convert into 100 £1 shares, nineteen shillings paid, or into
(*b*) Ninety-five fully paid £1 shares, or 1900 fully paid shilling shares, or
(*c*) To subscribe for shares at par, even if the market price of the shares stood at a premium, or
(*d*) To convert into shares validly issued at a discount under S. 47.

It has already been remarked that the consideration paid for shares need not be in cash. Partly or fully paid shares may be issued in satisfaction of the purchase price of the business or of any other property acquired by the company (but *see* p. 146 as to filing a contract). The contract under which shares are allotted must be *bonâ fide*. If there is evidence in the contract that the consideration is illusory, or of less cash value than the sum credited as paid on the shares, or if the contract is fraudulent, the person taking the shares may be liable to pay for them in cash. The general rule holds, however, that the Court will not inquire into the adequacy of the consideration, except in the circumstances mentioned (*re Wragg* [1897], 1 Ch. 796).

Future consideration may be good consideration for an allotment of shares, as where a company agrees to pay immediately for services to be rendered in the future (*Gardner* v. *Iredale* [1912], 1 Ch. 700), for then there is a debt presently payable by the company to the allottee, which debt is extinguished by the allotment of shares. But a company

cannot for a fixed present consideration contract that an indefinite amount of future share capital shall from time to time be issued as fully paid (*Hong Kong and China Gas Co.* v. *Glen* [1914], 1 Ch. 527).

Arrangements with Bankers.—Before the prospectus is issued, or, if a prospectus is not issued, before any money is received by the company, the secretary should ascertain the directors' choice of a banker to the company. He should then interview the manager of the particular branch of the chosen bank, and obtain from him the printed resolution which each bank prefers to have in its own form. The following is a specimen of such a form. There is nothing, of course, to prevent the company from passing the resolution in other words, provided the necessary provisions are included.

COMPANIES REGISTERED UNDER THE COMPANIES ACT.

To the MIDLAND BANK LIMITED,
5, Threadneedle St., London, E.C. 2.

.....19.....

GENTLEMEN,

THE PRACTICE COMPANY, LIMITED
(Registered Office, Moorgate, E.C. 2).

My Directors request you to open an account with the above-mentioned Company. In pursuance of this request I hand you herewith—

1. Certificate of Registration (for inspection and return).
2. Copy of the Memorandum and Articles of Association.
3. Certificate of Registrar of Joint Stock Companies that the Company is entitled to commence business.

(3) This Certificate is *not* required in the case of a Private Company.

4. Certified Copy of a Resolution of the Board of Directors.
5. I also append the signatures of the Directors.

Yours faithfully,

I. N. CORPORATE, *Secretary.*

THE PRACTICE COMPANY, LIMITED

We hereby certify that the following Resolution of the Board of Directors of The Practice Company, Limited, was passed at a Meeting of the Board held on the 15th day of August, 19....., and has been duly recorded in the Minute Book of the said Company :—

> " Resolved :—That a Banking Account for the Practice Company, Limited, be opened with the Midland Bank, Limited, at their Threadneedle Street Branch, and that the Bank be and is hereby empowered to honour Cheques, Bills of Exchange, and Promissory Notes, drawn, signed, accepted, or made on behalf of the Company by any two of the Directors and countersigned by the Secretary, and to act on any instructions given by the persons so authorised with regard to any accounts or transactions of the Company."

HOWARD SHEEPSHANKS, *Chairman.*

I. N. CORPORATE, *Secretary.*

DIRECTORS.

NAME.	SIGNATURE.

The resolution appointing bankers must, of course, be passed by a properly constituted Board of Directors, and be signed as indicated above. It is then handed to the manager of the bank, together with a copy of the memorandum and articles. The certificate of incorporation must also be produced. The bank manager will have the necessary particulars registered in the bank's books and return the certificate. Arrangements will be made with him for a minimum balance to be maintained by the company, and for deposit terms.

The secretary can now arrange with the bank to receive the application forms and moneys, and for a separate application account to be opened. Usually, it is more convenient to get the bank to prepare daily separate lists of moneys received on each class of share or debenture offered rather than have these particulars entered in a special pass book. Where the bank has installed mechanical book-keeping machines, such lists will be supplied as a matter of course. Each payment should be numbered serially to correspond with the number placed upon the application form by the bank.

The bank will not issue a cheque book or allow dealings with the company's money, except for the purpose of returning the application money if the minimum subscription is not reached, until the certificate to commence business (*see* p. 143) has been submitted. A private company may commence business immediately on incorporation, so in that case the above remarks do not apply (S. 94, s.-s. (7)).

It is advisable to keep separate banking accounts to record the receipt of (*a*) application moneys, (*b*) allotment moneys and (*c*) call moneys. This facilitates checking and enables the bank, if required, to give a certificate to the authorities of the Stock Exchange respecting the amount received on application.

Generally, there is issued with the prospectus an application form for the mutual convenience of applicants and the company. The company arranges with its bankers to receive these forms and remit them to the company. Applicants are required to pay the application and/or allotment moneys to the bank, or direct to the company, or its other agents, *e.g.*, its brokers. In other cases, the applicant may apply by letter, but an official form is to be preferred, since its employment may avoid subsequent disputes as to the terms of the issue (*see* Specimen Forms, pp. 700–2 and 708).

The amount payable on application on each share must not

be less than 5% of the nominal value of the share (S. 39, s.-s. (3)).

Application and Allotment.—With the possible exception of transfer, the most common way of becoming a member of a company is by application for, and allotment of, shares. The company issues a prospectus inviting applications for its shares. When enough applications have been received, the company accepts such of them, either wholly or in part, as it thinks fit, and signifies its acceptance of the applications by formal allotment. As soon as notice of the allotment (the allotment letter) has been posted to the applicant, *i.e.* put under the control of the post office in a manner authorised (*London and Northern Bank Ex parte Jones* [1900], 1 Ch. 220), even though the allotment letter never reaches the applicant, the contract is complete, although it may be rescinded in certain circumstances (*see* p. 104); and may be abandoned by mutual consent of the company and the allottee so long as his name has not been entered on the register. Where the company itself offers shares to a particular person, the contract is complete immediately that person accepts the offer and communicates his acceptance. Until formal allotment is made, and notice thereof is posted, the application to take shares can be withdrawn by written or verbal notice received by the company. Notice of allotment is unnecessary where the company is under some contractual liability to allot the shares, *e.g.*, to the vendor of a business, or to the subscribers to the memorandum, or to the directors who have signed the undertaking to take and pay for their qualification shares (S. 140, s.-s. (2)).

Notes on Application and Allotment Sheet.—(1) Wherever possible, the number of the allotment letter, and the letter of regret (if any) should correspond with the number of the application. This is not always possible, however, and some companies prefer to number each serially from 1 upwards.

(2) In many cases, the Cash Book folio can be omitted, the entry being put through in total. Where shares are issued at a premium, a column should be provided next to the allotment columns, as the premium is usually collected with the allotment money. Where shares are issued at a discount, the amount credited as discount can conveniently be recorded in an additional column.

(3) Shareholders are usually given the right to pay up in full at once only where the full nominal value of the shares is payable by instalments on fixed dates, and interest is generally

APPLICATION AND ALLOTMENT SHEET

Issue of.....shares of.....each in The Practice Co. Ltd., issued at.....per share.

Date of Application.	No. of Application.	Name of Applicant.		Address.	Description.	No of Shares Applied For.	Amount received on Application.		Date of Allotment.	No. of Shares Allotted	Distinctive Nos.	
		Surname.	Full Christian Names.				C B. Fol	Amount.			From.	To.

No. of Allotment Letter.	Total Amount due on Application and Allotment.	Balance due on Allotment.			Amount returned to Applicant.			No. of Letter of Regret.	Balance due if paid up in full.	Interest allowed at . % p.a.	Net amount due.	C B. Fol.	Date rec'd	Amounts paid in advance of Calls.			Folio in New Register of Members.	No of Certificate.	Remarks.
		Date.	C.B Fol.	Amnt.	Date	C B Fol	Amnt.							Date	C B Fol	Amnt.			

Chairman's initials ....

allowed on such payments. Otherwise, they may be allowed by the articles to pay up moneys in advance of calls. Columns not applicable should be omitted.

(4) If the sheets are to be used as a temporary Register of Members pending preparation of the Register proper, the reference to " Folio in *New* Register of Members " is advisable (see *Ex parte Cammell* [1894], 2 Ch. 292), otherwise a reference to " Folio in Register " may be taken as evidence that the allotment sheets were not intended to be such Register. An index will be required, unless the names are in alphabetical order, for such time as the sheets are used as the Register of Members (S. 96). The application forms may be used for such purpose if sorted alphabetically as suggested on p. 139.

(5) Although formal allotment is unnecessary in respect of shares agreed to be taken by the signatories to the memorandum, or by the directors who have signed the undertaking to take and pay for their qualification shares (S. 140, s.-s. (2)), they should be entered on the sheets to make the latter complete. Shares allotted for a consideration wholly or partly other than cash, *e.g.*, to vendors, should also be entered. In these instances, the facts should be stated in the Remarks Column, and a separate sheet employed.

(6) In the Remarks Column, any titles or distinctive modes of address should be noted, also any applications which are to have special treatment, *e.g.*, forms initialled by directors, underwriters, etc.

(7) It is advised that the sheets be in loose leaf form to facilitate spreading the work over a number of clerks.

(8) Where an application is for more than one class of shares, a cross reference, indicated by a code prefix, is necessary; or, if preferred, dummy duplicates, clearly marked, may be made out for each class.

(9) In the event of the application money received being insufficient for the shares applied for, the applicant should be immediately advised that unless the balance is paid by return, his application will be rejected, or the company may issue a smaller number than that applied for, as this is usually a condition contained in the application form. The form should be placed in a suspense file or tray, and on the money not being forthcoming, the application form returned with a remittance and appropriate letter, preferably by registered

post. Where an issue is heavily oversubscribed, remittances received after the lists have been closed should be returned with a printed notice that they were received too late for inclusion. If the issue is oversubscribed, it is the practice to give "country" applications consideration, even though the list has had to be closed.

(10) A summary sheet should be prepared, to which the totals of each sheet are carried. At the foot will appear a note similar to the following :—

..... Shares of each, payable as to ..... on Application and ..... on Allotment, numbered from to both numbers inclusive, allotted this ..... day of ..... 19 .

The date should be filled in by the Chairman of the Meeting which allots the shares, and he should sign the summary sheet and initial each other sheet.

The application forms, when received at the company's office, should be scrutinised to see that they are apparently in order. If they show any indication that a person is applying as agent for another, his authority should be called for.

In large issues, likely to be popular, there is often a good deal of "stagging," *i.e.* a person applies for a block of shares and pays the application money, anticipating that the issue will quickly go to a premium in the market, and so enable him to sell the shares allotted to him at a profit before the allotment money is to be paid. So far as it possibly can the company will reject "stags"; but only those experienced in share issues can detect this kind of applicant. The great objection to them is that they cause severe fluctuations in the market value of the shares, and tend to prevent the company's making any effective choice of members.

It should be noted that it is not necessary that the minimum subscription should be received in actual cash. Cheques taken in good faith shall be deemed to be sums "paid to and received by the company" (S. 39, s.-s. (1)). The minimum subscription must be a fixed amount and not merely a percentage of the amount offered for subscription; it must be definite and comprise only shares payable wholly in cash. The minimum applies to the *nominal* amount of the shares applied for, not to the amount payable on application (*see* also pp. 119 *et sqq.*).

Care should be taken in drafting the form of application to give the directors power to allot fewer shares than the number applied for; otherwise, allotment of a less number of shares than the number applied for is not an unconditional acceptance of the offer to take the shares, and is invalid unless a fresh acceptance of what is now an offer by the company is obtained from the applicant.

The Application and Allotment sheets should be prepared in a form similar to that shown on p. 136. The application forms should be serially numbered as received and should be entered in numerical order in the appropriate columns, and an index be prepared, preferably, by alphabetical filing of the application forms.

Where various classes of shares and debentures are issued, it is convenient to employ differently coloured sheets and forms for each class, although this will not prevent some applicants from applying on the wrong form. In some instances it may be desirable to sort out the forms in order of magnitude before numbering, and thus to be able to arrive readily at the incidence of the applications.

The entries on the Application Sheets must be checked back to the application forms, and to the pass book or credit sheets obtained from the bank. Where applications have been received direct or through agents, independent lists will be available, to which the checking must be done. Every clerk must initial for the work he has performed. Having agreed the totals, the secretary should initial the sheets, which will then be ready for the directors to proceed to allotment.

Oversubscription.—Where an issue has been oversubscribed, directors must decide on their course of action as regards the surplus subscriptions. The situation may be dealt with in one of the following ways :—

(*a*) Choose the required number of applicants to make up the share capital available, and return to the remainder their application moneys, accompanied by a Letter of Regret;

(*b*) Allot to every applicant a number of shares bearing the same proportion to the number applied for as the total capital available bears to the total capital applied for, *i.e.* all applicants are made to abate proportionately.

(*c*) Allot in full to the applicants for either the smallest, or the greatest numbers of shares, and to others on a gradually

diminishing scale. If this method be decided upon, the factors to be considered are whether a large number of small holdings or a small number of large holdings is more to the company's advantage, offsetting the respective advantages and disadvantages of the number of entries which will be necessary in the register of members, dividend lists, etc., against the danger of calls being unpaid. A large number of small holdings means correspondingly increased labour in writing up books, etc., but it also diminishes the amount unpaid in the event of any individual shareholder failing to meet a call made upon him.

Methods (*b*) and (*c*) above can only be adopted where the application letter authorises allotment of any less number of shares than those applied for, which it usually does. In any case of partial allotment, the excess application money is usually applied in reduction of the amount due on allotment. Except in heavy oversubscriptions, methods (*b*) or (*c*) may avoid all the work entailed on a return of application moneys.

Amongst the applicants, there may be certain persons to whom it is desirable to allot in full in view of their connections with probable customers, or their ability to influence business in other ways. On the other hand, there may be competitors or other persons whom it is desired to exclude, but naturally such applicants would avoid disclosure of the fact by applying in the name of nominees.

It is often difficult to be sure who really is beneficially entitled to the company's share capital, and who really controls the company, by reason of the fact that whole blocks of shares may be in the names of nominees. It is thought that the Annual Return contemplates disclosure of the actual owners of shares, so that, to the extent that the practice of holding in the names of nominees prevails, the intentions of the legislature are defeated.

Allotment by an improperly constituted Board of Directors is invalid unless articles expressly validate acts by directors in such circumstances, or unless an applicant, desirous of retaining the shares, can bring the irregular proceeding within the rule laid down in *Royal British Bank* v. *Turquand* [1856], 6 E. & B. 327, viz. that persons dealing with a registered company are, where the act done by the company is within its powers, entitled to assume that the act has been done regularly. But an irregular allotment may be subsequently ratified by a properly constituted Board (*re Portuguese Copper Mines* [1890] 45 Ch D

16). Directors must, as trustees of the company, allot fairly, and for the benefit of the company as a whole, and not to secure some personal end, *e.g.*, to control the voting power (*Piercy* v. *S. Mills & Co.* [1920], 1 Ch. 77).

Usually, the secretary would consult his directors prior to the meeting when allotment is to be made, and have ready for the meeting marked lists, showing exactly the number of shares to be allotted to the respective applicants. The directors then pass a resolution allotting the shares, and the chairman initials each sheet, and any alterations in the allotment column.

After allotment, the secretary must have prepared the allotment letters and have them checked back with the sheets. Allotment Letters and Letters of Regret (*see* specimens, pp. 703–4 and 709) should now be posted, the latter accompanied by remittances for the moneys returned. It is recommended that a note of the exact time of posting the Allotment Letters be inserted on the Summary Sheets as well as in the Postage Book, and a certificate of posting be obtained.

The Allotment Letter usually informs the allottee of the necessity for preserving it, and also that, in due course, it will be exchanged for a share certificate.

Allotment Letters must be stamped with an impressed stamp of one penny if the nominal amount allotted is under the value of £5, and with a sixpenny stamp if of a nominal value of £5 or over.

If no prospectus is issued, allotment must not take place until at least three days have elapsed after a statement in lieu of prospectus has been filed, otherwise the allotment is voidable (S. 41).

It should be noted that the provision that application moneys must be returned within forty-eight days of the issue of the prospectus, if the minimum subscription be not reached at the expiration of forty days from such issue, holds good only where a prospectus has been issued. In any other case, the directors may allow any reasonable time to elapse, but their withholding allotment for an unreasonable time would give the applicant the right to avoid the allotment (*Ramsgate Victoria Hotel* v. *Montefiore* [1866], L.R. 1 Ex. 109). What is an unreasonable time is a question of fact in each case.

Split Allotments.—In recent years, in the case of large popular share issues, it is not unusual to find that many trans-

fers are put through against allotment letters; in fact, transfers begin to come in shortly after the allotment letters are posted. This is largely the result of "stags" hastening to realise profits on their allotments.

Such transfers impose on the registration department a very heavy strain just at a time when the department is fully occupied in the preparation of the Share Register, Share Certificates, etc., and the practice has therefore grown up of giving allottees the right to split allotments, *i.e.* the right to renounce in favour of one or more persons. In a few instances, the right is merely to nominate some other person to the whole allotment, but generally the right is not restricted, and may even extend to allowing nominees, in their turn, to split. A time limit should be imposed, say four, five, or six weeks, for the exercise of the right.

Additional columns should be provided on the Allotment Sheets for recording the renunciations, and the particulars regarding the nominees should be entered on supplementary Allotment Sheets, ruled similarly to the original sheets, and cross-referenced.

By this means, those stags who unload immediately are eliminated, and the Share Register and Share Certificates can be made out with the assurance that they will not be disturbed so quickly as might otherwise be the case. Moreover, the registration of transfers is eliminated, and certification is also dispensed with, as the original allottee is required to deposit his letter of renunciation along with the allotment letter, receiving in return split allotments which he can deliver to his nominees. Such "split" allotment letters must be duly stamped. Doubts have been raised as to the legality of the practice. These doubts cannot, however, be resolved until a case is decided by the Court.

Offers to Shareholders.—Articles commonly provide that any new issue of shares must first be offered to the existing members, usually in proportion to their holdings, before being offered for public subscription. Where this is so, a list must be prepared showing the number of new shares for which each member is entitled to apply, usually to the nearest whole number. Thus, if one share is to be offered for every three held, a holder of 10 shares would be offered 3, a holder of 11 would be offered 4, although if articles provide for strict pro-

portions, fractional certificates (*see* pp. 713-4) may be necessary. On the list, columns should be provided for recording acceptances, renunciations, cash receipts, etc., similar to Application and Allotment Sheets, *mutatis mutandis*.

A circular will be sent, stating the reasons for the issue, accompanied by an offer showing the number of shares to which each member is entitled. Generally, members are given the right to renounce their rights in favour of other persons. It is also usual to give the members the right to apply for further shares that may become available through other members renouncing their rights entirely.

The prospectus or circular issued to existing members or debenture holders does not have to be registered with the registrar of companies (S. 35, s.-s. (5)).

Members may wish to sell a portion of their rights, in which case they will apply to the company for " split " renunciation forms, for the required numbers of shares.

A letter of renunciation, like a letter of allotment, must be stamped with a penny impressed stamp if the nominal value of the shares is less than £5, and with a sixpenny stamp if of £5 or over.

The right to participate in future issues is sometimes negotiated by means of an " Option Certificate " or " Certificate of Option Rights over Shares." A certificate of this kind must be stamped with a penny impressed stamp. The " Option Certificate " usually requires that no transfer of an option shall be made without the production of the certificate, and it must be surrendered before a new certificate can be issued in exchange. The options may be for subscription at par or at a premium.

Commencement of Business.—By S. 94 :—

(1) Where a company having a share capital has issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers unless—

(*a*) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and

(*b*) every director of the company has paid to the company, on each of the shares taken or contracted to be

taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and

(*c*) there has been delivered to the registrar of companies for registration a statutory declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with.

(2) Where a company having a share capital has not issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers, unless—

(*a*) there has been delivered to the registrar of companies for registration a statement in lieu of prospectus; and

(*b*) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash; and

(*c*) there has been delivered to the registrar of companies for registration a statutory declaration by the secretary or one of the directors in the prescribed form that paragraph (*b*) of this subsection has been complied with.

(3) The registrar of companies shall, on the delivery to him of the said statutory declaration and, in the case of a company which is required by this section to deliver a statement in lieu of prospectus, of such a statement, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled.

(4) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(5) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(6) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without

prejudice to any other liability, be liable to a fine not exceeding fifty pounds for every day during which the contravention continues.

(7) Nothing in this section shall apply to—

(*a*) a private company; or

(*b*) a company registered before the first day of January, nineteen hundred and one; or

(*c*) a company registered before the first day of July, nineteen hundred and eight, which has not issued a prospectus inviting the public to subscribe for its shares.

Where a prospectus has been issued, the statutory declaration cannot be made and the certificate to commence business cannot be obtained, if the minimum subscription (*see* p. 94) has not been reached; and, in that event, the application moneys must be returned (*see* p. 119). Should the promoters wish to go on, it will be necessary to review the minimum subscription, to see whether the company can be started on a smaller working capital, and to issue a new prospectus. If the minimum subscription has been stated in the articles (which is neither necessary nor advisable) these will have to be altered by special resolution. The Registrar will not file a new prospectus unless it is accompanied by a statement that the subscriptions have been returned and no shares allotted.

It is to be noted that by s.-s. (4) above any contract made by a company before the date of the issue of the certificate is provisional only. If a company never becomes entitled to commence business, it cannot be sued on any contracts express or implied that it may have entered into (*Otto Electrical Manufacturing Co.* [1906], 2 Ch.D. 390). But the persons contracting with the company cannot treat such contracts as non-existent, since the company may at some time obtain a certificate to commence business, in which case those persons will be bound. For that reason a contractor should always have inserted in such contracts a provision whereby he may rescind the contract in the event of the company not being entitled to commence business within a reasonable time.

Return of Allotments.—By S. 42 :—

(1) Whenever a company limited by shares or a company limited by guarantee and having a share capital makes any allotment of its shares, the company shall within one month thereafter deliver to the registrar of companies for registration—

(*a*) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount, if any, paid or due and payable on each share; and

(*b*) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) Where such a contract as above mentioned is not reduced to writing, the company shall within one month after the allotment deliver to the registrar of companies for registration the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and those particulars shall be deemed to be an instrument within the meaning of the Stamp Act, 1891, and the registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section twelve of that Act.

(3) If default is made in complying with the requirements of this section, every director, manager, secretary, or other officer of the company, who is knowingly a party to the default, shall be liable to a fine not exceeding fifty pounds for every day during which the default continues :

Provided that, in case of default in delivering to the registrar of companies within one month after the allotment any document required to be delivered by this section, the company, or any person liable for the default, may apply to the Court for relief, and the Court, if satisfied that the omission to deliver the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the delivery of the document for such period as the Court may think proper.

Where shares are allotted upon a contract envisaged by s.-s. (2) above, the prescribed particulars should be drawn

up in duplicate, at least, the denoted copy can then be used for filing at the company's offices, the stamped copy being delivered to the registrar of companies for registration.

The prescribed particulars referred to in s.-s. (2) above are set out in Companies Form No. 52 (the *Companies (Forms) Order*, 1929), and are as follows :—

(1) The number of shares allotted as fully or partly paid up otherwise than in cash.

(2) The nominal amount of each share.

(3) The amount to be considered as paid up on each such share otherwise than in cash.

(4) If the consideration for the allotment of such shares is services, or any consideration other than that mentioned below in Part V, state the nature of such consideration, and the number of shares so allotted.

(5) If the allotment is made in satisfaction or part satisfaction of the purchase price of property, give a brief description of such property and full particulars of the manner in which the purchase price is to be satisfied—(*a*) Total amount considered as paid on —— shares allotted otherwise than in cash, (*b*) Cash, (*c*) Amount of debt released or liabilities assumed by the purchaser (including mortgages on property acquired).

(6) Give full particulars, in the form of the following table, of the property which is the subject of the sale, showing in detail how the total purchase price is apportioned between the respective heads :—

Legal Estates in Freehold Property and Fixed Plant and Machinery and other Fixtures thereon.[1]
Legal Estates in Leasehold Property.[1]
Fixed Plant and Machinery on Leasehold Property (including Tenants', Trade and other Fixtures).
Equitable Interests in Freehold or Leasehold Property.[1]
Loose Plant and Machinery, Stock in Trade and other Chattels.[2]
Goodwill and Benefit of Contracts.
Patents, Designs, Trade Marks, Licences, Copyrights, etc.
Book and other Debts.
Cash in Hand and at Bank on Current Account, Bills, Notes, etc.
Cash on Deposit at Bank or elsewhere.
Shares, Debentures, and other Investments.
Other Property, viz.

One return should be made to serve for all allotments within the month preceding the date of filing. All companies limited by shares must comply with S. 42, whether guarantee, private, or public companies, including a company licensed to dispense with the word " Limited " as part of its name.

Share Certificates.—A share certificate under the common seal of the company specifying any shares held by any

[1] Where such properties are sold subject to mortgage, the gross value should be shown.

[2] No plant and machinery which was not in an actual state of severance on the date of the sale should be included under this head.

member is *prima facie* evidence of the title of the member to the shares (S. 68), and, if its issue is in form regular, estops the company from denying that the person named in the certificate is the registered holder (*re Bahia Railway Co.* [1868], 3 Q.B. 584; *Balkis Co.* v. *Tomkinson* [1893], App. Cas. 396), or that shares named as fully paid are, in fact, fully paid (*Burkinshaw* v. *Nicolls* [1878], 3 A.C. 1004; *Monarch Motor Car Co.* v. *Pease* [1903], 19 T.L.R. 148; but for different considerations applying where the certificate has been forged, see *Ruben* v. *Great Fingall Consolidated* [1906], App. Cas. 439).

There is no provision in the Act that the seal must be affixed, but having regard to S. 68, it is the universal practice to seal certificates, and if a Stock Exchange quotation is desired, articles must provide for the sealing of all share and stock certificates. A company has no right to insert on the certificate any memorandum as to lien; the certificate must be a mere statement of ownership (*In re W. Key and Son, Ltd.* [1902], 1 Ch. 467).

Within two months after allotment of any of its shares, debentures or debenture stock, and within two months after the date on which a transfer of any such shares, etc., is lodged with the company (*see* p. 173), the company must complete and have ready for delivery the certificates thereof, unless the conditions of issue otherwise provide (S. 67, s.-s. (1)).

If calls are likely to be made at an early date, the conditions of issue usually provide that the Allotment and Call Letters shall constitute the evidence of title, and that share certificates need not be issued until the shares are fully paid. If calls are not likely to be made, the certificates can be issued for the shares as partly paid, the amount paid up being inserted in the certificate. Where the balance of the share is called up later, it should be endorsed by the company stating clearly on the certificate the further amount paid. Reference should be made to the Stock Exchange rules as to the matter that should be printed on them if a quotation is desired (*see* p. 684). Certificates should be serially numbered. (A specimen share certificate is shown on p. 695.)

Certificates are issued free in exchange for the allotment letters and bankers' receipts for the amounts due on application, allotment, and calls (if any). When the certificates are ready, the shareholder should be advised by post that he may

attend at the company's office and exchange these documents for the certificate, or that he may have them sent to him upon receipt by the company of his written request, which, in terms, should absolve the company from liability should the certificates be lost in transmission. It is advised that certificates should be sent by registered post, and that a receipt should be obtained for every certificate. Either the certificate, or the letter enclosed with the certificate, should have a " tear off " form of receipt bearing the number of the certificate. *See* specimen form of share certificate in the Appendix at p. 695.

Certificates must be carefully checked before issue to see that all particulars are correctly entered.

Where a certificate has been lost or mislaid, the issue of a duplicate is governed by the terms of the articles, but is usually allowed on payment of 1*s.*, subject to the shareholder giving the company a letter of indemnity (6*d.* stamp).

If, after a duplicate certificate has been issued, the original certificate is subsequently lodged with the company, enquiries must at once be made, the position be cleared up, and one of them be cancelled forthwith. Cancelled certificates should be endorsed with details of the circumstances in which they were cancelled, and filed. Cancellation may be effected by a rubber stamp or by the word " Cancelled " being perforated on them. Certificates must be unmistakably cancelled, and carefully preserved after cancellation, to avoid any legal proceedings by a holder or transferee, if shares are improperly dealt with owing to the company's negligence in this matter.

Usually, certificates are only charged for when issued as duplicates, or when issued as " splits," *i.e.* where a member asks for his holding to be evidenced by separate certificates for small holdings in lieu of one certificate for the whole.

Funding Certificates.—Where a company is in difficulties, and heavy arrears of interest or dividend are due to its debenture, or preference share, holders, which the company is unable to discharge, it sometimes resorts to the expedient, by arrangement with the holders of such debentures or shares, of issuing what are called Funding Certificates for the amount of the interest or dividend accrued due. By these certificates the company engages itself to pay the amount due on or before a named date, and, in the meantime to pay interest on the amount, usually by half-yearly payments. These certificates

are transferable by writing under hand (rarely by deed), either by endorsement, or by the issue of a new certificate. The certificates do not require to be stamped.

Calls.—Where the due dates of the instalments on shares are stated in the prospectus or conditions of allotment, it is usual, though not compulsory, to send a reminder to the allottees. Such instalments are not actual calls, since calls proper are made by resolution of directors after allotment. Calls will be made by the directors as the money is required.

Articles may vest the power to make calls in the shareholders in general meeting, but usually this matter is left to the directors. Articles must be carefully followed, since they are essential terms of the contract with the shareholders, and any departure from them may invalidate the call. The board meeting at which a call is made must be properly constituted, and the necessary quorum be present. A call made at a meeting at which a quorum was not present, but which was subsequently confirmed by a proper quorum at a later meeting, has been held to be good (*In re Phosphate of Lime Co., Austin's Case* [1871], 24 L.T. 932).

The directors must exercise their power to make calls for the benefit of the company, *e.g.*, they must not exempt their own shares, or make calls simply to provide money to pay their own fees.

A company may, if so authorised by its articles, make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares, or accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up, or pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others (S. 48).

The call resolution must state the amount of the call, and the date of payment, and the call is due on the date of the resolution, not merely on the date when notice is given, even if a subsequent date is named for payment.

Since a debt due on a call is based on the memorandum and articles, calls are specialty debts (S. 20, s.-s. (2)), and do not become statute-barred until after the expiration of twenty years. If a member dies after a call has been made, the

amount is payable out of his estate; the same result follows if the call is made after his death, should his name remain on the register (*New Zealand Gold Extraction Co.* v. *Peacock* [1894], 1 Q.B. 622).

Articles usually provide for interest being charged on overdue calls, and give the directors power to pay interest on amounts paid in advance of calls provided that the rate which they arrange with the shareholders does not exceed a stated amount—Art. 16 of Table A says " not exceeding, without the sanction of the company in general meeting, six per cent." Since such interest on calls in advance is a debt due by the company, it must be paid, even if there are no profits, and it may be met out of capital (*Lock* v. *Queensland Mortgage Co.* [1896], A.C. 461). Calls paid in advance are not repayable whilst the company is a going concern. In the event of liquidation, repayment of calls paid in advance is postponed to all creditors' claims, but, in the adjustment of the rights of contributories themselves, is repaid before called-up capital.

It is considered unnecessary to make up a " Call List," since the usual form of share ledger gives all the information required, and the call letters can be prepared direct from it. Nevertheless, it is usual to prepare a list in a form similar to that on p. 152.

The receipts for calls should be made out by the Share Department, although the Accountant's Department will record the cash. The share ledger should be posted from the under copies of the receipts and checked back with the call cash book. Seven days after the due date of the call, a list of unpaid calls should be prepared and reminders sent out; follow-ups should be sent out, say, one week later, followed by threat of forfeiture.

If partly paid share certificates have been issued, they should be called in for endorsement or replacement. The call receipt should then be returned to the company in exchange for the new or endorsed certificate.

Reserve Liability.—A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except

THE PRACTICE COMPANY, LIMITED.

CALL LIST.

Second and Final Call of 5*s*. per share on 50,000 *Ordinary* Shares of £1 each.
Date Call made *July* 4, 19.., payable on or before *July* 18, 19...

No. of Call Letter.	Share Ledger Folio.	Shareholder.			No. of Shares Held.	Amount of Call Due at 5s.			Paid.				Outstanding.						Remarks
		Name.	Address.	Title, etc.					C.B. Folio	Date.	Amount.					No of Days	Interest Due.		
						£	*s*	*d*		19	£	*s*	*d*	£	*s*.	*d*.		£	*s*.	*d*	
240	1/47	Ross, Robert.	41 Greek St., Soho, W.	Esq.	400	100	0	0	321	July 18	100	0	0								NOTE.—In this column will be noted any instructions received to apply to Bankers, or powers of attorney, etc, for further calls.
241	1/48	Chalmers, George.	Maidenhead, Berks.	Captain D.S.O.	200	50	0	0	320	,, 16	50	0	0								
242	1/49	Cross, Mary.	Park St., Southend.	Miss.	100	25	0	0	321	,, 18	25	0	0								
243	1/50	Ravary, Ann.	16 Gloucester Terrace, W.	Mrs.	200	50	0	0	321	,, 18	50	0	0								

in the event and for the purposes aforesaid (S. 49). This is known as "reserve liability," and sometimes as "reserve capital," and is designed for the protection of creditors. The only companies making extensive use of this privilege are those formed for the purposes of banking and similar businesses, as it gives an added appearance of stability to such concerns.

Reserve liability may be created originally by the articles, and then the articles might be altered by special resolution to make the reserve callable; for, subject to the Act, and the memorandum, any article may be altered (*Malleson* v. *National Insurance Corporation* [1894], 1 Ch. 200). But the wording of S. 49 would appear to mean that where reserve liability is created by special resolution the capital reserved never can be called except for the purpose mentioned. And it has been decided that such capital cannot be mortgaged by the company, since, by its terms, S. 49 expressly reserves the uncalled capital for the benefit of the general creditors in a winding up (*Bartlett* v. *Mayfair Property Co.* [1898], 2 Ch. 28).

Annual Return.—By S. 108 :—

(1) Every company having a share capital shall once at least in every year make a return containing a list of all persons who, on the fourteenth day after the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return or, in the case of the first return, of the incorporation of the company.

(2) The list must state the names, addresses, and occupations of all the past and present members therein mentioned, and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or, in the case of the first return, of the incorporation of the company by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers, and, if the names therein are not arranged in alphabetical order, must have annexed to it an index sufficient to enable the name of any person in the list to be readily found :

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the registrar of companies, the list must state the amount of stock

held by each of the existing members instead of the amount of shares and the particulars relating to shares hereinbefore required.

(3) The return must also state the address of the registered office of the company and must contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars :—

(*a*) The amount of the share capital of the company, and the number of the shares into which it is divided;
(*b*) The number of shares taken from the commencement of the company up to the date of the return;
(*c*) The amount called up on each share;
(*d*) The total amount of calls received;
(*e*) The total amount of calls unpaid;
(*f*) The total amount of the sums, if any, paid by way of commission in respect of any shares or debentures;
(*g*) Particulars of the discount allowed on the issue of any shares issued at a discount, or of so much of that discount as has not been written off at the date on which the return is made;
(*h*) The total amount of the sums, if any, allowed by way of discount in respect of any debentures, since the date of the last return;
(*i*) The total number of shares forfeited;
(*j*) The total amount of shares for which share warrants are outstanding at the date of the return;
(*k*) The total amount of share warrants issued and surrendered respectively since the date of the last return;
(*l*) The number of shares comprised in each share warrant;
(*m*) All such particulars with respect to the persons who at the date of the return are the directors of the company as are by this Act required to be contained with respect to directors in the register of the directors of a company;
(*n*) The total amount of the indebtedness of the company in respect of all mortgages and charges which are required (or, in the case of a company registered in Scotland, which, if the company had been registered in England, would be required) to be registered with the

registrar of companies under this Act, or which would have been required so to be registered if created after the first day of July nineteen hundred and eight.

(4) The return shall be in accordance with the form set out in the Sixth Schedule to this Act, or as near thereto as circumstances admit.

(5) In the case of a company keeping a dominion register, the particulars of the entries in that register shall, so far as they relate to matters which are required to be stated in the return, be included in the return made next after copies of those entries are received at the registered office of the company.

By S. 109.—(1) Every company not having a share capital shall once at least in every calendar year make a return stating—

(*a*) the address of the registered office of the company;

(*b*) all such particulars with respect to the persons who at the date of the return are the directors of the company as are by this Act required to be contained with respect to directors in the register of directors of a company.

(2) There shall be annexed to the return a statement containing particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required (or, in the case of a company registered in Scotland, which, if the company had been registered in England, would be required) to be registered with the registrar of companies under this Act, or which would have been required so to be registered if created after the first day of July, nineteen hundred and eight.

The appropriate Form is Companies Form No. 6A.

And by S. 110.—(1) The annual return must be contained in a separate part of the register of members, and must be completed within twenty-eight days after the first or only general meeting in the year, and the company must forthwith forward to the registrar of companies a copy signed by a director or by the manager or by the secretary of the company.

(2) Section ninety-eight [*see* p. 127] of this Act shall apply to the annual return as it applies to the register of members.

(3) Except where the company is a private company, or is an assurance company which has complied with the provisions of subsection (4) of section seven of the Assurance Companies Act, 1909, the annual return shall include a written copy,

certified by a director or the manager or secretary of the company to be a true copy, of the last balance sheet [1] which has been audited by the company's auditors, including every document required by law to be annexed thereto, together with a copy of the report of the auditors thereon certified as aforesaid, and if any such balance sheet is in a foreign language there shall also be annexed to it a translation thereof in English, certified in the prescribed manner to be a correct translation:

Provided that, if the said last balance sheet did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets, there shall be made such additions to and corrections in the said copy as would have been required to be made in the said balance sheet in order to make it comply with the said requirements, and the fact that the said copy has been so amended shall be stated thereon.

(4) If a company fails to comply with this section or either of the two last foregoing sections of this Act, the company and every officer of the company who is in default shall be liable to a default fine.

(5) For the purposes of subsection (4) of this section, the expression "officer," and for the purposes of the last two foregoing sections of this Act the expression "director," shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

The registrar of companies has given his opinion that the expression "including every document required by law to be annexed thereto" used in s.-s. 3 above does not include a copy of the Profit and Loss Account, which need not therefore be delivered to him for registration. In the case of a foreign company which has established a place of business in this country, however, it would appear that a copy of the Profit and Loss Account must be delivered with the balance sheet.

Even if no general meeting is held in the calendar year, the list and summary must be filed (*Park* v. *Lawton* [1911], 1 K.B. 588). It is usual then to make it up to December 31st, and to delete the reference to the meeting. Although this complies with S. 110, it does not absolve the company from the penalty under S. 112 for not having held a general meeting.

Deceased or bankrupt persons whose names are on the register at the date of the return must be included in the

[1] See pp. 289 *et seq.*

Annual List. A note should also be made in the Remarks Column that the person is deceased or bankrupt, followed by the name(s) of his personal representative(s) or trustee in bankruptcy, with their relative descriptions, as, *e.g.*, "Bankrupt. A. C. Thomas, Trustee in Bankruptcy."

The Form of Return prescribed by S. 108 as contained in the Sixth Schedule of the Act, is as follows :—

FORM OF ANNUAL RETURN OF A COMPANY HAVING A SHARE CAPITAL.

Annual Return of the COMPANY, LIMITED, made up to the day of 19 (being the fourteenth day after the date of the first or only ordinary general meeting in 19).

The address of the registered office of the Company is as follows :—

Summary of Share Capital and Shares.

Nominal Share Capital £..... divided into [1] {.....shares of £..... each
{.....shares of £..... each

Total number of shares taken up [1] to the ..... day of ..... 19..... being the date of the return (which number must agree with the total shown in the list as held by existing members) . . .

Number of shares issued subject to payment wholly in cash . . . . . .

Number of shares issued as fully paid up otherwise than in cash . . . . . .

Number of shares issued as partly paid up to the extent of ..... per share otherwise than in cash . .

[2] Number of ..... shares (if any) issued at a discount . £

Total amount of discount on the issue of shares which has not been written off at the date of this Return. £

[3] There has been called up on each of ..... shares, £.....

[3] There has been called up on each of ..... shares, £.....

[3] There has been called up on each of ..... shares, £.....

[4] Total amount of calls received, including payments on application and allotment . . . . . £

Total amount (if any) agreed to be considered as paid on ..... shares which have been issued as fully paid up otherwise than in cash . . . . . £

[1] When there are shares of different kinds or amounts (*e.g.* Preference and Ordinary, or £1 and 1s.) state the number and nominal values separately.

[2] If the shares are of different kinds, state them separately.

[3] Where various amounts have been called, or there are shares of different kinds, state them separately.

[4] Include what has been received on forfeited as well as on existing shares.

Total amount (if any) agreed to be considered as paid on ..... shares which have been issued as partly paid up to the extent of ..... per share otherwise than in cash	£
Total amount of calls unpaid	£
Total amount of the sums (if any) paid by way of commission in respect of any shares or debentures or allowed by way of discount in respect of any debentures since the date of the last Return . . .	£
Total number of shares forfeited	£
Total amount paid (if any) on shares forfeited . .	£
Total amount of shares for which share warrants to bearer are outstanding	£
Total amount of share warrants to bearer issued and surrendered respectively since the date of the last Return	Issued £ Surrendered £
Number of shares comprised in each share warrant to bearer	£
Total amount of the indebtedness of the Company in respect of all mortgages and charges of the kind which are required (or, in the case of a Company registered in Scotland, which, if the Company had been registered in England, would be required) to be registered with the Registrar of Companies under the Companies Act, 1929	£

Copy of last audited Balance Sheet of the Company.

[1] NOTE.—Except where the Company is (1) a "Private Company" within the meaning of Section 26 of the Companies Act, 1929, or is (2) an Assurance Company which has complied with the provisions of Section 7 (4) of the Assurance Companies Act, 1909, this Return must include a written copy, certified by a Director or by the Manager or Secretary of the Company to be a true copy, of the last balance sheet which has been audited by the Company's auditors (including every document required by law to be annexed thereto) together with a copy of the report of the auditors thereon (certified as aforesaid), and if any such balance sheet is in a foreign language there must also be annexed to it a translation thereof in English certified in the prescribed manner to be a correct translation. If the said last balance sheet did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets there must be made such additions to and corrections in the said copy as would have been required to be made in the said balance sheet in order to make it comply with the said requirements, and the fact that the said copy has been so amended must be stated thereon.

Private Company.

[2] Certificates to be given by a Private Company.

A. "I certify that the Company has not since the date of the [3] last "Annual Return issued any invitation to the public to subscribe for "any shares or debentures of the Company."

(Signature)

(State whether Director or Secretary.)

[1] This note in the schedule is a recapitulation of S. 110, s.-s. (2).
[2] These certificates are required by S. 111.
[3] In the case of the first Annual Return strike out the words "last Annual Return" and substitute therefor the words "Incorporation of the Company."

B. Should the number of members of the Company exceed fifty the following certificate is also required :—

" I certify that the excess of members of the Company above fifty " consists wholly of persons who are in the employment of the " Company and/or of persons who, having been formerly in the " employment of the Company, were while in such employment, " and have continued after determination of such employment to " be, members of the Company."

(Signature)

(State whether Director or Secretary.)

NOTE.—Banking companies must add a list of all their places of business.

The Return must be signed at the end by a Director or by the Manager or Secretary of the Company.

Delivered for filing by.....

Particulars of the Directors [1] of the ..... COMPANY LIMITED, at the date of the Annual Return.

[2] The present Christian Name or Names and Surname.	Any former Christian Name or Names or Surname.	Nationality.	Nationality of origin (if other than the present nationality)	Usual residential Address.	[3] Other business occupation if any. If none state so.

[1] " Director " includes any person who occupies the position of a Director by whatever name called and any person in accordance with whose directions or instructions the Directors of a Company are accustomed to act.

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

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

LIST OF PERSONS holding Shares in the ..... COMPANY, LIMITED, on the ..... day of ..... 19....., and of Persons who have held Shares therein at any time since the date of the last Return or (in the case of the first Return) of the incorporation of the Company, showing their Names and Addresses, and an Account of the Shares so held.

N.B —If the names in this list are not arranged in alphabetical order, an index sufficient to enable the name of any person in the list to be readily found must be annexed to this list.

Folio in Register Ledger containing Particulars	NAMES, ADDRESSES, AND OCCUPATIONS.				ACCOUNT OF SHARES.					Remarks.
	Surname	Christian Name.	Address.	Occupation.	[1] Number of Shares held by existing Members at Date of Return [1]	[2] Particulars of Shares transferred since the date of the last Return or (in the case of the first Return) of the incorporation of the Company, by Persons who are still Members.		[2] Particulars of Shares transferred since the date of the last Return or (in the case of the first Return) of the incorporation of the Company, by Persons who have ceased to be Members		
						Number.[2]	Date of Registration of Transfer.	Number.	Date of Registration of Transfer	

Signature .....

State whether Director or Secretary or Manager .....

[1] The aggregate Number of Shares held, and not the Distinctive Numbers, must be stated, and the column must be added up throughout so as to make one total to agree with that stated in the Summary to have been taken up.

[2] When the shares are of different classes these columns may be subdivided so that the number of each class held, or transferred, may be shown separately. Where any shares have been converted into Stock, the amount of Stock held by each member must be shown.

[3] The date of Registration of each Transfer should be given as well as the Number of Shares transferred on each date The Particulars should be placed opposite the name of the Transferor and not opposite that of the Transferee, but the name of the Transferee may be inserted in the "Remarks" column immediately opposite the particulars of each Transfer.

The List can most conveniently be prepared in alphabetical order from the Index to the Register of Members (*see* p. 126), thus obviating the necessity of preparing a separate index to the List.

Dominion Register.—By S. 103 :—

(1) A company having a share capital whose objects comprise the transaction of business in any part of His Majesty's dominions outside Great Britain, the Channel Islands, or the Isle of Man may cause to be kept in any such part of His Majesty's dominions in which it transacts business a branch register of

members resident in that part (in this Act called a " dominion register ").

(2) The company shall give to the registrar of companies notice of the situation of the office where any dominion register is kept and of any change in its situation, and if it is discontinued of its discontinuance, and any such notice shall be given within fourteen days of the opening of the office or of the change or discontinuance, as the case may be.

(3) If default is made in complying with subsection (2) of this section, the company and every officer of the company who is in default shall be liable to a default fine.

(4) References to a colonial register occurring in any articles registered before the commencement of this Act shall be construed as references to a dominion register.

And by S. 104 :—

(1) A dominion register shall be deemed to be part of the company's register of members (in this and the next following section called " the principal register ").

(2) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the district where the dominion register is kept, and that any competent court in that part of His Majesty's dominions where the register is kept may exercise the same jurisdiction of rectifying the register as is under this Act exercisable by the Court, and that the offences of refusing inspection or copies of a dominion register, and of authorising or permitting the refusal may be prosecuted summarily before any tribunal having summary criminal jurisdiction in that part of His Majesty's dominions.

(3) The company shall transmit to its registered office a copy of every entry in its dominion register as soon as may be after the entry is made, and shall cause to be kept at its registered office, duly entered up from time to time, a duplicate of its dominion register.

Every such duplicate shall, for all the purposes of this Act, be deemed to be part of the principal register.

(4) Subject to the provisions of this section with respect to the duplicate register, the shares registered in a dominion register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any

shares registered in a dominion register shall, during the continuance of that registration, be registered in any other register.

(5) The company may discontinue to keep a dominion register, and thereupon all entries in that register shall be transferred to some other dominion register kept by the company in the same part of His Majesty's dominions, or to the principal register.

(6) Subject to the provisions of this Act, any company may, by its articles, make such provisions as it may think fit respecting the keeping of dominion registers.

(7) If default is made in complying with subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a default fine.

And by S. 105 :—

An instrument of transfer of a share registered in a dominion register, other than such a register kept in Northern Ireland, shall be deemed to be a transfer of property situate out of the United Kingdom, and, unless executed in any part of the United Kingdom, shall be exempt from stamp duty chargeable in Great Britain.

S. 103, s.-s. (1) says that a company with a share capital " whose objects comprise the transaction of business in a dominion," may keep a branch register in that dominion. Clearly, where the shares of a company registered in Great Britain, are, from whatever cause, largely held and dealt in by residents in British India, Australia, New Zealand, Northern Ireland, or the Irish Free State, etc., it is a convenience that such branch registers may be kept; and the fact that the shares are so held and dealt in would appear to constitute a " transaction of business " sufficient for the keeping of branch registers, since it is an essential part of a company's business to issue and transfer its shares and register its members. It must be noted that in most of the self-governing Dominions, such a company registered in England or Scotland is required to register in the Dominion in a similar manner to a foreign company which establishes a place of business in England or Scotland.

Many companies registered in the self-governing Dominions establish a register of members in London, if they have

numerous shareholders in England, and, subject to the law of the country of registration, such a register is similar to an English company's branch register maintained in India, Australia, etc.

And by S. 107 :—

(1) If by virtue of the law in force in any part of His Majesty's dominions outside Great Britain companies incorporated under that law have power to keep in Great Britain branch registers of their members resident in Great Britain, His Majesty may by Order in Council direct that sections ninety-eight and one hundred of this Act shall, subject to any modifications and adaptations specified in the Order, apply to and in relation to any such branch registers kept in Great Britain as they apply to and in relation to the registers of companies within the meaning of this Act.

(2) For the purpose of this section, the expression " His Majesty's dominions " includes any territory which is under His Majesty's protection or in respect of which a mandate under the League of Nations has been accepted by His Majesty.

A system of cross-advices between a dominion office and the registered office must be established, and standard advice notes, consecutively numbered, are advisable, so that the loss of an advice in transit would be at once apparent. It may even be desirable to go to the length of reporting weekly, fortnightly, or monthly on (along with other matters) the state of the registers, even if it means a " nil " advice. Every advice should be acknowledged by return of post. At dividend dates, the dominion office should be advised in due time of the date on which the register should be closed, and on the declaration of the dividend, the rate, date of payment, etc., should be cabled out, along with the last " advice numbers." The balances on the dominion register should be agreed, by cable, with the copy at the registered office.

Where a shareholder desires his shares to be transferred from a dominion register to the principal register, he should be required (by provision of the articles) to complete a Form of Request (and to pay the prescribed fee, usually 2*s.* 6*d.*). The Form, with the relevant certificates, is then deposited with the company at the dominion office, and a receipt issued by the authorised officer. This receipt can then be exchanged for a

new certificate at the registered office. Some companies endorse the certificate "Transferable in the Company's Books in . . .," and hand the certificate back. In this case, the endorsed certificate is exchanged for a new one. Similar procedure is necessary for transferring shares from the principal to the dominion register.

Such transfers are usually called "Removals," or, somewhat ambiguously, "Transmissions," and the receipts mentioned above "Removal (or "Transmission") Orders." These orders should be numbered consecutively and duplicates should be sent by the next mail after issue to warn the office to expect the orders.

The procedure given later in this book regarding transfers should be applied, *mutatis mutandis*, to these removals, and many companies, for additional safety, require the order to be sealed and approved at a directors' meeting before issue. The order is evidence of title, and if the member sells his shares before re-registration, it may be necessary to certify a transfer against the order. (*See* p. 176.)

At dividend dates, these "removal orders" are also agreed by cable, and are treated as transfers *cum* dividend, unless made after declaration but before payment of the dividend, in which case they are treated as *ex* dividend.

Where a considerable number of dividends are payable to dominion members on shares registered in the principal register, arrangements are usually made for their dividend warrants to be presented at a bank in the dominion, the warrants being suitably marked.

The certificates, orders, etc., in the dominion will be sealed with the official seal. (*See* p. 446.)

Share Warrants.—The power of a company to issue share warrants is given by S. 70, set out on p. 124 *supra*. Reference should also be made to S. 97 (*see* p. 125).

For the purpose of any provision in the articles requiring a director or manager to hold a specified share qualification, the bearer of a share warrant shall not be deemed to be the holder of the shares specified in the warrant (S. 141, s.-s. (2)).

Unlike share certificates, share warrants to bearer belong to the important class of documents known as negotiable instruments. Consequently a *bonâ fide* transferee by delivery of a share warrant who gives value will be entitled to claim the

rights thereunder even though the transferor had no title to the warrant. Hence special care must be taken as regards the material on which, and the method by which, share warrants are printed, and also by the holders, to guard against fraud and theft. Share warrants are usually most elaborately printed, and are deposited by the holders with their bankers for safe custody. If share warrants are issued in different denominations, distinctive colours, and/or alphabetical prefixes to the serial numbers, are often used for the different denominations.

Under most articles, the bearer of a share warrant is not entitled to receive notices from the company, and he may not sign a requisition for calling a meeting of the company, or attend or vote at meetings unless, and only so long as, he has deposited his share warrant with the company, and it remains so deposited. Deposit of the share warrant must be made a stated number of clear days before the bearer thereof proposes to exercise these rights. In exchange for the warrant deposited, the company hands a certificate of deposit to the bearer, and, on due notice being given to the company, the certificate may subsequently be relinquished to the company in exchange for the warrant.

The impressed stamp duty on a share warrant is an amount equal to three times the *ad valorem* stamp duty on the nominal value of the shares or stock comprised in the warrant. If a share warrant is issued without being properly stamped, the company and the principal officer of the company at the time of issue shall be liable to a fine of £50 (*Stamp Act*, 1891). The stamping must be done before the warrant is filled in and signed.

Share warrants are often printed both in English and French, as they are popular abroad owing to the ease with which they can be transferred. The values of the figures are the sterling values. The issue of share warrants is usually confined to companies in a sound financial position, paying regular dividends, and with a considerable body of foreign members.

The issue of share warrants is, by virtue of SS. 70 and 97, within the discretion of the directors unless the articles reserve the power to general meetings. The issue is made subject to conditions, which must conform to the Act and the company's articles, and, as a general rule, these conditions are more conveniently set out not in the warrant itself but in a leaflet, issued separately.

The following is a model set of conditions for an issue of share warrants :—

1. Share warrants shall only be issued on the request in writing of a person registered for the time being as a holder of the shares in respect of which the warrant is issued.

2. The request shall be in such form and supported by such evidence as to title as the directors may require.

3. Before the issue of a share warrant, the certificate for the shares to be included in it shall be delivered up to the directors by the applicant.

4. The stamp duty payable on each share warrant shall be paid by the applicant and also such fee (not exceeding —— for each share warrant) as the directors may fix.

5. Share warrants shall be issued under the seal of the company and signed by one director and the secretary of the company.

6. Each share warrant shall represent such number of shares as the directors think fit.

7. Coupons shall be attached to each share warrant providing for the payment of dividends upon the shares included therein. Each coupon shall be numbered and shall be payable to bearer.

8. Upon the declaration of a dividend, the directors shall publish an advertisement in the —— newspaper and such other newspapers as they shall think fit stating the amount of the dividend, the date of payment, and the number of the coupon to be presented. Any person thereafter presenting the coupon so numbered for payment and delivering up the same at the company's office shall be entitled to receive the dividend payable on the shares specified in the share warrant upon the terms of the notice given in the advertisement, and the delivery of such coupon shall be a good discharge to the company.

9. If any share warrant or coupon becomes defaced or is lost or destroyed the directors may upon such terms and upon such indemnity as they think fit issue another share warrant or coupon in lieu thereof.

10. No person holding a share warrant shall be entitled to attend or vote at any meeting of the company unless at least three days before the date of the said meeting he shall have deposited the share warrant at the office of the company together with a written statement as to his name and address.

Such share warrant shall remain at the office of the company until after the said meeting or any adjournment thereof. The directors shall upon receipt of such share warrant and statement give to the depositor a certificate [1] which shall entitle him to attend and vote at the meeting in the same way as a registered holder. Upon return of this certificate the holder shall be entitled to the return of the share warrant deposited by him with the company.[2]

It is hardly necessary to add, in view of the negotiability of share warrants, that before issuing warrants they should be most carefully checked with the applications therefor and the cancelled share certificates, and that the stock of unissued share-warrants should be kept under lock and key, and further safe-guarded, by recording particulars of the numbers printed, issued, cancelled, and spoiled, so that at any time the actual number of unissued warrants that should be in stock may be readily and accurately determined.

Stock Warrants.—It has been argued that the Act of 1929 abolished the issue of stock warrants to bearer. S. 380 says that the word "share" includes stock, except where a distinction between stock and shares is expressed or implied. In *Pilkington* v. *United Railways*, etc. [1930], 2 Ch. 108, Luxmoore, J., declared that, on the true construction of the Act of 1929, companies are still entitled to issue stock warrants to bearer.

Lien.—The articles of the majority of companies provide that the company shall have a first and paramount lien on the shares of each member for debts due by him to the company whether accrued due or not (*see* Table A, Arts. 7–10). Generally, the lien so created extends to dividends. If articles give no lien on shares, a lien may be created by special resolution (*Allen* v. *Gold Reefs of W. Africa* [1900], 1 Ch. 656), and a lien may be extended in the same way. It should be borne in mind that the Stock Exchange will not grant a quotation for shares unless articles provide that there shall be no lien on fully paid shares.

A lien on shares may be enforced by sale of the shares, and articles usually confer power of sale. But a lien may not be

[1] This certificate need not be stamped.

[2] Where the holder is to have the right of voting, etc., this method is most convenient and it is the one adopted in Palmer's *Company Precedents*, Pt. 1, Form 541.

enforced by forfeiture of the shares. Shares can only be forfeited by way of penalty for the non-payment of calls. Since a lien on shares constitutes an equitable charge or mortgage within the meaning of the *Conveyancing Act*, 1881, S. 2, s.-s. 6 (now *Law of Property Act*, 1925, S. 95, s.-s. 1), (*In re General Exchange Bank* [1871], 6 Ch. 818), a shareholder or his transferee, on payment of the debt, can require the company to assign both debt and lien to his nominee (*Everitt* v. *Automatic Weighing Machine Co.* [1892], 3 Ch. 506).

Where articles give a lien on shares, and a member whose holding is encumbered sells part of it, the shares purchased will be subject to the lien, but the company must first exercise its lien against the diminished holding of the vendor (*Gray* v. *Stone and Funnell* [1893], 69 L.T. 282).

Since no notice of any trust can, in England, be entered on the register of members, a company should refuse to recognise officially notice of lien on shares served upon it by third parties. But notwithstanding, a company may be affected by such notice. Where, for example, a company has received notice of lien on a member's shares, and subsequently, in a transaction with that member outside the relationship of company and member, becomes his creditor, the company's lien in respect of that transaction is postponed to the prior equity of the person who has given notice of lien. Companies should, therefore, keep an unofficial record of notices of lien served upon it by third parties, in case a duplicate certificate is asked for, or a transfer is executed by a member in respect of whose shares notice of lien has been served. A company's lien attaches to shares in the name of the registered holder, it cannot therefore operate against debts due to the company from a beneficiary of the shares (*In re Perkins* [1890], 24 Q.B. 613). But it is valid against the registered holder even though he be a trustee (*New London & Brazilian Bank* v. *Brocklebank* [1882], 21 Ch.D. 302) unless, in the latter case, the company had knowledge of the trust before the debt was incurred.

The chief authorities on the subject of lien are *New London & Brazilian Bank* v. *Brocklebank, supra ; Bradford Banking Co.* v. *Briggs* [1886], 12 App. Cas. 29; and *Mackereth* v. *Wigan Coal & Iron Co.* [1916], 2 Ch. 293.

In *New London & Brazilian Bank*, etc., the articles gave the company a paramount lien on its shares, and the company

sought to strengthen this lien by a further clause exempting it from being bound by or recognising " any agreement to transfer or charge any share; or any equitable, contingent, future or partial interest, or other right in, to, or in respect of such share, except an absolute right thereto in the person from time to time registered as the holder thereof." Shares were acquired with trust money. One of the holders became indebted to the bank. The bank had no knowledge at the time the advance was made to the holder that the shares were acquired with trust money, and sought to exercise its lien. It was held that the bank could exercise its lien, and that the beneficiaries under the trust had no right to repudiate the terms of the articles under which the trustees acquired the shares.

In *Bradford Banking Co., etc., supra*, the company's articles gave it " a first and paramount lien and charge available at law and equity upon every share for all debts due from the holder thereof." A shareholder deposited his certificate with a bank as collateral security for an overdraft, and the bank gave notice of its charge to the company. The company gave credit to the shareholder after receipt of the notice. It was held on the construction of the articles and of S. 27 (of 1908) that (*a*) the company had no priority of lien for credit given after receipt of the notice, and (*b*) that notice of a mortgage of shares was not notice of a trust within the meaning of S. 30 of the *Companies Act*, 1862, which corresponds to S. 27 of the 1908 Act, and S. 101 of the Act of 1929, but only notice to a trader of the bank's interest.

In the *Mackereth Case, supra*, shares were registered in the names of executors, one of whom deposited part of the shares with a bank as security for a loan to them by the bank. The bank gave notice to the company. The articles provided that the company should not recognise any holding of shares in trust, or any equitable interest, and that it should have a lien on shares for money due to the company. It was held that the company could not, after receiving notice that the shareholder was not beneficial owner, claim a lien on shares for advances made by the company to one of the executors subsequent to the receipt of notice.

S. 101, therefore, will not protect a company which, in face of a notice that a shareholder is not beneficial owner of the

shares, makes advances to the shareholder; and if he can bring himself within this proposition a person claiming an equitable interest in shares can appeal to the Court to protect his interests. But apart from this, S. 101, and the usual lien clause in the articles, adequately protect the company.

On receipt of notice of a lien on, or other equitable interest in, shares, dividends, etc., the company should return the notice by registered post to the sender together with a letter similar to the following :—

THE PRACTICE COMPANY, LIMITED.
Moorgate, E.C. 2.

..... 19.....

DEAR SIR(S),

The enclosed communication purporting to be a notice of the deposit of certain certificates of $\frac{\text{Shares}}{\text{Stock}}$ of this company is one which the company and its officers are unable to recognise, or in any way act upon, and is accordingly returned.

Yours faithfully,
C. C. Ess,
Secretary.

This protects the company so far as possible. The mortgagee can then obtain and serve on the company notice in lieu of distringas if he so desires, and thus free both himself and the company from future difficulties.

Upon receipt of notice of lien, it will be well if the secretary notifies the Accountant's Department, so that the member's account can be ruled off, and a debit balance be struck as on the date of receipt of notice, thus preserving the company's lien to its full extent. All subsequent transactions should, by arrangement with the member, form the subject-matter of a new account, on terms arranged between the company and the member. If this is not done, the doctrine of the appropriation of payments may be held to apply, and payments made in respect of indebtedness incurred subsequent to receipt of notice be appropriated to the reduction of the old debt for which the company has a lien, leaving the new debt, for which the company has no lien, uncovered.

CHAPTER VII

THE TRANSFER, TRANSMISSION AND FORFEITURE OF SHARES

ONE of the most important duties of the company secretary, requiring meticulous care and accuracy, is to supervise the registration of transfers and the transmission of shares. A mistake made in the Transfer Department of a company may result in grave inconvenience, and even financial loss to the company.

The actual detailed work of the Transfer Department may be in the hands of a registrar and his trained staff, but the secretary is usually responsible for the work, and, in any case, he must be thoroughly conversant with it.

Statute law affords small guidance in these matters, but the mass of legal decisions that have been given on disputed points connected with transfers affords eloquent proof of the many practical problems that have arisen to trouble secretaries in the past, and gives ground for anticipating that new problems will arise in the future, whether it be through the carelessness or ignorance of transferors or transferees, or through actual attempts to defraud. Accordingly it will be found that practice in transfer registration varies considerably with different companies. Generally speaking, it is somewhat intricate, and requires careful organisation if it is to be carried out accurately and with due despatch. But there are certain basic principles underlying the practice, and these must be thoroughly understood.

When a member transfers shares he transfers both his rights and his obligations as a member in respect of those shares as from the date of the registration of the transfer, subject only to his liability, where the shares are not fully paid, to be placed on the " B " list of contributories should the company go into liquidation within one year from the date of registration. Those rights and obligations include the right to future dividends and bonuses, and the liability for future calls, but not the right to dividends or bonuses already declared or

the liability for calls already made on the shares at the time of transfer, unless the contract of transfer so provides.

S. 62 says :—(1) The shares or other interest of any member in a company shall be personal estate, transferable in manner provided by the articles of the company, and shall not be of the nature of real estate.

(2) Each share in a company having a share capital shall be distinguished by its appropriate number.

In order to prevent evasion of stamp duty by verbal transfers which had become prevalent within recent years, a new provision was incorporated in the Act of 1929, viz. S. 63, which declares that :—

Notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company :

Provided that nothing in this section shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

By S. 64 :—A transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal representative is not himself a member of the company, be as valid as if he had been such a member at the time of the execution of the instrument of transfer.

S. 65 says :—On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

The mode and conditions of transfer are thus determined by the provisions as to transfer contained in the articles, which must be observed. The model articles of Table A (Arts. 17–22) afford a general guide as to the kind of provisions usually made in articles. The right of transfer, unless restricted by the articles, is an absolute right and in the absence of any restriction directors cannot refuse registraton of transfers (*Weston's Case*, 4 Ch. App. Cas. 20), unless the transfer instrument is itself defective, or the transferee is an infant and the

shares are not fully paid. See also the judgment of Buckley, L.J., in *Discoverer's Finance Corporation, Lindlar's Case* [1910], 1 Ch. 207, 312. It is seldom, however, that articles fail to impose restrictions. The transfer of shares not fully paid is usually restricted, directors being empowered to decline to register transfers of such shares to persons of whom they do not approve; and directors would generally refuse to register a transfer in respect of shares on which calls were outstanding, unless such calls were paid either by the transferor or the transferee; or of shares on which the company had a lien. And they would refuse to register a transfer of partly-paid shares to a person suffering under legal disability, *e.g.* a person of unsound mind; or any transfer to a person ineligible as a member under a restrictive article.

Directors are entitled to a reasonable time for consideration of the transfer (*re Ottos Kopje Mines* [1893], 1 Ch. 618), but, by S. 66 :—

(1) If a company refuses to register a transfer of any shares or debentures, the company shall, within two months after the date on which the transfer was *lodged* with the company, send to the transferee notice of the refusal.

(2) If default is made in complying with this section, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five pounds for every day during which the default continues.

And every company must, within two months after the date on which a valid transfer of any of its shares, debentures or debenture stock is *lodged* with the company, complete and have ready for delivery the certificates of the shares, etc. transferred, unless the conditions of issue otherwise provide (S. 67, s.-s. (1)) (cf. p. 148) or notice of refusal to register has been given in accordance with S. 66 *supra*.

If a Stock Exchange quotation is sought for new issues of shares it is a condition for quotation that there shall be no restrictions on the transfer of fully paid shares.

A private company *must* by its articles restrict the right of transfer, and usually the articles of such a company require the shares proposed to be transferred to be offered first to existing members of the company (*i.e.* there is a right of pre-emption) at a price fixed, or to be ascertained in a manner prescribed, *e.g.* by the company's auditors.

The practical necessity for some restriction on transfers is obvious when it is remembered that in the absence of all restriction a member could avoid liability on shares by the simple expedient of transferring them to a "man of straw." So long as the transfer was *bona fide*, and was not a mere pretence of transfer, or one where the transferor still retained some interest in the shares, it would be effective, and the transferee could compel registration of the transfer, right up to the last moment before liquidation of the company (*De Pass's Case*, 4 De G. & J. 544), and the transferor might even pay the transferee to take the shares (*Slater's Case*, 35 Beavan 391).

Where, as in Table A (Art. 19), power is given to directors to decline to register a transfer of shares, not being fully paid shares, to a person of whom they do not approve, the power must not be arbitrarily exercised, but for the benefit of the company as a whole, and upon grounds of objection personal to the proposed transferee, as *e.g.* that he is unlikely to be able to pay the balance outstanding upon the shares should a call be made. Directors so empowered may subsequently repudiate the registration of a transfer obtained by misrepresentation on the part of the transferor.

The discretionary power to refuse transfers must always be exercised *bona fide*, and, where it is improperly used, the Court will compel registration of a transfer; and the Court will order registration where by the wilful abstention of a director, whose attendance is necessary to a quorum, a transfer cannot be passed (*Copal Varnish Co.* [1917], 2 Ch. 349). Where the articles state that the Directors shall not be bound to specify the grounds upon which re-registration of any transfer is refused, the rejected transferee cannot call upon the directors to disclose their reasons (*Berry and Stewart* v. *Tottenham Hotspur Football and Athletic Co.* [1935], Ch. 718) (cf. *Sutherland and British Dominions Land Settlement Corporation* [1926], 1 Ch. 746). Directors, therefore, are not bound to give their reasons for refusing a transfer, but if they do, then, on action brought, the Court will inquire into the validity of those reasons.

Clauses restricting transfer must be construed reasonably. Thus in *Hobson* v. *Houghton & Co.* [1929], 1 Ch. 300, the articles contained restrictions upon the rights of shareholders and their executors to transfer. A shareholder by his will created a trust of his shares in the company, and the two

acting executors afterwards appointed an additional trustee, all three executing the transfer. The company refused to register but the Court held that the transfer was justified.

Apart from the certificate or other document of title so far as it serves, entry in the register of members is the evidence of title to the shares, and a transfer is incomplete until it is registered. The register must be kept at the registered office (S. 98). Shares are located where the register is kept (*Attorney-General* v. *Higgins* [1857], 2 H. & N. 351), and they can only be effectively dealt with there (*Brassard* v. *Smith* [1925], A.C. 371).

After the commencement of a winding up, every transfer of shares is void, unless, (1) in the case of a voluntary winding up, the transfer is made to or with the sanction of the liquidator (S. 229), and (2) in a winding up by or subject to the supervision of the Court, the Court otherwise orders (SS. 173 and 258).

Procedure.—On a sale of shares or stock of a small concern, and, indeed, in most cases where the transaction does not take place through the medium of a Stock Exchange, the seller simply executes a transfer in the form specified in the articles, and hands it with the relevant share certificate to the transferee, who after he has executed it deposits it, with the certificate, at the company's registered office for registration. The transferor's certificate may comprise more shares than he has sold, and in that case the transferor may himself deposit the certificate with the company, and will subsequently receive from the company a new certificate for the unsold balance still standing in his name.

Form of Transfer.—By S. 63, the company cannot register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company. (This does not prejudice transmissions by operation of law—*see* p. 199.) Articles generally require the transfer to be in "common form," which is illustrated on p. 177. The provision may, however, be simply that the transfer shall be an instrument under hand, in which case a deed is not necessary. In the case of debentures, the trust deed or terms of issue usually provide the form. In the absence of any provision, an instrument under hand is sufficient. The form contained in Table A is under hand. A printed transfer form is almost invariably used. A transfer in writing or typewriting permits of more ready erasure and alteration, and throws more work on the company's Registration Department.

Where the sale of shares or stock takes place through a Stock Exchange, the buyer and seller are represented by brokers. The seller's broker prepares the transfer form, has it executed by the seller, and then presents it to the buyer's broker accompanied by: (*a*) the relevant certificate, or, if agreed upon by the buyer's broker, by (*b*) a transfer receipt, a balance ticket, an allotment letter (subject to the terms of issue), or a dominion removal receipt, as the case may be. Against the delivery of these documents the buyer pays the purchase price.

Certification.—Where, however, the sale is for part only of a holding, or more than one purchaser is involved, it is obviously imprudent, or impossible, for the evidence of title to accompany the transfer. In this case, or where the buying broker will not accept the documents mentioned in (*b*) above, the seller's broker will present the transfer or transfers, duly executed by the seller, and accompanied by the document of title, to the company's office for "certification." This simply means that the document of title is lodged with, and retained by, the company, who certify on the transfer form that they hold it. There is no statutory duty to certify, but it is obviously such a useful aid to transfer that it would be unwise for a company to refuse this facility, for which no fee is charged.

Certification by Stock Exchange.—In order to expedite business the London and provincial Stock Exchanges will certify transfers of quoted (and in some cases unquoted) stock or shares, when presented by a broker operating on the exchange where the sale was effected. The Stock Exchange forwards direct to the secretary of the company the document of title and particulars of the names of the transferees, number of shares transferred, their distinctive numbers and instructions as to the balance of shares not transferred. The company checks the particulars carefully when the forms of transfer are received for registration, and cancels the certificate in the ordinary way.

A certified transfer is good delivery on the Stock Exchange and the buyer pays against it.

On receipt of a transfer for certification, attention must be paid to the following points:

(1) That the transfer is in the form required by the articles.

Common Form of Transfer.

I, ...

in consideration of the Sum of... [See Note at foot]

paid by..

hereinafter called the said Transferee

Do hereby bargain, sell, assign, and transfer to the said Transferee :—

.....

.....

..... of and in the undertaking called the...

.....

To Hold unto the said Transferee ..... Executors, Administrators, and Assigns subject to the several conditions on which ..... held the same immediately before the execution hereof; and ..... the said Transferee do hereby agree to accept and take the said ..... subject to the conditions aforesaid

As Witness our Hands and Seals, this ..... day of .....
in the year of Our Lord, One Thousand Nine Hundred and

Signed Sealed and Delivered by the above-named .....
in the presence of
Witness's Signature* .....
Address .....
Occupation ..... SEAL

Signed Sealed and Delivered by the above-named .....
in the presence of
Witness's Signature* .....
Address .....
Occupation ..... SEAL

Signed Sealed and Delivered by the above-named .....
in the presence of
Witness's Signature* .....
Address .....
Occupation ..... SEAL

Signed Sealed and Delivered by the above-named .....
in the presence of
Witness's Signature* .....
Address .....
Occupation ..... SEAL

Signed Sealed and Delivered by the above-named .....
in the presence of
Witness's Signature* .....
Address .....
Occupation ..... SEAL

NOTE.—The consideration money set forth in a transfer may differ from that which the first Seller will receive, owing to sub-sales by the original Buyer; the Stamp Act requires that in such cases the Consideration money paid by the sub-Purchaser shall be the one inserted in the Deed, as regulating the *ad valorem* Duty; the following is the Clause in question :—

"Where a Person, having contracted for the purchase of any property, but not having obtained a Conveyance thereof, contracts to sell the same to any other Person, and the property is, in consequence, conveyed immediately to the sub-Purchaser, the Conveyance is to be charged with *ad valorem* Duty in respect of the Consideration moving from the sub-Purchaser."—[54 & 55 Vict., cap. 39 (1891), Section 58, sub-Section 4.]

* When a Transfer is executed out of Great Britain, it is recommended that the Signatures be attested by H.M Consul or Vice-Consul, a Clergyman, Magistrate, Notary Public, or by some other Person holding a public position—as most Companies refuse to recognise Signatures not so attested. When a Witness is a Female she must state whether she is a Spinster, Wife, or Widow; and if a Wife she must give her husband's Name, Address and Quality, Profession or Occupation. The Date must be inserted in Words, and not in Figures.

A Husband must not witness the signature of his Wife, or vice-versa.

(2) That the transferee's name is stated (to avoid the certified transfer being used as a quasi-bearer [1] document).

(3) That the number, class and the distinctive numbers [2] of the shares specified in the transfer correspond with those in the document of title.

(4) That the document of title is *prima facie* in order. (If certification is against a Balance Ticket, make sure the original cancelled certificate is in the company's office.)

(5) That, if the document is a dominion transmission or removal receipt, the relevant advice has been received.

(6) That, if the transfer is signed by a legal personal representative or an attorney, probate or letters of administration, or the power of attorney are registered with the company.

(7) That the transferor's address corresponds with that in the register of members.

It should be noted that it is no evasion of the *Stamp Act*, 1891, to certify an unstamped transfer, and no liability for so doing would be incurred under S. 17 of that Act (*see* p. 188) by the registering officer.

If the documents are not in order on the face of them, certification should be refused.

Although the transferee may sign the transfer before certification, this is scarcely customary. The company will not refuse to certify a transfer not so signed; nor will it refuse to certify merely because the transfer is undated, or because a call upon the shares is unpaid. If, however, the transferor has but recently acquired the shares and the transfer to him has not been registered, the second transfer is not usually certified until a reasonable time has been allowed for the previous transferor to communicate with the company.

A company should refuse to certify or register a duplicate transfer except on receipt of a letter of indemnity from the transferor, and, usually, a statutory declaration verifying the loss or destruction of the original. The further precaution

[1] Probably there is no legal bar to certifying in blank, although it may lead to loss to the revenue through the transfer being passed from hand to hand in sale.

[2] Abbreviation of distinctive numbers should not be tolerated; it is a frequent source of error, and the transfer should be returned for the insertion of the full numbers, *e.g.* 45,303/404 should read 45,303/45,404 to avoid any possibility of the meaning *intended* being 45,303/46,404.

may be taken, where the transaction is large, of obtaining the guarantee of some responsible person, unless the standing of the transferor is beyond question.

Effect of Certification.—Although certification is, by custom, accepted by the buyer's broker as evidence that the seller is entitled to the shares or stock, a company does not by the act of certification represent that the seller has a good title to the shares or stock, or that the certificate itself is valid. Certification amounts to no more than a statement that a document of title, *prima facie* in order, has been lodged, and the company is not bound to make good a loss should intermediate transfers prove to be invalid (*Bishop* v. *Balkis Consolidated Co.* [1890], 25 Q.B.D. 520). It was held in *In re Concessions Trust* [1896], 2 Ch. 757, that where a buyer acts on the faith of a certification which, directly or indirectly, states that the shares are fully paid, he cannot afterwards be made liable for calls because in fact the shares were not fully paid. But where a secretary or other responsible officer fraudulently certifies that a certificate has been lodged whereas in fact it has not, and seemingly also where the certification is innocent and erroneous, the company is not bound by the certification (*George Whitechurch, Ltd.*, v. *Cavanagh* [1902], A.C. 117; followed in *Kleinwort Sons & Co.* v. *Assd. Automatic Machine Corporation* [1934], W.N. 65). And a company was held not to be liable to the pledgee where its secretary, having certified a transfer, later handed the certificate in mistake to the transferor, who pledged it in fraud of the transferee (*Longman* v. *Bath Electric Tramways* [1905], 1 Ch. 646).

Commercial transfer forms generally bear a printed certification, but where certifications are at all numerous, companies find it more convenient to use a rubber stamp with a movable dating device. The wording is usually in the following, or similar, form :

Certificate / Documents of Title [1] for ..... Shares / Stock ..... paid has / have been lodged at the Company's Office.
Date ..... THE PRACTICE COMPANY,
Checked ..... LIMITED.
Moorgate, London, E.C. 2. ..... *Secretary.* / *Registrar.*

[1] This alternative appears only where certification against documents other than a certificate, *e.g.* an allotment letter, is freqently called for.

On certification of the transfer, the certificate or other document of title should be immediately cancelled, and a record of the certification be endorsed on the back of the document, which should be filed in a special folder to await presentation of the transfer for registration.

It is often more convenient to have gummed slips which can be attached to the front of the certificate, in order to ensure uniformity and adequacy of information. Such slips are in the following form :

SERIAL NO. OF CERTIFICATION							
Date Certified.	No of Shares.	Distinctive Nos.		Transferee.	Balance Ticket No.	No of Transfer.	Initials of Clerk.
		From	To.				

The use of a Certification Book for recording particulars is an unnecessary duplication of entries which serves no really useful purpose.

A notification of the lodgment of the documents should be posted at once, in a plain, opaque, sealed envelope (not of commercial shape), bearing no indication of its sender or anything to draw special attention to it (*e.g.* it should *not* be marked " personal " or " private "), to the registered holder of the shares. The following form letter is convenient :

THE PRACTICE COMPANY, LIMITED,

TRANSFER DEPARTMENT.

Moorgate, London, E.C. 2.

Please quote ....19.....

To A. Member, Esq.
[*Address.*]

DEAR SIR (OR MADAM),

The undernoted $\frac{\text{deed}}{\text{deeds}}$ of transfer purporting to be signed by you ha... to-day been presented for certification, and unless I hear from

you to the contrary within ..... days, the Transfer / Transfers will be registered when lodged, if approved by the Directors.

Yours faithfully,
C. C. Ess,
Secretary (or *Registrar*).

No. of Shares,
£ of Stock.

Transferee(s) .....
.....

Where the certificate or other document of title has been lost by the holder of the shares or stock, certification cannot be made until the company receives a letter of indemnity (*see* p. 178). On receipt of this, the transfer may be certified.

It is customary to certify even when the registers or transfer books are closed. If a call remains unpaid, many companies stamp on the transfer, close to the space where the transferee must sign, a notice to the effect that a call of so much per share was made on a certain date, stating the due date of the call, with a warning that the receipted call letter must accompany the transfer when the latter is lodged for registration.

Occasionally, a company is approached by a member, or a broker, to allow a transfer to be substituted for one which has already been certified, in order that the stamp duty may be recovered. The company should distinctly mark the face of the old form to the effect that another form, duly stamped, transferring the same shares has been substituted.

Balance Ticket.—If the transfer certified conveys part only of the shares specified in the document of title, it is usual to issue a " Balance Ticket " to the transferor or his broker for the untransferred balance of shares. Some companies make a charge of 1*s.* per Balance Ticket. A specimen is shown below, and a counterfoil, or (preferably) a carbon copy of the ticket should be retained. Some companies issue a receipt for every document lodged, a practice which has much to commend it, since it tends to prevent subsequent disputes. The same form may be used, suitably amended, but it is recommended that, where the whole of the shares are included in the transfer, a distinctive receipt be used.

Particular attention is drawn to the necessity for carefully entering and checking the distinctive numbers of the shares. In a large aggregation of names, as in some companies' registers, many names are sure to be very much alike.

THE PRACTICE COMPANY, LIMITED.

Moorgate, London, E.C. 2.

BALANCE TICKET.

No.....

.....19.....

Certificate No.....

No. of Shares.

Total .....

Certified .....

Balance .....

Distinctive Numbers on Balance Ticket	
From	To

Issued to.....

Balance Certificate ready.... .....

(*Perforation*)

THE PRACTICE COMPANY LIMITED.

Moorgate, London, E.C. 2.

BALANCE TICKET.

No.....

.....19.....

This is to certify that a Balance of ..... Shares in The Practice Company, Limited, numbered from ..... to ..... both inclusive, now stands in the Company's books in the name of .....

The Balance Certificate will be ready on .....

Note.—No Balance Certificate will be issued, or Transfer certified, until this Ticket is lodged with the Company.

Office Procedure on Transfer.—When the transfer is received by the company for registration,[1] the form should be serially numbered, after which it must be examined on the following points :

(1) That the form complies with the articles, and the company's name is correctly and exactly stated.

(2) That the names, addresses and descriptions of the parties are in order.

(3) That it is properly dated (in words), executed and attested.

(4) That the number, class and distinctive numbers of the shares or amount of stock agree with the document of title and the register of members.

(5) That the documents of title have been surrendered to the company.

(6) That the transfer is properly stamped, and that the consideration is reasonable.

(7) That no " stop " has been received and no lien exists to prevent registration.

The subsequent procedure is then :

(8) If all the above are correct, issue a transfer receipt

[1] The broker leaving the form for registration should be required to place his name and address on the back of the transfer form to facilitate reference, and to pay the prescribed transfer fee (usually 2*s.* 6*d.*, but sometimes 1*s.* per £100 nominal).

stating that, if the transfer is passed by the directors, the share certificate (or other new document of title) will be ready on a certain date, when it may be obtained on surrender of the receipt.

(9) If not already done on certification, advise the transferor of the lodgment of the transfer.

(10) Prepare new document of title.

(11) Lay the transfers and documents of title before a Board Meeting to be passed. Have the certificates (if these are the relevant documents) sealed and signed.

(12) Enter up the register of members.

(13) Issue the documents of title to holders or their brokers.

(14) File the transfers and returned receipts.

It is useful, if a rubber stamp is impressed on the back of the transfer form, to record the initials of the different clerks who have been responsible for the various stages of registration.

The Signature of the Transferor.—Practice varies as to the check imposed on the transferor's signature. Some companies rely upon the advice sent to the holder, but it is always desirable to check the signature with that on the document by which the member first became a shareholder, *i.e.* the application form, letter of acceptance (if the company offered the shares), request for registration (if a representative), memorandum (if a subscriber) or transfer into his name, or on the card index (if any).

Whilst it must be admitted that a company officer may not detect an expert forgery, and that a person's signature may vary from time to time, the above is an elementary test which should, it is considered, save the company from acting on an obvious forgery. Where doubt exists, it is advisable to send a request for confirmation of the signature.

Transfer by Representative.—If the transfer is executed by a person acting in a representative capacity, his authority so to act should have been registered with the company, otherwise it must be called for. Care should be taken to see that the power to act is unrevoked, and that it authorises the execution of transfers. The proper documents in the various cases are as follows :

An executor.	Probate.
An administrator.	Letters of Administration (and, where the deceased left a will, probate).
Trustee in bankruptcy.	Office copy of appointment, or copy of the *Gazette*.
Liquidator.	A copy of the *Gazette*, or a certified copy of the resolution in voluntary liquidation.
Committee of a lunatic.	Office copy of order of Court.
Attorney.	Power of attorney.
Officer of a Company.	Appointment under the Common Seal or under writing authorised by the Board (S. 116).

If the transfer is under seal, the authority of the attorney to execute the deed must itself be given by deed (*Berkeley* v. *Hardy* [1826], 5 B. & C. 355).

The donee of a power of attorney may execute any instrument in his own name and under his own seal by the authority of the donor of the power (S. 123, *Law of Property Act*, 1925). Instruments creating powers of attorney should be deposited at the central office of the High Court, in which case an office copy is sufficient evidence of its contents (S. 219, *Judicature Act*, 1925), but not apparently of the truth of the contents or of the identity of donor or donee.

A statutory declaration by an attorney to the effect that he has not received any notice or information of any revocation of his power by death or otherwise, if made immediately before or within three months after acting on the power, is conclusive proof of non-revocation at the time of the act (S. 124 (2) *Law of Property Act*, 1925). The company should obtain this declaration; it is then relieved from any risk attendant upon acting on a revoked power of attorney.

Alterations in Transfer Form.—Material alterations in the form, *e.g.* of the number of shares transferred, or their distinctive numbers, or the consideration therefor, etc., must be initialled by all parties. A correction in the address of one party may be sufficiently evidenced by his initials alone. It is not unknown for a clerk, on presenting a transfer at the company's office for registration, and having it refused because a material alteration has not been initialled, to return in a very short space of time with the form apparently in order. he having inserted the initials by his own hand. A registration clerk can rarely prove that such is the fact, but where he is able to do so he should report the matter. The unauthorised in-

itialling may be due to mere laziness, but, nevertheless, it might conceivably in certain circumstances have serious consequences.

The Transferee.—It should be seen that the transferee's full name, address and description or occupation are stated, and that the signature agrees with the name. If the transferee is stated or implied to be a trustee, the transfer should be rejected, since, by S. 101, no notice of any trust, expressed, implied, or constructive, shall be entered on the register, or be receivable by the registrar, in the case of companies registered in England.

If the transfer be to a firm, the names and signatures of the persons constituting the firm should be stated as joint holders, and those names be entered in the register as joint holders of the shares. In Scotland, however, a firm is recognised as a person, and may be entered on the register.

The Act always requires the names of the holders of shares to be entered in the register, the only exception being the Public Trustee in England. Transfers to the Public Trustee are earmarked by a letter or number to distinguish the account, *e.g.* "The Public Trustee," followed by "a/c A1," or simply "1," and so on. It is doubtful if such a designation as "The Public Trustee, a/c James White," would comply with S. 101. In Scotland, however, a trust may be registered.

If the name of the transferee has been altered, an endorsement should appear on the transfer form, or a note be attached, to the effect that no sub-sale has been made by the person named as the original transferee.

The secretary must take care not to have the transferee's name entered in the register of members until the transfer has been authorised by the directors, for the directors' authorisation is necessary to give the transferee a title to the shares (*Chida Mines* v. *Anderson* [1905], 22 T.L.R. 27). Until a transfer is authorised and registered, the transferee's title to the shares is equitable only, and is liable to be upset because someone has a prior equitable title, or has obtained registration of a transfer of the shares executed after the date of the unregistered transfer, and so become the legal owner of them. A transferor remains liable on shares until the transferee's name is properly registered as their new holder, but the transferee is bound to indemnify him for any calls he is made to pay between the dates of the contract to transfer and actual registration. A fraudulent

or illegal transfer, though registered, does not relieve the transferor of liability on the shares transferred, although the responsibility may be upon the transferee, where, unknown to the transferor, he takes a transfer as nominee of the company (*Cree* v. *Somervail* [1879], 4 App. Cas. 648). It is illegal for a company to purchase its own shares (*Trevor* v. *Whitworth* [1888], 12 App. Cas. 409); and of questionable validity to advance money on the security of its shares, a proceeding which is usually prohibited by the articles, as in Table A, Art. 6, although it is probably improper even in the absence of an express prohibitory regulation. (*See also* S. 45, p. 121.)

Death of one of the Parties.—Where the transferor dies before the transfer has been passed, but before the company receives formal notice of his death, the transfer may be registered. After receipt of probate or letters of administration, however, it is desirable, but not essential, to require a letter of authority and request from the legal personal representative. A long interval between the date on the transfer and presentation for registration gives ground for inquiry, for the transfer may have been given as collateral security for a loan, which may have been satisfied. If in this interval the transferor has died, reference to his legal personal representative will prevent irregularities; failing this, the company's solicitor should be consulted. In such cases, care must be taken not to refuse transfers on insufficient grounds; the registration should merely be delayed until satisfactory evidence one way or the other is received. A reasonable time is allowed for investigation and inquiry before registration of a transfer, but refusal to register should be made only when circumstances justify that course, as otherwise the company may lay itself open to an action for damages (*Ottos Kopje Diamond Mines* [1893], 1 Ch. 618). (But *see* SS. 66 and 67, p. 173.) A deceased transferee cannot be registered. Where the transferee's decease is known, the transfer should be held in abeyance while the transferor and the personal representatives of the deceased are being communicated with. Generally speaking, the latter will then be entered on the transfer form in their personal names, without any reference to their representative capacities.

Attestation.—Unless the articles require attestation, the transfer cannot be refused merely on the grounds of non-

attestation. If the articles require transfers "in the common form," attestation is necessary.

Where the transfer is executed out of Great Britain, it is recommended that the signatures be attested by H.M. Consul or Vice-Consul, a clergyman, magistrate, notary public, or some other person holding a recognised public position, *e.g.* a banker. It is doubtful, however, whether a company, unless authorised by its articles, is strictly justified in refusing a signature not so attested, although it appears reasonable that, where shares are not fully paid, a company should be entitled to take precautions against irresponsible persons becoming holders of the shares Moreover, the witness may subsequently be very useful in tracing the transferee when the latter fails to claim dividends, etc.

Where signature is by mark, attestation (preferably by two persons of standing) is obviously imperative, and it is recommended that the attestation should state that the document has been read and explained to the person signing by mark.

Transfers must be witnessed by a person or persons outside the contract, and a wife is not generally accepted as witness to her husband's signature, or *vice versa*. The profession or occupation of the witness should be stated, and his or her signature be in such a position as to show that it is intended to be the signature of a witness. A female witness should state her occupation, or that she is a spinster, or a widow, or the wife of _____, as the case may be.

Attestation is not a subject for laying down hard-and-fast rules, and the secretary must exercise judgment and common sense in this matter. Long experience in the Registration Department will prepare him for meeting most contingencies, but there will occasionally arise some point on which he may have to seek the advice of the company's solicitor.

Consideration and Stamp Duty.—It is very important that before registering a transfer, the transfer officer should see that the consideration mentioned in the instrument is reasonable, and that the stamp is in accordance with the schedule. If the shares have a Stock Exchange quotation, or, in other cases, if dealings in them are frequent, then the market price will serve as a guide to what the consideration should be. In any other instance, the secretary or registrar should take whatever steps he can to ascertain what is the reasonable

consideration. An insufficiently stamped transfer cannot be registered without peril, for by S. 17 of the *Stamp Act*, 1891, "If any person whose office it is to enrol, register, or enter in or upon any rolls, books, or records, any instrument chargeable with duty, enrols, registers or enters any such instrument not being duly stamped, he shall incur a fine of £10." If the transfer is insufficiently stamped, or not stamped at all, the transfer is not invalid as between the transferor and transferee, but the proper stamp must be impressed before the company can register the transfer. An unstamped or an insufficiently stamped transfer is no authority for altering the register of members, since it could not be produced as evidence in the Courts.

A transfer instrument under hand must be stamped within fourteen days of execution; if under seal, within thirty days. Where a transfer is sent abroad for execution to be completed, or is first executed abroad and sent to this country, stamping must be effected within thirty days of its arrival in this country. A penalty is payable if the stamp is impressed after the lapse of the statutory days of grace.

Where dealings have taken place on the Stock Exchange, the consideration stated in the transfer form must be the consideration paid by the transferee, even if that is not the consideration actually received by the transferor. The procedure of the Stock Exchange must be known to understand the reason for this. An example will suffice: A instructs his broker to sell 1,000 shares. The broker sells them to two jobbers, C and D—700 and 300 respectively, at 21*s.* and 21*s.* 3*d.* C sells 500 for 21*s.* 6*d.* to M, and 200 for 20*s.* 9*d.* to N. D sells the 300 to E at 21*s.* 6*d.*, E sells them to F at 20*s.* 9*d.*, F to G at 20*s.* This all takes place in one account. "Tickets" bearing the ultimate buyers' names are passed back, through the intermediate parties, to the selling broker, who must prepare three transfers, viz. for 500 shares at 21*s.* 6*d.* to M; 200 shares at 20*s.* 9*d.* to N; 300 to G at 20*s.*, although the consideration received by A, the transferor, was on 700 shares at 21*s.* and 300 at 21*s.* 3*d.*

Where there is a doubt whether a transfer is adequately stamped, the transfer should be returned for adjudication by the Commissioners of Inland Revenue, who will assess the duty payable, and affix the adjudication stamp free of charge.

Directors should refuse registration where, to their knowledge, the stated consideration is less than the real consideration (*Maynard* v. *Consolidated Kent Collieries* [1903], 2 K.B. 121).

Transfers for a Nominal Consideration.—The Inland Revenue circular reproduced on p. 598 outlines the procedure, and should be referred to. Where a shareholder transfers shares to himself and his wife jointly, or he and his wife transfer their joint holding into one of their names, the Revenue authorities look on the transaction as a nominal one to the extent of the continuity of beneficial interest without change of ownership, but as an ordinary transfer for the balance, *i.e.* the stamp duty will be *ad valorem* duty on the market value of half the shares.

Supplementary Stamps.—A jobber on the Stock Exchange may have stock, shares, or any marketable securities, temporarily transferred either to himself or his nominee in order to await a more favourable market for sale. The *Finance Act*, 1920, S. 42, concedes that such transfers may be stamped with the nominal duty of 10*s.*, provided that there is simultaneously impressed a supplementary stamp denoting that the transfer has been stamped under the provisions of this section :

FINANCE ACT, 1920. SECTION 42. Supplementary Stamp.

Immediately on the expiration of two months from the date of the transfer, the jobber (or his nominee) must furnish to the Commissioners of Inland Revenue a certificate showing what part, if any, of the stock comprised in the transfer has been transferred by him to a *bona fide* purchaser, and what part, if any, has not been so transferred, and must produce such further evidence by way of statutory declaration or otherwise in relation thereto as may be required.

If any of the stock has not before the expiration of two months been so transferred, the dealer must pay to the Commissioners within fourteen days a sum equal to the difference between the amount of the duty actually charged on the

transfer and the amount of the *ad valorem* duty which would have been chargeable thereon if the stock comprised therein had been the stock which was not so transferred (*Finance Act*, 1920, S. 42, s.-s. 2), that is to say, the balance of untransferred stock is treated as having been transferred to the jobber, and he is required to pay the difference between the nominal transfer fee of 10*s*. and the *ad valorem* duty payable on the balance.

The company, in these circumstances, is only liable to see that the supplementary stamp is duly impressed when the transfer is received for registration. Usually, the company requires at least three clear days to elapse between registration of the transfer into the nominee's name, and the certification or registration of a further transfer, in order to permit notice of transfer being sent to the registered holder.

Composition of Stamp Duty.—Any county council or corporation or company may enter into an agreement with the Inland Revenue authorities for compounding the stamp duty on transfers and share warrants (S. 115, *Stamp Act*, 1891). The applicant must pay 1*s*. per cent. each half-year on the amount paid up on the securities. The compounding body itself then usually collects the stamp duty otherwise payable on each transfer, thus recovering the amount paid, or even making a profit. Application for composition, accompanied by particulars of the capital of the company, the amount paid up, market value, stamp duty paid on transfers during the preceding three years, and whether it is proposed that the company will charge the equivalent stamp duty on transfers, must be made to the Commissioners of Inland Revenue. The Commissioners have a discretion in the matter, and do not now entertain applications from trading companies.

Transfer Fees.—The usual charge is 2*s*. 6*d*. per instrument, but some companies, particularly dominion companies, charge an *ad valorem* fee. Usually, the articles fix the fee. A Transfer Fee Cash Book should be kept to record the fees received. A "practising" secretary may keep one book for the several companies for whom he acts—the book being provided with additional columns to accommodate the particulars.

A suitable ruling for a single company is as follows :—

Date.	Transfer Receipt No	Amount.	Analysis.							
			Transfers.				Probates.	Sundries.		Initials.
			Pref.	Ordy.	Def.	Deb.		For.	Amount	

Transfer Register.—The modern tendency is to minimise the books employed, and the transfer form itself is used as the posting medium, and is pasted or bound in a guard book or binder. (Companies to which the *Companies Clauses Act*, 1845, applies *must* keep a Transfer Register.)

There is no statutory form of Transfer Register, but a suitable ruling is shown on p. 192. Where transfers are few, additional columns may be provided to show the class of share or debenture; in other cases, separate registers are advised. It is unnecessary to show by whom the transfer was lodged; reference to the receipt number will disclose that.

In the case of transfers from or to Branch Registers, loose sheets with similar rulings should be used by the Branch Office. These can be filed to form a register.

Preparing Transfers for the Board.—Before the transfers are placed before the Board, they should have been duly passed and initialled by the clerks responsible for each of points (1)–(9) on p. 182. The check should include comparison of the Fees Register with the duplicate transfer receipt. The cancelled certificate (or other evidence of title) should be attached to the transfer. If any person named as transferor has, in response to the notice of lodgment, given notice of objection, the facts must be investigated, and, if necessary, the matter referred back to the person who lodged the transfer.

The transfers should bear on them (in pencil) the share register folios of transferor and transferee. If the latter is a new member, instead of a folio, the letters " N. M." (new member) or " N. A." (new account) may be written.

The new certificates, etc. should be prepared for the transferees, and also, where there are balances, for the transferors. Both must be cross-checked, the latter with the balance ticket

TRANSFER REGISTER.

Left-hand side.

Date when Lodged.	No. of Transfer Deed.	When Passed by Board.	Initials of Chairman.	Share Ledger Folio.	Transferor.			No. of Shares Transferred.	Amount			Consideration Paid.		
					Name.	Address.	Description.		£	s.	d.	£	s.	d.

Right-hand side.

Distinctive Numbers.		Number of Old Certificate.	Transferee			Number of New Certificates.		Share Ledger Folio.	Remarks.
From	To		Name.	Address.	Description.	To Transferee.	Balance Certificate		

duplicates, the former with the transfer, and both be reconciled with the cancelled certificates, or other documents of title.

A statement of the transfers should now be prepared to facilitate the work of the Board. The following form is extensively used:

Class of Shares or Stock .. . . Date of Registration . .....

No.	Folio.	Transferor.	Amount.	Transferee	Folio.

Transfers Nos .. .... to .... inclusive, representing . ..... shares, passed ... . 19 ... .

....
CHAIRMAN.

Procedure of Board or Transfer Committee.—As already stated, articles usually give the directors power to refuse transfers; and the articles of a private company must give such powers. In any action to compel registration of a transfer, the onus of proof of *mala fides* lies on those who seek to compel registration (*Ex parte Penny* [1873], 8 Ch. 446), the assumption being that, until the contrary is proved, the directors have exercised their powers rightly (*re Coalport China Co.* [1895], 2 Ch. 404).

Where a responsible official, *e.g.* the secretary or the registrar, has examined the transfers and reported them to the Board as being in order, the directors are entitled to rely upon that official's representations, and will not be personally liable if they prove to be wrong (*Dixon* v. *Kennaway* [1900], 1 Ch. 833).

A right to reject a transfer is validly exercised only if actively exercised. It must be rejected by definite resolution passed at a properly constituted meeting of the Board, and not, for example, on such grounds as that the directors cannot agree to pass the transfer (*In re Hackney Pavilion* [1924], 1 Ch. 276).

A company may not enter on its register notice of any trust, expressed, implied or constructive (S. 101), and is, there-

fore, not concerned with the relationship that may exist between registered holders of shares and *cestuis que trustent*, i.e. beneficiaries. Where an equitable mortgagee or assignee desires to make good his title, he should apply for an order of Court restraining the company from allowing a transfer (Order 46, R.S.C.). The company, on receipt of notice from an equitable mortgagee, etc., should allow time for such an order to be obtained, but need pay no other regard to the notice. Beyond this the notice would seem to be absolutely inoperative. *See* the judgment of the Earl of Selborne in *Société Générale de Paris* v. *Walker* [1885], 11 A.C. 20 at p. 30.

If directors pass a transfer by mistake, the company may amend the register (*Anderson's Case* [1868], 8 Eq. 509).

Where a member has the right to apply for a new issue of shares in the company, and to renounce that right in favour of another, directors, having power to refuse transfers, are not empowered to reject the application of the nominee of the shares, unless such power is expressly conferred by the articles, since a nominee is not a transferee (*Pool Shipping Co.* [1920], 1 Ch. 251).

At the meeting of the Board, or the Transfer Committee, the procedure is as follows:

(1) The secretary reads over the transfers, while one director compares the particulars with the new certificates, and another compares them with the cancelled certificates. A formal resolution is then proposed, seconded and carried, to record the passing of the transfers.

(2) The secretary or his clerk dates and seals the new certificates, which are then signed, an appropriate entry being made in the Seal Book.

(3) The transfers are afterwards handed to the registrar's clerks for posting to the share ledgers; the old certificates for filing, and the new for issue.

If a transfer register is used, the chairman of directors may initial the entries to date, or he may initial each transfer, or simply the summary.

SUMMARY OF TRANSFERS AND SHARE CERTIFICATES PASSED AT THE BOARD MEETING HELD ON , 19..

	Total Shares.
Transfers, Nos. to (inclusive) . .	
New Certificates :	
As per Transfers, Nos. to (inclusive) . .	
Balance Certificates :	
Nos. B. to B. (inclusive)	
Split Certificates :	
Nos. S. to S. (inclusive) . . .	
Duplicate Certificates :	
Nos. D. to D. (inclusive)	
Total	
Cancelled Certificates in hand on account of transfers not lodged for registration at last meeting . . .	
Cancelled Certificates since last meeting . . .	
Deduct : Cancelled Certificates now in hand awaiting lodgment of transfers	
Total Cancelled Certificates, agreeing with above .	
Transfer Fees received	£

Certified to be in order,

... . *Secretary.*
Registrar.

... . *Auditor.*[1]

It is recommended that, in posting, the new accounts be opened first and indexed, as this may prevent duplication. If the whole of the shares have been transferred from any account, the account should be ruled off and clearly marked " closed."

The transfers should now be filed in some convenient order, if indeed they do not constitute the " transfer register," as they are most important documents, constituting the company's authority for the entries in the register of members, and the evidence that the transferees have agreed to take the shares, subject to the regulations of the company.

[1] NOTE.—If a Share Transfer audit is customary, the auditor may prepare his statement in some other form, or his initials on transfers and certificates will be sufficient.

Blank Transfers.—Where a holder of shares deposits his share certificates by way of charge or mortgage, he is usually required to execute a transfer in blank of the shares, *i.e.* a transfer signed by him, but with no transferee's name inserted, and generally also to sign a witnessed agreement, known as a memorandum of deposit, giving the lender power to sell the securities in case of default, and, where the transfer must be by deed, undertaking to execute a completed transfer when called upon so to do. A transfer may be either (*a*) by deed, or (*b*) under hand, and the effect of a blank transfer differs in the two cases.

If transfer is required to be by deed, then, since a deed must be complete before there can be any valid delivery of it, a blank transfer cannot operate as a deed, and gives no authority to alter the register of members. And, though the transfer be subsequently completed and executed by the transferee, it remains inoperative until it has been handed back to the transferor and he re-delivers it as his act and deed; but a blank transfer can be completed and executed by the transferee if he is empowered to do so by authority under seal of the transferor. A blank transfer completed and executed by the transferee and re-delivered by the transferor, or completed and executed by power of attorney under seal, entitles the transferee to be registered as legal owner of the shares. In all other cases, the blank transfer, being evidence of a contract, confers upon the person to whom it is given an equitable interest in the shares, but this interest will be postponed in favour of any person who has a prior equitable interest therein, and may be defeated altogether if the transferor fraudulently executes a second transfer, and so enables some other person to become registered as owner of the shares. But such a fraudulent registration can be prevented if the person taking a charge or mortgage upon shares serves upon the company notice in lieu of distringas (*see* p. 205).

Where transfer may be effected under hand the position is simple. A blank transfer then operates as authority to the person taking it to fill in either his own name or that of another, and either he or that other is entitled to be registered as legal owner of the shares. But here also, unless the person to whom the blank transfer is given gets himself registered, or has acquired "a present absolute unconditional right to have

the transfer registered before the company was informed of the existence of a better title," he will be postponed to any person who has a prior equitable interest in the shares, and may be dispossessed by subsequent registration secured through the fraud of the transferor.

A purchaser of shares who takes a transfer in blank from anyone but the registered holder of shares takes it with notice of prior equities, and can acquire no better title to the shares than has his vendor. Where there are restrictions on transfer the deposit of share certificates is of little value as security, because a sale is ineffective to pass the equitable apart from the legal interest in the shares (*Hunter* v. *Hunter* [1936], A.C. 222).

A sale of shares on a blank transfer carries an implied promise of the purchaser to indemnify the vendor against calls made subsequent to the sale, whether made while the purchaser holds the shares or after he has sold them to a sub-purchaser (*Spencer* v. *Ashworth, Partington & Co.* [1925], 1 K.B. 589).

Where a lender on the security of shares has himself registered as owner of them, he becomes liable for any future calls upon the shares. For that reason a person taking a charge or mortgage upon shares may prefer an equitable to a legal mortgage of them. When registering such a transfer, the secretary will not make any note of the equitable interest in the shares that may remain to the mortgagor. S. 101 forbids notice of any trust to be entered upon the register, and this section is commonly strengthened by a special exemption clause in the articles. But companies frequently receive notice from equitable mortgagees of their interest in shares, the object being to prevent transfer of them without their consent. Such notices, especially where the articles contain an exemption clause, are ineffectual to the purpose, and the secretary receiving such a notice should return it with a formal letter intimating that the company is unable to recognise or act upon the notice. But though ineffectual to prevent transfer, such a notice is effectual to this extent: that where by its articles a company has a paramount lien on its shares for all debts and liabilities of shareholders to the company (and articles usually give this lien) a company's priority of lien is gone in respect of debts to the company (apart from the liability for future calls) incurred

by a shareholder subsequent to the receipt of notice from the equitable mortgagee. Notwithstanding S. 101, with or without an exemption clause in the articles, it has been held that a company was justified in refusing to register a transfer of shares where it had knowledge that the same transferor had executed a prior transfer of the shares to trustees of his creditors. And, on the authority of *Société Générale* v. *Tramways Union* [1885], 14 Q.B.D. 424, directors may be personally liable if, knowing that a transfer is made in breach of trust, they do not first communicate with the beneficiaries before registering the transfer.

As already indicated, the best way for an equitable mortgagee of shares to protect his interests is to serve on the company notice in lieu of distringas under Order 46 of the Rules of the Supreme Court.

Certain foreign and colonial companies issue share certificates with a form of transfer printed on the back. The original holder may execute this transfer in blank, and the certificate is then capable of passing by delivery as in the case of a bearer share warrant, and gives to the person taking it *bona fide* without notice of fraud or defective title an absolute right to be registered as owner of the shares.

Forged Transfers.—A forged transfer is void. Where a person acts innocently or fraudulently on a transfer whereon the transferor's signature is forged, and becomes registered, and receives a share certificate, the certificate gives him no title to the shares. On discovery of the fraud, the company is bound to restore to the register the name of the purported transferor, and to pay him any dividends that may have been declared on the shares since the date when his name was removed from the register; and the transferee is bound to repay to the company any dividends he may have received on the shares (*Sheffield Corporation* v. *Barclay* [1905], App. Cas. 392). The company may be a substantial loser if the transferee in such a case is adjudicated bankrupt, or cannot be traced.

But if, having received a certificate, the innocent or fraudulent transferee sells, or raises money on the shares, and the purchaser or lender acts *bona fide* without knowledge of the fraud on the faith of the certificate, then, while the company must still restore the name of the defrauded transferor

to the register, it may come upon the first transferee to make good that loss, but must also compensate the second transferee for any loss he has suffered (*Sheffield Corporation* v. *Barclay, supra*).

The difference in the two cases arises from the legal effect of the certificate. By issuing a certificate, a company declares that the person mentioned therein is the owner of the shares, and intends that it shall be used for the purpose of sale and transfer of the shares, and is estopped from denying its validity as evidence of ownership or as an instrument of transfer. In the first case, the transferee relies upon a forged transfer which is no transfer at all and utterly void; in the second case, upon a genuine certificate issued by the company, and he is entitled to rely upon it for the purposes for which it is issued.

A broker innocently acting upon a forged power of attorney who procures a transfer of stock or shares is, on the principle laid down in *Sheffield Corporation* v. *Barclay, supra,* liable to indemnify the issuers or managers of such stock or shares for any costs incurred in restoring the true owner to possession thereof (*Oliver* v. *Bank of England* [1902], 1 Ch. 610, affirmed *sub nomine Starkey* v. *Bank of England* [1903], App. Cas. 114).

Forged Transfer Acts, 1891 and 1892.—By these Acts a company is enabled to compensate a transferee who has suffered loss through a forged transfer or power of attorney. It is enabled to do so, but not bound to do so, and the adoption of the Acts gives an injured transferee no right of action against the company. A company may, if it thinks fit, build up a compensation fund, by charging upon each transfer an extra fee not exceeding 1*s.* per £100 transferred, but this method is not approved by the Stock Exchange. Undoubtedly the best method for a company to provide the voluntary compensation which it may make, and also to cover itself against the general expenses to which it may be put by action of the true owner of the securities to have his title restored, is by an insurance policy. A company making compensation under the Acts is subrogated to the rights of the person compensated.

Transmission of Shares.—The word "transmission" signifies the passing of securities by operation of law consequent upon: (*a*) the death, (*b*) the bankruptcy, (*c*) the lunacy, or (*d*) sentence to penal servitude of the owner, and is thus dis-

tinguished from a voluntary transfer of securities between the parties to the transfer.

Upon death, the securities of the deceased vest in his legal personal representative(s), *i.e.* the executor(s) under his will, or the administrator(s) of his estate. An executor is appointed by the will; an administrator by the Court in cases where the deceased has died intestate, or where a sole executor has died (but *see* p. 203) before the estate has been completely administered (*Administrator de bonis non*); or where the testator has omitted to appoint executors, or having appointed them they refuse to act (*Administrator cum testamento annexo*); or where the sole executor or next of kin is a minor (*Administrator durante minore ætate*); or is absent abroad (*Administrator durante absentia*); or where the right to probate or administration is disputed (*Administrator pendente lite*). Upon bankruptcy, the securities of the bankrupt vest in his trustee; on lunacy, in the committee of the lunatic; and on sentence to a term of penal servitude, in an administrator appointed by the Court.

An executor's power to act derives from the will. Probate, which is a sealed copy of the will issued by the Court after it has been proved, is the legal authority for a company's right to recognise an executor's power to act. In the case of bankruptcy a company acts upon receiving a copy of the order of the Court appointing the trustee; in lunacy, on a copy of the Court's order appointing the committee, which may consist of one or more than one person.

In all three cases, the secretary or registrar will direct an appropriate entry to be made in the Register of Probates, etc., recording such particulars as are necessary for the company's protection. These particulars will comprise: date of exhibition of the document, and of the member's death, etc.; nature of the document; names, addresses, and descriptions of the parties and the exhibitor, their status and powers; initials of the official who indorsed the document; folio in members' register; whether a request form is issued, or copy of documents made; and any special matters. On registering probate or letters of administration, the secretary or registering officer will have the documents impressed with a rubber stamp bearing the name of the company, the word "Registered" or "Exhibited," the date of registration, and the signature of the recording officer. A fee of 2*s.* 6*d.* is usually charged

for registration, but it would appear that the company's articles must give authority for making the charge.

In Scotland, the equivalent terms to executor and administrator are executor nominate (*i.e.* nominated by the will) and executor dative (*i.e.* appointed by decree of the Court). Where there is no probate, the document to be produced is the "Confirmation," and the company must see that the shares are set forth in the inventory attached to it. A Scottish probate or confirmation must not be accepted by an English company until it has been re-sealed by the principal Court of Probate in England. And probates granted in Northern Ireland must also be re-sealed in England. Similarly, English probates or letters must be re-sealed by the Commissariat of Edinburgh; so also probate or administration granted in any British colony, possession, or self-governing dominion. Probate or administration granted in any foreign country cannot be re-sealed in this country. A fresh grant, known as an ancillary grant, must be taken out here by the personal representatives, or their attorney. A company which permits a transfer of shares registered in the name of a deceased person of foreign domicile or domiciled in a British colony, possession, or self-governing dominion without evidence that probate has been obtained or confirmed by re-sealing in England or Scotland, as the case may be, renders itself liable to a penalty and payment of duty on the English or Scottish portions of the estate (*A.G.* v. *New York Breweries* [1899], App. Cas. 62).

The production to a company of any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate, or confirmation as executor, of a deceased person having been granted to some person shall be accepted by the company, notwithstanding anything in its articles, as sufficient evidence of the grant (S. 69). The executor or administrator can now obtain sealed copies of the probate or letters of administration for a fee of one shilling each, in order to facilitate their registration with companies. The copies are reproduced by photographic process and sealed with the small seal of the Court. If produced to a limited company in England they are sufficient evidence of the grant, notwithstanding anything in the company's Articles. The registrar of the company is entitled to retain the copy if he thinks fit as his authority for altering the register of members.

Where shares form part of the estate of a deceased whose property is less than £100 in value so that no probate need be taken out, the company will transfer the shares at the request of the person purporting to be entitled to deal with the estate. Before acting on such a request, however, the company should obtain a Letter of Indemnity signed by a person or body of standing and substance, in case the person requesting registration of the transfer is not, in fact, entitled to require it. The following is a usual form of such a Letter of Indemnity.

LETTER OF INDEMNITY ON WAIVING PRODUCTION OF PROBATE OR LETTERS OF ADMINISTRATION IN SMALL ESTATES.

TO THE.....

WHEREAS .....

late of.....

(hereinafter called the deceased) who died on..... 19...

was the registered proprietor of.....

Shares in the.....

numbered.....

And whereas the whole property left by the deceased in the United Kingdom was under the value of £100 (One hundred pounds) And whereas there is no necessity so far as the English Revenue is concerned to take out a grant of Representation to the deceased in this Country as Certified by the letter dated.....19.....from the Estate Duty Office, Somerset House, London, W.C. to.....

And whereas.....

is entitled according to.....Law, to administer the Estate of the deceased and to transfer the said Shares as appears by the Certificate of.....

Now Therefore in consideration of your waiving the production of an English Grant of Representation to the deceased and of your registering the transfer of the said shares from the name of.....

to that of.....

executed by.....issuing a certificate for the said shares in the name of.....

and paying to..... the amount of any dividends which have accrued or which may hereafter accrue thereon. We.....

of.....hereby agree to indemnify and hold you and each and every of you harmless and indemnified against all actions proceedings claims and demands costs charges and expenses which may be brought or made against you or any of you or which may be incurred or sustained by you or any of you in consequence of your permitting at any time hereafter, a subsequent transfer of the said shares or any of them.

DATED THIS.....day of .....19...

Signature.....6d Stamp.....
English

To be signed by a Bank or some other substantial person in the United Kingdom.

The regulations as to the transmission of shares are contained in the company's articles. Thus Table A provides (Arts. 20–22) that: (*a*) the legal personal representatives of a deceased sole holder of a share and the survivor or survivors of joint holders, or the legal personal representatives of the deceased survivor, shall be the only persons recognised by the company as having any title to the share registered in the name of such member; (*b*) that any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon production of such evidence as the directors may require, have the right to be himself registered, or instead of that to make such transfer of the share as the deceased member or bankrupt could have made, subject to the directors' right to decline or suspend registration under the articles; (*c*) a person becoming entitled to a share in his representative capacity as executor, or administrator, or trustee in bankruptcy, shall be entitled to the dividends and other advantages attached to the share as if he were the registered holder, but that until such person is registered he shall have no right of voting at meetings. In the case of a joint holding, the company is usually satisfied with the production of the death certificate of the joint holder.

The reason for provision (*a*) above is to absolve the company from any necessity to inquire into the beneficial ownership of the shares. Some articles go further, and require the personal representatives to transfer the shares into their own names or into the name of their nominee. It is doubtful, however, whether it is always wise to take such powers in the articles, unless the directors have their usual discretionary powers to decline a transfer, for the shares may not be fully paid. It would seem better to follow Table A in this matter, continue to treat the estate of the deceased member as the member, give the personal representatives power either themselves to be registered or to transfer the shares, and then to rely upon power in the articles to decline to register transfers to proposed transferees unlikely to meet their obligations for calls. Sometimes articles provide that the personal representatives must within one year and a day either themselves be registered or transfer the shares. In the absence of such provision, personal representatives are entitled to remain noted on the register in their representative capacity as long as they wish. Until the personal representatives transfer the shares,

or become registered in their own names, the estate is liable for all calls upon the shares, and is entitled to all the benefits accruing thereto. But if a bonus share issue is made, the personal representatives must take the *pro rata* share of the deceased in the issue into their own names, but, of course, as trustees for the beneficiaries. On becoming registered, personal representatives are entitled to be registered in such order as they request.

Where personal representatives themselves become registered, the deceased member's name is deleted from the register, and the representatives then become jointly and severally liable to the company for calls upon the shares, just as if they were the absolute owners of them, but with the right to recoup themselves out of the estate. Where they remain unregistered they are liable in their representative capacity only.

If the representatives are not required to, and do not, register in their own names, they may transfer the shares in their representative capacity, and, until they do, they are entitled, as representing the deceased, to receive all dividends declared upon the shares. A note should be made on the register that the member is dead, that probate or letters were granted on such a date, followed by the names, addresses and descriptions of the executors or administrators, as the case may be, and the date of registering these particulars. Representatives are not entitled, as such, to receive notice of meetings, unless the articles so provide (*Allen* v. *Gold Reefs of West Africa* [1900], 1 Ch. 656). It is the practice of many companies to call in the old certificates, and to indorse upon them the names of the representatives, taking care not to import into such indorsement any notice of trust.

Unless articles compel personal representatives to be registered in their own names, they should not be so registered except upon receipt by the company of a distinct and intelligent request to be registered, signed by the representatives, accompanied by the relevant certificates, and, where the articles make this necessary, a formal transfer stamped nominally with a 10*s*. stamp. Such a letter of request is shown in the Appendix (Form No. 39, p. 735).

A Letter of Request should be treated in the same manner as a transfer. The old certificates may be indorsed, and the old account of the deceased be altered to conform to the

transfer, but the better course is to close the account of the deceased, open a new account in the names of the representatives, cancel the old certificates, and issue new.

Where the representatives are not registered in their own names, and they sell part of the holding of the deceased, the balance certificates must be made out in the name of the deceased; it is usual to note the names of the representatives in the margin.

Where the executor was entitled to certain registered debentures as part of his share as beneficiary of the estate, the Court held that he was entitled to be registered as owner without further transfer; the company had already registered him in his representative capacity, and a further transfer would be an idle formality (*Edwards* v. *Ransomes & Rapier* [1930], 143 L.T. 594).

Death of Personal Representative.—On the death of one joint executor (or administrator), the surviving executor(s) (or administrator(s)) continue to act. On the death of a sole or last surviving executor, his executor acts as executor for both estates. But where the sole or surviving executor dies intestate, or a sole administrator dies, letters of administration *de bonis non* (*i.e.* for the unadministered estate) must be taken out by the next of kin of the deceased shareholder.

Parliamentary Companies.—Companies subject to the *Companies Clauses Act*, 1845, require that the personal representatives of a deceased member shall transfer the shares into their own names before becoming entitled to receive dividends or to deal with the shares. Probate (or letters of administration), authenticated by a formal declaration on the part of a person who knew the deceased member, is submitted to the company, who, if everything is in order, then substitutes in the register the names of the personal representatives for that of the deceased member, and the former become legal owners of the shares.

Bankruptcy.—S. 38 of the *Bankruptcy Act*, 1914, vests the securities of the bankrupt in the trustee of the bankrupt, but not if the securities are held by the bankrupt as trustee for others. By S. 48, s.-s. (3) of that Act, the trustee has the same right of transfer as the bankrupt had prior to his bankruptcy; and by S. 54 the trustee can, within twelve months of his appointment, or the date when he first had knowledge

of the property, or such extended time as the Court may allow, disclaim the shares. The trustee would disclaim if there was an uncalled liability on the shares, and their market value was less than the liability, and unlikely to appreciate. If he disclaims he must do so in writing, but disclaimer operates no further than to free the bankrupt's estate from liability on the shares; it does not affect the rights of third parties, and the company or any person injured by the disclaimer can prove in the bankruptcy for the loss suffered. The company may apply to the Court for an order vesting the shares in the company, and prove for the amount unpaid on the shares, less their market value, if any (*In re Hallett* [1894], 71 L.T. 408).

In a Scottish bankruptcy, the act and warrant (sequestration or extract decree [*cessio*]), or trust deed in favour of the trustee, should be produced to the company, and be registered in the Register of Probates, etc.

Table A, and most articles, confer upon the trustee the right to be registered as a member, and, where that right is exercised, he is liable for calls, otherwise the bankrupt's estate is liable.

Notice in Lieu of Distringas.—Any person claiming to be interested in any shares, stock, securities and dividends thereon standing in the books of a company, may file an affidavit, in the prescribed form, by himself or his solicitor, disclosing the nature of his interest and the material facts of the case, at the central office of the High Court, or any district registry, together with a notice in the prescribed form, and on procuring an office copy of the affidavit, and an authenticated duplicate of the filed notice, serve the office copy and the duplicate notice on the company. The notice may require the company to refrain from registering a transfer of the securities, or from paying a dividend upon them, or from doing both these things, without first notifying the person who has served the notice on the company.

The company must register the notice, and should make a note of it in the register of members, as no transfer (and/or payment of dividend) may take place unless eight days' notice has been given to the person serving the notice that the registration of a transfer and/or payment of a dividend is contemplated. The person interested can then take action against the registered holder of the shares or stock, etc., and obtain a

restraining order or injunction to prevent the transfer or payment. If the company hears nothing within the eight days, the distringas ceases to operate, and the company can proceed to register the transfer or pay the dividend (Rule 10, *Rules of the Supreme Court.* See also *Hobbs* v. *Wayet* [1887], 36 Ch.D. 260).

The distringas may be withdrawn at any time by notice to the company. Such notice should be signed by the claimant and witnessed, preferably by a solicitor. Notice in lieu of distringas is commonly known as a " stop notice."

Charging Order.—A creditor who has obtained judgment in a High Court action for an ascertained sum can obtain an order charging any stock or shares and the dividends thereon, which stand in the debtor's own name, or in his own right, or in the name of any person in trust for him, with the payment of the amount of the judgment debt and interest (Order 46, Rule 1, *Rules of the Supreme Court*).

This order places the creditor in the same position as if the charge in his favour had been given by the judgment debtor himself, but, until the order is made absolute (*i.e.* six months after the date of the order *nisi*), no proceedings can be taken. The order *nisi* is a provisional order which will be made absolute unless the person against whom it is obtained shows sufficient cause why it should not be made absolute.

When served on the company, the order operates as a distringas, and restrains transfers or payment of dividends until it is made absolute or discharged. If the company disregards the notice, it may be liable to compensate the judgment creditor to the value of the transfer, or for payment of such part as may be sufficient to satisfy the judgment debt (SS. 14 and 15, *Judgments Act*, 1838 and 1840). A charging order is enforced by a separate action proceeding by way of writ or by originating summons, *i.e.* a summons without writ granted on the application of a solicitor by a judge in chambers.

The charging order applies as between judgment creditor and judgment debtor; the notice in lieu of distringas is taken out by a person who is not a judgement creditor to prevent the transfer of securities over which he claims to have a charge or interest.

Garnishee Order.—A charging order cannot be made on debentures, since these are not stocks or shares (*Sellar* v. *Charles Bright* [1904], 2 K.B. 446), but they may be made the subject of a garnishee order. A garnishee order *nisi* attaches all debts owing or accruing due to a judgment debtor from a third party termed the *garnishee*, and calls upon the garnishee to attend the Court on a specified day at a specified time and show cause why he should not pay over to the judgment creditor (the *garnishor*) so much of the debt due from him to the judgment debtor as is sufficient to satisfy the judgment. By this order the debt is attached, but a garnishee should not pay the garnishor upon an order *nisi* (*In re Webster* [1907], 1 K.B. 623). At the hearing, the Court decides whether to make the order *absolute*, or to discharge it. If the order is made absolute, the garnishee must pay the garnishor, getting in exchange a *pro tanto* discharge of his debt to the judgment debtor. The company (the garnishee) must not pay over to the debtor any debts which are the subject of a garnishee order until the order has been discharged.

Liquidation of a Company.—A copy of the *Gazette* containing the notice of the appointment of the liquidator should be registered as the liquidator's authority to act. In the case of a voluntary liquidation, a certified copy of the resolution appointing the liquidator should be required.

Marriage of Female Member.—The company should require a letter signed by the shareholder both in her maiden name and in her married name, giving notice of her marriage and stating her husband's name, address and description. Some companies require to see a copy of the marriage certificate, but this is hardly necessary. The share certificates should be called in to be indorsed with the new name.

Change of Name of Shareholder.—A declaration by the shareholder that he has changed his name, signed in both his old and new names, and witnessed preferably by a solicitor, is sufficient evidence. If the change has been made by deed poll, royal licence, or (the extreme case) by Act of Parliament, the deed, licence, or Act should be produced for inspection. The old certificates should be indorsed with the new name.

Where a company holds shares in another company, and changes its name (which can only be done by special resolution, and with the consent of the Board of Trade), there should be

produced to the registering company the new certificate of incorporation issued by the Registrar of Joint Stock Companies certifying the change, or a certified copy, and a specimen of the new seal with the regulations for affixing it. Where the company-shareholder has been amalgamated with, or absorbed by, another company, there should be produced a proper transfer of the shares, or a copy of the contract of sale, or, where applicable, the Order of the Court under S. 154. The contract of sale will usually bear a denoting stamp, in view of the exemption from stamp duty conferred by S. 55, *Finance Act*, 1927 (*see* p. 586), otherwise the *ad valorem* stamp duty must be impressed.

Convicts.—If, as is usual, the convict's affairs are administered by a duly appointed administrator, the company should require notice of his appointment to be produced.

Forfeiture of Shares.—Forfeiture is the extreme step taken by a company to expropriate without compensation the shares of a member who fails to pay a call or instalment due upon them. Since forfeiture is in the nature of a penalty, the Courts are extremely critical of the procedure, and any irregularity will avoid the forfeiture. A company has no statutory right to forfeit shares, although by S. 108, s.-s. 3, provision is made in the annual return for a statement of the total number of shares forfeited. Such rights of forfeiture as a company has are conferred upon it by the articles as originally registered (*see* Table A, arts. 23–29), or as subsequently incorporated therein by special resolution. But where forfeiture is validly exercised within the powers contained in the articles, and *bona fide* for the benefit of the company as a whole (*Bellerby* v. *Rowland and Marwood Steamship Co.* [1902], 2 Ch. 14), and not merely to relieve a particular member of liability on his shares (*Spackman* v. *Evans* [1868], 3 H.L. 171), and the procedure is strictly followed, the Courts will not interfere (*Sparks* v. *Liverpool Waterworks* [1807], 13 Ves. 428).

"Forfeitures are *strictissimi juris* [*i.e.* of the strictest law], and parties seeking to enforce them must exactly pursue all that is necessary in order to enable them to exercise this strong power" (Lord Chelmsford in *Clarke and Chapman* v. *Hart* [1858]. 6 H.L.C. 650). "No forfeiture of property could be made unless every condition precedent had been strictly and literally complied with. A very little inaccuracy is as

fatal as the greatest" (James, L.J., in *Johnson* v. *Lyttle's Agency* [1877], 5 Ch.D. 687).

If the articles do not give power to forfeit, forfeiture must be sanctioned by the Court (*Clarke* v. *Hart, supra*). Forfeiture for non-payment of debts other than calls, *e.g.* where a company has a lien on shares for money advanced, is invalid (*Hopkinson* v. *Mortimer Harley & Co.* [1917], 1 Ch. 646).

If articles so provide, a shareholder whose shares are forfeited remains liable as an ordinary debtor for calls due at the time of forfeiture, and for interest thereon (*Stocken's Case* [1868], 3 Ch. App. Cas. 412), and he may be sued even in a liquidation commencing more than one year after forfeiture (*Ladies' Dress Association* v. *Pulbrook* [1900], 2 Q.B. 376). In the absence of such provision in the articles he is not relieved from liability to be put on the "B" list of contributories should the company go into liquidation within one year of the forfeiture (*Creyke's Case* [1869], 5 Ch. App. Cas. 63). But where shares validly forfeited have been re-allotted, all payments of uncalled capital by the new allottee enure for the benefit of the original allottee and release him *pro tanto* in respect of the damages for which his breach of contract in failing to pay the calls renders him liable. The right of the company to prove in the bankruptcy of the original allottee is, therefore, limited to the difference between the amount due from him and the sums received from the new allottee, plus the interest of which the company has been deprived by reason of the non-payment (*In re Bolton, ex parte North British Artificial Silk* [1930], 2 Ch. 48).

A company's articles usually give power to re-issue forfeited shares, and, upon re-issue, the company may treat the shares as being paid up to an extent not exceeding that paid up at the time of forfeiture. Thus, a forfeited £1 share, upon which 10*s.* has been paid, can be re-issued as fully paid for a further sum of 10*s.*, *i.e.* at a discount not exceeding the amount paid up at the time of re-issue (*Morrison* v. *Trustees Corporation* [1898], 79 L.T. 605). It was decided in *New Balkis Eersteling* v. *Randt Gold Mining Co.* [1904], App. Cas. 165, that a purchaser of forfeited shares holds them subject to payment of any call made upon the shares at the time of forfeiture, and unpaid by the original holder, and in *In re Randt Gold Mining Co.* [1904], 2 Ch. 468, that, where any money is subsequently recovered from the original holder in respect of the

unpaid call, the new holder is entitled to be credited with the amount recovered; and further, that, where the articles prohibit a member from voting so long as calls are in arrear, the new holder of the forfeited shares is not entitled to vote until either he or the dispossessed holder has paid up the calls.

It would appear that, as from 1st November, 1929, the company will have to nominate some person to execute a transfer to the purchaser of reissued forfeited shares in order to comply with S. 63, which makes it illegal to register a transfer unless a proper instrument of transfer has been delivered to the company, since forfeiture and reissue is not transmission by operation of law. Cf. art. 28 of Table A.

Prevention or Annulment of Forfeiture.—If directors forfeit shares wrongfully, the holder may appeal to the Court for a declaration that his shares are not subject to forfeiture (*Hopkinson* v. *Mortimer Harley & Co.* [1917], 1 Ch. 646). The Court will annul a forfeiture on very slight irregularity, *e.g.* where interest is claimed from the date of a call instead of from the date when payment is due (*Johnson* v. *Lyttle's Iron Agency* [1877], 5 Ch. 687). Any shareholder who doubts if his shares have been validly forfeited may bring an action to have the forfeiture set aside (*Sweny* v. *Smith* [1869], 7 Eq. 324). Forfeiture can be restrained pending trial of an action for rescinding the forfeiture, on the terms that plaintiff pays the outstanding call with interest thereon into Court (*Jones* v. *Pacaya Rubber Co.* [1911], 1 K.B. 455). Usually articles provide that directors may, with the consent of the person whose shares have been forfeited, annul the forfeiture (*Exchange Trust, Larkworthy's Case* [1903], 1 Ch. 711). The power of forfeiture can be exercised only by directors properly qualified and appointed, and at a meeting of such directors duly convened and constituted (*Garden Gully Mining Co.* v. *McLister* [1875], 1 App. Cas. 39), otherwise the forfeiture may be bad, and the shareholder can sue for rescission or damages.

Procedure.—Under the provisions of Table A, which are usually followed even in special articles, the procedure is as follows :—

Following a directors' resolution authorising the act—

(1) Send to the defaulting shareholder, by registered letter, a notice that unless the call (or instalment) and interest and expenses (if any) are paid at a specified place, usually the

registered office, on or before a certain day (which must not be earlier than the expiration of fourteen days from the date of the notice), the shares will be forfeited without prejudice to the company's right to sue for calls due.

(2) On expiration of the period, it is usual, though not compulsory unless the articles require it, to send a peremptory notice that, since the amount has not been paid, forfeiture will follow.

(3) The directors pass a formal resolution forfeiting the shares.

(4) Notice of this resolution to forfeit is sent to the defaulter.

(5) The shares are transferred to a "Forfeited Shares Account" in the Share Ledger.

(6) The necessary entry is made in the financial books.

Re-issue.—The shares may be re-issued, *i.e.* sold to another person, credited as paid to any amount not exceeding that paid by the original holder (*Morrison* v. *Trustees Corporation*, 79 L.T. 605).

The title of the new shareholder is evidenced by his certificate and/or call receipts. Under Table A (art. 28), a statutory declaration in writing by a director that a share has been duly forfeited on a stated date is conclusive evidence against all persons claiming to be entitled to the share, and the company may receive the consideration, if any, given for the share on any sale or disposition thereof, and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of, and he shall thereupon be registered as the holder of the share and shall not be bound to see to the application of the purchase money, if any, and his title is not affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share. (*See also* p. 209.)

Share certificates and other documents of title are rarely surrendered to the company on the shares being forfeited. It is recommended that a list of such documents be prominently displayed in the Share Department so that any effort to sell them can be immediately frustrated. Calls in arrear should also be listed to ensure that no transfer is registered on which calls remain unpaid.

Surrender.—Surrender signifies the act of a member who

relinquishes his shares in a company. A company governed by the Act may not accept a surrender of shares except (i) in such cases as it is in a position to forfeit the shares, and then the acceptance of the surrender is but a quick way to forfeiture, and (ii) in pursuance of a scheme for the reduction of capital, duly sanctioned by the Court under the Act (SS. 55, 56). Cozens-Hardy L.J., said in *Bellerby* v. *Rowland and Marwood, supra,* that " every surrender of shares, whether fully paid up or not, involves a reduction of capital which is unlawful, except where sanctioned by the Court under the Companies' Acts. Forfeiture is a statutory exception, and is the only exception." But in *Rowell* v. *John Rowell & Sons* [1912], 2 Ch. 609, a surrender of fully-paid six per cent. shares for an equal number of fully-paid five per cent. shares was held to be valid, as not involving any reduction of capital; and it would appear that a company has power in a proper case to accept a surrender of shares by way of compromising a dispute. Reference should also be made to redeemable preference shares (*see* p. 69) for a further statutory exception, inasmuch as the redeemed shares are surrendered for cancellation.

NOTE.—*The work of the Transfer Department as it is usually carried out in a large public company, is treated exhaustively in a "Practical Guide to Share Transfer Registration," by A. W. Pilgrim, A.I.S.A., and H. G. D. Coles, F.I.S.A., A.C.I.S., issued by the publishers of this work at 7s. 6d. net.*

CHAPTER VIII

DIRECTORS

A LIMITED company must of necessity act through agents, for it can act in no other way. The agents who guide the policy, and superintend the business, of a company may be called by various names, such as "Governor," "President," "Trustee," "Manager," "Member of the Committee of Management," "Member of the Council," but the most usual name in this country is "Director." By S. 380, the term "Director" includes any person occupying the position of director by whatever name called, and, by SS. 110 (5), 145 (4) and 352, any person in accordance with whose directions or instructions the directors of a company are accustomed to act. The titles "Managing Director," and, in private companies, "Governing Director" are commonly met with, indicating respectively that executive functions, or, by reason of holding a preponderating interest in the company, controlling power over policy is added to the functions ordinarily performed by directors. Where the company has acquired an existing business, the former proprietor is not unusually appointed managing director under the terms of purchase.

Function is everything; name matters nothing (*In re Forest of Dean Coal Mining Co.* [1878], 10 Ch.D. 450). So long as a person is, so to speak, an instrument duly appointed by the company to control the company's business, and authorised by the articles to contract in the company's name and on its behalf, he is a director, and as such is subject to all the liabilities and entitled to all the immunities attached to that position. A limited company may be appointed director of another company, if the articles sanction such an appointment (*Bulawayo Market Co.* [1907], 2 Ch. 458).[1] By S. 139, every company registered on or after 1st November, 1929, must have at least two directors, but this section does not apply to a private company. As it is inconceivable that the business of a public company could be successfully carried on by all the shareholders

[1] Usually, only a company possessing a controlling interest in another company is appointed to act, thus enabling it to exercise its control through any of its duly authorised directors, generally termed, in this connection, "Nominee Directors."

in general meeting, delegation of control in the case of a public company is a practical as well as a legal necessity.

The directors' relationship to the company of which they are directors, in their capacity as directors, is that of agents, and also, to a considerable extent, that of trustees.

As agents, directors have very wide discretionary powers. They are not liable upon contracts purported to be entered into by them on behalf of their principal, the company; but they may be personally liable where they act beyond the authority conferred upon them by the memorandum and articles, or in contravention of the Act, or where they contract in their own names and do not disclose that they are acting on behalf of the company. Where directors act in contravention of the memorandum then, since such acts are beyond the power of the company, they cannot be ratified and are null and void. But acts of directors in contravention of the articles, if within the power of the company, may be ratified and made valid by the company passing an ordinary resolution adopting such acts. Moreover such acts will bind the company even though there be no ratification, if they are within the apparent authority of the directors (*Royal British Bank* v. *Turquand* (1856), 6 E. & B. 327).

Directors are trustees inasmuch as they stand in a fiduciary position as regards the company, but there is no such relationship between them and the shareholders individually (*Percival* v. *Wright* [1902], 2 Ch. 421). As trustees, directors are personally liable to make good money or other property of the company that they may have misapplied; and debarred from entering into contracts on behalf of the company in which they are personally interested, whether as having an interest in the subject-matter of the contracts, or in the companies or firms with whom they are made, unless their interest in the contract or proposed contract has been disclosed at a meeting of the directors (S. 149—*see* p. 230); and from making any profit out of the company beyond their remuneration as directors, their dividends as shareholders, or by way of interest as debenture holders.

No spiritual person licensed to perform the duties of an ecclesiastical office may act as director of a company trading with the object of gain, except in a few definite instances where the company is concerned with schools, or is a benefit society or insurance company (*Pluralities Act*, 1838).

Appointment.—Directors can be appointed in several ways. The first directors of a company are commonly appointed by the articles, but S. 140 *infra* imposes certain restrictions. Where this is not so, articles usually provide that directors shall be appointed by the signatories to the memorandum; (*a*) by a majority of the signatories in writing (Table A, Art. 64), or (*b*) by the signatories in writing, in which case all should sign. An alternative mode of appointment is for all the signatories, or a majority of them, as the articles may require, to meet and pass a resolution appointing (*In re London & Southern Counties Land Co.* [1885], 31 Ch.D. 223). If articles so provide, the signatories themselves may act as first directors, pending appointment by them of others. Sometimes, articles give power to a vendor to appoint, or to nominate, a director or directors. Directors are usually empowered to appoint in order to fill a casual vacancy in their number, a person so appointed being subject to retirement at the same time as was the director in whose place he has been appointed (Table A, Art. 78); or to appoint a person as additional director, to hold office until the next ordinary general meeting of the company, when he may be re-elected as an additional director (Table A, Art. 79); or to appoint one (or more) of their number as managing director or manager, and to fix his remuneration. A managing director or manager so appointed holds office subject to his continuing to be a director, or to a resolution passed by the company removing him from the board (Table A, Art. 68). Directors retiring by rotation are eligible for re-election by the company in general meeting, and in default of their places being filled by the company, the retiring directors are deemed re-elected unless the company at the meeting resolve not to fill the vacancy (Table A, Art. 76), and articles usually empower the shareholders in general meeting to elect, re-elect, substitute, and remove directors. Where no directors have been appointed, members of the company can, under S. 115 convene a general meeting for the purpose of appointing directors (*see* p. 242).

Qualification.—There is nothing in the Act to confine membership of the directorate to members of the company, but most articles make the holding of shares in the company a necessary qualification, and, frequently, the actual extent of the required holding is specified. Table A, Art. 66, requires a

merely nominal qualification—"at least one share." Where articles declare that no person shall be eligible as a director who does not hold some specified number of shares, that is a condition precedent to the holding of the office, and unless a person is the registered holder of that number of shares he cannot be a director. If a company desires that its shares shall be quoted in the Stock Exchange List, a share qualification for directors must be imposed by the articles. The holding of share warrants is not a qualification for the office of director (S. 141 s.-s. (2)). If the qualification is increased after a director has qualified to the extent prescribed at the time of his appointment, he remains a director even if he does not acquire the larger qualification within the prescribed time, but continuing to act is regarded as an agreement to take up the extra qualification within a reasonable time (*Molineaux* v. *London, etc., Insurance Co.* [1902], 2 K.B. 589).

Where articles require a share qualification, then by S. 141:—

(1) Without prejudice to the restrictions imposed by the last foregoing section, it shall be the duty of every director who is by the articles of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the articles.

(2) For the purpose of any provision in the articles requiring a director or manager to hold a specified share qualification, the bearer of a share warrant shall not be deemed to be the holder of the shares specified in the warrant.

(3) The office of director of a company shall be vacated if the director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the articles, obtain his qualification, or if after the expiration of the said period or shorter time he ceases at any time to hold his qualification.

(4) A person vacating office under this section shall be incapable of being reappointed director of the company until he has obtained his qualification.

(5) If after the expiration of the said period or shorter time any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding five pounds for every day between the expiration of the said period or shorter time or the day on which he ceased to be qualified, as the case may be, and the last day on which it is proved that he acted as a director.

It is not necessary in order to qualify as director that the qualification shares should be obtained from the company, except where the person is named as director in the articles or prospectus, or the articles expressly so provide. It is sufficient that they are obtained within the two months, or such shorter

time as may be fixed by the articles, whether from the company, or by purchase and transfer, or by gift. But a director may not accept his qualification shares as a gift from promoter or vendor (*In re Canadian Oilworks Corporation, Hay's Case* [1875], 10 App. Cas. 593), or hold them in trust for such persons (*In re London & South Western Canal* [1911], 1 Ch. 346), for in both cases that constitutes a breach of trust, making him liable to pay over to the company the full value of the shares.

A director need not hold his qualification shares as beneficial owner, though articles provide that he shall hold "in his own right." He may hold as trustee for another (*Pulbrook* v. *Richmond Mining Co.* [1878], 9 Ch.D. 610); but not, as has been seen, as mere nominee of promoters or vendors, or as liquidator or executor. Where the beneficial owner, or a trustee in bankruptcy makes good his claim to the shares, a director registered as holder of the shares loses his qualification (*Sutton* v. *English and Colonial Produce Co.* [1902], 2 Ch. 502).

A joint holding may be a sufficient qualification, unless articles provide otherwise (*In re Glory Paper Mills, Dunster's Case* [1894], 3 Ch. 473).

Under S. 141 s.-s. (5), a person who acts as a director or manager in breach of the section is liable to a heavy penalty; he is liable also to refund fees paid to him by the company in mistake while he so acts (*In re Bodega Co.* [1904], 1 Ch. 276); and is open to an injunction restraining him from acting as director or manager, or representing himself as such. But, by S. 120 s.-s. (3), and by S. 143, usually strengthened by the articles (*see* Table A, Art. 88); also by the rule of law laid down in *Royal British Bank* v. *Turquand* [1856], 6 E. & B. 327, the acts of an unqualified director are valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification. The appointment and qualification of directors appertain to the internal management of a company, as to which persons dealing in good faith with the company are entitled to assume that all is being done regularly (*Mahoney* v. *East Holyford Co.*, 7 H.L. 869). But a company will not be liable for the acts of an unqualified director where it can be shown that the other contracting party acted *mala fide* with knowledge that the *de facto* director was unqualified or that his appointment was defective. The Court has moreover power to relieve a director who has acted without

the necessary qualification shares from the penalties imposed by S. 141. But where he is liable to repay money to the company, the Court will generally require evidence as to the wishes of shareholders (or if the company is insolvent, of creditors), before granting relief (*In re Barry & Staines Linoleum* [1934], Ch. 227).

S. 120, s.-s. (3) provides: Where minutes have been made in accordance with the provisions of this section (*see* p. 276) of the proceedings at any general meeting of the company or meeting of directors or managers, then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had. and all appointments of directors, managers, or liquidators, shall be deemed to be valid.

By S. 143 :—The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification. Art. 88 of Table A declares that all acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director, or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

S. 140 contains certain important restrictions on the appointment of directors by the articles or the naming of them as such in a prospectus or statement in lieu of prospectus. The section reads as follows :—

S. 140.—(1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in a prospectus issued by or on behalf of the company, or as proposed director of an intended company, in a prospectus issued in relation to that intended company, or in a statement in lieu of prospectus delivered to the registrar by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or the delivery of the statement in lieu of prospectus, as the case may be, he has by himself or by his agent authorised in writing—

(*a*) signed and delivered to the registrar of companies for registration a consent in writing to act as such director; and

(*b*) either—

(i) signed the memorandum for a number of shares not less than his qualification, if any; or

(ii) taken from the company and paid or agreed to pay for his qualification shares, if any; or

(iii) signed and delivered to the registrar for registration an undertaking in writing to take from the company and pay for his qualification shares, if any; or

(iv) made and delivered to the registrar for registration a statutory declaration to the effect that a number of shares, not less than his qualification, if any, are registered in his name.

(2) Where a person has signed and delivered as aforesaid an undertaking to take and pay for his qualification shares, he shall, as regards those shares, be in the same position as if he had signed the memorandum for that number of shares.

(3) On the application for registration of the memorandum and articles of a company the applicant shall deliver to the registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding fifty pounds.

(4) This section shall not apply to—

(*a*) a company not having a share capital; or

(*b*) a private company; or

(*c*) a company which was a private company before becoming a public company; or

(*d*) a prospectus issued by or on behalf of a company after the expiration of one year from the date on which the company was entitled to commence business

Register of Directors.—By S. 108, s.-s. (3*n*), and by S. 109, s.-s. (1*b*), there must be included in the annual return, which every company must deliver to the registrar, all such particulars with respect to the persons who at the date of the return are the directors of the company as are by this Act required to be contained with respect to directors in the register of the directors of a company.

The particulars required and other regulations regarding directors are set out in the following sections :—

S. 144.—(1) Every company shall keep at its registered office a register of its directors or managers containing with respect to each of them the following particulars, that is to say—

(*a*) in the case of an individual, his present Christian name and surname, any former Christian name or surname, his usual residential address, his nationality, and, if that nationality is not the nationality of origin, his nationality of origin, and his business occupation, if any, or, if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships; and

(*b*) in the case of a corporation, its corporate name and registered or principal office.

(2) The company shall, within the periods respectively mentioned in this subsection, send to the registrar of companies a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors or in any of the particulars contained in the register.

The period within which the said return is to be sent shall be a period of fourteen days from the appointment of the first directors of the company, and the period within which the said notification of a change is to be sent shall be fourteen days from the happening thereof.

(3) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of one shilling, or such less sum as the company may prescribe, for each inspection.

(4) If any inspection required under this section is refused or a default is made in complying with subsection (1) or subsection (2) of this section, the company and every officer of the company who is default shall be liable to a default fine.

(5) In the case of any such refusal, the court may by order compel an immediate inspection of the register.

(6) For the purposes of this section, a person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director and officer of the company.

The prescribed form, mentioned in S. 2 above, is Companies Form, No. 9—(*The Companies* (*Forms*) *Order*, 1929).

S. 145.—(1) Every company to which this section applies shall, in all trade catalogues, trade circulars, showcards, and business letters on or in which the company's name appears and which are issued or sent by the company to any person in any part of His Majesty's dominions, state in legible characters with respect to every director being a corporation, the corporate name, and with respect to every director being an individual, the following particulars—

(*a*) his present Christian name, or the initials thereof, and present surname;

(*b*) any former Christian names and surnames;

(*c*) his nationality, if not British;

(*d*) his nationality of origin, if his nationality is not the nationality of origin:

Provided that, if special circumstances exist which render it in the opinion of the Board of Trade expedient that such an exemption should be granted, the Board may by order grant, subject to such conditions as may be specified in the order, exemption from the obligations imposed by this subsection.

(2) This section shall apply to—

(*a*) every company registered under this Act or the Acts repealed by this Act unless it was registered before the twenty-third day of November, nineteen hundred and sixteen; and

(*b*) every company incorporated outside Great Britain which has an established place of business within Great Britain, unless it had established such a place of business before the said date; and

(*c*) every company licensed under the Money-lenders Act, 1927, whenever it was registered or whenever it established a place of business.

(3) If a company makes default in complying with this section, every director of the company shall be liable on summary conviction

for each offence to a fine not exceeding five pounds, and, in the case of a director being a corporation, every director, secretary and officer of the corporation, who is knowingly a party to the default, shall be liable to a like penalty:

Provided that in England no proceedings shall be instituted under this section except by, or with the consent of, the Board of Trade.

(4) For the purposes of this section—

(*a*) the expression "director" includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

(*b*) the expression "Christian name" includes a forename;

(*c*) the expression "initials" includes a recognised abbreviation of a Christian name;

(*d*) in the case of a peer or person usually known by a title different from his surname, the expression "surname" means that title;

(*e*) references to a former Christian name or surname do not include—

(i) in the case of a peer or a person usually known by a British title different from his surname, the name by which he was known previous to the adoption of or succession to the title; or

(ii) in the case of natural born British subjects, a former Christian name or surname where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years; or

(iii) in the case of a married woman, the name or surname by which she was known previous to the marriage;

(*f*) the expression "showcards" means cards containing or exhibiting articles dealt with, or samples or representations thereof.

S. 344. Companies incorporated outside Great Britain which establish a place of business within Great Britain, shall among other particulars, deliver to the registrar for registration a list of the directors of the company, containing such particulars as are required by the Act to be contained in the company's register of directors.

Powers of Directors.—This matter has already been touched upon (*see* directors as agents and trustees, p. 213), but more may usefully be added.

It is customary now to empower directors, under an article of wide general import (*see* Table A, Art. 67), to exercise all such powers of the company as are not required either by the Act or the articles to be exercised by the company itself in general meeting. This is both safer and more effective than any attempt to define the directors' powers by express provisions, although it is not infrequently found that, in addition to the general power, specified powers are conferred by separate articles.

Having regard to the fiduciary position in which directors stand towards the company, they are bound to exercise their

wide powers *bona fide*, for the benefit of the company as a whole, not for their own benefit solely, or for the sole benefit of particular persons; and, if they abuse their powers the Court will interfere. Thus, to cite but a few cases: in *Clark* v. *Workman* [1920], 1 I.R. 107, the Court restrained directors who held a preponderance of the shares from transferring those shares to a rival company; and in *Piercy* v. *S. Mills & Co.*, [1920], 1 Ch. 77, from allotting shares to themselves in order to control the voting power; and in *Alexander* v. *Automatic Telephone Co.* [1900], 2 Ch. 56, from acting unfairly in the making of calls; and in *Spackman* v. *Evans* [1868], 3 H.L. 171, from forfeiting shares in order to relieve the member of his liability on them.

The articles frequently provide that any director who is abroad or about to go abroad may appoint a person approved by his co-directors to be his " alternate director " to act in his place while he is abroad. The alternate director ceases to act on his principal's return. It should be remembered that the appointment or removal of an alternate director is a " change " which requires registration, but that the name of the principal director should still appear. The principal director does not appear to be responsible for acts of his alternate.

Directors are usually empowered to appoint committees out of their body for special purposes (*see* Table A, Art. 85). They may also be empowered to appoint " nominee directors " from out of their body to represent the company on the board of subsidiary companies to watch over the interests of the parent company. Where the Articles empower the Board to delegate to one of their number authority to do a certain act, and that act is one which that director would normally have power to do on behalf of the company, those doing business with the company are not obliged to inquire whether the director has in fact been so empowered, and the company cannot dispute their presumption that he has been so empowered (*British Thomson-Houston Co.* v. *Federated European Bank* [1932], 2 K.B. 176).

Where the Articles conferred power on " the governing directors " to appoint additional directors it was held that the powers so conferred must be exercised by all; a majority was not sufficient (*Perrott & Perrott* v. *Stephenson* [1934], Ch. 171). The rule generally applicable to corporations that when a

duty is delegated to a body of persons they can act at a meeting does not apply to companies.

The appointment of a managing director cannot be made unless directors are empowered to appoint by the articles or by the company in general meeting (*Boschoek Proprietary Co.* v. *Fuke* [1906], 1 Ch. 148, 159). Directors, being agents, cannot delegate their powers, unless expressly or impliedly authorised so to do by the articles, except such ordinary powers as would, in any case, be exercised by the company's servants; but where they are authorised delegation is valid (*In re Taurine Co.* [1883], 25 Ch.D. 118). Where a managing director is appointed, articles often reserve to the directors as a body such acts as borrowing money, taking security, etc., so it is well if articles define the powers of the managing director, and that negatively by declaring what acts he may not do

Usually the managing director is invested with the powers of a manager, and he receives in addition to an ordinary director's fee, special remuneration by way of salary or commission, or his fee as ordinary director may be taken into account when fixing the salary or commission. Where the remuneration is on a commission basis great care will be necessary in determining what that basis shall be, and in putting the arrangement into precise language capable only of one meaning, and that the one intended. Such a phrase, *e g.*, as "to be remunerated by 5% of the net trading profits of the business," may be variously interpreted. Where any particular source of income is to be excluded when determining the commission, it should be specifically excluded by the service agreement.

Assignment of Office.—S. 151 introduces a new and very proper safeguard against a director assigning his office to any person unless that person is approved by special resolution of the company. The wording of the section is as follows :—

S. 151.—If in the case of any company provision is made by the articles or by any agreement entered into between any person and the company for empowering a director or manager of the company to assign his office as such to another person, any assignment of office made in pursuance of the said provision shall, notwithstanding anything to the contrary contained in the said provision, be of no effect unless and until it is approved by a special resolution of the company·

Remuneration of Directors.—Directors are legally entitled to remuneration only under a contract of employment entered into with them by the company and to the extent sanctioned by the articles. Under such a contract and provision in the articles, directors may apply funds of the company to payment of their fees accrued due, and they may sue the company for unpaid fees (*New British Iron Co.* [1898], 1 Ch. 324) whether profits are made or not, since payment of such fees is not contingent upon the company earning profits, unless it is expressly made so by the articles. But where there is a condition precedent to the payment of fees, *e.g.* where, by the articles, directors have to determine the time of payment (*Caridad Copper Co.* v. *Swallow* [1902], 2 K.B. 44), or where a lump sum is fixed as remuneration to be divided between the directors in such manner as they, by resolution, may decide (*Morrell* v. *Oxford Portland Cement Co.* [1910], 26 T.L.R. 682), there is no debt accrued due that can be sued for until the directors have by resolution determined the day of payment or the manner of division. Directors may prove for unpaid fees in a winding up, but are ordinary not preferential creditors, for directors are not employees (*In re New British Iron Co. Ex parte Beckwith* [1898], 1 Ch. 324). But in rare cases where the articles allow a director to be engaged by the company in another capacity, *e.g.*, as editor of a paper, he may claim as a preferential creditor for the salary due to him in that capacity, for he is then a servant of the company within the meaning of S. 264 (*In re Beeton & Co.* [1913], 2 Ch. 279). Directors' remuneration if fixed by the articles is alterable only by special resolution (*Boschoek Proprietary Co.* v. *Fuke* [1906], 1 Ch. 148).

In a case where directors proved in a winding-up for fees due more than six years, the fees having been shown on balance sheets signed by the directors at board meetings, it was held that the Statute of Limitations applied, and such balance sheets were not acknowledgments sufficient to revive the claim for fees which were statute-barred; only the fees due within the six years could be proved for in the liquidation; the balance sheet was not a written promise by the company or its agents to pay the fees (*In re Coliseum* (*Barrow*) [1930], 2 Ch. 44).

Where articles do not fix the directors' fees, it is usual for them to provide that the company in general meeting may vote their remuneration (*see* Table A, Art. 65, and *Dunstan* v. *Imperial*

Gas, etc., Co. [1832], 3 Bar & Ad. 125). In this case, the remuneration commences from the date of the meeting at which the amount is fixed (*London Gigantic Wheel Co.*, 24 T.L.R. 618) unless the resolution otherwise directs. And where articles do fix the remuneration, it is competent for the company to vote additional remuneration by way of gratuity, so long as the company is a going concern, and articles do not forbid.

Directors are not entitled to receive any greater sum than the actual amount of the fees authorised by the articles, or voted in general meeting. That is to say, they must pay their own travelling expenses incurred on the company's business (*Young* v. *Naval and Military Co-op. Socy.* [1905], 1 K.B. 687) and income tax payable on their fees (*Boschoek Proprietary Co.* v. *Fuke, supra*) out of the fees, unless articles, or the shareholders in general meeting, sanction such payments in addition to the fees. Directors receiving, or consenting to the payment of, excess fees are jointly and severally liable to repay to the company such excess (*Leeds Estate Co.* v. *Shepherd* [1887], 36 Ch.D. 787); and where the company is being wound up may be compelled to restore fees improperly received by misfeasence proceedings under S. 276.

It is ultra vires a company to covenant to pay a pension to the widow of the managing director unless specially authorised by the Articles or by resolution; the director is not an employee (*In re Lee, Behrens & Co.* [1932], 2 Ch. 46).

Under the *Apportionment Act*, 1870, periodical payments in the nature of income, *e.g.* rents, annuities, salaries, pensions, etc., are apportionable. In *Moriarty* v. *Regent's Garage Co.* [1921], 1 K.B. 423, it was held that the Apportionment Act applied to the payment of directors' fees, but on appeal (2 K.B. 766) the Court, though granting the appeal upon other grounds, refrained from deciding whether the Apportionment Act applied and left the question open. If either the contract of service or the articles provide that a director's fee shall be "*at the rate of* £— per annum," or "£— per annum and accrue due from day to day," there can be no doubt that, where a director's service does not extend to the full year, he is entitled to receive payment for the period of service.

But contracts or articles are frequently less explicit, and do no more than provide that the remuneration shall be so many pounds per annum. Where that is so, it has been held in several cases (*see Salton* v. *New Beeston Cycle Co.* [1899], 1 Ch. 775;

Inman v. *Ackroyd & Best* [1901], 1 K.B. 613) that there can be no apportionment, and that a director is not entitled to any remuneration unless and until he has completed the full year of service. But, as indicated above, the legal position will not be satisfactorily cleared up until the question whether directors' fees can be regarded as salary, so as to bring them within the *Apportionment Act*, 1870, is authoritatively decided. Meanwhile, the article or contract fixing directors' remuneration should be so worded as to make it perfectly clear what is intended. As to disclosure of remuneration in the company's accounts, etc., *see* p. 294.

Disqualification of Directors.—Table A, Article 72 provides as follows :—

72. The office of director shall be vacated, if the director—
(*a*) ceases to be a director by virtue of section 141 of the Act; or
(*b*) without the consent of the company in general meeting holds any other office of profit under the company except that of managing director or manager; or
(*c*) becomes bankrupt; or
(*d*) becomes prohibited from being a director by reason of any order made under S. 217 or 275 of the Act; or
(*e*) is found lunatic or becomes of unsound mind; or
(*f*) resigns his office by notice in writing to the company; or
(*g*) is directly or indirectly interested in any contract with the company or participates in the profits of any contract with the company.

Provided, however, that a director shall not vacate his office by reason of his being a member of any corporation which has entered into contracts with or done any work for the company if he shall have declared the nature of his interest in manner required by S. 149 of the Act, but the director shall not vote in respect of any such contract or work or any matter arising thereout, and if he does so vote his vote shall not be counted.

Most companies' articles follow Table A in the matter of the disqualification of directors, but additional reasons for disqualification are frequently found, *e.g.*, being absent from directors' meetings for a prolonged period, or being convicted of an indictable offence. As to (*b*) above, it has been held that a director acting as paid trustee for debenture holders is *ipso facto* disqualified as director (*Astley* v. *New Tivoli Co.* [1899], 1 Ch. 151). Under (*c*) above, bankruptcy subsequent to appointment will disqualify. Where the word " insolvent " is used in place of the word " bankrupt," the meaning is that by his own admissions and to the knowledge of others the director is unable to discharge his debts (*London and Counties Assets Co.* v. *Brighton Grand Concert Hall* [1915], 2 K.B. 493). With regard to (*g*) *see* p. 230. It is not necessary to disqualification that

the director should actually participate in the profits (*Star Steam Laundry Co.* v. *Dukas* [1913], 108 L.T. 367). Hence companies often incorporate a special article providing that a director may contract with his company, if he discloses to the Board his interest in the contract and does not participate in the profits; and most articles provide that a director shall not be disqualified from holding office because he is also a member or a director of another company with whom the company has entered into a contract. But he must not as director vote on the contract. (And *see* p. 230.)

Undischarged Bankrupts, etc.—The Act of 1929 incorporates two sections new to company law, viz. SS. 142 and 217. S. 142 restrains undischarged bankrupts from acting as directors except upon the terms mentioned in the section, and S. 217 empowers the Court in England to restrain any promoter, director, or official of a company who has committed a fraud in connection with the company from acting as director of any company for a period not exceeding five years. The wording of S. 142 is as follows:—

(1) If any person being an undischarged bankrupt acts as director of, or directly or indirectly takes part in or is concerned in the management of, any company except with the leave of the Court by which he was adjudged bankrupt, he shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds, or both to such imprisonment and fine:

Provided that a person shall not be guilty of an offence under this section by reason that he, being an undischarged bankrupt, has acted as director of, or taken part or been concerned in the management of, a company, if he was on the third day of August, nineteen hundred and twenty-eight, acting as director of, or taking part, or being concerned in the management of, that company and has continuously so acted, taken part, or been concerned since that date and the bankruptcy was prior to that date.

(2) In England the leave of the Court for the purposes of this section shall not be given unless notice of intention to apply therefor has been served on the official receiver, and it shall be the duty of the official receiver, if he is of opinion that it is contrary to the public interest that any such application should be granted, to attend on the hearing of and oppose the granting of the application.

(3) In this section the expression "company" includes an unregistered company and a company incorporated outside Great Britain which has an established place of business within Great Britain, and the expression "official receiver" means the official receiver in bankruptcy.

(4) Subsection (1) of this section in its application to Scotland shall have effect as if the words "sequestration of his estates was awarded" were substituted for the words "he was adjudged bankrupt."

S. 217, s.-s. (1) reads as follows :—

> Where an order has been made in England for winding up a company by the Court, and the official receiver has made a further report under this Act stating that, in his opinion, a fraud has been committed by a person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the Court may, on the application of the official receiver, order that that person, director or officer shall not, without the leave of the Court, be a director of or in any way, whether directly or indirectly, be concerned in, or take part in the management of a company for such period, not exceeding five years, from the date of the report as may be specified in the order.

Resignation of Directors.—A director may resign his office, and notice of resignation addressed to the secretary, at the registered office of the company, is sufficient for the purpose. Articles usually provide for resignation, but it would appear to be immaterial whether they do or do not, except that, if they do, any conditions contained therein must be observed by a director who desires to retire. Once a director has tendered his resignation, he may not withdraw it without the consent of the company duly given (*Glossop* v. *Glossop* [1907], 2 Ch. 371).

If, as is common, the articles provide that the office of a director shall be vacated if by notice in writing to the company he resigns his office, a verbal notice that he resigns, given by a director to the company and accepted by a resolution in general meeting, is valid notice, and vacates the office (*Latchford Premier Cinema* v. *Ennion* [1931], 2 Ch. 409).

Removal of Directors.—Art. 80 of Table A gives power, by extraordinary resolution, to remove a director, and special articles generally give such power. Where the power is exercised by the company in general meeting, the director removed has no remedy except in damages against the company, where such action can be maintained (*Bainbridge* v. *Smith* [1889], 41 Ch.D. 462). It is different, however, where a director is improperly prevented from acting by his co-directors, since he may then apply for an injunction to restrain his co-directors from excluding him from their meetings and from acting as director (*Pulbrook* v. *Richmond Mining Co.* [1878], 9 Ch.D. 610).

Rotation of Directors.—Articles usually provide for the retirement of directors by rotation, *see* Table A, Arts. 73–80, under which provisions the whole of the directors retire at the first ordinary meeting of the company, and one-third of them at the ordinary meeting in every subsequent year. Retiring

directors are eligible for re-election, and, if the meeting does not fill the vacated office, the retiring director is deemed to have been re-elected, unless the meeting resolves not to fill the vacancy. These provisions are wise and useful, for they make for continuity of policy and at the same time afford opportunities for the shareholders to substitute new directors for old by the simple expedient of not re-electing retiring directors, thus relieving them of the unpleasant necessity to remove directors. The secretary should keep a roll of directors, showing clearly when they are due to retire. Retirements in the first two years are usually fixed by ballot, unless, as in Table A, all the directors are to retire at the first general meeting of the company. Where additional directors were co-opted by the board, and held office only until the commencement of the ordinary general meeting next after their election, it was held that in determining the number of the board for the purpose of deciding how many ought to retire, the additional directors were not to be counted (*Eyre* v. *Milton Proprietory Ltd.* [1936] Ch. 244). Where directors who have served longest have been in office for an equal period, the question who is to retire must be determined by ballot, *i.e.* by drawing lots, and not by a secret vote of the members of the board (*ibid.*). It is quite common in the case of private companies, for the articles to name directors as "governing" or "life" or "permanent" directors. In that case, the articles must first be altered by special resolution before any change in such directors can be made.

Liability of Directors.—Besides the penalties which directors may incur for failing to comply with the requirements of the Act, as to which *see* Appendix, p. 622 *et sqq.*, they may also render themselves personally liable (*a*) in respect of contracts entered into by them, and on the ground of (*b*) negligence, (*c*) misfeasance and breach of trust, and (*d*) fraud.

Contracts.—As regards contracts, directors will be personally liable thereon in cases where they contract in their own names not disclosing that they are acting on behalf of the company; or where in accepting bills of exchange they sign in such a way as to bind themselves and not the company (*Dutton* v. *Marsh* [1871], 6 Q.B. 361); or where they append their names to a bill of exchange, promissory note, or cheque whereon the company's name is incorrectly stated, or the word "Limited" is omitted from the name, unless the company duly pays the same (*Atkins*

& Co. v. *Wardle* [1889], 61 L.T. 23); and lastly they may be liable in damages in cases where they contract beyond their powers, on the ground that they impliedly warranted their authority so to contract (*Collen* v. *Wright* [1857], 8 El. & Bl. 647).

Negligence.—It would be well if directors were always appointed by reason of special fitness for the post, but this is far from being the case, and a director is not bound to bring any special personal qualification to his office, but he is bound to act with such care as can reasonably be expected of him having regard to the knowledge and experience that is his (*In re Brazilian Rubber Plantations* [1911], 1 Ch. 425). And he is bound to use fair and reasonable diligence in the discharge of his duties, though, if an ordinary director, he is not bound to attend every board meeting, or to devote the time and attention to the company's business that is to be expected of a member of a partnership (*In re Forest of Dean Coal Mining Co.* [1878], 10 Ch.D. 450). Directors are entitled to trust their co-directors, and where there is no ground for suspicion, to rely upon the judgment, information, and advice of the company's responsible officials (*Dovey* v. *Cory* [1901], App. Cas. 477). Directors who act within their powers, and with such care as is reasonably to be expected from them having regard to their knowledge and experience, and honestly for the company's benefit, discharge their legal and equitable duty to the company, and are not liable for mistakes or errors of judgment (*Lagunas Nitrate Co.* v. *Lagunas Nitrate Syndicate* [1899], 2 Ch.D. 392).

Since there lies upon directors a duty to act honestly, with reasonable care, and fair diligence in discharge of their duties, there may be a breach of that duty, and if there be such breach, and loss to the company ensues, and both facts be proved to the satisfaction of the Court, the delinquent directors will be liable to make good the loss to the company. Whether directors have or have not been guilty of such negligence can only be determined on the particular facts of the particular case. The negligence must be in a business sense culpable or gross (*In re National Bank of Wales, Cory's Case* [1899], 2 Ch. 629).

Misfeasance and Breach of Trust.—Unless a director can obtain relief from the Court under S. 372 (*see* p. 230) he is liable on the same footing as a trustee to refund to the company any money of the company paid away without authority to do so, notwithstanding that he believed the company to have such authority and he derived no personal benefit from the payment

But he will be liable only where he has participated in the misapplication, or is aware of and has concurred in it. He is not liable for the wrongful acts of others of which he had no knowledge and in which he took no part. Every director concerned in such a transaction is jointly and severally liable to make good the misapplied funds, and if one of several directors concerned in a misapplication of the company's funds makes restitution he is entitled to recover contributions from the others.

[The above propositions are well illustrated and explained in *In re Forest of Dean Coal Mining Co.* [1878], 10 Ch.D. 450; *Leeds Estates, etc. Co.* v. *Shepherd* [1887], 36 Ch D. 787; and *Masonic & General Life Assurance Co.* v. *Sharpe* [1892], 1 Ch. 154.]

Directors, being the company's agents, may not make any profit for themselves out of the company's business beyond what they are entitled to as directors (and share or debenture holders). That an agent may not make any profit for himself out of his principal's business without the full knowledge and assent of his principal is one of the fundamental principles of the law of agency. Directors may be authorised by the articles, or by the company in general meeting, to contract with the company at a profit to themselves, or, on behalf of the company to enter into contracts in which they are personally interested, on the terms that they disclose to the board the nature and extent of their interest in the contracts, and abstain from voting thereon. But apart from such express authorisation and disclosure they may not do either of these things. Where, for example, a director sells his own property through an agent to the company, without authorisation and disclosure, the company can rescind the contract, reject the property and reclaim the purchase price, or, alternatively, retain the property and sue for damages. So, too, where directors sell to one of their number assets of the company, the company may repudiate the contract, or sue the directors for breach of their duty to the company. These principles, illustrated in many cases where directors have been sued for misfeasance of this kind, were stated by Knight Bruce, V.C., in *Benson* v. *Henthorn* [1842], 1 Y. & C., 326, in the following terms:—"The company have the right to the entire services of the directors, and to the advice of every director in giving his opinion on matters which are brought before the Board for consideration, and the general rule that no trustee can derive

any benefit from dealing with those funds of which he is trustee applies with still greater force to the state of things in which the interest of the trustee deprives the company of the benefit of his advice and assistance."

The provisions of S. 149 should be noted :—

(1) Subject to the provisions of this section, it shall be the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of his interest at a meeting of the directors of the company.

(2) In the case of a proposed contract the declaration required by this section to be made by a director shall be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested, and in a case where the director becomes interested in a contract after it is made, the said declaration shall be made at the first meeting of the directors held after the director becomes so interested.

(3) For the purpose of this section, a general notice given to the directors of a company by a director to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made.

(4) Any director who fails to comply with the provisions of this section shall be liable to a fine not exceeding one hundred pounds.

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.

In view of s.-s. (3) above, it is advisable for every director to give to the board written notice of the companies and firms in which he is interested, and to bring this up to date at short and regular intervals, otherwise he may innocently contravene the section. Particularly is this so where the director is in the habit of buying and selling shares as a speculator. And directors will be well advised, whenever the board enters into any contract, to review their private interests to see whether disclosure is necessary; and, when they acquire an interest in a company or firm, to see whether the company of which they are directors has any contract with that company or firm. The section may be very difficult to comply with in certain cases, *e.g.* in the case of bank directors, and correspondingly increased care must be taken. The secretary should tactfully remind his directors from time to time of their obligations under this section.

S. 372 provides that if in any proceeding for negligence, default, breach of duty, or breach of trust against a person to

whom this section applies, it appears to the Court hearing the case that that person is or may be liable in respect of the negligence, default, breach of duty, or breach of trust, but that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty, or breach of trust, that Court may relieve him, either wholly or partly, from his liability on such terms as the Court may think fit (s.-s. (1)). The section applies to directors, managers, officers and auditors of the company (s.-s. (4)).

Secret profits and commissions, properly called bribes, no matter what form they may take, accepted by a director, or indeed by any of the company's servants, in pursuance of the company's business, belong to the company, and may be recovered from the taker, or, where that is still possible, the company may repudiate the contract in respect of which the bribe was offered and accepted (*Panama & South Pacific Telegraph Co.* v. *India Rubber & Telegraph Works Co.* [1875], 10 Ch. App. 515). They are corrupt gifts wrongfully accepted. If the bribe be in connection with a sale of goods, the Court will assume that the true price of the goods is less than the price charged by at least the amount of the bribe, and where the bribe has not been paid over, action will lie against the briber for such excess.

By *The Prevention of Corruption Act*, 1906, an agent who corruptly accepts or retains for himself or another any gift or consideration as an inducement or reward for doing or forbearing to do any act in relation to his principal's business, or for showing any favour in relation to such affairs is guilty of a misdemeanour and liable to imprisonment, with or without hard labour, not exceeding two years, or a fine not exceeding £500. So too is the person giving or offering the bribe, and any person giving or using a false receipt with intent to deceive the principal.

Payments for Loss of Office.—The following declaration of law as to payments received by directors for loss of office or on retirement should be carefully noted :—

> S. 150.—(1) It is hereby declared that it is not lawful in connection with the transfer of the whole or any part of the undertaking or property of a company for any payment to be made to any director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, unless

particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the company and the proposal approved by the company.

(2) Where a payment which is hereby declared to be illegal is made to a director of the company, the amount received shall be deemed to have been received by him in trust for the company.

(3) Where a payment is to be made as aforesaid to a director of a company in connection with the transfer to any persons, as a result of an offer made to the general body of shareholders, of all or any of the shares in the company, it shall be the duty of that director to take all reasonable steps to secure that particulars with respect to the proposed payment, including the amount thereof, shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(4) If any such director fails to take reasonable steps as aforesaid, or if any person who has been properly required by any such director to include the said particulars in or send them with any such notice fails so to do, he shall be liable to a fine not exceeding twenty-five pounds, and if the requirements of the last foregoing subsection are not complied with in relation to any such payment as is mentioned in the said subsection, any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any persons who have sold their shares as a result of the offer made.

(5) If in connection with any such transfer as aforesaid the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares or any valuable consideration is given to any such director, the excess or the money value of the consideration, as the case may be, shall, for the purposes of this section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

(6) Nothing in this section shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are mentioned in this section or with respect to any other like payments made or to be made to the directors of a company.

Fraud.—Directors are personally liable for frauds committed by them, such as issuing fraudulent prospectuses or balance sheets, etc., or for any other tort, and the company may also be liable for a fraud or other wrong committed by directors acting as the company's agents in pursuance of the company's business. Further, under the *Larceny Act*, 1916, and SS. 272 and 362 of the Act, directors may be held criminally liable.

The memorandum of a limited company may provide that the liability of the directors or managers, or of the managing director shall be unlimited, and a company may, if so authorised by its articles, by special resolution, alter its memorandum so as to render unlimited the liability of its directors or managers, or any managing director (*see* SS. 146 and 147).

Prior to the coming into operation of the Companies Act,

1929, it had become customary to insert in articles a clause indemnifying directors against liability for any actions, costs, charges, losses, damages and expenses which they might incur or sustain through any act done, concurred in or omitted in or about the execution of their duty or supposed duty in their office as director, except liability incurred through their own *wilful* neglect or default. Such a clause was held to be valid (*In re Brazilian Rubber Estates* [1911], 1 Ch. 425). But the Courts expressed strong disapproval of directors being so protected (*In re City Equitable Fire Insurance Co.* [1925], 1 Ch. 407), and S. 152 of the Act renders such provision in the articles or in any contract null and void, not only as regards directors, but any " manager or officer of the company, or any person (whether an officer of the company or not) employed by the company as auditor. " The section reads as follows :—

> Subject as hereinafter provided, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any director, manager or officer of the company, or any person (whether an officer of the company or not) employed by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void :
>
> Provided that—
>
> (*a*) in relation to any such provision which is in force at the date of the commencement of this Act [1st November, 1929], this section shall have effect only on the expiration of a period of six months from that date; and
>
> (*b*) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force; and
>
> (*c*) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such director, manager, officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section three hundred and seventy-two of this Act in which relief is granted to him by the Court.

Local Directors.—A company carrying on business abroad frequently places the management of such business in the hands of a local board. Power must be contained in the articles to permit the board at the chief office to delegate their powers, to appoint and remove, and otherwise control local directors. An official seal (*see* p. 446) should be provided.

CHAPTER IX

COMPANY AND DIRECTORS' MEETINGS. NOTICES. QUORUM. VOTING. POLL. PROXIES. RESOLUTIONS. AGENDA. MINUTES.

A COMPANY meeting implies a concurrence, or coming together, of at least a quorum of members in order to transact either the ordinary or special business of the company. But there may be circumstances where the word " meeting " imports a somewhat different meaning. Where, for example, one person holds all the shares of a particular class, then, since one person cannot meet himself, there cannot be a meeting in the ordinary sense of the word. But this one shareholder could in writing signed by him pass a valid resolution for such a purpose, as, say, a re-organisation of share capital under S. 153 (*East* v. *Bennett Bros.* [1911], 1 Ch. 163).

Articles of association provide that to constitute a valid company meeting a quorum of members must be present. The prescribed quorum may vary with different companies—Art. 45 of Table A prescribes three persons for a quorum—and even for different sorts of meetings of the same company. Sometimes articles require a quorum to be " personally present," and sometimes to be " present in person or by proxy." In the first case, proxies cannot, in the second case, they can, be counted. Further, the meeting must be called and held exactly in the manner set forth by the Act and articles, and the prescribed notice of the meeting, specifying the nature of the business to be transacted, if the business be special business, must be sent to every person who, under the regulations of the company, is entitled to receive such notice. The distinction between special and ordinary business is noted at p. 248.

The quorum necessary for the transaction of the business of directors may, by Table A, Art. 82, " be fixed by the directors, and unless so fixed shall when the number of directors exceeds three be three."

The meetings of a registered company are of three kinds :—

(*a*) the Statutory Meeting, (*b*) Ordinary General Meetings, (*c*) Extraordinary General Meetings.

(*a*) **Statutory Meeting.**—The object of this meeting is to afford the shareholders an opportunity to see what degree of success has attended the flotation of the company, and to place before them any business, such as contracts to be varied, which requires their approval before it can be transacted. Any matter relating to the formation of the company or arising out of the statutory report may be discussed at this meeting without notice, but no resolution may be passed unless notice to propose it has previously been given in accordance with the articles.

S. 113, s.-s. (8) (*see infra*, p. 239) provides that the meeting may adjourn from time to time, in order to pass any resolution of which notice has been given either before or subsequently to the former meeting. It will be noted in this case that the power of adjournment is in the hands of the meeting, not of the chairman.

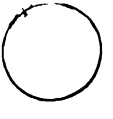
The statutory meeting stands in a class by itself. It is not an ordinary meeting as is the annual general meeting. It must be held by every company limited by shares and every company limited by guarantee and having a share capital; private companies are, however, exempted by S. 113, s.-s. (10). The meeting is not obligatory in the case of unlimited companies or companies limited by guarantee and not having a share capital.

The statutory report, of which a specimen is reproduced below, calls for no comment. If the register of members has not been written up, it is convenient to lay the application and allotment sheets on the table, since these will be doing interim duty for the register.

It is advisable to prepare a certificate of posting for preservation as evidence of due compliance with the requirement that a copy of the report must be sent to every member.

(*Statutory Report.*)

COMPANIES ACT, 1929



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

Report pursuant to S 113 of the *Companies Act*, 1929, of THE PRACTICE COMPANY, LIMITED.

(*a*) The total number of shares allotted is *50,000 Ordinary Shares*

of £1 each, of which *10,000 shares* are allotted [1] *as fully paid up*, in consideration of *part of the purchase price of sundry assets acquired by the Company*, and upon each of the remaining shares the sum of *£1* has been paid in cash.

(*b*) The total amount of cash received by the Company in respect of the shares issued wholly for cash is *£39,500*, and on the shares issued partly for cash is *nil*.

(*c*) The Receipts and Payments of the Company to the [2]*10th* day of *November*, 19 , are as follows :—

Particulars of Receipts.	£	s.	d.	Particulars of Payments.	£	s.	d.
Amount received on 40,000 Ordinary Shares issued for Cash	*39,500*	*0*	*0*	*Payment to Vendors in respect of purchase of Land, Buildings, and Machinery*	*25,000*	*0*	*0*
Trading Receipts	*10,321*	*0*	*0*	*Preliminary Expenses*	*3,550*	*0*	*0*
				Trading payments	*9,300*	*0*	*0*
				Balance at Bank	*11,971*	*0*	*0*
	£49,821	*0*	*0*		*£49,821*	*0*	*0*

The following is an account (or estimate) of the Preliminary Expenses of the Company

	£	s.	d.
Cost of Registration of the Company, underwriting commission, law costs, brokerage, printing and advertising, etc., estimated at	*4,000*	*0*	*0*

(*d*) Names, Addresses and Descriptions of the Directors, Auditors (if any), Manager (if any), and Secretary of the Company.

DIRECTORS.

Surname.	Christian Name.	Address.	Description.
Burgess.	*Charles.*	*Moorgate, London, E.C.2.*	*Civil Engineer.*
Clynes.	*William.*	*Etruria, 45 Leander Road, Barnes, S.W. 13.*	*Manufacturer.*
Roberts.	*James.*	*559 Deeside Road, Leigh.*	*Commercial Traveller.*

AUDITORS.

Checker & Co.	—	*Salisbury House, London, E.C.*	*Chartered Accountants.*

[1] Here state as "fully paid up" or paid up otherwise than in cash to the extent of — per share.

[2] This date must be within seven days of the date of the report.

MANAGER.

Chalmers.	*Arthur.*	*Loretto House, Salisbury Road, Croydon.*	*Electrical Engineer.*

SECRETARY.

Ess.	*Charles Carew*	*759 Cloynes Road, Lewisham, S.E.*	*Certified Secretary.*

(*e*) Particulars of any Contract the modification of which is to be submitted to the Meeting for its approval, together with the particulars of the modification or proposed modification.

The Contract set out in the Prospectus, and dated April 19th, 19..., whereby the services of Arthur Chalmers, M.I.E.E., were to be secured to the Company for a period of ten years, is to be submitted to the Meeting with a view to the reduction of the term of years from ten to seven.

WE hereby certify this Report.

Charles Burgess.
James Roberts. } Two Directors.

WE hereby certify that so much of this Report as relates to the shares allotted by the Company and to the Cash received in respect of such shares and to the receipts and payments of the Company on Capital Account is correct.

Checker & Co., Auditors.

Dated the *15th* day of *November*, 19...

The holding of the statutory meeting is governed by S. 113 of the Act, which reads as follows:

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

(2) The directors shall, at least seven days before the day on which the meeting is held, forward a report (in this Act referred to as "the statutory report") to every member of the company.

(3) The statutory report shall be certified by not less than two directors of the company, or, where there are less than two directors, by the sole director and manager, and shall state—

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

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

(*c*) an abstract of the receipts of the company and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;

(*d*) the names, addresses, and descriptions of the directors, auditors, if any, managers, if any, and secretary of the company; and

(*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.

(4) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors, if any, of the company.

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

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

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution

of which notice has not been given in accordance with the articles may be passed.

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

(9) In the event of any default in complying with the provisions of this section, every director of the company who is guilty of or who knowingly and wilfully authorises or permits the default shall be liable to a fine not exceeding fifty pounds.

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

(*b*) **Ordinary General Meetings.**—With the majority of companies, these meetings are confined to the one general meeting in the year, known as the annual general meeting, which every company is bound to hold.

By S. 112 :

(1) A general meeting of every company shall be held once at the least in every calendar year, and not more than fifteen months after the holding of the last preceding general meeting.

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

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

Art. 39 of Table A says :

A general meeting shall be held once in every calendar year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the third month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held

in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

The calendar year is the year from 1st January to 31st December. The statutory meeting is a general meeting for the purposes of S. 112, but an extraordinary meeting is not. And it should be noted that the registrar will not accept an annual return made up by reference to the statutory meeting.

The provisions of the articles must be strictly adhered to in calling and holding the meeting, at which only the ordinary business of the company may be transacted, unless due notice of special business has been given.

(*c*) **Extraordinary General Meetings.**—Art. 41 of Table A says that directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by S. 114 of the Act. And if at any time there are not within the United Kingdom sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

The wording of S. 114 is as follows :—

(1) The directors of a company, notwithstanding anything in its articles, shall, on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company, or, in the case of a company not having a share capital, members of the company representing not less than one-tenth of the total voting rights of all the members having at the said date a right to vote at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

(2) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of

several documents in like form, each signed by one or more requisitionists.

(3) If the directors do not within twenty-one days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any of them representing more than one-half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three months from the said date.

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

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

(6) For the purposes of this section, the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by section one hundred and seventeen of this Act.

It is clear from s.-s. (1) above that members from whom amounts are due in respect of calls must be ignored when computing the proportion of one-tenth. Where shares are held in the names of joint holders, all must sign the requisition, unless the articles expressly provide that one joint holder may sign for all (*Patent Wood Keg Syndicate* v. *Pearse* [1906], W.N. 164).

Any provision in the articles purporting to restrict the right of requisitioning an extraordinary meeting under S. 114 is void, although articles may extend the power by conferring it upon members holding a smaller proportion of the voting power than one-tenth. The section confers the right upon members holding capital which carries voting power; hence preference shareholders and holders of share warrants can join in requisitioning a meeting only where they are entitled to vote.

Other Extraordinary Meetings.—Apart from the special meetings which may be necessary under SS. 153, 251, etc.,

where from any reason it is impossible to call a meeting of the company, then it is provided by S. 115 that—

(1) The following provisions shall have effect in so far as the articles of the company do not make other provision in that behalf:

(*a*) a meeting of a company, other than a meeting for the passing of a special resolution, may be called by seven days' notice in writing;

(*b*) notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A, and for the purpose of this paragraph the expression "Table A" means that Table as for the time being in force;

(*c*) two or more members holding not less than one-tenth of the issued share capital or, if the company has not a share capital, not less than five per cent. in number of the members of the company may call a meeting;

(*d*) in the case of a private company two members, and in the case of any other company three members, personally present shall be a quorum;

(*e*) any member elected by the members present at a meeting may be chairman thereof;

(*f*) in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each ten pounds of stock held by him, and in any other case every member shall have one vote.

(2) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in manner prescribed by the articles or this Act, the court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the court thinks fit, and where any such order is made may give such ancillary or consequential directions as it thinks expedient, and any meeting called, held and conducted in accordance with any such order shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

The directors may, however, find it necessary to convene a meeting of the members at any time. Such meetings must be convened as provided by the articles, and the notices must specify the special business to be transacted at the meetings.

Articles, as already stated, usually provide that directors may, and that on requisition by members in accordance with the Act they shall, convene a general meeting of the company. A general meeting must be called by directors at a properly constituted Board meeting (*Haycraft Gold Reduction, etc. Co.* [1900], 2 Ch. 230). But, if articles sanction that course, a signed resolution of the directors without meeting will suffice. A secretary cannot issue notice of a general

meeting except by authority of the directors, but notice invalidly given may be ratified by resolution of the directors passed at a duly constituted Board meeting held prior to the general meeting (*Hooper* v. *Kerr, Stuart & Co.* [1900], 83 L.T. 729). In fixing the time and place of a meeting, the directors must act reasonably, so as to give the members an opportunity to record their votes. And once they have duly convened a meeting, they may not, unless authorised by the articles, postpone the meeting (*Smith* v. *Paringa Mines* [1906], 2 Ch. 193).

Non-Company Meetings.—Though this chapter is concerned only with the meetings held by companies registered under the *Companies Act*, 1929, readers may find it useful to have here set forth the sources to which they may refer for guidance in respect of the meetings held by certain other bodies, viz.:

(1) Building Societies—the *Building Societies Acts*, 1874–94, and the rules drawn up by each society thereunder.

(2) Burial Boards—*Burial Acts*, 1852 and 1853.

(3) Co-operative Societies—the *Industrial and Provident Societies Act*, 1893, and the rules of each society drawn up thereunder.

(4) County Councils—the *Local Government Act*, 1929, and the standing orders of the Council.

(5) District Councils—the *Local Government Act*, 1929; *Public Health Act*, 1925, and the standing orders of each council.

(6) Friendly Societies—*Friendly Societies Act*, 1896, and the rules drawn up thereunder by each society.

(7) Public Assistance Committees (superseding the old Boards of Guardians)—*Poor Law Act*, 1930.

(8) Literary and Scientific Societies—the *Literary and Scientific Institutions Act*, 1854, and the rules drawn up thereunder by each society.

(9) Metropolitan City and Borough Councils—*London Government Act*, 1899; *Metropolis Management Act*, 1855; *Public Health* (*London*) *Act*, 1891, and the standing orders of each council.

(10) Parish Councils and Meetings—*Local Government Act*, 1894, and 1929, and the rules of the Council.

(11) Provincial City and Borough Councils—*Municipal Corporations Act*, 1882; *Public Health Act*, 1925, and the standing orders.

(12) Trades Unions—*Trades Union Acts*, 1871–1913, and the rules of each union.

The Chairman.—The successful conduct of any meeting is largely dependent upon the personality of the Chairman, elected according to the rules of the body over which he presides. The articles of a company should, and invariably do, contain directions as to the election of the chairman.

Chairman of Directors' Meetings.—Table A provides as follows :—The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but, if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting (Art. 84). Where directors delegate any of their powers to a committee made up of their own body, the committee must conform to any regulations imposed upon them by the directors (Art. 85). A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting (Art. 86).

Chairman of Company Meetings.—The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company (Art. 47). If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman (Art. 48).

The Powers and Duties of a Chairman.—It is the chairman's duty to see that the business which the meeting has been called to transact is carried out in the most expeditious manner, consistent with the recognised rules of debate, and with the procedure prescribed by the Act and the articles.

The power and duties of the chairman of a company meeting, assisted by the secretary of the company, may be briefly summarised as follows :

(*a*) To see that a quorum is present before he allows the meeting to proceed.

(*b*) To decide what motions and amendments are in order

for discussion at the meeting, and to suppress irrelevant proceedings.

(*c*) To see that the articles of the company are complied with; that every motion or amendment is properly proposed and usually seconded (*see* p. 261).

(*d*) To preserve order, and impartially to secure that every person entitled to speak has a proper opportunity to express his views provided he keeps to the point.

(*e*) To ensure that the minority is properly heard, and at the same time to take any action necessary to prevent an energetic but recalcitrant minority from obstructing the meeting.

(*f*) To put questions to the meeting, and declare the result of the voting.

(*g*) To grant a poll if properly demanded by the prescribed number of members.

(*h*) To see that the sense of the meeting is properly ascertained upon any question before the meeting (Chitty, J., in *National Dwellings Society* v. *Sykes* [1894], 3 Ch. 159).

(*i*) To see that proper minutes are kept, and to sign those minutes as authorised by the meeting or articles.

(*j*) To call upon speakers to address the meeting (*e.g.* where two or more persons rise at once), or to resume their seats when their allotted time has expired, or when they introduce irrelevant topics, or otherwise obstruct the meeting. In the event of the meeting getting out of hand, it is recommended that it be adjourned for, say, half-an-hour or more. The interval usually gives time for the " hotheads " to cool down. Disorderly persons may be removed from the meeting.

(*k*) To do all acts necessary for preserving order and regulating the proceedings, so that all persons duly entitled have a reasonable opportunity of voting, on their own responsibility, subject to being called upon to answer for their conduct if they do anything improperly (Denham, C.J., in *Reg.* v. *D'Oyly*, [1840], 12 A. & E. 159). If the chairman's decision is disputed, it must be regulated by the majority of those present, subject to the articles and right of appeal to the Courts.

The duties of the chairman at a directors' meeting are similar to those set out above, but, in the nature of things, proceedings at directors' meetings are much less formal than those at company meetings.

Notices.—To call a company meeting, and for other purposes, *e.g.* the making of calls, forfeiture of shares, etc., it is necessary to send notice to the persons entitled thereto. In the case of company meetings, notice must be sent to all persons entitled to be present at the meeting, that the meeting will be held, and to give the date, time and place of meeting, and the reasons or purposes for which it is called. If special business is to be transacted, the nature of such business and the express words of the resolution(s) to be put to the meeting should be stated in the notice.

In the case of directors' meetings, which are less rigorously regulated than company meetings, notice may not be necessary where the articles or minutes prescribe that a board meeting shall take place on certain fixed dates and times, *e.g.* the first Tuesday in each month, or where at each meeting the date, etc. of the next meeting is fixed. Even then, however, it is usual, and certainly advisable, to send out reminders. Art. 81 of Table A provides that a director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

In the case of company meetings, the provisions of the articles must be followed explicitly. Typical provisions are those contained in Table A, Arts. 103–107 (*see* pp. 679-80).

A document may be served on a company by leaving it at, or sending it by post to, the registered office of the company.

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

A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorised officer of the company, and need not be under its common seal (S. 33). "Document" includes notice (S. 380). By S. 93 every limited company must have its name mentioned in legible characters in all notices.

General notices are usually authenticated by having the name of the company, the registered address, and the date of

the notice legibly printed at the top, and by the following subscription:

By Order of the Board,

.....Secretary.

The secretary cannot give a valid notice except on instructions from his directors, but, instructions being given, it is his duty to see that the notice complies with the Act and with the articles, particularly as regards the persons to whom it is to be sent, the length of time that is to elapse before the meeting is held, and any special business to be transacted, and extraordinary or special resolutions to be proposed. Notices must be explicit, free from ambiguity, and reasonably intelligible to recipients.

It is customary to send notices by post, and a certificate of posting should be prepared, and, when signed by a Post Office official, be preserved, at least in all cases where the meeting is called to deal with important business.

Where the articles or the Act prescribe, without more, a certain number of days' notice or days' interval (*e.g.* between meetings) it has been held that this means "clear days" (*In re Railway Sleepers Supply Co.*, [1885], 29 Ch.D. 204), *i.e.* neither the day when notice is served or deemed to have been served, nor the day of the meeting can be included in the number of days. But articles usually go further and provide, as in Table A, Art. 42, that the day on which notice is served or deemed to be served shall be excluded and the day of the meeting be included in the period. The secretary must see that either the "clear" days' notice or the special period of notice laid down by the articles is given, and it is recommended that he should, unless the meeting be one of extreme urgency, avoid any risk of error on this point by posting the notices in ample time.

Except in the case of small companies, a copy of the notice should also be inserted in the chief morning paper of the district in which the company's registered office is situated, and in other papers such as *The Times*, etc., where the advertisement is likely to meet the eyes of shareholders. If share warrants to bearer have been issued, public advertisement is essential.

Subject to the articles, there is no legal necessity to give notice to shareholders resident abroad. But Table A, Art. 103 provides that such a shareholder may supply to the company an address in Great Britain and Northern Ireland where notices may be given. Where the shareholder has not supplied an address for the purpose, Art. 104 provides that a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the company's registered office shall be deemed notice duly given as on the day of publication of the advertisement. It is better, however, that a company's articles should be so worded that notices may be given to members resident abroad in the same way as to members resident here, leaving the former to attend the meetings if they desire, and are able, to do so.

Unless articles so provide, it is unnecessary to give notice to the personal representatives of a deceased member, but notice must be given if they have become registered (*Allen* v. *Gold Reefs of West Africa* [1900], 1 Ch. 656). The same remarks apply to the trustee of a bankrupt shareholder. Art. 106 of Table A provides that a company *may* give notice in these cases in manner there laid down.

It is advisable to provide in the articles that accidental omission to give notice to any member, or the non-receipt of notice by any member (*see* Art. 43, Table A), shall not invalidate the meeting or proceedings thereat, otherwise any resolution passed at the meeting may be invalid (*Smyth* v. *Darley* [1849], 2 H.L. 789; *Young* v. *Ladies' Imperial Club* [1920], 2 K.B. 523).

A company meeting may be—

(*a*) *The Statutory Meeting.* The notice convening this meeting should state that it is to be the statutory meeting; or—

(*b*) *An Ordinary Meeting, e.g.* the annual general meeting. Business transacted at an ordinary meeting may be either (1) ordinary or (2) special business. Ordinary business is usually defined, as in Table A, Art. 44, to consist of "sanctioning a dividend, the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the

place of those retiring by rotation, and the fixing of the remuneration of the auditors." All other business is special business. It is usual, when giving notice of an ordinary meeting, to indicate briefly the nature of the ordinary business to be transacted. But special business may also be transacted at an ordinary meeting, provided that the notice fairly specifies the nature of the business and the resolution to be proposed; or—

(c) *An Extraordinary Meeting.* The business transacted at an extraordinary meeting is special business, and the notice convening such a meeting must state the resolution to be proposed, and whether it is to be proposed as a special or as an extraordinary resolution.

The articles of association sometimes provide as to notice of amendment to resolutions. In the absence of such provision it would seem that the meeting could consider and pass an amendment to an extraordinary resolution or a special resolution of which notice had been given.

Notices are not to be too rigidly construed. So long as they comply with the Act and the articles, and substantially and fairly set forth the nature of the business to be transacted, they are valid. Thus, where, in a notice, a resolution to increase directors' fees specified that the increase was to be at a certain rate, and the resolution as passed provided for an increase at a lower rate, the resolution was held to be validly passed, since it came within the scope of the proposed resolution (*Torbock* v. *Lord Westbury* [1902], 2 Ch. 871). It was held in *Normandy* v. *Ind Coope & Co.* [1908], 1 Ch. 84, that a notice of meeting called to pass a special resolution for the purpose of altering the articles in important particulars was insufficient, in that it did not expressly set forth the material alterations to be made. Prior to that case, the legal view was that it was sufficient to state the terms of the resolution without specifying the exact changes. In *MacConnell* v. *E. Prill & Co.* [1916], 2 Ch. 57, a notice was held to be invalid because it did not state that the resolution was to be proposed as an extraordinary resolution, and also on the further ground that, while it stated that the company's capital was to be increased, it did not specify the exact amount of the increase.

A company is bound by the unanimous agreement of all its members. Even if the particular business is *ultra vires* the directors and the members do not meet together at one time and in one place, but discuss and agree the business one with another separately, so long as the particular matter is within the powers of the company, and all the members agree to it, it is binding upon the company (*Parker & Cooper* v. *Reading* [1926], Ch. 975). (*See* also the proviso to S. 117, s.-s. (2), at p. 268.)

A resolution that does not come within the business to be transacted as set forth in the notice convening the meeting will be valid if it is passed at a meeting attended by all the members; so also if no notice of the meeting, or insufficient notice, is given (*Express Engineering Works* [1920], 1 Ch. 466; *Oxted Motor Co.* [1921], 3 K.B. 32). The case first cited illustrated the principle that although directors, acting in their capacity as directors, may not vote at a directors' meeting upon a contract in which they have a personal interest, yet they may vote on the same matter at a company meeting in their capacity as members.

It should be noted that the notice convening the meeting for passing a special resolution must give twenty-one *clear* days' notice, exclusive of the day of service and of the day on which the meeting is to be held. A company cannot curtail by its articles the length of notice required by S. 117 (2) (*In re Hector Whaling Ltd.* [1936], Ch. 208).

PRECEDENT NOTICES

Statutory Meeting

THE PRACTICE COMPANY, LIMITED.

MOORGATE,
LONDON, E.C.2.
(*Date*)

Notice is hereby given that, pursuant to section 113 of the *Companies Act*, 1929, the Statutory Meeting of the Company will be held at ..... on ..... day, the ..... day of ..... 19..., at ... o'clock in the ..... noon.

By Order of the Board,
C. C. ESS,
Secretary.

Annual General Meeting

THE PRACTICE COMPANY, LIMITED.

MOORGATE,
LONDON, E.C.2.
(*Date*)

Notice is hereby given that the First Ordinary General Meeting of the Company will be held at ..... on ..... day, the ..... day of ....., 19..., at ... o'clock in the ..... noon, for the purpose of receiving the Reports of the Directors and Auditors on the Balance Sheet as at ....., 19..., the documents required by law to be annexed thereto, and the Profit and Loss Account for the year then ended, and for the election of Directors and Auditors, the declaration of a dividend, and the transaction of the ordinary business of the Company.

By Order of the Board,
C. C. ESS,
Secretary.

To pass an Extraordinary Resolution

THE PRACTICE COMPANY, LIMITED.

MOORGATE,
LONDON, E.C.2.
(*Date*)

Notice is hereby given that an Extraordinary General Meeting of the Company will be held at ....., on ..... day, the ..... day of ..... 19..., at ... o'clock in the ..... noon, [or, immediately following the Ordinary General Meeting above convened] for the purpose of considering and, if thought fit, of passing the following resolution as an Extraordinary Resolution :

That the Share Capital of the Company be increased by the creation of Ten Thousand Ordinary Shares of one pound each to rank in all respects *pari passu* with the Company's original Ordinary Share Capital

By Order of the Board,
C. C. ESS,
Secretary.

To pass a Special Resolution

THE PRACTICE COMPANY, LIMITED.

MOORGATE,
LONDON, E.C.2.
(*Date*)

Notice is hereby given that an Extraordinary General Meeting of the Company will be held at ..... on ..... day, the ..... day of ....., 19..., at ... o'clock in the ..... noon, for the purpose of considering and, if thought fit, of passing the following Resolution as a Special Resolution :

That the Company be wound up voluntarily.

By Order of the Board,
C. C. ESS,
Secretary.

NOTE.—A statutory declaration of solvency has been delivered to the registrar of companies for registration, and it is proposed that the winding up shall be a members' voluntary winding up.

Directors' Meeting

THE PRACTICE COMPANY, LIMITED.

MOORGATE,
LONDON, E.C.2.
(*Date*)

To .....

DEAR SIR,

I have to inform [remind] you that a meeting of the Board of Directors will be held at the Registered Office of the Company on..... day, the ... . day of ....., 19..., at ..... o'clock in the ..... noon.

Yours faithfully,
C. C. ESS,
Secretary.

THE PRACTICE COMPANY, LIMITED.

MOORGATE,
LONDON, E.C.2.
(*Date*)

To .....

DEAR SIR,

At the Monthly [Bi-monthly, weekly, etc.] Meeting of the Directors to be held on ..... day next, the ....., 19..., the following special business is to be transacted :

I enclose a copy of the agenda for your information.

Yours faithfully,
C. C. ESS,
Secretary.

Printed " form " letters may be used, similar to the following :

THE PRACTICE COMPANY, LIMITED.

TELEPHONE : London Wall.
TELEGRAMS : " Pracomted, Ave., London."

MOORGATE,
LONDON, E.C.2.

.....19...

To .....

NOTICE OF BOARD MEETING

The next meeting of the Directors will be held at the above address on ..... day, ..., 19 .., at ... a.m.

C. C. ESS,
Secretary.

Business :—(1) General.
(2) .....

Forfeiture of Shares

THE PRACTICE COMPANY, LIMITED.

MOORGATE,
LONDON, E.C.2.
(*Date*)

To .....

SIR,

Whereas you have failed to pay the Call of ..... per share on the ..... Shares registered in your name, and whereas the said call was due to be paid on the ..... day of ..... 19..., notice is hereby given to you that unless the said Call is paid to the Company on or before the ..... day of ..... 19..., together with interest thereon at the rate of five per centum per annum from the due date thereof to the date of payment, then on the above-mentioned date, the .... day of ..... 19..., the said Shares will become liable to forfeiture, and in accordance with Article ..... of the Company's Articles of Association, may be forfeited at any time thereafter without further notice.

By Order of the Board,
C C. ESS,
Secretary.

Newspaper Advertisement

THE PRACTICE COMPANY, Limited.

NOTICE OF MEETING.

Notice is hereby given that the FORTIETH ORDINARY GENERAL MEETING of the Members of the PRACTICE COMPANY, Limited, will be held at Winchester House, Old Broad-street, in the City of London, on Thursday, the day of , 19 , at 12 30 o'clock in the afternoon, for the purposes of receiving the Report of the Directors, the Annual Balance Sheet and the Report of the Auditors thereon, for the declaration of Dividends, the election of Directors and Auditors, and fixing the remuneration of the latter, and for other business of the Ordinary General Meeting.

Dated this day of , 19

By Order of the Board,
O. O. ESS, Secretary.

Moorgate, London, E.C. 2.

Notice of Interim Dividend by Advertisement.

WEST CANADIAN COLLIERIES, Limited.

Notice is hereby given that an INTERIM DIVIDEND at the rate of 2½ per cent. (6*d.* per share) has been declared on account of the year to 31st December, 1929, and will be PAID on 15th March, 1930.

Registered Shares.—Dividend will be paid by cheques sent direct to Shareholders for shares standing in their names on 1st March, 1930.

Share Warrants to Bearer.—Coupon No. 19 of Share Warrants to Bearer will be accepted for examination and payment at the Registered Office of the Company, 38, Gresham-street, E.C. 2, provided Declaration Forms, which can be obtained from the Secretary, 38, Gresham-street, E.C. 2, duly completed, are accompanying same.

Notice of Final Dividend by Advertisement to Holders of Share Warrants to Encash Coupons

THE PRACTICE COMPANY, LIMITED.

MOORGATE,
LONDON, E.C.2.
1st March, 19...

DIVIDENDS ON ORDINARY SHARES

Notice is hereby given that a dividend of Two Shillings per Share, less Income Tax, has been declared payable upon the Ordinary Shares of the Company, in respect of the half year ended 31st December, 19 ....., such dividend being payable on 15th March, 19.... Coupon No. 12 attached to Share Warrants will be payable on or after the latter date at the London Bank, Ltd., Lombard Street, E.C.3, at the rate of Two Shillings per Share, less Income Tax.

Listing forms can be obtained from the said Bank

Coupons must be left three clear days for examination.

By Order of the Board,
C. C. ESS,
Secretary.

Notice to Exchange Talons for Coupon Sheets

BURMEISTER and WAIN ORDINARY SHARES.

Notice is hereby given that Talons off Warrants of the above Shares requiring new Coupon Sheets may now be lodged with Helbert, Wagg and Company, Ltd., 41, Threadneedle-street, E.C. 2, to be exchanged for new Coupon Sheets, between the hours of 11 and 2 (Saturdays excepted).

Preliminary Advertisement of Proposed Dividends.

THE NITRATE RAILWAYS COMPANY, Limited. The Directors of the Nitrate Railways Company, Limited, resolved at their Board Meeting on 29th April to recommend at the Annual General Meeting of the Company shortly to be held, and of which due notice will be given, that, subject to final audit of the accounts, the following DIVIDENDS be DECLARED, less income-tax —

A final dividend of 4 per cent., *i.e.* 8s. per share, on the Ordinary (unconverted) Shares, making a total dividend for the year 1929 of 6 per cent.

A final dividend of 4 per cent., *i.e.* 8s. per share, on the Preferred Converted Ordinary Shares, making a total dividend for the year 1929 of 6 per cent

G. L. H. AXWORTHY, Secretary,
110, Cannon-street, London, E.C.4.
29th April, 1930.

Admission to Meetings.—The admission of persons not entitled to be present at a meeting may be the cause of subsequent disputes as to the validity of the resolutions passed, and it is therefore advisable to take adequate steps to ensure that unauthorised persons are excluded.

Where the meeting consists of few persons, signatures may be taken in an Attendance Book, or on Attendance Sheets, but

where a meeting is attended by many persons, it is better to issue an admission card to each member, to be signed by him and handed in at the door. The cards should be checked off with the register of members as they are handed in. Entry of a person's name in the register is his sole title to vote. The signatures of members who forget to bring their cards should be taken in an Attendance Book or Sheet. Sometimes the envelope in which the notice was sent is accepted as evidence, but this is unsatisfactory.

A specimen ruling for an admission card is as follows:

THE PRACTICE COMPANY, LIMITED

Admit.....to the

Annual General Meeting of the Company to be held at .....

..... on ..... 19..., at

.....a.m.

J. SMITH,
Secretary.

Member's Signature .....

Members are requested to sign this card before coming to the meeting, as it is desired to avoid any delay in commencing proceedings.

N.B.—THIS CARD MUST BE HANDED IN AT THE DOOR.

Quorum.—A *quorum* is the fixed minimum number that must be present at a meeting for the valid transaction of business. In the case of a private company, two members, and in the case of any other company three members, personally present shall be a quorum, unless the articles otherwise provide (S. 115). Reference should be made to Arts. 3 and 45 of Table A (*see* pp. 666 and 672).

Articles frequently state that the quorum for directors' meetings may be fixed by the directors from time to time. The quorum so fixed should be minuted, and will hold force until properly altered at a duly constituted subsequent meeting. If the articles are silent on the point, and Table A is excluded, then, apparently, a majority of the directors must be present (*York Tramways* v. *Willows* [1882], 8 Q.B.D. 685), unless it has become *customary* for a less number to act, in which case the *usual* number will suffice (*In re Tavistock Ironworks, Lyster's Case* [1867], L.R. 4 Eq. 233).

Articles frequently allow directors to contract with the company, provided that they disclose their interest in the contract, and do not, as directors, vote on matters connected with it. (And *see* S. 149, p. 230.) In such a case the interested director must not be counted in a quorum for the purpose of voting on that matter. But a director may vote on such a matter *as a member* at a general meeting (*East Pant Du United Lead Co.* v. *Merryweather* [1864], 13 W.R. 216).

It is usual for articles to state that in the event of the number of directors falling below the quorum by death or other causes, the remaining directors may act for the purpose of filling the vacancy. If the articles contain no such provision, the directors should have a meeting of the company requisitioned under S. 114. Unless articles provide to the contrary, no valid board meeting can be held while the number of directors is less than the required quorum (*Faure Electric Co.* v. *Phillipart* [1888], 58 L.T. 525).

It is inadvisable for a quorum of one to be authorised; but where a company is regulated by Table A it would appear that a quorum of one might be fixed for a board meeting under Art. 82, or the powers of the Board might be delegated to a committee of one, under Art. 85 (*In re Fireproof Doors* [1916], 2 Ch. 142).

The quorum must be present for the whole meeting, *i.e.* if three is the quorum and four directors attend, but two leave before the business is completed, business completed after retirement of the two from the meeting is invalid, although third parties without notice of the irregularity would be protected (*County of Gloucester Bank* v. *Rudry Merthyr Co.* [1895], 1 Ch. 629; and *see* Art. 88 of Table A). So, too, where articles embody the above or a similar article, would shareholders be

liable for a call made by an irregularly constituted meeting of the board.

As to the quorum necessary for valid proceedings at a general meeting of a company, *see* p. 234. In the rare cases where articles contain no provision for a quorum, three members (two in the case of a private company) personally present form a quorum (S. 115). Probably only those members present who are entitled to vote can be counted in the quorum; and it would seem that a quorum must be present throughout the meeting. One person, even though he holds proxies from all the other shareholders, cannot form a quorum, and no valid business can be transacted by a single member, since there is no meeting (*Sharp* v. *Dawes* [1876], 2 Q.B.D. 26; but *see* p. 234).

By Art. 46, Table A, a requisitioned meeting must be dissolved if, within half-an-hour from the time appointed for the meeting, a quorum is not present. In any other case, in the same circumstances, the meeting must be adjourned to the same day in the next week at the same time and place, and if a quorum is not present within half-an-hour from the time appointed for the adjourned meeting the members present shall be a quorum (S. 116).

The representative of a company shareholder is entitled to be counted in the quorum.

Voting.—The voting powers of members are generally determined by the articles. The provisions as to voting contained in Table A are to be found in Arts. 54–62. But these provisions are not uncommonly varied in special articles. In default of, and subject to, any regulations in the articles, then, by S. 115 (*f*), in the case of a company originally having a share capital, each member has one vote (both on a show of hands and on a poll) in respect of each share or each ten pounds of stock held by him, and in any other case every member shall have one vote.

Articles generally provide, as in Art. 54, Table A, that on a show of hands every member present in person shall have one vote, and that on a poll every member shall have one vote for each share of which he is the holder.

Subject to the articles:

(1) The sense of the meeting is first taken by a show of hands, and it should be noted that proxies to a member of

the company do not count on a show of hands (*Ernest* v. *Loma Co.* [1897], 1 Ch. 1). Before or after the chairman's declaration as to the voting on a show of hands, a poll may, as provided by the articles, be demanded by the number of members prescribed by the articles (*see* p. 269 for special and extraordinary resolutions). When a poll is demanded, the result of the voting by show of hands has no effect; the fate of the resolution is dependent on the result of the poll. A poll duly demanded must be taken, and until it is taken the meeting at which it was demanded is merely adjourned.

(2) Where articles provide that a poll shall be taken in "such manner as the chairman directs," the chairman may decide that the poll be taken at once, or he may fix some subsequent time and place for the poll to be taken.

(3) On a poll, every person who votes does so with the weight of votes attaching to his holding. On a poll, proxies are counted.

A member who was not present when the poll was demanded may vote at the poll (*Campbell* v. *Maund* [1836], 5 A. & E. 865). It has been frequently held that on a poll each resolution must be voted on separately, but where *on a show of hands* there are two resolutions before a meeting of members, and there is a right to a poll, the chairman may put the resolutions *en bloc* if no member requires him to put them separately (*In re R. E. Jones* [1933], 50 T.L.R. 31).

On a show of hands the chairman's declaration of the result of the voting is conclusive, unless it be clearly wrong and is challenged. The result of the voting at a poll is usually ascertained by scrutineers appointed for the purpose, who communicate the result to the chairman, who then announces it to the meeting. Unless the articles so provide, the chairman has no casting vote. But articles usually give the chairman a casting vote both on a show of hands and on a poll.

The object of the casting vote is to avoid a deadlock when the voting on both sides is equal. The chairman thus has two votes, one as a member, and an additional casting vote. In general, the chairman would give his casting vote in support of the policy of the Board; but where any sweeping change is involved, he should, as a rule, vote for the existing state of affairs.

The usual method of taking a poll is for each voter or his

proxy to attend in person and to sign a paper " for " or " against " the motion, the votes being inserted afterwards. It would not be permissible for the poll to be taken by voting papers sent through the post, unless the articles so provide.

Procedure for taking a Poll.—(1) Prepare a list of members, showing the number of shares and number of votes opposite each name, with additional columns for recording the votes polled " for " and " against " the resolution. If several resolutions are to be voted upon, sufficient columns should be provided for recording the votes on each resolution. A " remarks " column is also necessary for recording reasons for rejection of votes, votes made by proxy, etc. These sheets should always be ready before a general meeting, to save time.

(2) The chairman must decide whether the poll is properly demanded, and fix the date, time and place for taking it. If all preparations have been made, it may be taken forthwith.

(3) If the articles so provide, or the meeting so requires, appoint scrutineers to examine all proxies, supervise the voting, and report the result to the chairman. As the members sign the polling sheets (separate sheets for " for " and " against "), the number of votes should be entered on the list mentioned in (1) above and checked by the scrutineers; if proxies are allowed, the fact that anyone votes as proxy must be noted in the appropriate column.

(4) The chairman then declares the result.

If a resolution is duly carried on a poll taken at a date later than the meeting at which the poll was demanded, the resolution is deemed to have been passed on the date when it was in fact passed, and not on any earlier date (S. 119).

Any provisions in the articles restricting the right to vote must be observed. Articles usually provide that any holder of shares on which calls are in arrear may not vote in respect of such shares.

Proxies.—A proxy is a written document authorising the person named therein to vote at a meeting for and in place of the appointer. If for one meeting only, the proxy form must bear a 1*d.* stamp; if for more than one meeting, it must be stamped as a Power of Attorney (10*s.*). The term " proxy " is also applied to the appointee.

It should be noted that there is no common law right to vote by proxy, and proxies can therefore only be used where this

mode of voting is specifically provided for by the articles, or by the Act.

Articles generally do, and should always, require the deposit of proxies at the company's office some hours prior to the meeting (*see* Art. 60, Table A), in order to give the officers of the company an opportunity to check them before they are used. Proxies not lodged within the period described by the articles are invalid, nor would they be available at an adjourned meeting. But fresh proxy papers could be lodged before the day for holding an adjourned meeting, if the articles so provide.

If a shareholder gives a proxy he can still attend the meeting and vote, whether or not he has given notice of revocation; a vote tendered by the proxy is then properly rejected (*Cousins* v. *International Brick Co.* [1931], 2 Ch. 90).

Directors frequently issue stamped proxies for signature by members, appointing themselves as proxies for the members signing, in order to secure support for their policy. It has been held that, where directors act thus, and in the interests of the company, the cost of obtaining the proxies may be paid out of the company's funds (*Peel* v. *L N.W. Railway Co.* [1907], 1 Ch. 5).

Company Members and Proxies.—Where a corporation is a member of another corporation, then by S. 116 of the Act—

> (1) A corporation, whether a company within the meaning of this Act or not, may—
>
> (*a*) if it is a member of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company;
>
> (*b*) if it is a creditor (including a holder of debentures) of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be
>
> (2) A person authorised as aforesaid shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual shareholder, creditor, or holder of debentures, of that other company.

A copy of the resolution is in such case sufficient evidence to admit the representative so appointed (*Colonial Gold Reef* v. *Free State Rand* [1914], 1 Ch. 382). A company may appoint a proxy, and usually articles provide that the appointment shall

be made under seal or under the hand of an officer or attorney duly authorised (*see* case cited and Table A, Art. 59). Articles commonly provide that, apart from the representative of a corporate shareholder, a proxy cannot act as such unless he himself is entitled on his own behalf to be present at the meeting, and to vote, but Art. 59, Table A, provides that a proxy need not be a member of the company. Sometimes a witness is required to the signature on a proxy form.

A proxy form may be signed and the space for the name of the proxy left blank. Provided the blank is filled in before the form is deposited, by a person authorised to fill it in, the proxy is valid (*Sadgrove* v. *Bryden* [1907], 1 Ch. 318).

Procedure at Meetings.—At meetings of directors and committees the procedure is usually informal, but at company meetings, as at all important meetings, it is advisable to adopt and adhere to the ordinary rules of debate.

It is usual to require every motion to be proposed and seconded, although, in the absence of any positive provision in the articles, a seconder is not strictly necessary. If a motion is not seconded, however, the chairman frequently rejects it, on the ground that lack of a seconder indicates that there is little likelihood of the motion going any further. But this is not necessarily so, and a motion has often been passed by an overwhelming majority notwithstanding that no seconder rose on the motion. The chairman must, therefore, unless constrained by the articles, use his discretion when dealing with a motion that is not seconded.

After the proposer has suitably introduced the motion, and the seconder has added his observations, the chairman invites general discussion on the motion, and having allowed adequate time for discussion, he then puts the motion to the vote by show of hands, and afterwards declares the result.

Amendments.—Any motion the object of which is to alter the original motion is an amendment. An original motion can be amended in one of the following ways :

(1) By omitting words or phrases; or

(2) By inserting or adding words or phrases; or

(3) By substituting other words or phrases for those in the original motion.

(4) By altering the position of words or phrases.

In England [1] an amendment must not be a mere negative of the original motion, for there is already in existence the necessary machinery to reject it, *i.e.* voting against it. An amendment must also be germane to the motion under discussion, and must not introduce matters outside the business of the meeting, or re-introduce matters already disposed of at the meeting.

An amendment to a resolution proposed as a special or as an extraordinary resolution is allowable, provided that it does not so alter the resolution that it becomes something entirely different from that originally proposed.

Where several amendments are moved, they should be dealt with, so far as possible, in the order in which they bear upon the original motion. This is the practice in England, but in Scotland it is common to vote on the amendments, two at a time, thus eliminating them gradually. But it is better practice to allow only one amendment at a time to be before the meeting. If the amendment is carried, it should be incorporated in the original motion, which is then, as amended, put before the meeting for further debate, and the next amendment (if any) can then be moved. Where an amendment is moved to an amendment, the rules are the same as those operating as between an original motion and its amendment.

The usual rules of debate are :

(1) The proposer may speak twice on a motion—once in moving it and once in reply to the debate—but cannot propose or second an amendment.

(2) The proposer of an amendment has no right of reply.

(3) All other persons may speak once on each motion.

(4) Any person may speak once on each amendment (including the proposer of the original motion), but no person can propose or second more than one amendment to any motion or amendment.

(5) The proposer and seconder may move the withdrawal of their motion.

(6) An amendment cannot be moved to a part of a motion which has already been amended.

Standing orders may impose limits upon the time allowed to speakers, otherwise the chairman must exercise his dis-

[1] In Scotland a direct negative is in order, and is a common method of arriving at a quick decision.

cretion, taking care that a recalcitrant minority is not allowed to " talk out " the majority. If the chairman finds that any speaker is taking an undue time, repeating himself or wandering off into irrelevancies, or revealing an intention to obstruct the proceedings, he should call on him to resume his seat.

Interruption of Debate.—Apart from amendments, debate may be interrupted by a motion for adjournment, or by one of the formal motions, viz.—" that the chairman leave the chair "; " that the meeting proceed to the next business "; " that the question be now put "—the closure; or " that the question be not now put "—the previous question.

The motions called the Previous Question and the Closure are designed to put an end to the discussion on the matter before the meeting. If the Previous Question motion is carried, the meeting must at once proceed to the next item on the agenda —further discussion on the matter under debate being deferred *sine die*, or until a later meeting. Due notice that the matter is to be raised again must be given. If the motion is lost, the original proposition (otherwise amended or not by the meeting, as the case may be) must be put without further discussion. Should the chairman consider that the Previous Question is moved for a frivolous or vexatious reason he has power to reject the motion. An alternative to moving the Previous Question is to move " that the meeting do now proceed to the next business." If this motion is lost, the discussion on the original proposition continues.

If the Closure is moved and carried, the original motion must be put to the meeting without further debate. If the motion is lost, the interrupted debate continues. The Closure is particularly useful for checking the activities of verbose minorities.

Points of Order.—Any member may appeal to the chairman at any time on a point of order, *e.g.* on any breach of the rules applicable to the meeting, or in the event of improper language or behaviour. The chairman may allow a short debate on a point of order, but should give an immediate ruling which binds the meeting.

Adjournment.—A meeting properly convened cannot be *postponed*, unless the regulations expressly so provide, and the requisite action prescribed therein is taken (*Smith* v. *Paringa Mines Co.* [1906], 2 Ch. 193). But a meeting may be *adjourned* to a later time. An adjourned meeting is a continuation of the

original meeting (*Scadding* v. *Lorant* [1851], 3 H.L. 418) (but as to resolutions *see* S. 119, p. 264). So no new notice of an adjourned meeting need be given (*Wills* v. *Murray* [1850], 4 Ex. 843).

In general terms, the chairman can only adjourn a meeting when it is impossible, by reason of disorder, to complete the business, or under powers contained in the articles. If a chairman attempts to adjourn a meeting against the wishes of the majority, the meeting can elect another chairman and proceed with the business.

Where articles provide that the chairman " may with the consent of any meeting . . . adjourn the meeting," the chairman is not bound to adjourn, even though the meeting may resolve to do so (*Salisbury Gold Mining Co.* v. *Hathorn* [1897], App. Cas. 268). Table A, Art. 49, so provides, but adds, " and shall [adjourn] if so directed by the meeting." Under this provision the chairman has no discretion, he must adjourn if so directed. Articles commonly provide that a poll shall immediately be taken to test the will of the meeting on the matter of adjournment (*see* Table A, Art. 53).

In company meetings, the Act (or articles) in many cases provides for automatic adjournment when a quorum is not present within a prescribed time after that fixed for the meeting to begin.

In the case of the Statutory Meeting under S. 113, s.-s. (8), it would seem that the chairman has no discretionary power of adjournment, since the section expressly confers a right of adjournment on the meeting itself.

At an adjourned meeting, other than the Statutory Meeting (*see* p. 239), only such business as is left uncompleted at the original meeting can be dealt with, unless the articles provide otherwise, or unless new notice has been given setting out such new business as is to be dealt with.

Where after 31st October, 1929, a resolution is passed at an adjourned meeting of a company, of the holders of any class of shares in a company, or of the directors of a company, the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date (S. 119).

Privilege.—Board and company meetings are privileged occasions. Statements made at such meetings, however severe

in their criticism, are not actionable, unless the speaker is actuated by malice, or abuses the occasion from a desire to inflict injury upon another person, or allows himself so to be overcome by anger as recklessly to cast aspersions upon others, not caring whether they are true or false. The presence of reporters at a company meeting, if their presence is customary, and subsequent publication of the proceedings in the newspapers, does not destroy the privilege, but it is otherwise if their presence is not customary, and they have been specially asked to attend. The privilege extends to the Press reports themselves, so far as they deal with matters of public interest for the public benefit. Where a newspaper published statements made by the chairman of a company meeting defamatory of the company's cashier, and the statements were proved false, the newspaper was held liable in damages to the plaintiff, on the ground that publication of the statements was not of public interest or for the public benefit. If a meeting is "public," *i.e.*, for the discussion of a matter of public concern, a report which is fair and accurate, and not published maliciously, is protected by the *Law of Libel Amendment Act* [1888], S. 4.

Meetings of Directors.—The articles may provide that a meeting of the board of directors shall be held on a specified day in each month, or in each quarter, or at other specified intervals, but it is more usual for the Board to be convened as the requirements of the business dictate. In some cases it is left to the secretary to call such meetings at his discretion, but this is an irregular practice, since the secretary should, strictly speaking, only call a meeting when so instructed by the directors. Table A, Art. 81, states that the secretary may convene a meeting on the requisition of one of the directors. The meeting *may*, however, ratify an unauthorised act of the secretary, thereby making it in order.

Meetings of directors have, in general, the following functions, subject, of course, to the articles:

(*a*) Management of the business of the company.
(*b*) Allotment and forfeiture of shares.
(*c*) Making calls.
(*d*) Passing transfers.
(*e*) Authorisation of the use of the seal.
(*f*) Passing accounts for payment.

(*g*) Recommendation of dividends.
(*h*) Declaration of interim dividends.
(*i*) Appointment of officials.

Meetings of the Board may be held anywhere provided that the directors are called together as a Board by proper notice, or by custom (*e.g.* where a fixed day in each month is prescribed). And a meeting may be held even in informal circumstances provided all the directors are present and expressly or impliedly waive informalities. But a casual meeting is not a duly convened board meeting, if any one (or more) of the directors objects.

It will be seen, therefore, that the presence of a quorum is not in itself sufficient to constitute a valid board meeting; something more is required. The meeting must have been convened by proper notice sent to each director, or else there must have been a prior or subsequent arrangement or intention to come together as a board meeting. But, as stated above, if all the directors are present, they can waive any irregularities.

Directors may not attempt to frustrate business by wilful non-attendance (*see* p. 228) at board meetings.

Committees.—Any body may, subject to its regulations, delegate certain of its powers to committees. In company work, the articles usually allow the board of directors to appoint such committees as they think fit. The system is particularly valuable in a large company, since it permits routine matters, or matters involving specialised knowledge, to be debated in detail at the committee meetings, only the results and/or recommendations being submitted by the committee to the full Board.

The advantages are:

(1) More efficient distribution of duties;
(2) Those directors with specialised knowledge can apply it to the best advantage;
(3) The work of the Board is expedited;
(4) More detailed discussions are possible;
(5) Diverse interests are better protected and understood.

The following disadvantages may be mentioned:

(1) Lack of proper information on the part of other members of the Board may cause friction when a committee reports.

(2) Unless the Board retains and exercises its control over the committee, the powers of the Board are weakened.

(3) Reference to committees may cause delay, unless a rule is enforced that committee meetings must always precede board meetings.

The chairman of the directors should always be an *ex officio* member of every committee, thus securing cohesion and ensuring more harmonious working between the committee and the full Board. The more important committees are usually the Transfer Committee and the Finance Committee.

Resolutions.—A company expresses its will at duly convened meetings of its members by means of motions, which, after being proposed, seconded, and debated by members, are then put to the vote by the chairman, and if passed by the requisite majorities, then become resolutions of the company. The terms "motion" and "resolution" are, however, used indiscriminately.

Shareholders' resolutions are of various kinds:

(1) *The Ordinary Resolution.*—This is not defined by the Act (which refers to it, indirectly only, as " a resolution passed by the company in general meeting "), but its function is well recognised in company proceedings. It is a resolution passed by a simple majority of those present and voting at the meeting, those not voting not being counted. Subject to the articles, an ordinary resolution is sufficient for the allotment of shares; adjournment of a meeting; transaction of ordinary business (*see* p. 248); increase of capital, consolidation of shares, conversion of shares into stock (and *vice versa*), subdivision of shares, and cancellation of unissued shares (S. 50); voluntary winding up where the objects for which the company was formed have been attained, or the period fixed for the duration of the company has elapsed (S. 225, s.-s. (1)); appointment of liquidator in a members' voluntary winding up (S. 232); and registration of an unlimited company as limited (S. 16).

(2) *The Extraordinary Resolution.*—This is a resolution passed by a majority of not less than three-fourths of such members as, being entitled so to do, vote in person or, when proxies are allowed, by proxy at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given (S. 117, s.-s. (1)).

Such a resolution is necessary for certain alterations of capital under S. 50 if the articles so provide; voluntary winding up of an insolvent company (S. 225); arrangement with creditors or a compromise with debtors or contributories in a members' voluntary winding up (S. 248); and disposal of the books on dissolution in a members' voluntary winding up (S. 283).

(3) *The Special Resolution.*—This resolution is defined by S. 117, s.-s. (2) as follows :—

> A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than twenty-one days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given :
>
> Provided that, if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.

Such a resolution is essential for the following purposes :

(*a*) Changing the company's name (S. 19, s.-s. (1)).
(*b*) Altering the company's objects (S. 5).
(*c*) Alteration of the articles (SS. 10 and 319).
(*d*) Reduction of share capital (S. 55).
(*e*) Creation of reserve liability (S. 49).
(*f*) Rendering unlimited the liability of directors (S. 147).
(*g*) Payment of interest out of capital on shares issued for constructional purposes (S. 54).
(*h*) Appointment of investigating inspectors (S. 137).
(*i*) Approving the assignment of office by a director (S. 151).
(*j*) Winding up by the Court (S. 168) or voluntarily in general cases (S. 225).
(*k*) Authorising liquidator to sell the undertaking for shares, etc. (S. 234).

Many of the above resolutions require in addition the sanction or confirmation of the Court or of the Board of Trade, or of the Registrar, and reference should be made to the appropriate pages of this book (*see* Index).

Articles may specify that a special resolution is required for certain other purposes, *e.g.* consolidation of shares, etc., for which, in other companies, an ordinary or extraordinary resolution may suffice.

The remainder of S. 117 is important:

(3) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed a poll shall be taken to be effectively demanded, if demanded—

(*a*) by such number of members for the time being entitled under the articles to vote at the meeting as may be specified in the articles, so, however, that it shall not in any case be necessary for more than five members to make the demand; or

(*b*) if no provision is made by the articles with respect to the right to demand the poll, by three members so entitled or by one member or two members so entitled if that member holds or those two members together hold not less than fifteen per cent. of the paid-up share capital of the company.

(5) When a poll is demanded in accordance with this section, in computing the majority on the poll reference shall be had to the number of votes to which each member is entitled by virtue of this Act or of the articles of the company.

(6) For the purposes of this section, notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by this Act or the articles.

By S. 118:

(1) A copy of every resolution or agreement to which this section applies shall, within fifteen days after the passing or making thereof, be forwarded to the registrar of companies and recorded by him.

(2) Where articles have been registered, a copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.

(3) Where articles have not been registered, a printed copy of every such resolution or agreement shall be forwarded to any member at his request, on payment of one shilling or such less sum as the company may direct.

(4) This section shall apply to—

(*a*) Special resolutions;

(*b*) Extraordinary resolutions;

(*c*) Resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless, as the case may be, they had been passed as special resolutions or as extraordinary resolutions;

(*d*) Resolutions or agreements which have been agreed to by all the members of some class of shareholders, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members;

(*e*) Resolutions requiring a company to be wound up voluntarily, passed under paragraph (*a*) of subsection (1) of section two hundred and twenty-five of this Act (*see* (1) p. 507).

(5) If a company fails to comply with subsection (1) of this section, the company and every officer of the company who is in default shall be liable to a default fine of two pounds.

(6) If a company fails to comply with subsection (2) or subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one pound for each copy in respect of which default is made.

(7) For the purposes of the last two foregoing subsections, a liquidator of the company shall be deemed to be an officer of the company.

Every resolution must be carefully drafted, and it may often be desirable that it should be drafted by a solicitor. It must be lucid, free from ambiguity, precisely convey the meaning desired, and so secure the exact object intended.

A resolution must not be illegal or contrary to public policy. It is void if it is *ultra vires* the company, but a matter *ultra vires* the directors only may be ratified by the company in general meeting so altering the articles as to confer the necessary power upon the directors.

A majority of shareholders at a general meeting cannot override acts done by the directors within their powers, although (subject to the provisions of S. 117) the statutory majority can pass a special resolution to alter the articles restricting or extending the powers of the directors.

Any attempt so to alter the articles as to constitute a fraud on the minority can be restrained on application to the Court.

Specimen Resolutions—Directors' Meetings

(*a*) *Issue of Prospectus :*

That the copy of the prospectus produced to this meeting be hereby approved and that it be dated this ..... day of ..... and be signed by all the directors of the company and forthwith delivered to the registrar of companies for registration.

(*b*) *Allotment of Shares :*

That the shares specified in column ... of the application and allotment sheets produced to this meeting be and are hereby allotted to the several persons whose names they are set against, and that the chairman do initial each such sheet for reference.

That a letter of allotment be sent to each allottee forthwith.

(*c*) *Making a Call :*

That a call of .....*s.* per share be and is hereby made upon the holders of the ordinary shares in this company, such call to be payable to the London Bank, Limited, at ....., on the ..... day of ....., 19..., and that call letters in respect thereof be issued forthwith.

(*d*) *Forfeiture of Shares :*

That whereas ....., the registered holder of ..... ordinary shares of £1 each, numbered from ..... to ..... inclusive, has failed to pay the call of ..... per share due on the ..... day of ....., 19..., and further has failed to comply with the notice served upon him dated the ..... day of ....., 19..., the said shares be and are hereby forfeited.

Specimen resolutions to be passed at company meetings are included in the specimen notices at p. 251.

Agenda.—Agenda (= things to be done) is the term used to connote the items of business to be transacted at meeting, of the board of directors or of the company, indeed at a meeting of any kind. These items of business are set out on a paper termed the " agenda paper," in the order in which it is proposed that they should be dealt with at the meeting.

The secretary is usually responsible for drawing up the agenda, and he may do so either on his own responsibility or in consultation with the chairman. It is his business to see that the agenda paper is complete without being too voluminous. It should be indicative rather than exhaustive, but sufficiently detailed to enable those to whom copies are furnished to form an opinion on the matters to be discussed.

It is advisable that all routine matters should be dealt with first, leaving contentious business requiring detailed debate to be dealt with after these non-contentious routine matters have been disposed of. If routine matters are left to the end, there is the risk that too little time will be left for their due consideration, and it may happen that owing to the early retirement of members from the meeting, the remaining business cannot be transacted because a quorum is not present.

Where a meeting has to consider important business, a copy of the agenda is frequently circulated with the notice of the

meeting. In all cases, uniformity of agenda is desirable, and it will be found convenient to formulate a standard model for meetings of a like character.

The general outline of the agenda paper is usually :

(1) Election of chairman, where not otherwise provided.
(2) Reading the minutes of the previous meeting; signing of minutes by the chairman, unless the chairman of the previous meeting has already signed them.
(3) Share transfers to be passed.
(4) Letters, etc., received likely to be of interest to the directors.
(5) Financial and statistical statements; departmental and other reports.
(6) Signing of cheques, acceptance of bills, etc.
(7) Special business, full particulars of which should be inserted in the agenda.

In many cases the agenda can be so presented that with the transposition of verbs and slight modifications of wording, the minutes can be prepared therefrom by an experienced typist who was not even present at the meeting.

Some companies employ an agenda book, on the left-hand page of which the agenda is set out, and on the right-hand page the chairman makes notes from which the minutes may be readily written up. It is probably more convenient, however, to prepare the chairman's copy of the agenda on a large sheet of paper, leaving a large margin for his notes. The secretary usually also makes his own notes. The sheets can then be filed for preservation, although many experienced authorities, not without reason, hold that, once the minutes have been written up and signed, all rough notes and draft minutes, resolutions, etc., should be destroyed.

Specimen Agenda.—First meeting of the Board of Directors, held at ....., on ....., 19.....

Agenda.	Notes.
Present : in the chair.	[Names of Directors.]
In attendance.	[Names of Secretary, Solicitor, Accountant, etc., who are in attendance.]
The solicitor will produce the certificate of Incorporation No. ....., dated ...., 19....	
Elect chairman.	Mr. .....
Fix quorum for board meetings.	3
Appoint the managing director.	Mr. ..... Salary, £..... p.a.
Appoint the secretary.	Mr. .... Salary, £..... p.a.
Pass resolution appointing the bankers of the company and method of operating the accounts.	..... Bank, Ltd. Standard Form ..... copy attached.
Adopt common seal and pass resolution *re* custody of keys.	2 locks — chairman and secretary.
Appoint Messrs. A. C. & Co., Accountants, as the company's auditors.	Remuneration to be agreed.
Approve draft prospectus and sign copy for registration.	Duplicate attached.
Approve arrangements for publishing prospectus.	Advert. in *Times*, *Financial Times*, *Financial News*, and *Manchester Guardian*. Distribution through ..... & Co.
Fix future meetings.	First Wednesday in each month.

Meeting of the Board of Directors held at ....., on ....., 19....

Agenda.	Notes.
Present: in the chair:	[Names.]
In attendance.	
Read minutes of previous meeting.	
Deal with matters arising thereout.	
Read and consider correspondence.	[Decisions.]
Details.	
Consider reports of—	
(1) Finance Committee: Financial Statements.	See attached statements.
(2) Works manager *re* recommendations for increase in stocks.	Increase agreed.
(3) Transfer Committee: Transfer Deeds Nos. ... to ..., Certificates Nos. ... to...	
(4) Secretary *re* appointment of new assistant.	Mr. ..... Salary £ ..... p.a. Usual agreement.
Consider proposals for alteration to articles Nos. ... and ... drafted by the company's solicitors.	Resolved that an extraordinary Meeting be called for ....., 19... at ..... Secretary instructed to call and arrange.

Agenda of Statutory Meeting held at ....., on ....., 19.....

Chairman's copy.

Agenda.	Notes.
1. The notice calling the meeting to be read by the secretary. 2. Move that the statutory report as circulated be taken as read. 3. Direct the attention of the members to the fact that a list of the members is open for inspection. 4. Give a summary of the company's progress, the result of the issue of the prospectus, etc., and indicate possibilities of future expansion. 5. Invite discussion. 6. Reply to questions. 7. Propose that the modifications of contracts as stated in the report be approved. 8. Declare meeting closed.	

[Detailed] Annual General Meeting held at ....., on ....., 19...

Agenda.

1. The secretary will read the notice convening the meeting.

2. The chairman will propose that the directors' report and the balance sheet as at ....., 19..., be taken as read.

3. The secretary will read the auditors' report.

4. The chairman will address the meeting, reviewing the year's activities and results, and the company's prospects.

5. The chairman will move the adoption of the report and accounts.

6. The chairman will call upon a shareholder to second the motion, and will then invite discussion.

7. The chairman will reply to questions and put the motion to the meeting and declare the result.

8. The meeting will elect directors. [The secretary should arrange for the motions to be proposed and seconded by members from the body of the meeting.]

9. The chairman will move that the dividends recommended by the directors in their report be declared. This, when seconded, will be put to the meeting, and the chairman will declare the result.

10. The meeting will appoint the auditors. [The secretary should arrange for this motion to be proposed and seconded by members from the body of the meeting.]

11. A vote of thanks to the chairman will be moved.

12. The chairman will declare the meeting closed.

Minutes.—By S. 120 :

(1) Every company shall cause minutes of all proceedings of general meetings, and where there are directors or managers, of all proceedings at meetings of its directors or of its managers, to be entered in books kept for that purpose.

(2) Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Where minutes have been made in accordance with the provisions of this section of the proceedings at any general meeting of the company or meeting of directors or managers, then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers, or liquidators shall be deemed to be valid.

It will be seen that by the above section the minute books are statutory books, which must be kept, although no penalty is imposed for failure to do so, save indirectly by S. 121 in relation to minutes of general meetings. It would obviously be fatal not to keep a formal record of the business transacted at company and directors' meetings. A separate minute book should be kept for company meetings, as by S. 121 the minute book may be inspected by members, who are also entitled on

payment of the required fee to a copy of the minutes. S. 121 says :—

> (1) The books containing the minutes of proceedings of any general meeting of a company held after the commencement of this Act shall be kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that no less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge.
>
> (2) Any member shall be entitled to be furnished within seven days after he has made a request in that behalf to the company with a copy of any such minutes as aforesaid at a charge not exceeding sixpence for every hundred words.
>
> (3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time, the company and every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding two pounds and further to a default fine of two pounds.
>
> (4) In the case of any such refusal or default, the court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall be sent to the persons requiring them.

The minutes should contain decisions; only in rare instances is it necessary or desirable to detail the discussions precedent to such decisions. All resolutions should be given in detail exactly as passed, but it is rarely expedient to encumber the minutes with the names of proposers and seconders.

Where specially important decisions are made, it may be useful for future reference to add such appropriate phrases as :

" unanimously "—where all those present voted for the motion.

nem. con. (Nemine contradicente)—no one saying otherwise —where all those who voted were in favour of the motion.

nem. dis. (Nemine dissentiente)—no one dissenting.

But their use is really superfluous.

At times it may happen that at a board meeting a director or at a general meeting a shareholder, raises strong objection to a particular proposal. If the objector does not withdraw, the chairman must decide whether to proceed, and meet the objection by minuting the fact, with the name of the objector.

Where a special majority is required, some secretaries

prefer to note the numbers voting for and against the resolution. This is a matter of individual preference on which no general rule can be formulated.

The minutes should be adequately indexed, and marginal references or headnotes be introduced, since these greatly facilitate reference. It is usual to employ a bound book for use as a minute book, and either to write the minutes in by hand, or to typewrite them by a special machine. If the minutes are separately typed and pasted in, the chairman should, in order to prevent substitution, initial each sheet, so that his initials overlap the foundation page on which the sheet is pasted. Loose-leaf minute books are not recommended (see p. 424).

Minutes are occasionally written up as the meeting proceeds, in which case they are read over, and signed by the chairman before the meeting closes. This, however, is rarely practicable; and it is more usual for them to be subsequently written up from the notes made by the chairman and secretary. The chairman may then sign them as a true record as soon as they are ready, but the general method is for them to be read at the succeeding meeting, at which they are approved as a true record, and signed as such by the chairman of the succeeding meeting.

The word "confirmed" is often used when certifying minutes as correct, as, *e.g.*, "The minutes of the meeting held on Monday the 16th June, 19..., were read and confirmed." This is a misuse of the word. Minutes are not *confirmed*: they are signed, being approved as a fair and true record of the proceedings. The phrase to be employed is some such phrase as: "The minutes of the meeting held on Monday the 16th June, 19..., were read and signed as correct."

If the subsequent meeting disapproves of the decisions of the former meeting, the remedy lies, not in altering the minutes of that meeting (for that would be falsifying the record), but in formally resolving upon new decisions, which will then be minuted, and have the effect of annulling the previous decisions.

If any alteration has to be made in minutes, the offending passage must be struck out and the amendment be inserted and initialled by the chairman. On no account should erasures be made. No alterations may be made in minutes except such as are necessary to make the minutes a true record of what happened at the meeting of which they purport to be minutes.

No alteration can be allowed after the minutes have been signed.

On the invalidity of altering minutes, the remarks of Esher M.R. in *In re Cawley & Co.*, [1889], 42 Ch. 209, are usually cited:

" Something happened with regard to that resolution which I cannot help thinking was most dangerously irregular, for the secretary, either in consequence of some supposed power vested in him or of some idea of his own, some time afterwards inserted in the minutes . . . certain dates as the dates of the calls. In my opinion that was the most dangerous thing that could well be done. . . . Any shareholder, looking at these minutes as they now stand, would suppose the dates were agreed upon at the meeting, and were then filled in, whereas in truth no dates were agreed upon by the directors at all. The dates form no part of the resolution, and yet here is the entry made as though they formed part of the resolution then passed. I trust that I shall never again see or hear of the secretary of a company, whether under superior directions or otherwise, altering minutes of meeting, either by striking out anything or adding anything. The proper mode of fixing the dates would have been by resolution and then entering that resolution on the minutes."

In writing up minutes, trivial matters may generally be omitted, but if a decision has been arrived at, the decision should be duly minuted. In case of doubt it is suggested that it is better to include than exclude. The minutes may in later years be the only reliable evidence available to support certain actions, etc., and this contingency should always be kept in mind when writing up minutes.

Minutes are evidence, but only *prima facie* evidence, of what was done at the meeting, and stand as correct unless and until they are proved to be incorrect. Where it is alleged that any resolution not recorded in the minutes was in fact discussed and passed at a meeting, express evidence may be given to prove what occurred (*re Fireproof Doors* [1916], 2 Ch. 142).

In *In re Indian Zoedone Co.*, [1884], 26 Ch. D. 77, Selborne L.C. said:

" The minutes in the books are to be received, not as conclusive, but *prima facie* evidence of resolutions and proceedings at general meetings . . (and) . . . inasmuch as the chairman

who presides at such meetings, and has to receive the poll and declare its result, has *prima facie* authority to decide all emergent questions which necessarily require decision at the time, his decisions of these questions will naturally govern, and properly govern, the entry of the minutes in the books; and though in no sense conclusive, it throws the burden of proof upon the other side, who may say, contrary to the entry in the minute book following the decision of the chairman, that the result of the poll was different from that there recorded."

Specimen Minutes.—(*a*) *Board Meeting.*

Minutes of a meeting of the Directors held on the 5th day of June, 19..., at the registered office of the Company. There were present

..... Chairman of the Board.

.....

..... Directors.

.....

.....

In attendance.

.....Secretary.

The Minutes of the meeting held on the 5th day of May, 19..., were read and signed by the Chairman.

Resolved. That ..... Ordinary Shares numbered ..... to ..... inclusive be and are hereby allotted to the applicants as per allotments lists submitted by the Secretary.

Upon the motion of Mr....., seconded by Mr....., it was *Resolved* unanimously [or it was *Resolved*, Mr. ..... dissenting] [or resolved]

That the agreement dated ..... between the Company and the Eureka Trading Corporation, Ltd., be and is hereby approved and adopted, and the seal of the Company affixed thereto.

The Secretary having read a letter from ....., dated ....., and the Board being of opinion that the proposal was not sufficiently advantageous to the Company, the Secretary was directed to reply declining the proposal.

.... Chairman.

(b) *Ordinary General Meeting.*

Minutes of Tenth Annual General Meeting of THE PRACTICE COMPANY, LIMITED, held at the Cannon Street Hotel, London, E.C., on the 5th day of June, 19..., at three o'clock.

Present :— ..... Chairman.

..... }
..... } Directors.
..... }

In attendance.

..... Secretary.

..... Auditor.

and . . *members.

The Secretary read the notice convening the meeting.

The Chairman addressed the meeting and explained the Balance Sheet.

Upon the motion of the Chairman, seconded by Mr. ....., it was *Resolved* unanimously—

That the Tenth Annual Report and Accounts annexed thereto be received and adopted.

Resolved that a dividend of ..... per cent. on the ordinary shares of the company for the year ended ....., 19..., be, and is hereby declared, payable forthwith to all members entered on the register of members on .. .., 19....

Resolved that the retiring director, Mr. ....., be and is hereby re-elected.

Resolved that Mr. ....., of Messrs. ....., be and is hereby re-elected auditor of the Company, at a remuneration of £ ..... p. a.

Upon the motion of Mr. ....., seconded by Mr. ....., a vote of thanks was accorded unanimously to the Directors.

..... Chairman.

* The number of members present is here inserted. Some companies minute: "and the members whose signatures appear in the Attendance Book"; others insert the names of all those present. There is no stereotyped form.

Variation of the above.

The Chairman moved and Mr. ..... seconded :

That the Tenth Annual Report and Accounts annexed thereto be adopted.

An amendment was thereupon moved by Mr. ....., and seconded by Mr. ..... :

That the Report and Accounts be received but not adopted, and that a Committee of five shareholders be appointed, with power to add to their number, to inquire into the past and present management of the Company, and with power to call for all such books and documents, and to obtain such professional assistance as may be necessary.

The amendment was put to the meeting and upon a show of hands declared by the Chairman to be lost. A poll was then demanded and taken forthwith, with the result that ..... voted for the amendment and .. ... against. The original motion was then put to the meeting and declared by the Chairman to be carried.

(c) *Extraordinary General Meeting.*

Minutes of an Extraordinary General Meeting of THE PRACTICE COMPANY, LIMITED, held at the Cannon Street Hotel, London, E.C., on the 5th day of June, 19....., at three o'clock.

Present : ..... Chairman.

..... }
..... } Directors.
..... }

In attendance.

..... Secretary.

..... Solicitor to the Company.

..... Auditor.

and ... . members.

The notice convening the meeting was read by the Secretary.

The Chairman explained that owing to the expansion of the Company's business it had become necessary to increase the Company's capital in order to provide further working capital.

The Chairman moved and Mr. ..... seconded "That the capital of the Company be increased to £..... by the creation and issue of .... new ordinary shares of £.... .. each." *Resolved* accordingly.

The proceedings were concluded by a vote of thanks to the Chairman.

... . Chairman.

The Secretary's Duties as to Meetings.—The success or failure of a meeting undoubtedly rests on the secretary and the chairman. The chairman's onerous duties have been dealt with elsewhere. The secretary's duties are sufficiently apparent from the contents of this chapter, but it is felt that a summary of his duties will be useful for reference. The class of meeting will decide how far the following general reminders are relevant:

Before the meeting.

(1) On instructions from a properly constituted board meeting, ascertain that the required hall is available and book it for the occasion. This applies particularly where the hall has to be hired, but even if the hall belongs to the company, its availability must be assured.

(2) Issue proper notices in the prescribed form (if any) and to the persons entitled to receive such notice by the Act or articles. See that the proper length of notice is given.

(3) Prepare the agenda in consultation with the chairman.

(4) If the chairman has to deliver a speech, see that he is supplied with all necessary and relevant data. It frequently falls to the secretary actually to draft at least the outline of the chairman's speech, since he is more familiar with details than the chairman.

(5) Get together, in the order of business disclosed by the agenda form, all documents, correspondence, etc. to be submitted to or likely to be called for at the meeting, *e.g.* transfers, new certificates, contracts, the seal, etc.

(6) See that all reports are ready for the meeting. In the case of financial returns, this may mean co-operation with the accountant, or the secretary himself may have to prepare them (*cf.* p. 285).

(7) In the case of general meetings, issue a reminder to every director two days before the meeting to ensure their attendance at the meeting.

At the Meeting.—(1) Attend in good time, and see that proper supplies of paper, pens, ink, blotting-paper, etc. are laid out and that the seating accommodation is ample. In the case of a general meeting, assistants should be at the door to collect signatures or attendance cards, etc., and to attend to any details incidental to the meeting.

(2) Have at hand all information, etc. mentioned in (5) and (6) above, and in particular (where necessary):

(*a*) copies of the memorandum and articles;

(*b*) copies of balance sheets and the documents required by law to be annexed thereto (*see* Chap. X), and auditors' reports for the current, and say two or three prior, years, with full schedules of information on the accounts sufficient to enable the chairman to answer questions thereon;

(*c*) all proxies lodged and lists thereof;

(*d*) the register of members;

(*e*) minute book;

(*f*) ruled sheets for use if a poll is demanded.

(3) Arrange for members to propose and second such resolutions as it is particularly desirable should be moved from the meeting, *e.g.* on the election and remuneration of directors and auditors.

(4) Take accurate and sufficient notes from which to write up the minutes, particularly the exact wording of all resolutions passed.

(5) Generally assist the chairman in every possible way, particularly in seeing that the meeting is properly constituted.

After the Meeting.—(1) Write up the minutes.

(2) Carry out any instructions given by the meeting, *e.g.* as to writing letters; confirming agreements; despatching allotment letters; registering transfers; delivering certificates, etc.

(3) Convene any further meeting required.

(4) File any necessary returns, etc. with the Registrar; *e.g.* return of allotments; copy of prospectus; annual list and summary, etc.

(5) Attend to Stock Exchange requirements, *e.g.* dividend notices.

CHAPTER X

ACCOUNTS. FINANCIAL REPORTS

It is not proposed to deal in detail with the accounts of limited companies. Company accountancy has become so complex and technical a subject that to write anything worth while about it, except in the most general terms, is impracticable in a book concerned primarily with secretarial practice. On this subject the reader is referred to *Higher Book-keeping and Accounts* by Cropper, Morris and Fison, to the same authors' larger work entitled *Accounting*, and to *Company Accounting* by H. A. R. J. Wilson. These authoritative treatises should find a place in the library of every secretary.

The secretary may be directly responsible for the book-keeping and accounts of his company, although in a large corporation there is usually a separate department which deals exclusively with these matters, under a chief accountant, usually fully qualified as such, who may or may not be responsible to the secretary. Whether he is or is not directly concerned with the accounts, the secretary should know the requirements of the Act respecting the keeping of accounts, and the responsibilities of his directors regarding the preparation of the balance sheet, and the documents to accompany the balance sheet, etc., and he must be familiar with the principles on which companies' accounts are prepared, and be able to interpret them and utilise the results they disclose. Indeed, in any case, it is the results that are important, although these cannot be obtained without adequate records and co-ordination of them, all of which requires sound organisation under skilled supervision.

Throughout this work, references are made to the duties of a secretary in many relations to the company, which may be, and frequently are, carried out by a separate department under an independent executive. Where the circumstances of the company make this segregation of duties imperative, it is not difficult for the reader to mark out for himself the matter germane to his own particular position. Of necessity, the

authors have to write on the assumption that the whole includes the part, and it is impracticable to deal specifically with each of hundreds of differently organised companies.

In all cases the secretary will have to see that the financial, costing and statistical statements are ready for each meeting of the directors, and where the preparation of these statements falls to the chief accountant, the necessity for close and cordial co-operation between the departmental chiefs needs no emphasis.

The system of internal check must be such that every conceivable loophole, not only for fraud but also for those troublesome errors and oversights that are so detrimental to the efficiency and credit of a business, is closed. No clerk concerned with the receipt or payment of money should also be responsible for recording such transactions in the personal or other ledger accounts. The work of entering should be so arranged that each entry is independently checked by some clerk having nothing to do with the making of the original entry. The duties of the clerks should periodically, at irregular and unannounced intervals, be changed about. By these means the risks of collusion are minimised, and each clerk becomes conversant with the work of his fellows. Thus checking is facilitated, and dislocation, when changes in the staff occur, prevented.

Books of Account.—Prior to the *Companies Act*, 1929, there were no statutory provisions requiring a company registered under the Companies Acts to keep accounts, or to present even a balance sheet to the members, although any balance sheet laid before the company in general meeting had to be audited, and public companies had to file with the registrar of companies, at the same time as the annual return, a statement in the form of a balance sheet, made up to whatever date appeared on such statement.

The disadvantages arising from this lack of control were only too apparent, and the new provisions introduced into the Act of 1929, designed to ensure the regular presentation by a company to its members of true and intelligible accounts of the company's business, were very welcome to all who have the public interest at heart.

Every company must, by S. 122, keep proper books of account. It will be noticed that what constitutes " proper

books of account" is not closely defined. This is a commercial matter which the law leaves to men of business. They it is who must decide what, in given circumstances, are proper books. Any sort of books are proper books that will show the required details sufficient to "exhibit and explain the transactions and financial position of the trade or business of the company, etc." (S. 274, s.-s. (2)). A complete set of books kept upon double entry principles will do this, but there is the important question of ease and economy of method.

In deciding on the form of the records, it is usual to consult the company's auditors, whose training and experience make them conversant with the book-keeping and accounting requirements of varying businesses. In a business of any size to-day, the suitability of machine accounting must be investigated before a final decision is made. The modern tendency is to eliminate all duplication wherever possible, and the fact that book-keeping machines accumulate totals, and strike balances automatically, makes accounting in totals much more practicable by machine than by hand.

Section 122 says :—

(1) Every company shall cause to be kept proper books of account with respect to—

(*a*) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(*b*) all sales and purchases of goods by the company;

(*c*) the assets and liabilities of the company.

(2) The books of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open to inspection by the directors.

(3) If any person being a director of a company fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, he shall, in respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds :

Provided that a person shall not be sentenced to imprisonment for an offence under this section unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

Failure to keep proper books of account is not infrequently a contributory (or it may be even the main) cause of the failure of a business. Hence, in S. 274, we find that where a company is wound up, and it is shown that proper books of account have not been kept for a period of two years immediately preceding

the commencement of the winding up, those responsible for the default are liable to be imprisoned. Subsection (2) of the section gives a general indication of what is meant by the expression " proper books." S. 274 reads as follows :—

> (1) If where a company is wound up it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, every director, manager or other officer of the company who was knowingly a party to or connived at the default of the company shall, unless he shows that he acted honestly or that in the circumstances in which the business of the company was carried on the default was excusable, be liable on conviction on indictment to imprisonment for a term not exceeding one year, or on summary conviction to imprisonment for a term not exceeding six months.
>
> (2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stocktakings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

Profit and Loss Account; Balance Sheet.—The Act, S. 123, prescribes that the directors of a company shall make up, annually, a Profit and Loss Account (in the case of a company not trading for profit, an Income and Expenditure Account), and lay it before the company in general meeting. The account must not be made up to a date earlier than nine months before the date of the meeting (twelve months before the date of the meeting when the company carries on business, or has interests, abroad). The Act further prescribes that the directors shall in every calendar year cause to be made out a Balance Sheet as at the date to which the Profit and Loss Account (or Income and Expenditure Account) is made up; and attach to it their report as to the state of the company's affairs, the amount, if any, they recommend should be paid by way of dividend, and the amount, if any, they propose to carry to reserve.

The contents of the Profit and Loss Account are not mentioned, and so it is open to directors to give there as little or as much detail as they think desirable. But the amount paid as directors' fees must be shown separately in the accounts laid before the general meeting (S. 128, s.-s. (1*c*)). As to the directors' report, *see* pp. 334 *et sqq.*

S. 123.—(1) The directors of every company shall at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year lay before the company in general meeting a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the period, in the case of the first account, since the incorporation of the company, and, in any other case, since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months, or, in the case of a company carrying on business or having interests abroad, by more than twelve months:

Provided that the Board of Trade, if for any special reason they think fit so to do, may, in the case of any company, extend the period of eighteen months aforesaid, and in the case of any company and with respect to any year extend the periods of nine and twelve months aforesaid.

(2) The directors shall cause to be made out in every calendar year, and to be laid before the company in general meeting, a balance sheet as at the date to which the profit and loss account, or the income and expenditure account, as the case may be, is made up, and there shall be attached to every such balance sheet a report by the directors with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend, and the amount, if any, which they propose to carry to the reserve fund, general reserve or reserve account shown specifically on the balance sheet, or to a reserve fund, general reserve or reserve account to be shown specifically on a subsequent balance sheet.

(3) If any person being a director of a company fails to take all reasonable steps to comply with the provisions of this section, he shall, in respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds:

Provided that a person shall not be sentenced to imprisonment for an offence under this section unless in the opinion of the court dealing with the case, the offence was committed wilfully.

Contents of Balance Sheet.—The main regulations governing the form and contents of the balance sheet are given in S. 124 of the Act. But, in addition, other regulations are to be found in different sections of the Act. Thus, the following information, additional to that laid down by S. 124, must be stated separately in the balance sheet.

(*a*) By S. 44.—The total commission paid in respect of shares or debentures, or the total sums allowed as discount in respect of any debentures, or so much thereof as has not been written off.

(*b*) By S. 46, s.-s. (2).—Where a company has issued redeemable preference shares, a statement specifying what part of the issued capital consists of such shares, and the date on or before which those shares are, or are to be liable, to be redeemed.

(*c*) By S. 47, s.-s. (3).—Particulars of the discount allowed

on the issue of shares issued at a discount, or so much of the discount as has not been written off.

(*d*) By S. 54, s.-s. (1(*g*)).—Where shares have been issued under S. 54, the share capital on which and the rate at which interest has been paid out of capital during the period to which the accounts relate. S. 54 says that "the rate of interest shall in no case exceed four per cent. per annum, or such other rate as may for the time being be prescribed by Order in Council." The *Companies (Interest out of Capital) Order*, 1929, has increased the rate to "not exceeding six per cent." It would appear that disclosure in the Profit and Loss Account is here a permissible alternative.

(*e*) By S. 75, s.-s. (3).—Where a company has power to re-issue redeemed debentures, particulars of redeemed debentures which can be re-issued.

(*f*) By S. 128.—(1) Particulars of loans to directors and officers of the company, and (2) The total amount paid to the directors as remuneration for their services, inclusive of all fees, percentages, or other emoluments, paid to or receivable by them or from the company or by or from any subsidiary company (S. 128 refers to the "accounts," hence this information may appear as a note, but the face of the balance sheet is more appropriate). A managing director's remuneration need not be disclosed, neither need the remuneration paid to any other director in respect of any salaried employment or office in the company that he may hold (*see* p. 294).

(*g*) By S. 45, s.-s. (2).—The aggregate amount of any loans made by a company to its employees, or to trustees of its employees, for the purpose of acquiring fully-paid shares to be held by the employees or by trustees for them.

(*h*) By S. 125.—Shares in or amounts owing from a subsidiary company; indebtedness to a subsidiary company (*see* p. 296).

(*i*) By S. 126.—A holding company must annex to its balance sheet a statement duly signed showing how the profits and losses of its subsidiary company (or companies) have been dealt with in the holding company's accounts. The word "annex" connotes *prima facie* a separate document, but the provisions of this section are probably satisfied by including the required information in the form of a note on the face of

the balance sheet. In practice, the statement invariably follows the auditor's report.

Section 124 reads as follows :—

(1) Every balance sheet of a company shall contain a summary of the authorised share capital and of the issued share capital of the company, its liabilities and its assets, together with such particulars as are necessary to disclose the general nature of the liabilities and the assets of the company and to distinguish between the amounts respectively of the fixed assets and of the floating assets, and shall state how the values of the fixed assets have been arrived at.

(2) There shall be stated under separate headings in the balance sheet, so far as they are not written off—

(*a*) the preliminary expenses of the company; and

(*b*) any expenses incurred in connection with any issue of share-capital or debentures; and

(*c*) if it is shown as a separate item in or is otherwise ascertainable from the books of the company, or from any contract for the sale or purchase of any property to be acquired by the company, or from any documents in the possession of the company relating to the stamp duty payable in respect of any such contract or the conveyance of any such property, the amount of the goodwill and of any patents and trade-marks as so shown or ascertained.

(3) Where any liability of the company is secured otherwise than by operation of law on any assets of the company, the balance sheet shall include a statement that that liability is so secured, but it shall not be necessary to specify in the balance sheet the assets on which the liability is secured. [NOTE.—An example of a liability secured by operation of law is a vendor's lien for the unpaid purchase price of property. The secured liabilities here referred to are such as arise from agreement between the parties.]

(4) The provisions of this section are in addition to other provisions of this Act requiring other matters to be stated in balance sheets.

It is usual to state the fixed assets as " at cost " or " at cost, less depreciation."

It will be observed that it is the last available balance sheet of the company that must be contained in the annual return. If accounts are in a foreign currency, the sterling equivalents must be shown in such balance sheet (S. 110, s.-s. (3)). (*See* p. 155.)

The manner in which a balance sheet should be compiled has received some measure of judicial attention in *Galloway* v. *Schill, Seebohm & Co.* [1912], 2 K.B. 354; and in *Newton* v. *Birmingham Small Arms Co.* [1906], 2 Ch. 378, where it was held that the purpose of a balance sheet is to show that the financial position of a company is as good as is there stated and not to show that it is not better; and in other cases that have come before the courts. In the main, however, the compilation of accounts is left to men of business, and, so long as

the requirements of the Act are satisfied, and there is no attempt to mislead, directors may be as secretive in their methods of presentation as the exigencies of modern competition would appear to dictate. But secrecy can be carried too far; clearly, the legislature intends that shareholders and creditors should be able to determine from its registered and published accounts the exact financial position of a company in which they are interested. Modern practice is to present the Balance Sheet in a more attractive and informative form than formerly, and secretaries should consult the auditors with a view to reconstructing the form where necessary.

Copies of Balance Sheet.—A public company is bound, under penalty, to send to every member entitled to receive notices of general meetings, not less than seven days before the date of the general meeting, a copy of the balance sheet, to be laid before the company at that general meeting, including every document required by law to be annexed thereto, together with a copy of the auditors' report. Who is and who is not entitled to receive without request a copy of these documents will depend upon the rights of members as defined in the articles. But any member of a public company, and any debenture holder is entitled, on demand and without charge, to receive a copy of the last balance sheet of the company, including every document required by law to be annexed thereto.

A private company is bound, under penalty, within seven days of a request so to do, to send a copy of the balance sheet and auditor's report at a charge not exceeding sixpence for every hundred words.

These provisions are set out in S. 130 of the Act as follows :—

> (1) In the case of a company not being a private company—
>
> (*a*) a copy of every balance sheet, including every document required by law to be annexed thereto, which is to be laid before the company in general meeting, together with a copy of the auditors' report, shall, not less than seven days before the date of the meeting, be sent to all persons entitled to receive notices of general meetings of the company;
>
> (*b*) any member of the company, whether he is or is not entitled to have sent to him copies of the company's balance sheets, and any holder of debentures of the company, shall be entitled to be furnished on demand without charge with a copy of the last balance sheet of the company, including every document required by law to be annexed thereto, together with a copy of the auditors' report on the balance sheet.
>
> If default is made in complying with paragraph (*a*) of this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding twenty pounds, and if,

where any person makes a demand for a document with which he is by virtue of paragraph (*b*) of this subsection entitled to be furnished, default is made in complying with the demand within seven days after the making thereof, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five pounds for every day during which the default continues, unless it is proved that that person has already made a demand for and been furnished with a copy of the document

(2) In the case of a company being a private company, any member shall be entitled to be furnished, within seven days after he has made a request in that behalf to the company, with a copy of the balance sheet and auditors' report at a charge not exceeding sixpence for every hundred words.

If default is made in furnishing such a copy to any member who demands it and tenders to the company the amount of the proper charge therefor, the company and every officer of the company who is in default shall be liable to a default fine.

The provisions of sub-section (1) apply to a private company which has contravened the regulations in its articles which make it such (S. 27(3)).

Signing of the Balance Sheet.—Every company balance sheet must be duly signed in accordance with the provisions of S. 129 of the Act. The auditors' report must be attached to the balance sheet, and the report must be read before the company in general meeting, and be open to inspection by any member.

S. 129.—(1) Every balance sheet of a company shall be signed on behalf of the board by two of the directors of the company, or, if there is only one director, by that director, and the auditors' report shall be attached to the balance sheet, and the report shall be read before the company in general meeting, and shall be open to inspection by any member.

(2) In the case of a banking company registered after the fifteenth day of August, eighteen hundred and seventy-nine, the balance sheet must be signed by the secretary or manager, if any, and where there are more than three directors of the company by at least three of those directors, and where there are not more than three directors by all the directors.

(3) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated, or published, or if any copy of a balance sheet is issued, circulated, or published without having a copy of the auditors' report attached thereto, the company, and every director, manager, secretary, or other officer of the company who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding fifty pounds.

As to how far signing the Balance Sheet operates as an acknowledgment for the purposes of the Statutes of Limitations, *see* pp. 223 and 339. The Balance Sheet is not an account stated, and if directors owe money to the company it appears that their signing the Balance Sheet *qua* directors does not operate as a promise to pay (*Shaw & Sons (Salford), Ltd.* v. *Shaw* [1935], 2 K.B. 113.

Loans to Directors; Directors' Remuneration.—SS. 128 and 148 of the Act of 1929 introduced provisions unknown to earlier company Acts. It has already been pointed out that

a director is agent of, and, to an extent, a trustee for, the company, and that therefore he stands in a fiduciary position to the company. It is therefore fitting that the members of the company should know exactly what emoluments and other benefits he derives from his position as director.

Remuneration.—This, by S. 128, must be disclosed, in total, in the annual accounts, and must include all remuneration received by directors from any subsidiary company. A managing director's remuneration need not be disclosed, nor need the remuneration of any other director so long as it is remuneration in respect of some salaried employment or office in the company. The provisions of S. 128 are strengthened by those contained in S. 148. S. 148 provides that, on written demand by the members of a company, a statement certified as correct by the company's auditors must, within one month of the receipt of the demand, be sent to all the members of the company. The demand must be made by members representing not less than one-fourth of the aggregate number of votes to which all the members of the company are entitled. The statement must show the aggregate remuneration or other emoluments received for each of the last three preceding years for which the accounts of the company have been made up, including that received from subsidiary companies, or by virtue of a director having been nominated by the company a director of any other company, and also the remuneration of any managing director. It will be noted that the majority required is such as to ensure that there shall be a real desire on the part of members for the information. Merely frivolous demands by competitors and others are thus ruled out. Moreover the company in general meeting may resolve that the information be not given.

Loans.—These, by S. 128, must be disclosed in the annual accounts, and the particulars given must show (*a*) the amount loaned to any director or officer of the company during the period covered by the accounts, including any loans repaid during the period; (*b*) the amount loaned to any director or officer of the company prior to that period and outstanding at the end of the period. Students will not overlook the provisions of S. 45 in respect of authorised loans for the purpose of employees purchasing fully-paid shares in the company; or loans to trustees for the purchase by them of fully-paid shares to be held for the benefit of employees.

S. 128.—(1) The accounts which in pursuance of this Act are to be laid before every company in general meeting shall, subject to the provisions of this section, contain particulars showing—

(*a*) the amount of any loans which during the period to which the accounts relate have been made either by the company or by any other person under a guarantee from or on a security provided by the company to any director or officer of the company, including any such loans which were repaid during the said period; and

(*b*) the amount of any loans made in manner aforesaid to any director or officer at any time before the period aforesaid and outstanding at the expiration thereof; and

(*c*) the total of the amount paid to the directors as remuneration for their services, inclusive of all fees, percentages, or other emoluments, paid to or receivable by them by or from the company or by or from any subsidiary company.

(2) The provisions of subsection (1) of this section with respect to loans shall not apply—

(*a*) in the case of a company the ordinary business of which includes the lending of money, to a loan made by the company in the ordinary course of its business; or

(*b*) to a loan made by the company to any employee of the company if the loan does not exceed two thousand pounds and is certified by the directors of the company to have been made in accordance with any practice adopted or about to be adopted by the company with respect to loans to its employees.

(3) The provisions of subsection (1) of this section with respect to the remuneration paid to directors shall not apply in relation to a managing director of the company, and in the case of any other director who holds any salaried employment or office in the company there shall not be required to be included in the said total amount any sums paid to him except sums paid by way of directors' fees.

(4) If in the case of any such accounts as aforesaid the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report on the balance sheet of the company, so far as they are reasonably able to do so, a statement giving the required particulars.

(5) In this section the expression "emoluments" includes fees, percentages and other payments made or consideration given, directly or indirectly, to a director as such, and the money value of any allowances or perquisites belonging to his office.

S. 148.—(1) Subject as hereinafter provided, the directors of a company shall, on a demand in that behalf made to them in writing by members of the company entitled to not less than one-fourth of the aggregate number of votes to which all the members of the company are together entitled, furnish to all the members of the company within a period of one month from the receipt of the demand a statement, certified as correct, or with such qualifications as may be necessary, by the auditors of the company, showing as respects each of the last three preceding years in respect of which the accounts of the company have been made up the aggregate amount received in that year by way of remuneration or other emoluments by persons being directors of the company, whether as such directors or otherwise in connection with the management of the affairs of the company, and there shall, in respect of any such director who is—

(*a*) a director of any other company which is in relation to the first-mentioned company a subsidiary company; or

(*b*) by virtue of the nomination, whether direct or indirect, of the company a director of any other company;

be included in the said aggregate amount any remuneration or other

emoluments received by him for his own use whether as a director of, or otherwise in connection with the management of the affairs of, that other company :

Provided that—

(i) a demand for a statement under this section shall be of no effect if the company within one month after the date on which the demand is made resolve that the statement shall not be furnished; and

(ii) it shall be sufficient to state the total aggregate of all sums paid to or other emoluments received by all the directors in each year without specifying the amount received by any individual.

(2) In computing for the purpose of this section the amount of any remuneration or emoluments received by any director, the amount actually received by him shall, if the company has paid on his behalf any sum by way of income tax (including super-tax and sur-tax) in respect of the remuneration or emoluments, be increased by the amount of the sum so paid.

(3) If any director fails to comply with the requirements of this section, he shall be liable to a fine not exceeding fifty pounds.

(4) In this section the expression "emoluments" includes fees, percentages and other payments made or consideration given, directly or indirectly, to a director as such, and the money value of any allowances or perquisites belonging to his office.

Holding Companies.—A holding company is a company holding, either directly or through a nominee, a part of the share capital of another company (in relation to the holding company termed a "subsidiary company") and which holds more than fifty per cent. of the issued capital in that other company or exercises preponderating voting strength, or has power to appoint the majority of the directors of the subsidiary company. A holding company may control one or a number of subsidiaries.

The tendency to form larger and larger manufacturing and trading units has long been at work, and has become accentuated since the Great War. To such an extent is this true, that it was often well-nigh impossible for members or creditors of a holding company, or for members or creditors of its subsidiary companies, to judge the true financial position of either. Sections 125, 126, and 127 of the Act of 1929 seek to remedy this to a limited extent.

By S. 125. A holding company must set out separately in its balance sheet any assets consisting of shares in or amounts owing from a subsidiary company (or subsidiaries), distinguishing shares and indebtedness. Similarly, where a holding company is indebted to a subsidiary, or subsidiaries, the aggregate

amount must be separately disclosed in its balance sheet. It is to be noted that *aggregates* only need be shown, details in respect of each subsidiary are not necessary.

By S. 126. A holding company must annex to its balance sheet a duly signed statement stating how the profits and losses of a subsidiary (or subsidiaries) have been dealt with in its accounts, and in particular, how and to what extent (1) provision for the losses of the subsidiary (or subsidiaries) has been made in the holding company's accounts, or in the accounts of the subsidiary (subsidiaries), or in both, and (2) the losses of a subsidiary (or subsidiaries) have been taken into account by the directors of the holding company in arriving at the profits and losses of the holding company as disclosed in its accounts. Here also details are not required.

If in the case of a subsidiary the auditors' report is qualified, the statement required by S. 126 must contain particulars of the qualification. If directors of the holding company cannot obtain the information required for the statement obligatory by S. 126, those signing the balance sheet must report the fact in writing and annex the report to the balance sheet.

S. 127 defines the meaning of the expression "subsidiary company." A company whose ordinary business includes the lending of money may hold shares in another company as security only. The mere fact that its shares are so held does not constitute that company a subsidiary of the lending company.

S. 125. Where any of the assets of a company consist of shares in, or amounts owing (whether on account of a loan or otherwise) from a subsidiary company or subsidiary companies, the aggregate amount of those assets, distinguishing shares and indebtedness, shall be set out in the balance sheet of the first-mentioned company separately from all its other assets, and where a company is indebted, whether on account of a loan or otherwise, to a subsidiary company or subsidiary companies, the aggregate amount of that indebtedness shall be set out in the balance sheet of that company separately from all its other liabilities.

S. 126.—(1) Where a company (in this section referred to as "the holding company") holds shares either directly or through a nominee in a subsidiary company or in two or more subsidiary companies, there shall be annexed to the balance sheet of the holding company a statement, signed by the persons by whom in pursuance of section one hundred and twenty-nine of this Act [*see* p. 293] the balance sheet is signed, stating how the profits and losses of the subsidiary company, or, where there are two or more subsidiary companies, the aggregate profits and losses of those companies, have, so far as they concern the holding company, been dealt with in, or for the purposes of, the

accounts of the holding company, and in particular how, and to what extent,—

(*a*) provision has been made for the losses of a subsidiary company either in the accounts of that company or of the holding company, or of both; and

(*b*) losses of a subsidiary company have been taken into account by the directors of the holding company in arriving at the profits and losses of the holding company as disclosed in its accounts:

Provided that it shall not be necessary to specify in any such statement the actual amount of the profits or losses of any subsidiary company, or the actual amount of any part of any such profits or losses which has been dealt with in any particular manner.

(2) If in the case of a subsidiary company the auditors' report on the balance sheet of the company does not state without qualification that the auditors have obtained all the information and explanations they have required and that the balance sheet is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them and as shown by the books of the company, the statement which is to be annexed as aforesaid to the balance sheet of the holding company shall contain particulars of the manner in which the report is qualified.

(3) For the purposes of this section, the profits or losses of a subsidiary company mean the profits or losses shown in any accounts of the subsidiary company made up to a date within the period to which the accounts of the holding company relate, or, if there are no such accounts of the subsidiary company available at the time when the accounts of the holding company are made up, the profits or losses shown in the last previous accounts of the subsidiary company which became available within that period.

(4) If for any reason the directors of the holding company are unable to obtain such information as is necessary for the preparation of the statement aforesaid, the directors who sign the balance sheet shall so report in writing and their report shall be annexed to the balance sheet in lieu of the statement.

It should be noted that the statement required by S. 126 is that of the directors and the auditors of the company are not required to audit or to certify it. It should therefore follow and not precede the auditors' report.

S. 127.—(1) Where the assets of a company consist in whole or in part of shares in another company whether held directly or through a nominee and whether that other company is a company within the meaning of this Act or not, and—

(*a*) the amount of the shares so held is at the time when the accounts of the holding company are made up more than fifty per cent. of the issued share capital of that other company or such as to entitle the company to more than fifty per cent. of the voting power in that other company; or

(*b*) the company has power (not being power vested in it by virtue only of the provisions of a debenture trust deed or by virtue of shares issued to it for the purpose in pursuance of those provisions) directly or indirectly to appoint the majority of the directors of that other company,

that other company shall be deemed to be a subsidiary company within the meaning of this Act, and the expression "subsidiary com-

pany " in this Act means a company in the case of which the conditions of this section are satisfied.

(2) Where a company the ordinary business of which includes the lending of money holds shares in another company as security only, no account shall for the purpose of determining under this section whether that other company is a subsidiary company be taken of the shares so held.

It is felt by many critical and informed observers that this legislation does not go far enough, and the future will undoubtedly bring forth further provisions, perhaps making consolidated statements compulsory.

Banking, Insurance, etc. Companies.—Section 131 of the Act contains special provisions applicable to Banking and Insurance Companies, and to Deposit, Provident, or Benefit Societies.

S. 131.—(1) Every company, being a limited banking company or an insurance company or a deposit, provident, or benefit society, shall, before it commences business, and also on the first Monday in February and the first Tuesday in August in every year during which it carries on business, make a statement in the form set out in the Seventh Schedule to this Act, or as near thereto as circumstances admit.

(2) A copy of the statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(3) Every member and every creditor of the company shall be entitled to a copy of the statement, on payment of a sum not exceeding sixpence.

(4) If default is made in complying with this section, the company and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(5) For the purposes of this Act a company which carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company.

(6) This section shall not apply to any assurance company to which the provisions of the Assurance Companies Act, 1909, as to the accounts and balance sheet to be prepared annually and deposited by such a company apply, if the company complies with those provisions.

The prescribed statement is as follows :—

SEVENTH SCHEDULE.

FORM OF STATEMENT to be published by BANKING and INSURANCE COMPANIES and DEPOSIT, PROVIDENT, or BENEFIT SOCIETIES.

[1] The share capital of the company is , divided into shares of each.

[1] If the company has no share capital the portion of the statement relating to capital and shares must be omitted.

The number of shares issued is .

Calls to the amount of pounds per share have been made, under which the sum of pounds has been received

The liabilities of the company on the first day of January (*or* July) were—

Debts owing to sundry persons by the company.

On judgment, £
On speciality, £
On notes or bills, £
On simple contracts, £
On estimated liabilities, £

The assets of the company on that day were—

Government securities [*stating them*]
Bills of exchange and promissory notes, £
Cash at the bankers, £
Other securities, £

Financial Reports

Monthly or, at the longest, quarterly reports should be submitted to the Board showing the position of the business and the state of manufacturing operations. These must be reasonably condensed to give the necessary information in " tabloid " form, so that the exact position of the business can be seen by the Board at a glance. If too much detail is given, the whole may be obscured by the parts, particularly to those directors who have any particular department under their special charge. Subsidiary statements and schedules can advantageously be got out to show detail, and these can be best prepared by the employees having charge of the particular sections of the work. The summarised reports should be prepared by the chief accountant (or the secretary, in some cases), or by his immediate assistant, under his supervision. The reports should be standardised to permit ready comparison.

It is not usually sufficient to report the financial results up to a given date and over a given period, and do no more. The immediate commitments should also be shown, together with the resources available to meet them, and also any contingent commitments.

Comparative columns can advantageously be added, showing the corresponding figures for the previous period, and the corresponding period in the previous year or years. Columns showing comparative percentages are useful for enabling rapid comparisons to be made. All such reports should be in pounds (£) only; shillings and pence obscure the issue.

The following statements are suggestive only; obviously each business must adopt statements most suited to its own requirements.

FINANCIAL STATEMENT, 31ST MAY, 19 .

	This Month.	Last Month	Last Year (May).	Remarks.
Resources.				
Cash at Bank :				
Deposit . . .	2,000	3,000	—	
Current . . .	1,200	800	2,100	
Cash in Hand . .	100	200	50	
	3,300	4,000	2,150	
Trade Debtors	—	22,000	20,000	
Due June . . .	15,000	—	—	
Due July . . .	8,000	—	—	
Due later . . .	—	—	—	
Bills Receivable . .	—	2,300	—	
Due June . . .	800	—	—	
Due July . . .	600	—	—	
Due later . . .	300	—	—	
	24,700	24,300	20,000	
Total . . .	28,000	28,300	22,150	
Commitments.				
Wages	400	200	500	Due 3 June
Debenture Interest . .	1,500	1,200	—	Due 1 June
Sundry Creditors . .	—	11,000	12,000	
Due June . . .	6,000	—	—	
Due July . . .	4,000	—	—	
Due later . . .	1,000	—	—	
Bills Payable . . .	—	2,600	—	
Due June . . .	—	—	—	
Due July . . .	500	—	—	
Due later . . .	800	—	—	
Total . . .	£14,200	15,000	12,500	
Excess Resources . .	£13,800	13,300	9,650	

NOTE.—Temporary Investments Available £ — .

Interim Balance Sheet.

	Date		Corresponding date last year	
	Liabilities.	Assets.	Liabilities.	Assets.
Liabilities.				
Creditors				
Loans				
Bills Payable . . .				
Bank Overdraft . .				
	£			
Capital Issued :				
Debentures . . .				
Profit and Loss A/c as per last Balance Sheet . .				
Assets.				
Cash :				
Deposit A/c . . .				
Current A/c . . .				
In Hand . . .				
Debtors :				
Bills Receivable . .				
Investments . . .				
Stock (estimated) .				
Fixed Assets (detailed) .				
Excess or Deficiency . .				
	£			

Operating Statement, 31st May, 19 .

	% on Sales.	This Month.	% on Sales.	Last Month.	% on Sales.	Progressive Total for Year to date.	Last Year. % on Sales.	Last Year. May.	Last Year. % on Sales	Last Year. Progressive Total.
Sales (Net) . .										
Cost of Sales .										
Gross Profit . .		£		£		£		£		£
Standing Overheads										
Other Administrative Expenses .										
Selling Expenses .										
Net Trading Profit		£		£		£		£		£
Other Income :										
Interest . .										
Rent . .										
Bad Debts recovered .										
Cash Discounts .										
Transfer Fees .										
		£		£		£		£		£
Other Expenses										
Debenture Interest .										
Cash Discounts										
Bad Debts .										
Taxes . .										
		£		£		£		£		£
Net Profit		£		£		£		£		£

The above statement should be supported by explanatory schedules for each group of items.

For example, assuming that the average gross profit is 33⅓ per cent. on sales, the closing stock can be approximated, and the cost of sales found as follows. (If continuous stock records are maintained, this approximation is, of course unnecessary.)

Stock, 1st May :		
Purchases (net) :		
Carriage Inwards :		
Wages :		
Manufacturing Expenses :		
Fuel :		
Depreciation of Plant :		
	£	(*a*)
33⅓% on Sales (Gross Profit)		(*b*)
	£	(*c*)
Deduct Sales		(*d*)
Closing Stock	£	(*e*)

∴ Cost of Sales = (*a*) — (*e*), or, more shortly, (*d*) — (*b*).

SALES RETURN.

Month.	This Year.		Last Year.		Increase or Decrease.[1]	
	Total for Month.	Total for Year to date.	Total for Month.	Total for Year to date.	Monthly.	Total.
Jan. . . .						
Feb. . . .						
etc.						

[1] Decreases will be entered in red.

SCHEDULE OF OVERDUE DEBTS.

Debtor.	S.L. Fol.	Amount.	Due (date).	Nature of Debt.	Remarks.

In presenting statements and statistics to the Board, and also for general use, the form of presentation must be adequately considered. For many purposes, graphical and diagrammatic representations are much to be preferred, since the facts disclosed can be appreciated at a glance.

A study of the subject of statistics is a valuable adjunct to the secretary, and will suggest the best methods of presentation into which it is impossible to enter here. The use of index-numbers, weighted averages, etc. can be fully appreciated only after a careful study of statistical methods. *Business Statistics and Statistical Method*, by H. J. Wheldon, B.Com., F.C.W.A., F.L.A.A., A.C.I.S., and *The Elementary Manual of Statistics*, by A. L. Bowley, Sc.D., F.B.A., can be commended as authoritative works on the subject.

Budgetary Control.—This is a method of control that has found increasing favour of recent years, although it is by no means new. The best-known example of its application is the annual budget presented to Parliament, setting forth the probable receipts and expenditure on national account for the year immediately succeeding its date.

The fundamental principle is that every department must estimate its production or sales, its income and/or expenditure for a given period in advance, thus enabling all departments to co-ordinate their efforts. A goal is thus set before each department, and before every member of each department. By this means sales and production can be co-ordinated with the financial resources; plans be made to ensure continuous operation, and for the engagement of labour, etc.; processes, equipment and products can be standardised and controlled by costs; and the accumulated experience of business cycles be applied to avoid either over- or under-production. Further, a comparison of the actual results achieved with the budgeted estimates will furnish valuable data for future guidance.

The precise value of these budgets can readily be envisaged. If, for example, the approximate sales for the following six or twelve months are carefully estimated on the basis of the experience of past years, modified, if necessary, in the light of present trade conditions and outlook, production can then be scheduled to ensure the supply of the necessary articles for sale. If it is found that it would be more economical to increase this production, a budget thereof will warn the sales depart-

ment to make a special effort to increase sales, if necessary perhaps at slightly reduced prices. The amount of, and times for, the purchase of raw material can then be gauged, and standards set for labour. Limits can be fixed for expenses, and the necessary working capital can be obtained, not at a moment's notice, and so probably on uneconomical terms, but at the best moment and on the most advantageous terms. Standards can be revised as results become known, and, within reasonable limits, profits and losses can be predetermined.

Budgets, to be of practical use, must not be inflexible, and it is frequently better to employ maxima and minima, so as to ensure proper provision for eventualities.

Budgets must necessarily be kept absolutely secret, since they contain information that would be of the greatest value to competitors were they to obtain it. The master budget, compiled from the department budgets, must therefore be kept in a safe place, and access to it be granted only to those entitled thereto. Information which has to be passed on to others should be such as it is necessary for them to know, but no more than this. Subordinates should not be allowed to become conversant with the budget as a whole.

The student should consult *Flexible Budgeting and Control,* by D. J. Garden, M.A., B.Com., Ph.D.

CHAPTER XI

AUDIT AND INVESTIGATIONS

THE appointment and the remuneration of auditors are dealt with in S. 132 of the Act as follows :

(1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

(2) If an appointment of auditors is not made at an annual general meeting, the Board of Trade may, on the application of any member of the company, appoint an auditor of the company for the current year.

(3) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member to the company not less than fourteen days before the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the members, either by advertisement or in any other mode allowed by the articles, not less than seven days before the annual general meeting :

Provided that if, after notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date fourteen days or less after the notice has been given, the notice, though not given within the time required by this subsection, shall be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this subsection, be sent or given at the same time as the notice of the annual general meeting.

(4) Subject as hereinafter provided, the first auditors of the company may be appointed by the directors at any time before the first annual general meeting, and auditors so appointed shall hold office until that meeting :

Provided that—

(*a*) the company may at a general meeting of which notice has been served on the auditors in the same manner as on members of the company remove any such auditors and appoint in their place any other persons being persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than seven days before the date of the meeting; and

(*b*) if the directors fail to exercise their powers under this subsection, the company in general meeting may appoint the first auditors, and thereupon the said powers of the directors shall cease.

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

(6) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of an auditor appointed before the first annual general meeting, or of an auditor appointed to fill a casual vacancy, may be fixed by the directors, and that the remuneration of an auditor appointed by the Board of Trade may be fixed by the Board.

It will be seen from the above that auditors may be appointed by (1) the directors (*a*) at any time prior to the first annual general meeting; (*b*) in order to fill a casual vacancy; (2) the company in general meeting; (3) the Board of Trade. The Board of Trade can, however, appoint only where an appointment is not made at an annual general meeting, and then only if a member applies to the Board. The Board cannot fill a casual vacancy. In any case, the remuneration of auditors is fixed by the appointing authority. Most frequently auditors are appointed, and their remuneration is fixed, as laid down in s.-s. (6), by the company in general meeting. Usually, the auditors' fee is stated in the resolution re-appointing the auditors, although in some cases their appointment is "at a fee to be fixed by the directors." How far this latter method complies with the provisions of the Act is doubtful, but it is unlikely that an appointment so made at a reason-

able remuneration would be upset by the court. It is advisable that the proposal for the re-election of retiring auditors at the general meeting should be moved and seconded by members, and not by directors, or other officers of the company.

It is clear that no director, or officer of the company subject to the directors, could provide the independent audit of the company's accounts contemplated by the Act, nor can a body corporate bring to bear on an audit that personal and professional view-point which is so essential, hence it is provided by S. 133 that—

(1) None of the following persons shall be qualified for appointment as auditor of a company :

(*a*) a director or officer of the company;

(*b*) except where the company is a private company, a person who is a partner of or in the employment of an officer of the company;

(*c*) a body corporate.

(2) Nothing in this section shall disqualify a body corporate from acting as auditor of a company if acting under an appointment made before the third day of August, nineteen hundred and twenty-eight, but subject as aforesaid any body corporate which acts as auditor of a company shall be liable to a fine not exceeding one hundred pounds. [NOTE.—Since auditors have to be appointed at every annual general meeting, the effect of this sub-section was to disqualify any body corporate that had acted as auditor prior to August 3, 1928, from continuing so to do after the annual general meeting held next following that date.]

(3) In the application of this section to Scotland the expression "body corporate" does not include a firm. [NOTE.—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 of diligence directed against the firm, and on payment of the debt is entitled to relief *pro rata* from the firm and its other members. *Partnership Act*, 1890 (S. 4, s.-s. (2)).]

If the directors have appointed auditors prior to the issue of the prospectus, their names and addresses must appear in the prospectus (S. 35 and Fourth Schedule) or in the statement in lieu of prospectus (S. 40 and Fifth Schedule); and, if the directors have appointed auditors prior to the holding of the statutory meeting, their names, addresses, and descriptions must be stated in the statutory report, and that report, so far as it relates to the shares allotted by the company, and to the cash received in respect thereof, and to the receipts and payments of the company on capital account, must be certified as correct by the auditors (S. 113, s.-ss. (3) (*d*), and (4)).

Auditors, howsoever appointed, are the representatives of

the members and report direct to them. The provisions of S. 132, s.-ss. (3) and (4), afford considerable security both to auditors and members, and protect conscientious auditors from being quietly removed should directors be desirous of the services of others who may prove more pliable.

Rights of Auditors.—The rights of auditors are set out in S. 134, s.-s. (2), as follows :

Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors.

Any article purporting to limit the rights of auditors is *ultra vires*, and therefore invalid (*Newton* v. *Birmingham Small Arms Co.* [1906], 2 Ch. 378). But there is nothing to prevent a company by its articles, or by special contract, from imposing upon its auditors extra duties, *e.g.* a share transfer audit.

It may be taken as a fact that the word " books " in the expression " books, accounts and vouchers " includes the company's minute books and letter books, and that the word " voucher " comprises all documentary evidence that the auditors may require in order properly to discharge their duties to the members. If auditors are denied the rights given to them by this sub-section they must report the fact to the members. The Court will, ordinarily, on application, direct a general meeting of the company to be called in order to ascertain whether the members desire the particular auditors to act, but it will not force a company to employ auditors of whom the members do not approve (*Cuff* v. *London and County Land Co.* [1912], 1 Ch. 440.

By S. 134, s.-s. (3) : The auditors of a company shall be entitled to attend any general meeting of the company at which any accounts which have been examined or reported on by them are to be laid before the company and to make any statement or explanation they desire with respect to the accounts.

This statutory right is one which auditors must use discreetly. They cannot by disclosure at the meeting protect themselves against liability for non-disclosure of material facts in their report; and it may be difficult for them to make any statement at the meeting where the directors are unfriendly without going further into matters of policy than is desirable;

and it may be unwise for them to answer specific questions put to them by members without consent of the directors. On the other hand, the right is particularly valuable where the auditors have reason to believe that their report will be intentionally misinterpreted by the directors, or where facts have subsequently come to their knowledge which, if they had been known at the time they framed their report, would have led them to qualify their report. If auditors are present, they should correct any misrepresentation of their report by a director whether accidentally or intentionally made. It will be noted that the section says that auditors shall be entitled to attend, not that they must attend. Auditors should therefore use their own best judgment whether to attend or not. These observations are based upon the opinions of counsel obtained both by the Institute of Chartered Accountants and the Society of Incorporated Accountants and Auditors.

Duties of Auditors.—The duties of auditors are defined in S. 134, s.-s. (1) :—The auditors shall make a report to the members on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office, and the report shall state—

(*a*) whether or not they have obtained all the information and explanations they have required ; and

(*b*) whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and explanations given to them, and as shown by the books of the company.

The definition of an auditor's duties has received close attention by the Courts, particularly in the following cases: *In re Spackman* v. *Evans* [1868], 3 H.L. 171 ; *London and General Bank* [1895], 2 Ch. 673 ; *Kingston Cotton Mill Co.* [1896], 2 Ch. 279 ; *Squire Cash Chemists* v. *Ball, Baker & Co.* [1911], 28 T.L R. 81 ; *In re Republic of Bolivia Syndicate* [1914], 1 Ch. 139 ; *In re City Equitable Fire Insurance Co.* [1925], Ch. 407 ; *Rex* v. *Kylsant and Morland* [1931], 101 L.J.K.B. 97 ; *In re The Westminster Road Construction Co.* [1932], The Accountant, 203.

In *London and General Bank*, 1895, 2 Ch. at p. 682, Lindley L.J. said :

"It is no part of an auditor's duty to give advice, either to directors or shareholders, as to what they ought to do. An auditor has nothing to do with the prudence or imprudence of making loans with or without security. It is nothing to him whether the business of a company is conducted prudently or imprudently, profitably or unprofitably. It is nothing to him whether dividends are properly or improperly declared, provided he discharges his own duty to the shareholders. His business is to ascertain and state the true financial position of the company at the time of the audit, and his duty is confined to that. But then comes the question: How is he to ascertain that position? The answer is, by examining the books of the company. But he does not discharge his duty by doing this without inquiry and without taking any trouble to see that the books themselves show the company's true position. He must take reasonable care to ascertain that they do so. Unless he does this his audit will be worse than an idle farce. Assuming the books to be so kept as to show the true position of the company, the auditor has to frame a [1] balance sheet showing that position according to the books, and to certify that the balance sheet presented is correct in that sense. . . . An auditor, however, is not bound to do more than exercise reasonable care and skill in making inquiries and investigations. He is not an insurer. . . . What is reasonable care in any particular case must depend upon the circumstances of that case. Where there is nothing to excite suspicion, very little inquiry will be reasonably sufficient, and in practice I believe business men select a few cases at haphazard, see that they are right, and assume that others like them are correct also. Where suspicion is aroused, more care is obviously necessary."

In *Kingston Cotton Mill Company* [1896], 2 Ch. at p. 288, Lopes L.J. said:

"It is the duty of an auditor to bring to bear on the work he has to perform that skill, care and caution which a reasonably competent, careful and cautious auditor would use. What is reasonable skill, care and caution must depend on the particular circumstances of each case. An auditor is not bound to be a detective, or, as was said, to approach the work with suspicion,

[1] It should be noted that the auditor is not concerned with the preparation of the balance sheet. The balance sheet is the directors' balance sheet, and the auditors' duty is to report upon it.

or with a foregone conclusion that there is something wrong. He is a watch-dog, not a bloodhound. He is justified in believing tried servants of the company in whom confidence is placed by the company. He is entitled to assume that they are honest, and to rely upon their representations, provided he takes reasonable care. If there is anything calculated to excite suspicion, he should probe it to the bottom; but in the absence of anything of that kind he is only bound to be reasonably cautious and careful. . . . It is not the duty of an auditor to take stock; he is not a stock expert; there are many matters in which he must rely on the honesty and accuracy of others" [*e.g.* in the valuation of particular assets including stock on hand]. "He does not guarantee the discovery of all fraud."

The remarks of Lopes L.J. were cited in *Squire Cash Chemists* v. *Ball, Baker & Co.* 28 T.L.R. 81, and the Court added at p. 83:

"The auditor is to make a proper and reasonable investigation of the accounts and stock sheets. If as a reasonably prudent man he ought to conclude on that investigation that something is wrong, it is his duty to call attention to the fact. It is not the duty of an accountant, in auditing the accounts of a company, to take stock, though he may well call for explanations of particular items in the stock sheets. But he is entitled to rely on the documents vouched by servants of the business [or by professional valuers in other cases], unless he has reason for believing those servants to be dishonest."

If the balance sheet is incorrect, and damage to the company results therefrom, it is upon the auditors to show that its incorrectness is not due to their default, otherwise they will be liable. Auditors have been held to be officers of the company and liable in the same way as directors to an action for misfeasance under S. 276. Thus where an auditor considered a balance sheet unsatisfactory and called the attention of the directors to the fact, and urged that no dividend should be paid, but was induced by the directors not to qualify explicitly his report at the foot of the balance sheet, and a dividend was declared, both he and the directors were held to be jointly and severally liable to repay the amount of the dividend, the Court considering so vague a phrase as "the value of the assets is dependent upon realisation" to be an insufficient warning

to the shareholders. The warning must always be explicit (*In re London and General Bank* [1895], 2 Ch. 673).

After they have signed the report annexed to a Balance Sheet, the auditors need only forward that report to the secretary of the company, leaving him to see that a general meeting is convened to consider it. It is not their duty to see that every member receives a copy; the words " the members " in S. 134 mean " the members assembled in the general meeting " (*In re Allen Craig & Co. (London)* [1934], Ch. 483).

Obligations upon Directors, etc.—S. 129 contains provisions as to (*a*) the signing of the balance sheet on behalf of the board by two of the directors of the company, or, if there is only one director, by that director; (*b*) the attachment to the balance sheet of the auditors' report; (*c*) the reading of the report before the company in general meeting, and keeping it open for inspection at that meeting by any member; (*d*) the penalty for issuing, circulating or publishing an unsigned balance sheet, or one not having attached to it a copy of the auditors' report, and (*e*) special provisions in respect of banking companies registered after August 15, 1879. The provisions are set out in full at p. 293.

S. 130 contains provisions as to sending copies of the balance sheet and auditors' report not less than seven days before the date of the annual general meeting to all persons entitled to receive notices of general meetings, and, on demand by them, to any member and debenture holder of a company. These provisions do not apply to a private company, whose members may be called upon to pay for their copies (*see* p. 292).

The balance sheet is the directors' balance sheet, not the auditors', and the provisions of the Act regarding balance sheets (*see* pp. 288 *et sqq.*) are obligations upon the directors, not (with the exception of S. 128) on the auditors. The auditors cannot dictate the form of the balance sheet, but they can and must see that it complies with the company's own regulations, and with all statutory requirements, and exhibits the true financial position of the company, and is free from any suppressions or misrepresentations of material facts, otherwise they must report wherein it does not satisfy them on these points, especially as to particulars respecting loans to, and remuneration of, directors, etc. (S. 128, s.-s. (4)).

Thus, auditors must see that dividends are not paid out of

the company's capital within the meaning of the Companies Act, which is a rule of law, and that they are paid only out of profits, which is a declaration derived from Table A, and invariably to be found in companies' articles. The question what in any particular case are a company's profits that may legally be divided, or should be divided is a large and complicated one, which is discussed in greater detail in Chapter XII. Buckley, J., in *Newton* v. *Birmingham Small Arms Co.* [1906], 2 Ch., at p. 387, said :

" The purpose of the balance sheet is primarily to show that the financial position of the company is at least as good as there stated, and not to show that it is not or may not be better."

It was confirmed in that case that where auditors are of the opinion that the power to create secret reserves out of profits prior to the payment of dividends is not being used for the benefit of the company as a whole, even though the articles give the directors unfettered discretion in this matter, it is within their competency to report the fact to the members, and they should do so. And it may be assumed from the same case that, where that power is properly used, auditors are not bound to disclose the existence of such reserves.

The report must actually be read at the meeting, and is usually read by the secretary.

Secretary's Duties.—It is necessary that the auditor's position should be understood by the secretary, if for no other reason than to prevent friction. As we have seen, it is no part of an auditor's duty to give advice. But, usually, auditors are men well versed and experienced in business, and they can and do give invaluable assistance to the officers of the companies whose accounts they audit, and it is the rule, rather than the exception, for them to be consulted on all important changes in financial policy, or in the system of book-keeping.

On the first visit of the first auditors, the secretary should have ready for their inspection the certificate of incorporation ; and the certificate entitling the company to commence business, a copy of the memorandum and articles, application and allotment sheets, etc., preliminary contracts, and all other relevant documents.

On all occasions he should have ready all the statutory books, including the minute books of directors' and general meetings, and all books of account and vouchers relating thereto. He, in common with all other officers of the company, must be prepared at all times to give to the auditors all the information and explanations they require, and to produce any correspondence or other evidence necessary to substantiate the entries in the books and accounts.

The secretary, at each annual audit (or at such less periods as the company elects to submit accounts to the members), should see that the books have been written up to date and balanced, that an agreed trial balance, and draft profit and loss account and balance sheet have been prepared, together with particulars of all adjusting entries, capital and revenue apportionments showing the basis on which the apportionments have been made, and supporting schedules of payments in advance, outstanding items, and assets and liabilities in sufficient detail to enable the auditor readily to check them.

The original stock sheets, as well as the fair copy, should be produced, duly initialled by the clerks and other persons responsible for the various stages of their preparation, together with a certificate of the value of the whole, signed by a director or other responsible official. Similar details of work in progress should be supplied. It is preferable that the person usually in charge of the stock-taking, etc., should sign these sheets, and that they should be countersigned by a director.

The schedule of investments should give full particulars of the *exact* name of the stocks, shares, debentures, etc. held; their nominal value; amounts paid up on them and amounts uncalled; cost price; date of acquisition; dividend dates; present market value, and the location of the share certificates and other documents of title, so that the auditors may know where they can be inspected.

Details of changes in any fixed assets, *e.g.* additions to or sales of plant and machinery, should be supplied.

The bankers should be requested to send direct to the auditors' office a certificate of all balances on the company's accounts as on the date of the balance sheet.

Allocations to reserve should be supported by the minutes.

In large companies the position of the secretary is in itself sufficiently onerous, even if he is relieved of responsibility for

the accounting side of the company's business. A qualified accountant is therefore commonly employed to superintend the accounting. To what extent the secretary is to be responsible for the work of the accountant's department is a matter to be determined by the Board of Directors. It is highly desirable that the respective powers and duties of these functionaries should be exactly defined, in order to prevent overlapping of duties and consequent friction. Where there is hard-and-fast segregation the secretary cannot be held responsible for negligence or default on the part of the accountant, except it arise from his own collusion with that officer, but he may be made responsible for seeing that all the statistical material required by the auditors and the directors for the proper carrying out of their duties is ready in approved form and due time. The division of a company's activities into mutually exclusive departments has its own undoubted dangers. There must be one co-ordinating authority, whether of the directors themselves or of the directors through the agency of the secretary, and the problem to be solved, and usually successfully solved, is the precise margin of tolerance to be allowed between departments, and the exact measure of supervision, if any, to be exercised by the secretary acting as the representative of the directors.

In many companies it is the practice to leave the final adjustments and the preparation of the final accounts to the auditors. It must be remembered that in so far as they are engaged in the preparation of the accounts, they are acting as accountants to the company and *not* as auditors. The balance sheet is that of the directors, and the auditors, *as auditors*, have merely to report upon it. Although auditors are usually consulted as to the method of book-keeping, and the form that the accounts shall take, they cannot exercise any further control over the accounts than that of stating their objections, should they have any, in their report.

It must be emphasised also that not every person who styles himself an " accountant " is necessarily qualified to act as auditor; and a company should be satisfied that they are appointing a suitable person as auditor. Membership of one of the recognised bodies of accountants, which impose strict tests of educational suitability and theoretical knowledge, and require a defined minimum of practical experience as one of the

qualifications of membership, should be a *sine qua non*, except perhaps in most exceptional circumstances where the skill and efficiency of the person appointed is definitely known, and there are special reasons (of a valid nature) for his employment.

Investigations.—If, as sometimes happens at a general meeting of a company, the members are dissatisfied with the state of the company's affairs as revealed by the accounts presented, the auditors' report thereon, the directors' report, and the chairman's explanatory speech, it may happen that the resolution for the adoption of the report and accounts is defeated. Such a rejection of the report amounts to a vote of censure upon the directors, and the dissatisfied members may go further, and move for the appointment of inspectors to investigate the affairs of the company and to report thereon.

Inspectors may be appointed by the members, (1) at the general meeting convened to consider the report, if the resolution for appointment of inspectors be carried at that meeting (it would appear necessary to give notice to propose such a resolution); (2) by the members, under S. 137; (3) on the application of the members, by the Board of Trade, under S. 135.

Inspectors appointed by method (1) above have no power to examine the books, or the officers of the company upon oath; and are dependent upon the directors for such information as they may be able to obtain. Clearly, it would be undesirable that all-powerful investigators (such as can be appointed either under S. 135 or S. 137) should be capable of appointment on what might be little better than a catch vote engineered by a few angry members. Members have the protection of the auditors' report, and if there is a legitimate desire on the part of members for more than this, it must be satisfied in the formal and deliberate manner provided by the statute.

For inspectors to be appointed under S. 137, it is necessary to pass a special resolution in manner laid down by S. 117.

For inspectors to be appointed by the Board of Trade, the procedure set out in S. 135 must be observed.

SS. 135 to 138 read as follows:

S 135.—(1) The Board of Trade may appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the Board direct—

(*a*) In the case of a banking company having a share capital, on the application of members holding not less than one third of the shares issued;

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

(*c*) In the case of a company not having a share capital, on the application of not less than one fifth in number of the persons on the company's register of members.

(2) The application shall be supported by such evidence as the Board of Trade may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in, requiring the investigation; and the Board of Trade may, before appointing an inspector, require the applicants to give security, to an amount not exceeding one hundred pounds, for payment of the costs of the inquiry.

(3) It shall be the duty of all officers and agents of the company to produce to the inspectors all books and documents in their custody or power.

(4) An inspector may examine on oath the officers and agents of the company in relation to its business, and may administer an oath accordingly.

(5) If any officer or agent of the company refuses to produce to the inspectors any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company, the inspectors may certify the refusal under their hand to the court, and the court may thereupon enquire into the case, and after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of the court.

(6) On the conclusion of the investigation the inspectors shall report their opinion to the Board of Trade, and a copy of the report shall be forwarded by the Board to the registered office of the company, and a further copy shall, at the request of the applicants for the investigation, be delivered to them.

The report shall be written or printed as the Board direct.

S. 136.—(1) If from any report made under the last foregoing section it appears to the Board of Trade that any person has been guilty of any offence in relation to the company for which he is criminally liable the Board shall proceed as follows:

(i) in the case of an offence in England, if it appears to the Board that the case is one in which the prosecution ought to be undertaken by the Director of Public Prosecutions, the Board shall refer the matter to him;

(ii) in the case of an offence in Scotland the Board shall refer the matter to the Lord Advocate.

(2) If where any matter is referred to the Director of Public Prosecutions under this section he considers that the case is one in which a prosecution ought to be instituted and, further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him, he shall institute proceedings accordingly, and it shall be the duty of all officers and agents of the company, past and present (other than the defendant in the proceedings), to give to

him all assistance in connection with the prosecution which they are reasonably able to give.

For the purpose of this subsection, the expression "agents" in relation to a company shall be deemed to include the bankers and solicitors of the company and any persons employed by the company as auditors, whether those persons are or are not officers of the company.

(3) The expenses of and incidental to an investigation under the last preceding section of this Act (in this subsection referred to as "the expenses") shall be defrayed as follows:

(*a*) Where as a result of the investigation a prosecution is instituted by the Director of Public Prosecutions or by or on behalf of the Lord Advocate, the expenses shall be defrayed by the Board of Trade;

(*b*) In any other case the expenses shall be defrayed by the company unless the Board of Trade think proper to direct, as the Board are hereby authorised to do, that they shall either be paid by the applicants or in part by the company and in part by the applicants:

Provided that—

(i) if the company fails to pay the whole or any part of the sum which it is liable to pay under this subsection, the applicants shall make good the deficiency up to the amount by which the security given by them under the last preceding section exceeds the amount, if any, which they have under this subsection been directed by the Board to pay; and

(ii) any balance of the expenses not defrayed either by the company or the applicants shall be defrayed by the Board.

(4) Subsection (3) of section thirteen of the Economy (Miscellaneous Provisions) Act, 1926 (which provides for the issue out of the Bankruptcy and Companies Winding-up (Fees) Account of sums towards meeting the charges estimated by the Board of Trade in respect of salaries and expenses under this Act in relation to the winding-up of companies in England), shall have effect as if expenses to be defrayed by the Board under this section were expenses incurred by the Board under this Act in relation to the winding up of companies in England.

S. 137.—(1) A company may by special resolution appoint inspectors to investigate its affairs.

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

(3) If any officer or agent of the company refuses to produce to the inspectors any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company, he shall be liable to be proceeded against in the same manner as if the inspectors had been inspectors appointed by the Board of Trade.

S. 138. A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

Non-Statutory Inspections.—It is not proposed to deal with inspections other than the statutory inspections already mentioned. Occasions do arise, however, when an investigation in the accounting sense is necessary, and such may be delegated to the secretary, *e.g.* in respect of branch works or transactions. Investigations of this kind form a subject of their own, and require, in most cases, the trained skill of an accountant.

Branch Audits.—It is common where a company has numerous branches, long distances apart, or abroad, to appoint local auditors to carry out local audits, and to forward certified returns to the Head Office. Such auditors are not, of course, statutory auditors, since they will not report upon the amalgamated accounts to the company in general meeting. The appointment and remuneration of these local auditors is not, therefore, subject to the same regulations as those of the company's statutory auditors. Such local auditors are, in fact, investigating accountants, and not strictly auditors in the legal sense. It is sufficient if auditors to a banking company having branch banks beyond the limits of Europe are allowed access to copies of or extracts from the books and accounts of the branches (S. 134, s.-s. (2)). But in practice the same principle applies to any company having branches overseas, for all such copies or extracts would be certified as correct by reputable local accountants. In such cases it is usual for the auditors to state in their reports that they have accepted such local certificates.

Joint Auditors.—In many cases, companies appoint joint auditors (two firms), and since in this case both firms are statutory auditors, the requirements of the Act as to appointment, etc. must be carried out. It is not for the company, but for the auditors themselves to decide how they shall perform their joint functions. They act as joint auditors of the company and are responsible to the same degree and in the same manner as single auditors would be.

The question whether the appointment of joint auditors is an advantage or not is one of personal opinion. Where a company's business is very extensive, the audit of the accounts is usually completed more quickly by joint auditors than by a single firm. In some cases joint auditors are appointed as much to create a feeling of extra security among the shareholders as to facilitate the work of audit.

Internal Audit.—Where a company has its own qualified

accountant, an internal audit staff is frequently appointed. The secretary will have to handle the audit reports for presentation to the Board, although, usually, the accountant will be primarily responsible for their completion. In some companies a firm of professional accountants is appointed to undertake a continuous audit, another firm being appointed to carry out the statutory audit. In these circumstances, the former firm would also prepare all interim statements, and the final accounts on which the statutory auditors base their report.

Form of Auditor's Report.—The following may be taken as typical of the wording of the report appended by auditors to accounts examined and approved by them.

To the Shareholders of The Practice Company, Limited.

We report to the shareholders as follows:—We have audited the above Balance Sheet dated . We have obtained all the information and explanations we have required. In our opinion such Balance Sheet is properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs according to the best of our information and the explanations given to us and as shown by the books of the Company.

(Sgd.) ABEL CHECKER & COMPANY.

If the auditors are of opinion that any particular matter ought to be brought to the attention of the shareholders, *e.g.* that the accounts do not comply with the requirements of the Act, or the valuation of some particular asset, it is usual to qualify the report by the insertion of some such remark as:

Subject to the fact that we have not been able to verify the correctness of the value placed by the Directors upon the Investment, in our opinion such Balance Sheet, etc.

Where the report is too lengthy to appear on the balance sheet it must be attached thereto. There is no method by which directors may legally withhold an unfavourable report; the members are thus protected.

Reports to be set out in the Prospectus.—These are dealt with at p. 96, to which reference should be made.

Right of Auditors to Relief.—By S. 152, auditors, in common with directors, managers, and officers of a company, cannot be

protected by the articles, or in a contract, from liability for negligence, default, breach of duty, or breach of trust in relation to the company. Equally, under S. 372, they are given the same rights as directors, etc., to relief by the Court, in proceedings against them, where, in the opinion of the Court, they have acted honestly and reasonably and in all the circumstances of the case ought fairly to be excused ; and also, on the same grounds, where application is made to the Court, because they have reason to believe that proceedings are contemplated against them.

CHAPTER XII

DIVISIBLE PROFITS. DIVIDENDS

APART from companies formed for charitable purposes and the like, it is a primary object of a company carrying on business for the acquisition of gain to distribute those gains in the form of dividends amongst its members. The power to declare dividends may, as provided by the articles, rest with the company in general meeting, or with the directors and the sanction of a general meeting, or, infrequently, with the directors alone. In actual practice the directors are the determining authority, for shareholders in general meeting usually adopt the directors' recommendations.

The Act itself is silent upon the subject of dividends, except that S. 48, s.-s. (3), declares that, where a larger amount is paid up on some shares than on others, a company may, if so authorised by its articles, pay dividends in proportion to the amount paid up on each share. The regulations as to payment of dividends are left to the articles. By S. 124, s.-s. (2), the directors' report must contain a statement of the amount, if any, which they recommend should be paid by way of dividend.

The legislature attaches supreme importance to the principle that a limited company shall keep its paid-up capital intact. In all circumstances it is illegal to pay a dividend out of that capital, for that is to reduce the paid-up capital in a way unauthorised by the Act. Directors who are parties to such payment are jointly and severally liable to repay the amount of any dividend that has been paid out of capital. Article 91 of Table A declares that no dividend shall be paid otherwise than out of profits, and this declaration invariably finds a place in companies' articles. We thus have the rule of law that a dividend shall not be paid out of capital, and the declaration of the articles that a dividend shall be paid only out of profits. Both the rule and the declaration are axioms of company finance, and no competent man of business would ever think of controverting their soundness. But difficulty may arise when it comes to applying the two principles in

practice. What in any given case are a company's profits that may (*a*) legally, (*b*) prudently, be divided amongst the members?

The meaning of the word "profits" in its general aspect was discussed by Moulton, L.J., in *In re Spanish Prospecting Company*, [1911], 1 Ch. 92.

"The word 'profits' has, in my opinion, a well-defined legal meaning, and this meaning coincides with the fundamental conception of profits in general parlance, although in mercantile phraseology the word may at times bear meanings, indicated by the special context, which deviate in some respects from this fundamental signification. 'Profits' implies a comparison between the state of a business at two specific dates, usually separated by an interval of a year. The fundamental meaning is the amount of gain made by the business during the year. This can only be ascertained by a comparison of the assets of the business at the two dates. For practical purposes these assets, in calculating profits, must be valued and not merely enumerated. . . . We start, therefore, with this fundamental definition of 'profits'—namely, if the total assets of the business at the two dates be compared, the increase which they show at the latter date as compared with the earlier date (due allowance, of course, being made for any capital introduced or taken out of the business in the meanwhile) represents, in strictness, the profits of the business during the period in question.

"But the periodical ascertainment of profits in a business is an operation of such practical importance as to be essential to the safe-conduct of the business itself. To follow out the strict consequences of the legal conception, in making out the accounts of the year, would often be very difficult in practice. Hence the strict meaning of the word 'profits' is rarely observed in drawing up the accounts of firms or companies. These are domestic documents, designed for the practical guidance of those interested, and so long as the principle on which they are drawn up is clear, their value is diminished little, if at all, by certain departures from this strict definition which lessen greatly the difficulty of making them out. Hence certain assumptions have become so customary in drawing up balance sheets and profit and loss accounts that it may almost be said to require special circumstances to induce parties to depart from them. For instance, it is usual to exclude gains and losses arising from causes not directly connected with the business of the company, such, for instance, as a rise in the market value of land occupied by the company. The value assigned to trade buildings and plant is usually fixed according to an arbitrary rule, by which they are originally taken at their actual cost and are assumed to have depreciated by a certain percentage each year, although it cannot be pretended that any such calculation necessarily gives their true value either in use or in exchange. These, however, are merely variations of practice by individuals. They rest on no settled principle. They mainly arise from the sound business view that it is better to under-rate than to over-rate your profits, since it is impossible for you to foresee all the risks to which a business may in future be exposed. For instance, there are many sound business men who would feel bound to take account of the depreciation in value of business premises (or in the value of plant specially

designed for the production of a particular article), although they would not take account of appreciation in the same arising from like causes.

"To render the ascertainment of the profits of a business of practical use, it is evident that the assets, of whatever nature they may be, must be represented by their money value. But, as a rule, these assets exist in the shape of things or rights, and not in the shape of money. The debts owed to the company may be good, bad or doubtful. The figures inserted to represent stock-in-trade must be arrived at by a valuation of the actual articles. Property, of whatever nature it be, acquired in the course of the business has a value varying with the condition of the market. It will be seen, therefore, that in almost every item of the account a question of valuation must come in. . . . It is not to be wondered at, therefore, that, in many cases, companies that are managed in a conservative manner avoid the difficulty thus presented, and content themselves by referring to assets of a speculative type, without attempting to affix any specific value to them. . . . Profits may exist in kind as well as in cash. . . . But although there is a wide field for variation in these estimations of profit in the domestic documents of a firm or a company, this liberty ceases at once when the rights of third persons intervene. . . .

"I would have it clearly understood that these remarks have no bearing upon the vexed question of the fund out of which dividends may legally be paid in limited companies. Cases such as *Verner* v. *General and Commercial Investment Trust* and *Lee* v. *Neuchatel Asphalte Co., Ltd.*, show that this fund may, in some cases, be larger than what can rightly be regarded as profits; and the decisions in these cases depend largely upon the fact that there is no statutory enactment which forbids it to be so."

There is no satisfactory comprehensive definition of divisible profits, nor is one ever likely to be devised. The question has been before the Courts on many occasions, but never in a general and comprehensive form. Judgment has always been, and must obviously always be, based upon the established facts and circumstances of the particular case, and usually it has been delivered with regard to some specific item or items of profit or loss, of capital or revenue.

In *Dovey* v. *Cory National Bank of Wales* [1901], App. Cas. 477, Lord Macnaghten said: "I do not think it desirable to formulate precise rules for the guidance or embarrassment of business men for the conduct of business affairs. I think there never will be much difficulty in dealing with any particular case on its own facts and circumstances, and I rather doubt the wisdom of attempting to do more." And, in the same case, Lord Halsbury said: "It is easy to lay down that you must not pay dividends out of capital, but the application of that very plain proposition may raise questions of the utmost difficulty in their solution. It is doubtful whether

such questions can ever be treated in the abstract at all." And Lindley, L.J., in an earlier case, *Lee* v. *Neuchatel Asphalte Co.*, [1889], 41 Ch.D. 1, said: "It is not a subject for an Act of Parliament to say how accounts are to be kept; what is to be put into a capital account, what into an income account, is left to men of business." In *Ammonia Soda Company* v. *Chamberlain* [1918], 1 Ch. 266, Peterson, J., said: "I have before me, however, the warning of Lord Halsbury and Lord Macnaghten in *Dovey* v. *Cory*, and I propose to lay to heart, as far as possible, the example of Lord Macnaghten when he declined to formulate precise rules for the guidance or embarrassment of business men in the conduct of business affairs." And when that case came before the Court of Appeal [1918], 1 Ch. 281, Swinfen Eady, L.J., in rejecting a submission by Counsel, said: "[to accept it] would be to fall into an error which Lord Macnaghten pointed out should be avoided, and would only serve to impose upon companies a burden which Parliament has abstained from casting upon them."

Profits may be either capital profits or revenue profits. A capital profit may or may not be legally distributable, and if legally distributable, it may not be prudent to distribute. Revenue profits are legally distributable, provided that floating or circulating capital is kept up, but here also prudential considerations enter in, and the fund of net profits available for distribution may be reduced by appropriation to reserves of various kinds. It frequently happens also that the building up of specific reserves is imposed upon directors by the memorandum and articles, or by the terms of agreements entered into by the company with third parties. Profits carried to reserve remain profits until capitalised.

A company's assets are usually divided into (*a*) fixed assets, (*b*) floating or circulating assets, and both may be of a wasting nature. The best commercial opinion unhesitatingly affirms that in ascertaining profits all depreciation and capital waste must be provided for, and that net profit means the sum remaining after provision for all ascertained losses has been made. The legal view is that while depreciation in the value of floating assets must be provided for, it is not in all cases and in all circumstances incumbent upon directors first to make good waste in connection with fixed assets. The result is that, in a given case, the sum of profits that could

be legally distributed as dividend is larger than the sum which directors of sound financial training would consider it prudent or even advisable to distribute.

The following are the chief considerations governing the ascertainment of divisible profits:

(1) The company's own memorandum and articles may have expressly reserved, or excluded from divisibility, certain profits of the company; or may contain clauses necessitating the creation of reserves or redemption funds; or may, as in Table A, art. 93, give a general power to directors to create a reserve or reserves out of profits as they may think proper, which they may have acted upon. Apart, however, from any express stipulation in the articles, directors may, with the sanction of the members, create reserves out of profits.

(2) Agreements entered into by the company with third parties may require reserves or funds to be created, *e.g.* a Debenture Trust Deed, etc.

(3) Subject to the above, the fund of divisible profits is constituted by the income on revenue or trading account for any particular accounting period, *less* (*a*) all attachable outgoings whether paid or unpaid, and (*b*) adequate charges for depreciation of the floating assets, for the same period.

(4) Capital profits in order to be available for payment of dividend should be realised profits, and must remain after the whole accounts have been taken fairly for the year (*Foster* v. *New Trinidad Lake Asphalte Co.* [1901], 1 Ch. 208). The judgment of Peterson, J., in *Ammonia Soda Co.* v. *Chamberlain* [1918], 1 Ch. 266, confirmed in the Court of Appeal, would seem to suggest that, in special circumstances, realisation is not an essential condition.

(5) Profit on the sale of *part* of a company's capital assets may, in a proper case, subject to (4) above, be available for dividend if the articles so provide (*Lubbock* v. *British Bank of South America* [1892], 2 Ch. 198).

(6) Fixed capital may be sunk and lost, and yet the excess of current receipts over current payments may be divided, but floating or circulating capital must be kept up, as, otherwise, it will enter into and form part of such

excess, in which case to divide such excess without deducting the capital which forms part of it, will be contrary to law (*Verner* v. *General and Commercial Trust* [1894], 2 Ch. 239).

(7) A company may write up its assets as the result of a *bona fide* revaluation, and may divide current profits without first making good prior losses (*Ammonia Soda Co.* v. *Chamberlain* [1918], 1 Ch. 266).

(8) Where a company has written down the value of its fixed assets out of divisible profits, so long as it has not made that reserve for all time and in all circumstances, there is nothing to prevent the company from writing back the depreciation so written off (*Stapley* v. *Read Bros.* [1924], 1 Ch. 1).

The above considerations will now be dealt with seriatim :

(1) The necessity for inspecting the company's memorandum and articles is often overlooked; indeed, the precise regulations, settled as they may have been by parties whose connection with the company has long ceased, are very often imperfectly known to the company's officials. It cannot be too strongly emphasised that the company secretary must be *au fait* with every detail of his company's memorandum and articles. If the articles provide for the creation of reserves before the ascertainment of the fund available for distribution among the shareholders, those articles must be complied with, unless and until they have been regularly and properly altered.

In *Bond* v. *Barrow Hæmatite Steel Co.* [1902], 1 Ch. 358, the preference shareholders sought to compel the directors to declare a preference dividend out of the credit balance on Profit and Loss Account. The articles of the company gave the directors power to transfer amounts to reserve before the payment of a dividend. It was decided that the shareholders cannot compel directors to declare a dividend (there is no legal right to a dividend until it is properly declared) without making such reserves as they consider necessary.

Articles may state that no capital profits shall be available for dividend, but, then, the question to be solved is: What particular profits are capital profits? This will be further dealt with under (4) below.

(2) This is a question of contract law. If a company borrows money upon a contract imposing specific obligations upon the borrower, and giving specific rights to the lender in the event of default, then the company must duly carry out its obligations, otherwise the specific rights will be enforced (*see* chapter dealing with Debentures and Trust Deeds).

(3) Here the chief authorities are as follows:

(*a*) *Lee* v. *Neuchatel Asphalte Co.* [1889], 41 Ch. 1. The articles of the company, formed to work a bituminous quarry, *i.e.* a wasting property, provided that it should not be bound to provide for the renewal or depreciation of any lease or of the company's interest in any property or concession. It was decided that a company so empowered by its articles may distribute as dividend the excess of its receipts over its expenditure without first making good the depreciation of the wasting capital asset.

(*b*) *Bolton* v. *Natal Land and Colonisation Co.* [1892], 2 Ch. 124. In this case it was held that a company may declare a dividend out of current profits without first making good loss of fixed capital. The company had debited Profit and Loss Account with a bad debt amounting to £70,000, and had at the same time written up its lands, because of an estimated appreciation in their value, by approximately the same amount, and credited this sum to Profit and Loss Account. Three years later, when profits were made, it was sought to restrain the company from paying a dividend on the ground that the land was not worth its book value. The Court decided as above.

(*c*) *Verner* v. *General and Commercial Investment Trust* [1894], 2 Ch. 239. It was held that an investment company can lawfully pay a dividend out of current profits without first making good capital which has been lost. The investments of the company had depreciated by over £240,000, and of that sum it was alleged that £75,000 was irrevocably lost. There was an excess of current income over current expenditure, and the Court decided that this could be used for dividend purposes without first providing for the capital loss. This case serves to bring out the fact that while particular assets may be fixed assets in one

company, they may be floating assets in another. In a trust company proper the investments are fixed capital assets, but not so the temporary investment of surplus funds by a manufacturing company.

The same principle was taken a step further in the case of *Bond* v. *Barrow Hæmatite Co.* [1902], 1 Ch. 353. The company had purchased the lease of certain mines which included blast furnaces and cottages. Owing to flooding, the mines were closed down, the cottages sold, and the leases surrendered. It was contended that this was a capital loss, but the judge stated that he considered the money invested in those items was properly regarded *in this company* as circulating capital, and the losses ought to come into account before any profit could be said to have been earned. Thus, it will be evident that the line of demarcation between fixed and circulating capital is not easily drawn, that no hard-and-fast rules can be laid down, and that each case must be considered on its own facts, and in the light of its own peculiar circumstances. It should be noted in this case that it was an action to compel the directors to pay a dividend, not to restrain them from so doing, and Farwell, J., remarked : " The Courts have, no doubt in many cases, overruled directors who proposed to pay dividends, but I am not aware of any case in which the Court has compelled them to pay when they have expressed their opinion that the state of the accounts do not permit of any such payment."

Following the line of thought in the *Bond* case, it is not difficult to conceive of other assets being held by a company, which are merely the " purchase of stocks in advance," and, by parity of reasoning, although, at first sight, they may be regarded as fixed assets, might more rightly be considered as floating assets. It seems clear that it is the object of the acquisition rather than the mere fact of acquisition which is the deciding factor.

(4) The leading case precluding a company from distributing as dividend the appreciation of one particular capital asset, in this case, book debts, without regard to the value of the assets in their entirety, even though the amount by which the particular asset has appreciated is readily ascertainable,

has already been mentioned (*see* p. 326). During the course of the judgment it was stated : " Some of the items mentioned in the schedule (to the vending agreement) may have been over-valued, some under-valued, and no doubt fluctuations in value of the assets have supervened. . . ." Considerable attention seems to have been paid to this point. In practice, of course, the vendor's and the purchaser's ideas of the value of the individual assets transferred may be widely divergent, and the truth of the statement in this case is not difficult to appreciate. Apart from realised or unrealised appreciation of capital assets, there are other capital profits which are likely to accrue to a company. Similarly, there may be profits arising on share capital or liabilities.

In *Wall* v. *London and Provincial Trust* [1920], 2 Ch. 582, it was held that a company voluntarily adopting the Double Account System [this system is *obligatory* upon certain statutory companies, *e.g.* railway companies, formed to carry out works of public utility] could not legally treat profits made on the redemption of its debentures as available for dividend. This ruling does not prevent companies using the Single Account System from distributing profit made on their liabilities. Again, profits made on the issue of shares, *i.e.* premiums on shares, can, subject to the memorandum or articles, be distributed as dividend (*In re Hoare & Co.* [1904], 2 Ch. 208). But whether it is wise to distribute such profits is another matter.

(5) This class of profit is similar to (4) above, except that it results from the sale of a part of the undertaking. The articles of the company gave power for such a sale in the leading case quoted, and an ordinary meeting passed the requisite resolution in pursuance of the articles.

(6) It must be pointed out that in the case quoted, special mention was made of the fact that the company was not insolvent, and was acting within its articles. That case was followed by *Wilmer* v. *Macnamara & Co.* [1895], 2 Ch. 245, where the company was not restrained from declaring a dividend simply because the depreciation of goodwill had not been provided for—the goodwill being considered as a fixed asset. Here, again, emphasis was laid upon the fact of the solvency of the company.

In *Cox* v. *Edinburgh and District Tramways Company* [1898], S.C., the same principle was applied, and the fact that there was a heavy capital loss owing to the replacement of capital assets (horse trams were replaced by cable traction trams) was not sufficient to prevent current profits being applied to the payment of dividends.

(7) Some discussion has taken place with regard to the true effect of *Ammonia Soda Co.* v. *Chamberlain*, in view of the judge's remarks on the question of losses of fixed and floating or circulating capital, but it is submitted that in that case the judgments in the Lee and Verner cases were approved and followed. It is clear, however, from *Ammonia Soda Co.* v. *Chamberlain* that members who, with full knowledge that particular capital assets have been written up by reason of a *bona fide* revaluation of which they approved, consent to a distribution of dividend made possible by such revaluation, cannot afterwards maintain an action against the directors in the name of the company on the ground that such dividends were improperly declared and paid out of capital. In this respect the case followed *Towers* v. *African Tug Co.* [1904], 1 Ch. 558, where it was held that members who knowingly receive dividends improperly paid out of capital cannot maintain an action against the directors to compel them to make good the amount of the dividend.

(8) The case of *Stapley* v. *Read Bros.* is really reflective of *Wilmer* v. *Macnamara*, since in any event goodwill has been held to be a fixed asset, and, subject to specific clauses in the articles, the reservation of profits for capital losses is in the hands of the directorate.

Having regard to the somewhat complicated legal view of the fund available for distribution as dividends, a company would be well advised to seek legal advice when it is proposed to distribute profits arising from an extraordinary or peculiar source.

Dividends

A member has no right to any dividend on his shares until a dividend has been declared in manner laid down by the company's articles. A dividend so declared then becomes a debt due from the company to the members, and since

dividends are payable under the articles, such debts of the company are specialty debts (*Artisans Land and Mortgage Corpn.* [1904], 1 Ch. 796) and do not become statute barred until after the expiration of twenty years from the date of declaration. Dividends are usually declared annually. But directors are generally empowered by the articles to pay interim dividends at their discretion, and these are paid most frequently half-yearly, but occasionally quarterly. An intermediate or interim dividend is to be regarded as an instalment of the whole dividend, and it can be rescinded before payment (*Lagunas Nitrate* v. *Schröder* [1901], 85 L.T. 22).

Articles usually state that the dividend shall be paid in proportion to the amounts paid up on the shares, but if the articles are silent on the point, and Table A (1908 or 1929 Act) is excluded, dividends are payable on the nominal value of the shares. Table A to the 1862 Act, under which some companies are still working, made dividends payable on the nominal amount of the shares. Under the current Table A (*see* also S. 48, s.-s. (3)), dividends are payable on the amount paid up on the shares. But amounts paid in advance of calls, if carrying interest, do not rank for dividend; and no declared dividend shall bear interest against the company. These provisions are usually incorporated in the company's own articles where Table A is not adopted, but they are frequently found in modified form.

As in Table A, the articles usually leave the power to recommend dividends in the hands of the Board, and stipulate that the company shall not be able to declare a dividend greater than that recommended by its directors. The declaration is made by the company in general meeting, and then, but not before, the dividend so declared becomes a debt due from the company to its shareholders.

The rights of different classes of shares to participate in dividends have already been discussed under classes of shares, and the company cannot pay to one class until the rights of prior classes have been satisfied. Well-drawn articles will state precisely the rights of participation of each class of the members, so that friction is not likely to arise.

The right of the member to receive his dividends in cash is indefeasible (*Hoole* v. *Great Western Railway Co.* [1868], 3 Ch App. Cas. 262). Yet this does not prevent the members from

agreeing to accept a dividend in specie, *i.e.* a distribution of specific shares in their own company or in a subsidiary company. The former mode of distribution is quite common, and is dealt with later under " Bonus Shares " (*see* p. 341). Such an agreement may be express or contained in the articles of association.

Dividends are payable to the person who is registered as a member at the time the dividend is declared (*Eastern Union Railway Co.* v. *Symonds* [1860], 5 Ex. 237). But transfers of shares sometimes take place, reserving to the transferor rights of bonus, or otherwise (already dealt with under " Transfers ").

By Article 94, Table A, where there are registered joint holders, any one of such holders may give effectual receipts for dividends paid, and similar provision is commonly made in special articles. In the absence of a specific request (see *ante*—" Shares "), notice of dividend would be sent to the first named of the registered joint holders (Table A, Art. 105).

The definition of the rights to the payment of dividend attaching to different classes of shares is of considerable importance, and should be clearly dealt with in the memorandum or articles, preferably in the latter, although such matters are quite commonly set out in the memorandum. Where a company " passes " (*i.e.* does not declare) a preference dividend, the preference shareholders have no right to the arrears, if the articles expressly declare that the preference shares are non-cumulative, or contain words indicating that the fixed preference dividend for the year is to be paid only out of the profits for that year. In the absence of a clear intimation that preference shares are non-cumulative, arrears of preference dividends must first be paid before other classes of shares participate. Preference shares may be specifically stated to be cumulative, and where they are merely declared to be preference they are deemed to be cumulative. Where in a winding up there are arrears of preference dividend, such arrears cannot be claimed, unless by the articles they are made payable in such an event; and where articles state that such arrears shall be paid on a winding up, they are payable notwithstanding that no profits exist (*In re Springbok Agricultural Estates* [1920], 1 Ch. 563). If, however, the articles

provide that arrears of dividend " due " shall be paid, no arrears are payable except in respect of dividends previously declared (*In re Roberts and Cooper* [1929], 2 Ch. 383).

It is not, of course, necessary to discharge the whole of the arrears of preference dividend by one payment, and a payment on account of arrears is sometimes made. Difference of opinion exists as to the propriety of noting arrears of preference dividend on the face of the balance sheet. The matter is of some importance to prospective members, but of no great concern to creditors, who have other means of ascertaining a company's financial resources. But a company in arrear may be building up reserves to the postponement of its preference shareholders. And since these reserves may later be liberated for the purpose of paying off the arrears, a seemingly strong financial position may prove to be illusory. On the whole, it would appear to be the better and the fairer course to note such arrears in the balance sheet, and this is generally done.

Where dividends on preference shares are in arrear and cannot for the time being be paid, the company can issue Funding Certificates stating that it will pay the dividend of a certain amount on a specific date. These certificates are then sent to the shareholders, who may transfer them in the usual manner.

The directors' report circulated to the shareholders before the annual meeting must contain particulars as to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend, and the amount, if any, which they propose to carry to the reserve fund, general reserve or reserve account, shown specifically on the balance sheet, or to be shown specifically on a subsequent balance sheet (S. 123). The following forms part of an actual report:—

THE PRACTICE COMPANY, LIMITED

The Directors submit the annexed Statement of Accounts for the year ended 31st December:

The Profit and Loss Account (including £20,568 0*s.* 9*d.* balance from last account), after providing in the Trade Account for expenses of management, maintenance of premises, plant and machinery and all other expenses, shows a balance of . . .	£108,457 5 3

From this has to be deducted the Interim Dividend paid on the 11th August last on the Ordinary Shares at 1*s.* per Share . .	£16,875 0 0		
Dividend on Preference Shares for the year	2,500 0 0		
Interest on Debentures for the year .	4,725 0 0		
		£24,100 0 0	
Leaving a Balance of		84,357 5 3	
The Directors recommend payment of a final Dividend at the rate of 1*s.* 6*d.* per share on the Ordinary Shares, making, with the Interim Dividend, 2*s.* 6*d.* per share for the year, which will absorb	£25,312 10 0		
And they propose to write off from the asset Goodwill	7,000 0 0		
And to place to Special Reserve Account	10,000 0 0		
To add to Pension Fund . .	5,000 0 0		
To add to Dividend Equalisation Reserve	10,000 0 0		
And to put to Employers' Liability Fund	5,000 0 0		
		62,312 10 0	
Leaving to carry forward to next Account . . .		£22,044 15 3	

Opinion is growing that Directors' Reports should be more informative, particularly in the case of holding companies. Readers can refer to the Accounts, etc., of concerns like the Dunlop Rubber Co. for examples of modern practice.

At the foot of the directors' report there is usually an intimation of the date when the dividend warrants will be ready for posting, and sometimes a notice to coupon-holders, where there are share warrants, informing them that coupons must be lodged at the offices of the company within a stated number of days prior to date of payment.

Where no coupons are attached to the share warrants, the share warrants must be lodged at the company's offices, in exchange for which the warrant-holder is given a Certificate of Lodgment. After the warrant has been ascertained to be correct, the company, in exchange for the Certificate of Lodgment, returns the warrant to the warrant-holder, and also hands him a warrant for payment of the dividend due.

Generally, when coupons attached to share warrants have all been utilised, further coupons may be obtained by sending the talon to the company. A talon is a request for fresh coupons printed on the share warrant and detachable like the coupons themselves (*see* Form, p. 715). Dividend warrants and coupons are usually made payable at the company's bankers, but coupons are sometimes made payable at the

company's offices. Usually, dividend warrants will be printed with the company's name and its bankers' thereon, so that the completion is similar to that of a cheque.

Where numerous members hold the same amount of shares, *e.g.* 5, 10, 25, 50, 100 shares, etc., it is economical to have a number of dividend warrants printed for each such amount, so that only the name of the holder need be inserted by hand or machine. It is customary to state on the warrant that it must be presented for payment within a specified time, *e.g.* six months. If presentation is delayed beyond that time, the warrant is treated by the paying banker as a stale warrant, and he will not pay it until it has been confirmed for payment by the issuing company.

It is common for a company, by advertisement in *The Times* and other London or local newspapers, publicly to announce payment of a dividend, and also prior to the announcement, and sometimes simultaneously with it, to intimate that the transfer registers will be closed for a specified period (*see* Register of Members). With the vast majority of companies these intimations are made in the copy of the annual report and accounts sent to members prior to the holding of the annual general meeting at which these matters are to be considered.

At a Board meeting held at a convenient date prior to the annual general meeting, the directors will pass the necessary resolutions, giving effect to their recommendations as to the way the profit disclosed in the report shall be dealt with. At the annual general meeting the shareholders usually adopt the directors' recommendations. It is open to them to pass a smaller, but not a greater dividend than that proposed. The secretary should see that the proposed date of payment does not follow too closely the date of the declaration of the dividend, in order to allow ample time for the frequently laborious work entailed in preparing the dividend warrants.

The compilation of the dividend sheets from which the warrants are made out cannot be commenced until the whole of the transfers received prior to the date fixed for closing the register have been passed through. Where transfers are numerous, it will facilitate the work if they are so dealt with as to free the registers one by one for the preparation of the dividend sheets. And it may be advisable, if numerous registers are employed, to take out a " Control Account " for each separate class of shares, in order to prove the transfer postings. It

is highly desirable that some method of checking be adopted, and the total amounts of the holdings be verified against the company's capital accounts before the warrants are prepared.

The use of dividend books is somewhat obsolete. Sheets are more easily handled than books, and they facilitate the splitting up of the work amongst the staff. After each sheet has been prepared it should be initialled, and then be checked back by another clerk, who should also initial to certify the checking. Where there are different classes of shares, it greatly facilitates the work of sorting and identification if differently coloured paper is adopted for each class of share, the dividend warrants for each class being on the same coloured paper as the dividend sheets of that class.

There are numerous forms of dividend sheets, but the following will be found convenient. They should be printed and written on one side only. An addressing machine will be found to reduce the amount of work involved, and other mechanical devices such as adding machines may also be usefully employed (*see* Chap. XVI).

THE PRACTICE COMPANY, LTD.

Preference Dividend Sheet for year ended 20th June, 19—

No. of Dividend .....

Rate .....

Date payable .....

Member's Name and Address.	Share Register Folio.	Value of Shares	Dividend			Warrant Number.	Special Instructions and Remarks.
			Gross.	Tax.	Net.		

It is becoming increasingly popular for shareholders to send to companies their signed mandate instructing them to pay dividends as they become due direct to their bankers. Where such mandates are at all numerous, it is convenient to list these shareholdings on separate dividend sheets provided with columns, dissecting the receiving bankers into at

least the "Big Five," with one column for other bankers. When this is done, it is often convenient to draw one cheque for the total dividends payable through any one bank, attaching thereto the appropriate "dividend tops," thus saving stamp duty. But arrangements should first be made by the company with the bankers, as this system throws additional work upon them.

All dividend sheets should be numbered consecutively, and, after the dividend has been paid, be bound into a folder.

Where the shareholders are numerous, then, as soon as the total amount of the dividend has been ascertained, the secretary should arrange with the company's bankers for a separate Dividend Account to be opened, and have the sum payable transferred thereto from the company's general account. In this way the amount of the unclaimed dividends can easily be verified. Besides, it is inexpedient that the company's general pass-book should be complicated by dividend payments, since, if a separate account is not opened, the monthly reconciliation of the cash and pass-books is less easily effected.

When a dividend warrant has been posted, the company is deemed to have paid the amount (*Thairlwall* v. *Great Northern Railway Co.* [1910], 2 K.B. 509). If a warrant should be lost or destroyed, the secretary should, on receiving notice of the fact, ascertain whether the warrant has been presented for payment or not, and, if not, stop payment of it. He should then require the shareholder to give the company a letter of indemnity in the usual form before he issues a duplicate warrant. The letter of indemnity must be stamped with a 6*d*. stamp if the warrant is for £5 or more, otherwise a stamp is not required.

Special care should be taken to see that dividend warrants are not sent to any member against whose interests notice in lieu of distringas (*see* p. 205) has been lodged, since the company is bound by such notice; or to a shareholder against whom the company is asserting a lien in respect of his holding. Similarly, a shareholder's dividend may be attached in favour of a judgment creditor by a garnishee order (*see* p. 206), and, if such is served on the company, the dividends cannot be safely paid away.

Where a company maintains a Dominion Register, provision must be made for the payment of dividends on the shares there registered (*see* p. 164). Arrangements may also be

made for cheques or warrants to be made payable by particular bankers in the Dominions, Colonies or foreign countries, for the convenience of local shareholders.

Unclaimed Dividends.—Large companies will not be able to carry on for any great length of time without accumulating a fund of unclaimed dividends. Every effort should be made to trace the members entitled to the dividends, but it is extraordinary how negligent some members are, both as regards their rights in and duties to companies of which they are members. Failure of members to notify changes of address is a constant source of trouble to the company secretary. In such cases, some companies take a considerable amount of trouble to endeavour to get shareholders to cash their warrants, *e.g.* by referring to the previous warrant to see what bank it was passed through, so that that bank may be approached, with a statement of the circumstances, to give the present address or to forward a letter to the shareholder. Reference can sometimes be made to stockbrokers or other known agents, but expenditure in tracing shareholders must be kept within reasonable limits.

Articles of association sometimes provide for the forfeiture of unclaimed dividends after the lapse of a number of years, *e.g.* five years, and then, providing the necessary formalities are complied with in every respect, the forfeiture will be good, although the Courts would probably, in the generality of cases, grant relief against forfeiture. But companies desiring a Stock Exchange quotation for their shares may not take power to forfeit unclaimed dividends, for if they do a quotation will not be granted. Where dividends have not been claimed for a period of twenty years from the date of declaration of payment they cannot afterwards be claimed from the company, since a company is not a trustee in respect of the amounts, unless unclaimed dividends are, as they should be, stated separately in the company's balance sheets. An entry in a balance sheet of debenture interest or dividends unclaimed is a sufficient "acknowledgment" of the debt within the *Civil Procedure Act*, 1833, S. 5, and will prevent the claim being barred (*Burnham* v. *Atlantic & Pacific Fibre Importing and Manufacturing Co.* [1928], Ch. 836.) It should be observed that companies working under Table A of the 1862 Act have powers of forfeiture, whereas new Table A gives no such power.

Dividend Equalisation Reserve.—Where the profits of a

company vary considerably from year to year, it is sometimes advisable to create a fund for the equalisation of dividends. In prosperous years, when profits are high, amounts are withheld from dividend and placed to reserve, to be utilised for the payment of dividends in lean years when profits are low, thus maintaining a steady rate of dividend year by year. This procedure has the advantage of keeping the market price of a company's shares steady, and placing it in a favourable position with the investing public in the case of a new issue. It is entirely for the directorate to say whether this reserve should be employed in the business or invested in securities outside the business. Since, however, the reserve is built up to provide funds to pay fair dividends during periods when the company is making insufficient profits, and is therefore the more likely to be financially embarrassed, it is most advisable that the fund should be invested outside the business in securities readily realisable, and stable in capital value.

Profits prior to Incorporation.—When a company is to be formed to take over an existing business, the actual date of taking over is frequently prior to the incorporation of the company (*e.g.* at the date of the last balance sheet), so that, when the company does come into existence, it enters into the contract previously made provisionally, and thus takes the benefit of the profits, or suffers the losses made subsequent to the date of taking over. Rarely are accounts taken at the date of the incorporation, and it is therefore usual at the end of the company's first financial year to divide the year's profit or loss upon an agreed basis, in order to arrive at relative figures for the pre-incorporation and the post-incorporation periods. Usually, the vendor carries on the business at an agreed remuneration, and since the company has no legal existence until its incorporation, the profits accruing or loss sustained between the date of taking over and that of incorporation are of a capital nature. The date for splitting is not the date of the company becoming entitled to commence business, but the date of incorporation.

The basis of the division is necessarily an approximation, and the total profits for the first period are usually divided on a time basis, the pre-incorporation portion being placed to a Capital Reserve Account. Other methods may be employed, such as a division based on the proportion of the sales or, more scientifically, on a combination of the sales and time bases

Where a profit results, the amount might, instead of being treated as a capital reserve, be utilised in writing down goodwill. On the other hand, should a loss result, it could be added to the goodwill figure. This procedure is not so inaccurate as it may seem at first sight, since the goodwill figure is often the difference between the net tangible assets taken over and the amount of the purchase price. Many other points arise in this connection, but they are more appropriately treated in the accountancy text-books.

A capital reserve must be distinguished from reserve capital. The former usually consists of profits made on capital assets belonging to the company, or are extraordinary, non-recurring, non-trading profits. The latter has already been dealt with (*see* p. 151). Its creation is sanctioned by S. 49 of the Act.

Frequently, profits are carried to capital reserve not because of legal compulsion, but as a prudent commercial provision dictated by sound financial policy. As already pointed out, there is little legal guidance on this matter of capital profits apart from the very limited application of *Wall* v. *London and Provincial Trust* [1920], 2 Ch. 582.

A capital reserve is often eliminated by writing down a company's assets, so that to the extent that the assets have been over-reduced a " secret reserve " has been formed. No objection can be taken to this course (*Newton* v. *Birmingham Small Arms Co.* [1906], 2 Ch. 378). But auditors have power to report to the members, and, in cases where they are of opinion that the power to create secret reserves is being abused, *i.e.* not being used for the benefit of the company as a whole, it is their duty so to report.

Bonus Shares.—A company sometimes pays a dividend in the form of shares in its own undertaking, and thus capitalises its profits. Where current profits are ample to pay high dividends, the company may, if the articles permit, issue to the members, by way of fully paid shares, a part of its accumulated reserves. Should the original articles not confer the requisite authority for this procedure they must be altered to give the power. Bonus shares may be issued either at par or at a premium, and are issued without deduction of tax; tax has already been paid on the profits carried to reserve from which the issue is made, and the net profits assume a capital nature for all purposes as soon as capitalised. Such shares, or even debentures, issued as a bonus are not income, and

therefore the recipients are not liable to sur-tax thereon (*Inland Rev.* v. *Blott* [1921], 2 A.C. 171; and *Inland Rev.* v. *Fisher's Executors* [1926], A.C. 395).

Likewise, where a company has redeemed preference shares out of profits and thus created a capital redemption reserve fund, and new shares are issued up to the nominal value of shares redeemed, the capital redemption reserve fund may be applied by the company, up to an amount equal to the nominal amount of the shares so issued, in paying up unissued shares of the company to be issued to members of the company as fully-paid bonus shares (S. 46, s.-s. (5)).

Usually, distribution is made *pro rata* to the holding of the members in the company, and power to dispose of or adjust fractional parts of shares is reserved to the directors in the resolution. The directors generally state at the time of the proceedings the date from which the new issue will rank for dividend.

The resolution declaring the bonus must be carefully worded, and should state, *inter alia :*

> (1) The rate of the distribution, (2) the amount of the reserve to be allocated, (3) whether the shares are to be fully paid or issued at a premium, (4) the date at which the register of members is deemed to be closed for the purpose of ascertaining those entitled to participate, (5) the nomination of a trustee on behalf of the shareholders, (6) method of dealing with " fractional certificates," (7) provisions for executing and filing with the Registrar a contract under S. 42.

Where such an allotment involves an increase in the registered capital of the company, the necessary resolution for the increase must be passed, and the requisite stamp duties paid on the increase.

The normal allotment procedure must, of course, be followed. In addition, letters of renunciation and split allotment letters are usually employed. When the member wishes to renounce his rights in favour of another he must use the nomination letter duly stamped (1*d.* if under £5; or 6*d.* if £5 or over). Where the allotment letter is desired to be " split," *e.g.* by a member for the benefit of members of his family, the new " split " allotment letters must be stamped, so also the renunciation letters attached to them, if utilised.

Obviously, great care will be needed in dealing with split allotment letters, or renunciations, or where the allotment letter has been renounced in part. A reconciliation of the total issue must be made against " splits," " renunciations," " acceptances," and " part acceptances and renunciations " in manner similar to that employed for reconciling the registers in the case of transfers.

When the reconciliation has been completed and the register of members written up, the necessary certificates should be prepared, the members being notified that the certificates can now be had on surrendering the allotment letters, or split allotment letters.

Where shares are partly paid up, a company may declare a bonus on the shares to be utilised in paying up a simultaneous call upon the shares; this capitalises the profits just as if new shares were issued in satisfaction of the bonus.

Payment of Interest out of Capital.—A company can never pay dividends to its shareholders, *qua* shareholders, out of capital, but, subject to the authority of its articles, or of a special resolution, a company is allowed, in certain cases, to pay interest out of capital on shares issued to raise capital for the construction of works, etc. This matter is governed by S. 54 of the Act, which reads as follows:

> 54.—(1) Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the sum so paid by way of interest to capital as part of the cost of construction of the work or building, or the provision of plant:
>
> Provided that—
>
> (*a*) No such payment shall be made unless it is authorised by the articles or by special resolution:
>
> (*b*) No such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the Board of Trade:
>
> (*c*) Before sanctioning any such payment the Board of Trade may, at the expense of the company, appoint a person to inquire and report to them as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry:
>
> (*d*) The payment shall be made only for such period as may be determined by the Board of Trade; and such period shall in no case extend beyond the close of the half-year next after the half-year during which the works or buildings have been actually completed or the plant provided:

(*e*) The rate of interest shall in no case exceed four per cent. per annum, or such other rate as may for the time being be prescribed by Order in Council:

(*f*) The payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid:

(*g*) The accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate:

(*h*) Nothing in this section shall affect any company to which the Indian Railways Act, 1894, as amended by any subsequent enactment, applies.

(2) If default is made in complying with proviso (*g*) to subsection (1) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds.

By the *Companies (Interest out of Capital) Order*, 1929, the rate of interest to be paid on any shares of a company and charged to capital in pursuance of the powers conferred by S. 54, s.-s. (1) shall in no case exceed six per cent. per annum. This, of course, was necessary when interest rates were high.

It will be noted that, with legislative safeguards, S. 54 recognises the accounting principle, that where in the construction of assets interest enters as an essential element of the cost of such assets, the interest may legitimately be capitalised.

Profit-sharing Certificates.—Many companies, in order to induce greater effort on the part of their employees, by giving them an interest in the profit-earning capacity of the business, issue profit-sharing certificates, either in a special form or as part of the share capital of the company. Where such issues consist of shares in the company, returns of allotments must be filed, and, if the registered capital is increased thereby, the necessary formalities consequent thereon must be observed. Where profit-sharing certificates are employed, they are usually issued to trustees for the employees, and, as a general rule, they form no part of the issued capital and carry no capital or voting rights.

Reference should be made to the provisions of S. 45 on the question of making loans to employees, or providing money for trustees of approved schemes, for the purpose of acquiring shares in the company (*see* p. 121).

Dividend Warrants.—By S. 33, *Finance Act*, 1924, it is enacted that:

Every warrant or cheque or other order drawn or made, or purporting to be drawn or made, after the thirtieth day of November nineteen hundred and twenty-four, in payment of any dividend or interest distributed by any company, being a company within the

meaning of the [1] *Companies (Consolidation) Act*, 1908, or a company created by letters patent or by or in pursuance of an Act of Parliament, shall have annexed thereto or be accompanied by a statement in writing showing:

(*a*) the gross amount which, after deduction of the income tax appropriate thereto, corresponds to the net amount actually paid; and

(*b*) the rate and the amount of income tax appropriate to such gross amount; and

(*c*) the net amount actually paid.

If a company fails to comply with the provisions of this section, the company shall, in respect of each offence, incur a penalty of ten pounds:

Provided that the aggregate amount of any penalties imposed under this section on any company in respect of offences connected with any one distribution of dividends or interest shall not exceed one hundred pounds.

It should be noted that where dividends are declared to be paid "free of tax," the warrant, etc. should have annexed, or be accompanied by a statement showing the particulars specified in the above section. Where dividends are declared without deduction of tax (not "free of tax") reference should be made to the cases of *Neumann* v. *Commissioners of Inland Revenue* [1934], A.C. 215; and *C.I.R.* v. *Cull* [1939], 3 A.E.R. 761, to see if the facts are similar. The point in question is not one which comes within the scope of this work.

The following are examples of forms which furnish the information required. In addition they contain certain particulars which should be given if the statement is made that the forms will be accepted by the Inland Revenue authorities in connection with claims to any allowance or relief from Income Tax, viz.:

(1) The name of the shareholder;
(2) The period for which the dividend or interest is declared;
(3) The date of payment; and
(4) A declaration by the secretary, or other responsible official of the company, to the effect that income tax on the profits of the company has been or will be duly paid to the proper officer for the receipt of taxes.

It is particularly recommended that a company which obtains relief in respect of Dominion income tax (S. 27, *Finance Act*, 1920) should incorporate in the form an explanatory memorandum to its shareholders on the lines indicated in Example (3) or Example (4), whichever is appropriate.

[1] Now the *Companies Act*, 1929 (*see* S. 381).

EXAMPLE (1). Form for dividend "less Income Tax."

THE PRACTICE COMPANY, LIMITED,

Moorgate,
London, E.C. 2.
1st December, 19.....

No. .....

Notice of Dividend for the *year* ended *30th September*, 19.....

To .....

A dividend at the rate of 5% *per annum* on the *Ordinary* Shares of the Company having been duly declared for the *year* ended *30th September*, 19....., I beg to forward you the annexed warrant for the amount in respect of the shares registered in your name.

		£	*s.*	*d.*
1,000 *Ordinary* Shares of £1 each @ 5%	=	50	0	0
Less Income Tax @ 5*s.* 6*d.* in the £	=	13	15	0
Net amount of Warrant		36	5	0

I hereby certify that Income Tax on the profits of the Company, of which profits this dividend forms a portion, has been or will be duly paid to the proper Officer for the receipt of Taxes.

C. C. ESS,
Secretary.

This portion of the sheet should be preserved, as it will be accepted by the Inland Revenue authorities in connection with any claim to allowance or relief from Income Tax.

EXAMPLE (2). Form for dividend "free of Income Tax."

THE PRACTICE COMPANY, LIMITED,

Moorgate,
London, E.C. 2.
1st December, 19.....

No. .....

Notice of dividend for the *year* ended *30th September*, 19.....

To .....

A dividend at the rate of 5% *per annum*, "free of Income Tax," on the *Ordinary* Shares of the Company having been duly declared for the *year* ended *30th September*, 19....., I beg to forward you the

annexed warrant for the amount in respect of the shares registered in your name.

		£	s.	d.
1,000 *Ordinary Shares* of £1 *each* @ 5%	=	£50	0	0
This dividend is equivalent to a gross amount of		68	19	4
Less Income Tax @ 5*s.* 6*d.* in the £		18	19	4
Net amount of Warrant		50	0	0

I hereby certify that Income Tax on the profits of the Company, of which profits this dividend forms a portion, has been or will be duly paid to the proper Officer for the receipt of Taxes.

C. C. ESS,
Secretary.

This portion of the sheet should be preserved, as it will be accepted by the Inland Revenue authorities in connection with any claim to allowance or relief from Income Tax.

EXAMPLE (3). Form for dividend "less Income Tax" where the Company obtains relief in respect of Dominion Income Tax under Section 27 of the *Finance Act*, 1920.

[For the purposes of the example it is assumed that the Company obtains relief under Section 27 for the fiscal years covered by the dividend at a rate of 2*s.* in the £ on its total income.]

THE PRACTICE COMPANY, LIMITED,

Moorgate,
London, E.C. 2.
1*st December*, 19.....

No. .....

Notice of Dividend for the *year* ended 30*th September*, 19.....

To .....

A dividend at the rate of 5% *per annum* on the *Ordinary* Shares of the Company having been duly declared for the *year* ended 30*th September*, 19....., I beg to forward you the annexed warrant for the amount in respect of the shares registered in your name.

		£	s.	d.
1,000 *Ordinary* Shares of £1 *each* @ 5%	=	50	0	0
Less Income Tax @ 3*s.* 6*d.* in the £*	=	8	15	0
Net amount of Warrant		41	5	0

* *See Memorandum on back hereof.*

I hereby certify that Income Tax on the profits of the Company,

of which profits this dividend forms a portion, has been or will be duly paid to the proper Officer for the receipt of Taxes.

C. C. ESS,
Secretary.

This portion of the sheet should be preserved, as it will be accepted by the Inland Revenue authorities in connection with any claim to allowance or relief from Income Tax.

Back of form.

MEMORANDUM.

Section 27 of the *Finance Act*, 1920, provides for the granting of relief in respect of Dominion Income Tax at the rate of :

(*a*) the Dominion tax, or

(*b*) one-half of the taxpayer's appropriate rate of British tax (as defined by the Section), whichever is the less.

Under this Section, the Company has obtained, or will obtain, relief from British Income Tax, by reference to the full standard rate of British Income Tax, viz. :—5*s.* 6*d.* in the £, and the rate of British Income Tax deducted from the dividend is 2*s.* 6*d.* in the £, arrived at as follows :

		s.	*d.*	
Full standard rate of British Income Tax	=	5	6	in the £
Less relief in respect of Dominion Income Tax	=	2	0	,,
Rate of tax deducted from the dividend .	=	3	6	,,

EXAMPLE (4). Form for dividend "free of Income Tax" where the Company obtains relief in respect of Dominion Income Tax under Section 27 of the *Finance Act*, 1920.

[For the purposes of the example it is assumed that the Company obtains relief under Section 27 for the fiscal years covered by the dividend at a rate of 2*s.* in the £ on its total income.]

THE PRACTICE COMPANY, LIMITED,

Moorgate,
London, E.C. 2
1*st December*, 19.....

No. .....

Notice of Dividend for the *year* ended 30*th September*, 19.....

To .....

A dividend at the rate of 5% *per annum*, "free of Income Tax," on the *Ordinary* Shares of the Company having been duly declared for the *year* ended 30*th September*, 19....., I beg to forward you the

annexed warrant for the amount in respect of the shares registered in your name.

		£	s.	d.
1,000 *Ordinary Shares of* £1 *each at* 5%	=	£50	0	0
This dividend is equivalent to a gross amount of	=	60	12	1
Less Income Tax @ 3*s.* 6*d.* in the £ * .	=	10	12	1
Net amount of Warrant .		50	0	0

* *See Memorandum on back hereof.*

I hereby certify that Income Tax on the profits of the Company, of which profits this dividend forms a portion, has been or will be duly paid to the proper Officer for the receipt of Taxes.

C. C. ESS,
Secretary.

This portion of the sheet should be preserved, as it will be accepted by the Inland Revenue authorities in connection with any claim to allowance or relief from Income Tax.

Back of form.

MEMORANDUM.

Section 27 of the *Finance Act*, 1920, provides for the granting of relief in respect of Dominion Income Tax at the rate of:

(*a*) the Dominion tax, or

(*b*) one-half of the taxpayer's appropriate rate of British tax (as defined by the Section), whichever is the less.

Under this Section, the Company has obtained, or will obtain, relief from British Income Tax by reference to the full standard rate of British Income Tax, viz., 5*s.* 6*d.* in the £, and the rate of British Income Tax applicable to the dividend is 2*s.* 6*d.* in the £, arrived at as follows:

		s.	d.	
Full standard rate of British Income Tax .	=	5	6	in the £
Less relief in respect of Dominion Income Tax	=	2	0	„
Rate of tax applicable to the dividend .		3	6	„

The actual warrant, annexed to, or accompanying, the above statement, should be modelled on the following:

Size of Warrant between 4 ins. and 5½ ins. vertical, and 8½ ins. horizontal; or combined size of Warrant and Income Tax Voucher between 8 ins. and 11 ins. vertical, and 8½ ins. horizontal.

Serial No...... *No. of Dividend*.....

THE PRACTICE COMPANY, LIMITED.

London, ...19 ...

DIVIDEND WARRANT.

Stamp.

To BANK OF LONDON, LIMITED,
83, LOMBARD STREET, LONDON, E C. 3.

PAY to A Shareholder *or Order*

the sum of Fifty pounds

For and on behalf of THE PRACTICE COMPANY, LTD.

£ 50 : 0 : 0

Signature(s).....
.....

Signature of Payee.....

T. or M. or C., (whichever letter is applicable.)

This warrant must be signed by the Payee, and presented for payment within six months from date.

It is not unusual for the signatures of the requisite number of directors to be *printed* on the warrant, so that only the secretary, or, in some cases, the auditor, need actually sign. In large companies directors' names do not appear on the warrants, and the secretary's signature is often in facsimile, the only written authority being the initials of the accountant or registrar. Adequate safeguards must, of course, be taken to guard against the unauthorised issue of warrants.

Where joint holders are concerned, the warrant is sometimes made payable to the first named, *e.g.* James Smith, sometimes to (*b*) "James Smith and Anor.," and occasionally to (*c*) "James Smith and John Jones." In case (*b*) the proper signature is "For Self and Anor., James Smith"; in case (*c*) both holders must sign.

Dividend Announcements.—On 12th December, 1938, the Stock Exchange Committee addressed a circular to public companies, of which the following is a summary :—

The form and contents of dividend announcements made by Public Companies to the Press and the Stock Exchange have led to the conclusion that in many instances there is danger of misunderstanding either because of vagueness in wording or because such announcements are unaccompanied by preliminary figures.

Both these factors operate to the detriment of the general public, the former directly in that ambiguity gives rise to a wrong interpretation, the latter less directly in that the wording is clear but the lack of the figures may, and not infrequently does, establish a false market in the shares until the figures become known.

The Committee are of opinion that it is most desirable that wherever possible profits should be announced at the same time as the final dividend, even if this calls for the qualification that such profit figures are provisional, or subject to audit. It is also their conviction that it is in the interests of the investing public as a whole that there should be as uniform a practice in this matter as is compatible with business efficiency.

The subjoined specimen dividend announcements are submitted for the favourable consideration of directors of public companies with a view to their general adoption.

Dividend statements should always be as short as possible and these specimen statements contain what is considered to be the minimum information set out in the most concise way. They will not, of course, cover the requirements of all companies, but by suitable modification can, it is believed, be made to cover the vast majority of cases. Where it has been the practice of directors to disclose more detailed information with their announcements it is no part of the Committee's purpose to urge any curtailment of that practice; nor, on the other hand, is it to be thought that they are attempting to persuade directors to disclose more information than it has been customary for them to do. Their attempt is confined to obtaining *at the same time* as the final dividend announcement, figures, etc., which are in any event communicated in due course to the public.

The Committee ask for the assistance of all directors, auditors and secretaries of public companies in bringing about and maintaining a valuable reform and do not doubt such assistance will be readily given.

SPECIMEN STATEMENTS

Interim Dividend

Date.....

At a meeting of the Board of the ..... Company, Limited, held to-day, the undermentioned dividend was declared :—

Interim on Ordinary Shares of .....% actual (..... per Share) less income-tax at ..... in the £, on account of the year ending ..... 193....

FINAL DIVIDEND

Date..... .....

At a meeting of the Board of the ..... Company, Limited, held to-day, it was decided to recommend the undermentioned dividend :—

Final on Ordinary Shares .....% actual (..... per Share) less income-tax at ..... in the £, making .....% for the year ended ..... 193....

Where applicable

Cash Bonus of .....% actual (..... per Share) less income-tax at ..... in the £.

Rights Issue of ..... in ..... at ..... *Bonus Issue of* ..... in .....

to..... (state participants)

Net Profits for year £..... (last year £. . .. . .).*

* If the net profits for the 2 years have not been arrived at on a comparable basis, information thereon should be given.

CHAPTER XIII

BORROWING POWERS. RECEIVERS

In this chapter our purpose is to describe the methods of borrowing usually adopted by limited companies, and the statutory and other regulations that govern the borrowing.

Buying goods on credit is essentially temporary borrowing, although such credit is not taken into account in deciding whether or not the company has exceeded its borrowing powers. A company that has hitherto promptly paid its accounts as they fell due may often tide over a short period of financial stringency by forgoing discount upon its purchases in exchange for extended credit. Where it is necessary or expedient to secure longer credit than is customarily given in the particular trade, a tactful letter should be sent to each creditor explaining that the need for the extended accommodation is due to temporary causes only. But it must not be overlooked that this method of obtaining respite from the necessity to discharge present obligations may prove somewhat expensive. If, for example, the cash discount obtainable for prompt payment within one month is $2\frac{1}{2}$ per cent., and the company is allowed to withhold payment for an additional two months at the cost of losing the discount, the price of the accommodation for the two months' extra credit is at the rate of 15 per cent. per annum. It may sometimes be possible and expedient to obtain temporary relief by consolidating credit balances by accepting bills, which, under arrangement with the creditors who draw them, can be retired on the due dates, and renewed at interest. The interest in such cases can fairly be charged to capital, if the bills are accepted in respect of the purchase or construction of fixed assets that have not reached a revenue earning stage; but, if the bills relate to floating assets, or permanent assets actually earning revenue, the interest should be charged to revenue for the period when it accrues.

Borrowing may be necessary for many reasons. Under-capitalisation is the most common cause. But a company adequately capitalised may find it imperative to borrow if its capital has been badly laid out in the first place, and, in consequence, its assets are improperly balanced or distributed; or if it is so successful that its business grows too fast. A company may be earning excellent profits, but if the profits are locked up in stock and book debts, and for these reasons its working capital is depleted, it will sooner or later have to resort to borrowing. Lack of co-ordination between a company's technical and financial departments may also result in a shortage of working capital from time to time; for example, where there is excessive buying of raw material, over-production, the declaration of excessive dividends, and even the payment of excessive fees to directors.

It is a self-evident financial axiom that money should never be borrowed unless it can be remuneratively employed. The folly of borrowing at, say, 5 per cent. per annum, while keeping funds locked up in investments yielding, say, 3½ per cent. per annum, needs no demonstration; yet one finds, in practice, that business men are guilty of such improvidence. But this axiom must not be pressed to mean that money should never be borrowed unless it can be profitably utilised at once. If it be known that borrowing must be resorted to in the near future, and that loanable capital can be had to-day on exceptionally low terms, it may be sound finance to borrow at once.

Rash or reckless borrowing may make it necessary for a company to consolidate its borrowings into longer dated loans bearing a higher interest rate, or to convert its loans into preference shares carrying a permanent liability to pay dividends thereon before the ordinary shareholders, who bear the real risk of the company's business, can participate in the profits.

Money borrowed to provide fixed assets might be repaid by a fresh issue of shares, or from the proceeds of fresh loans, or out of profits. To enable loans to be repaid out of profits, rigid economy must be practised, unless the new assets are so quickly productive that a fund can be built up out of the increased profits wherewith to pay off the loan by the time that repayment is due.

Before borrowing, a company must be reasonably certain that it will be able to pay the interest on the loan at the due dates, otherwise interest will have to be met out of capital, a proceeding that cannot long be continued without creating fresh financial difficulties.

It is not to be understood that loans should never be consolidated. On the contrary, it may be most advantageous to convert a short-term loan, or a series of such loans, into a loan of longer duration, even at a higher rate of interest, if the effect of the conversion is to free the company from immediate financial difficulty, and enable it to take full advantage of discounts offered for prompt payment, provided, of course, that ultimate redemption of the consolidated loan is reasonably certain.

If it comes to a question of capitalising profits, it is better, where possible, to inaugurate a redemption fund for repayment of the liability, and to issue bonus shares to the members in proportion to their holdings, rather than to convert the liability on the loan into shares, since those bearing the risk of the undertaking thus get the benefit of the profits earned.

When money becomes generally "cheap" the company should consider whether it is possible to fund the loan at a lower rate of interest; it may pay to give notice to repay the existing loan, making a new issue at a lower rate of interest to take its place. In such circumstances, it will generally be found that many of the existing holders will take up the new issue in exchange.

The issue of redeemable preference shares (*see* p. 69), as an alternative to borrowing on loan or debentures, must be considered. But if these are to be redeemed out of profits, a redemption fund must be created and capitalised.

It must be borne in mind that interest may not be the only cost of a loan. The cost of a bank overdraft, or loan, whether obtained with or without the deposit of collateral security, or the personal guarantees of directors, or the issue of a debenture giving a charge over the company's assets, is practically confined to the interest payable thereon. But capital raised by a public issue of debentures will, in addition to interest, involve the payment of legal costs, commission to underwriters and brokers, stamp duties, printing and advertising charges, the discount on issue, or the premium on redemption, etc.

Stamp Duty. By S. 8, *Finance Act*, 1899—

(1) Where any local authority, corporation, company or body of persons formed or established in the United Kingdom propose to issue any Loan Capital, they shall, before the issue thereof, deliver to the Commissioners a statement of the amount proposed to be secured by the issue.

(2) Subject to the provisions of this section, every such statement shall be charged with an *ad valorem* stamp duty of two shillings and sixpence for every hundred pounds and any fraction of a hundred pounds over any multiple of a hundred pounds of the amount proposed to be secured by the issue, and the amount of the duty shall be a debt due to Her Majesty.

(3) The duty under this section shall not be charged to the extent to which it is shown to the satisfaction of the Commissioners that the stamp duty payable in respect of a mortgage or marketable security has been paid on any trust deed or other document securing the Loan Capital proposed to be issued.

(4) If any local authority, corporation, company or body of persons neglect to deliver a statement, or fail to pay the duty in compliance with this section, that local authority, corporation, company or body of persons shall be liable to pay to Her Majesty, in addition to the duty, a sum equal to 10 per cent. upon the amount of the duty, and a like sum for every month after the first month during which the neglect or default continues.

(5) In this section the expression "Loan Capital" means any debenture stock, county stock, corporation stock, municipal stock, or funded debt, by whatever name known, or any capital raised by any local authority, corporation, company or body of persons formed or established in the United Kingdom, which is borrowed, or has the character of borrowed money, whether it is in the form of stock or in any other form, but does not include any county council or municipal corporation bills repayable not later than twelve months from their date, or any overdraft at the bank or other loan raised for a merely temporary purpose for a period not exceeding twelve months; and the expression "local authority" includes any county council, municipal corporation, district council, dock trustees, harbour trustees, or other local body by whatever name called.

The above provisions are frequently overlooked, but the secretary should bear them in mind in connection with any loans which his company intends to raise for periods over one year. In so far as the loan capital is applied in conversion or consolidation of existing loan capital, a deduction of 2*s.* per cent. is allowed (*Finance Act*, 1907, S. 10). And by S. 29, *Finance Act*, 1934, the expression "loan capital" used in S. 8, *Finance Act*, 1899, shall not include any loan capital which is of such a description as to be incapable of being dealt in on a stock exchange in the United Kingdom.

Other Stamp Duties are dealt with *infra*, pp. 580 *et sqq.*

It is exceptional for a company not to take power in its memorandum to borrow and lend money. But sometimes the

power to borrow is limited by the memorandum to a fixed amount, or to an amount not exceeding the company's paid-up capital, or not exceeding one-half of such capital. More frequently, the limitation is fixed by the articles. If the limitation is contained in the memorandum, and it is desired to alter it, procedure must be taken under S. 5 of the Act (*In re Reversionary Interest Society* [1892], 1 Ch. 615); if in the articles, alteration may be effected by passing a special resolution. Since the reason for limiting borrowing powers is to place a check upon the directors exercising those powers, it would seem more reasonable that the limitation, if any, should be made in the articles, thus enabling the members easily to increase the power to borrow should necessity dictate.

Trading and commercial companies, whether express power to borrow is conferred by the memorandum or not, have an implied power to borrow, since borrowing is incidental to, and arises out of the objects of, such companies (*General Auction Co.* v. *Smith* [1891], 3 Ch. 432). But non-trading companies, *e.g.* Building Societies, and companies not carried on for the purpose of making profits, have no such implied power (*Blackburn Benefit Building Society* v. *Cunliffe, Brooks* [1882], 22 Ch.D. 61). Where, by its constitution, a company has no implied power to borrow, and no express or implied power of borrowing is conferred by its memorandum, it may obtain the required power by passing a special resolution to alter its memorandum to give the power, and by obtaining confirmation by the Court of the alteration (S. 5).

Arising out of the power to borrow, as necessary to its exercise, a company can mortgage or charge the whole or any part of its property present or future to secure repayment of any loan it may contract; including its uncalled capital, if the words used embrace that asset, but not reserve capital created under SS. 49 and 53 of the Act (*Bartlett* v. *Mayfair Property Co.* [1898], 2 Ch. 28), and, apparently, not the capital liable to be called on the winding-up of a company limited by guarantee. Where power is given to charge the company's "assets," or "property and rights" (*Howard* v. *Patent Ivory Co.* [1888], 38 Ch.D, 156), or the company is empowered to raise money in specific ways, and there follows the phrase "or in such other manner as the company may determine," or words of similarly wide import, uncalled capital

may be charged. But the use of expressions of narrower meaning may preclude the charging of uncalled capital, *e.g.* where the company is authorised to charge its "property," or its "property present and future" (*Johnson* v. *Russian Spratt's Patent* [1898], 2 Ch. 149). Uncalled capital is not present or future property until the right to call it has been exercised, and a debt has been created.

The actual method of borrowing may be such as the company in its own interests decides to be best. It may borrow by giving or discounting bills of exchange; or by overdraft or loan from its bankers, unsecured if either can be obtained that way; if not, by giving whatever collateral or additional security the bankers require, *e.g.* the personal guarantees of directors, or an equitable mortgage by deposit of title-deeds, or a legal mortgage of specified fixed assets, or the issue of a debenture conferring a floating charge over its assets; or of debentures or debenture stock, secured by a first charge upon its whole undertaking, and subsequently make a second issue of idebentures or debenture stock, giving a second charge upon it undertaking.

A company may borrow by one or a combination of the modes outlined above, but if its borrowing power is restricted to a definite amount (Art. 69 of Table A restricts borrowing so that "the amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purpose of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting"), the whole of its borrowings, in whatever manner effected, must be taken into consideration when ascertaining whether or not the directors have exceeded their powers in this respect. Redeemable preference shares are not moneys borrowed within the meaning of any such provision, being share capital taken up by members, nor need ordinary trade credit be reckoned as "borrowing" for this purpose.

Any person proposing to lend money to a company must first ascertain from its memorandum and articles its precise power of borrowing and the limits, if any, set to it. All outside persons are deemed to know the contents of these documents. If a company has no power to borrow, or, having power, the memorandum limits the amount that can be borrowed, any

borrowing at all in the first case, and all excess borrowing in the second case, is utterly void, and the security given in either case is of no avail. Such borrowing is *ultra vires* the company and cannot be ratified. And where a limit to the authority of the directors to exercise the borrowing powers of the company is contained in the articles, and directors exceed those limits, securities given in respect of the excess borrowing are also of no avail; but in this case the company may validate the directors' *ultra vires* borrowing by resolution in general meeting, and the company may possibly be estopped from denying that the securities are good and subsisting securities under the rule that outside persons dealing with a company are entitled to assume that the directors have acted regularly. But this rule will not avail a person who has actual or constructive notice that the borrowing is irregular. It only avails a person honestly ignorant that it is irregular (*Howard* v. *Patent Ivory Co., supra*).

Where money is borrowed *ultra vires* by directors, the directors may be personally liable in damages to the lenders on the ground that they have impliedly warranted that they had authority to borrow (*Firbank's Exors.* v. *Humphreys* [1887], 18 Q.B.D. 54). And the lenders may follow the money in the hands of the company, and obtain an injunction restraining the company from parting with it if it is still in the company's possession, whether as cash or in the form of an investment or other asset purchased with the borrowed money; or, if the company has paid the money away to *bona fide* creditors, the lenders may be subrogated to the rights of those creditors, but only as unsecured creditors of the company (*Blackburn Benefit Building Society* v. *Cunliffe Brooks, supra*).

When seeking accommodation from bankers, the question may have to be considered whether it is better to borrow on loan or by way of overdraft. A loan may be more difficult to negotiate than an overdraft, since bankers are averse from locking up their funds for any long period. The interest charged on an overdraft is usually at a higher rate than on a loan, but, on the other hand, interest on an overdraft is charged on the sum actually overdrawn, whereas a loan is placed to the customer's credit on loan account as soon as it is granted, and interest runs on the whole amount from the date of entry, irrespective of the amount actually utilised. If bank over-

drafts are to be negotiated in order to tide over normal periods of drain, negotiations will be facilitated if the company's accounts are kept up to date, and the annual Profit and Loss Account and Balance Sheet is available within a short time after the close of the company's financial year, even although a longer period may elapse before those accounts are placed before a general meeting.

A company must not exercise any borrowing powers until it has satisfied the provisions of S. 94, s.-s. (1), as to minimum subscription, etc., and received its certificate entitling it to commence business (*see* p. 143). A private company is not so affected (S. 94, s.-s. (7)), and may exercise its borrowing powers at once. Nothing in S. 94, however, prevents a simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures (S. 94, s.-s. (5)), but the debentures cannot be allotted until the certificate to commence business is received.

It must not be forgotten that by the rules of the Stock Exchange a limit must be set to the borrowing powers of a company.

Debentures.—By far the most important mode in which a company borrows is by the issue of debentures.

"A debenture means a document which either creates a debt or acknowledges it" (*Per* Chitty J. in *Levy* v. *Abercorris Slate and Slab Co.* [1888], 37 Ch.D. 264). A variety of documents may fall within this definition, and some that do could not rightly be called debentures. But, as the learned judge pointed out, there is no precise definition of the term, for neither in law nor commerce is it a technical term of exact meaning. An income stock certificate was held to be a debenture in *Lemon* v. *Austin Friars Investment Trust* [1926], 1 Ch. 1. As generally understood in the commercial world, a debenture may be defined, broadly, as an instrument, styled on its face a debenture, issued by a company under its seal as security for a named sum of money, obliging the company to repay that sum on a future date fixed, and meanwhile to pay interest thereon at a named rate per annum at named intervals. But it is not necessary that a debenture should be issued under the company's seal, although usually it is; nor is it necessary in order to be a debenture that it should be issued by a company. There may be a single debenture issued to one person, *e.g.* to

bankers, or a number of debentures, each for the same amount, forming a whole series, issued to the public generally. The debentures may be simple acknowledgments of indebtedness unsecured by any charge upon the company's property, but usually they confer a mortgage or charge, and this may be done in the debenture itself, or in a separate trust deed, or in both documents, if there is a separate trust deed.

Debentures may be of several kinds :

(1) Registered debentures; (2) Bearer debentures.

Both classes may be—

(*a*) unsecured (rare); (*b*) secured (1) by a floating charge over the company's whole undertaking; or (2) by a specific charge over stated assets, usually freehold or leasehold property, or other fixed assets; or (3) by a floating and a specific charge.

Registered Debentures.—In this country the majority of debentures are registered. The payment of the interest due thereon may be by warrant on the company's bankers posted by the company to the registered holder, or to the first named of joint holders; or it may be provided for by means of interest coupons payable to bearer attached to the debenture bonds, a talon being included by which further coupons may be obtained when the original supply is exhausted. By S. 67 every company must within two months after allotment, or lodgment of a transfer, of debentures or debenture stock have ready for delivery the debentures, or debenture stock certificates, unless the conditions of issue otherwise provide.

Bearer Debentures.—This form of debenture is not unknown in this country, but abroad it is the common form. It was held in *Goodwin* v. *Robarts* [1875], 10 Ex. Cas. 337 (foreign government scrip payable to bearer), and in *Bechuanaland Exploration Co.* v. *London Trading Bank* [1898], 2 Q.B. 658 (English bearer debentures), that bearer scrip or bonds which for some time past had been treated as negotiable instruments in this country by mercantile custom were on that ground entitled in law to be recognised as negotiable instruments. And in *Edelstein* v. *Schuler* [1902], 2 K.B. 144, the learned judge expressed the view that the time had passed when the negotiability of bearer bonds either English or foreign could be called in question.

Such bonds can therefore be transferred without notice to the company, and whoever takes such bonds *bona fide* for value becomes the legal owner of them. The holders of bearer debentures are sometimes given the right to have them converted into registered debentures, and re-converted into bearer bonds. By S. 77, notwithstanding anything contained in the statute of the Scots Parliament of 1696, chapter twenty-five, debentures to bearer issued in Scotland are valid and binding according to their terms. Payment of interest on bearer debentures is provided for by coupons annexed to the bonds, as in the case of bearer share warrants.

Unsecured Debentures.—The holder of such a debenture, often called a "naked" or "simple" debenture, is an unsecured creditor of the company. In case of default in payment of interest and/or capital he must bring an action to enforce payment, and, on judgment obtained, levy execution on the property of the company, if the judgment is not satisfied. Or he may petition for the winding up of the company, and prove as an ordinary creditor for the amount of the debt. Debentures of this kind are not usually issued except as an acknowledgment of a short-period loan, and obviously would not be accepted from any but companies financially strong.

Floating Charge.—Where debentures give a floating charge over the company's undertaking, the company is free to deal with all or any of its property in the ordinary course of business. The charge is an equitable one attaching to the property charged in the varying conditions in which it happens to be from time to time. So long as the company is a going concern, it may, in the ordinary course of its business, sell, lease, exchange or otherwise deal with its property, *e.g.* by mortgage of specific assets, as it thinks fit. If the company had not this freedom of action, its business would be brought to a standstill. But on the happening of any event mentioned in the debenture, which gives the debenture holders the right to commence an action against the company for the enforcement of the security (*e.g.* default in the payment of interest or repayment of the principal), and the Court usually enforces the security by appointing a receiver, and either ordering sale of the property, or granting leave subsequently to apply for power of sale; and if a receiver is appointed, or winding-up proceedings are commenced, the floating charge becomes a fixed charge, or, as

it is said, is "crystallised," and the company may not further deal with the property. A company that has given a floating charge over its undertaking is not debarred from specifically mortgaging particular assets so as to give the mortgagees priority over the floating charge (*In re Colonial Trusts Corporation* [1879], 15 Ch.D. 465). And an equitable mortgage created subsequent to the floating charge may also have priority (*Wheatley* v. *Silkstone, etc. Coal Co.* [1885], 29 Ch.D. 715). For that reason it is not unusual for the mortgage bond to prohibit the company from giving any mortgage that shall have priority over the debentures secured by the floating charge, or rank *pari passu* with them. But such a prohibition will be ineffectual where a person who takes a legal mortgage of specific assets shows that he was not aware of the floating charge, or, being aware of it, had no knowledge of the prohibition (*English and Scottish Mercantile Co.* v. *Brunton* [1892], 2 Q.B. 700). And the same is true of an equitable mortgage subsequently created by deposit of title-deeds, if the equitable mortgagee is without notice (*In re Castell and Brown* [1898], 1 Ch. 315). A floating charge can be asserted against the company's ordinary creditors, and also against judgment creditors, provided the latter have not actually levied execution and obtained payment, or obtained a garnishee order absolute before the floating charge has crystallised (*Evans* v. *Rival Granite Quarries* [1910], 2 K.B. 979, and *Robson* v. *Smith* [1895], 2 Ch. 124.)

By S. 266, a floating charge upon a company's undertaking or property created within six months of the commencement of its being wound up is invalid, unless it is proved that the company was solvent immediately after the charge was created, except to the amount of any cash paid to the company in consideration for the charge together with interest on that amount at the rate of 5 per cent. per annum.

The question whether the cash has been paid is one of fact in each case, and it is not necessary that the money should be "absolutely and unconditionally" paid over to the company (*In re Matthew Ellis* [1933], 1 Ch. 458).

By S. 78, debts which in every winding up are under the provisions of Part V of the Act to be paid in priority to all other debts (*see* pp. 558 *et sqq.*) shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession of any property comprised in or subject to a floating charge

in priority to any claim for principal or interest in respect of the debentures. And payments made under this section shall be recouped as far as may be out of the assets available for the general creditors of the company.

Specific or Fixed Charge.—Such a charge is usually given over a company's fixed assets. It is a legal mortgage, and the company cannot deal with the property mortgaged except subject to the mortgagee's interest therein.

Specific and Floating Charge. Trust Deed.—It is common practice nowadays, where any considerable issue of debentures is made, to secure the issue by means of a trust deed conveying the legal estate in specific property to trustees for the debenture holders, and giving a floating charge over the general undertaking. The advantages of such a deed are—

(*a*) It enables the conditions attached to an issue of debentures, and the mode of enforcing the security, to be set forth more clearly and in greater detail than can be done in a debenture bond.

(*b*) To the trustees is committed the duty of watching over the interests of the debenture holders and safeguarding their rights.

(*c*) The trustees are usually empowered to take possession and sell the property charged should the company make serious default in the payment of interest or principal, or commit any breach of the covenants contained in the deed, or upon commencement of winding-upproceedings, or on the appointment of a receiver, and to appoint a receiver, and manager, for the carrying on of the business, with powers and duties as defined in the deed.

(*d*) The trustees are therefore in a position to act much more quickly and effectively than if a meeting of the debenture holders themselves had first to be called in order to take action.

A trust deed usually also provides for payment of remuneration to the trustees, for the company to maintain adequate insurance of the mortgaged assets, and a sinking fund for the redemption of the debentures. Further, it may provide for meetings of the debenture holders, and give power to a majority, *e.g.* a three-fourths majority, to modify the rights of the debenture holders or to vary the security, and where the power thus given is exercised in strict accordance with the deed, and *bona fide* for the benefit of all the debenture holders, the minority will be bound.

Reference should be made to the Rules of the Stock Exchange (*see* p. 690*d*) for the provisions that should be included in a trust deed in order to meet the requirements of that Institution.

Debenture Stock.—A company may, instead of borrowing by the issue of debentures, make an issue of debenture stock. Debenture stock has the same characteristics as debentures, but whereas debentures are issued for some round sum, *e.g.* £100, debenture stock is issued in one mass as it were, and each certificate issued entitles the holder to a specified part of the whole. Debenture stock is secured by a trust deed, and has been described as "borrowed capital consolidated into one mass for the sake of convenience." Debenture stock holders may transfer their holdings either wholly or in part, and such transfers are not restricted to multiples of a pound, but may include fractions thereof, unless the regulations confine holdings to a minimum round sum, or forbid transfers involving fractions of a pound.

In many cases debenture issues are made through an issuing house, or are underwritten. The commission paid on a debenture issue so made must be stated in the Annual Return filed next after the issue (S. 108, s.-s. 3 f.). The same remark applies to any discount allowed on debentures.

Debentures may be issued at a discount, and be repayable at par, or be issued at a discount, or at par, and be repayable at a premium. By S. 44, the amount of the debenture discount and any commission paid on the issue of the debentures must be shown in the Balance Sheet separately until it is written off. S. 44 does not make it obligatory to write off the amount, but until written off it must be shown.

Underwriting commission may sometimes be partly discharged by the issue of debentures. Where this is the case, the nominal amount of the debentures must be shown, together with the total discount. The issue of the debentures merely discharges in part the liability on the personal account of the underwriters.

The amount of the discount allowed on issue, or the amount of premium contracted to be paid on redemption, as the case may be, is merely deferred interest. The company reaps a benefit by being able to make the issue at a lower rate of interest than if the issue were at par (or repayable at par, as the case may be), so that in the early years of the life of the

loan there is less likelihood of default. The discount or premium should, however, be duly provided for by annual appropriations of profit, unless, as is generally advisable, a sinking fund is built up to an amount sufficient to repay the loan on its due date. In writing off discount, care must be taken to spread the burden equitably over the periods having the benefit of the money raised by the debentures.

Debentures may be irredeemable or perpetual debentures (S. 74), *i.e.* repayable only in the event of a winding up, or some serious default on the part of the company, or they may be repayable on a fixed date, or after notice duly given. The time and mode of repayment depend upon the provisions contained in the debenture itself or in the trust deed, and these must be carried out exactly. Sometimes the company is empowered to redeem at an earlier date than that fixed, due notice of the intention to redeem being given, or the company may be required to maintain a sinking fund, and apply that fund either to the redemption of all the debentures on the date fixed for redemption, or to redeeming annually a specific part of the issue, either by drawings or by purchase in the open market.

Where the redemption is effected by drawings, the process is usually controlled by some public or professional man, *e.g.* a notary public, solicitor or accountant. Notice that a drawing will take place is usually advertised beforehand, and later the numbers of the debentures drawn are also advertised. The following are specimens of such notices :

THE PRACTICE COMPANY, LIMITED,

of Moorgate, E.C.2., hereby give notice that Wednesday, the 6th day of June, 19.., at 12 o'clock noon, has been fixed for the drawing of the debentures of the Company secured by the Trust Deed dated the 1st January, 19.., to be redeemed on the 1st July, 19.., and will take place at the registered offices of the Company, Moorgate E.C.2.

Y. Z., Solicitor to the Company.

THE PRACTICE COMPANY, LIMITED.

Tenth Drawing of Seven per cent. First Mortgage Bonds.

Notice is hereby given that in accordance with the terms of the Trust Deed dated 1st January, 19.., the following fifty

numbers of Seven per cent. First Mortgage Bonds of £100 each have this day been drawn for redemption at the registered offices of the Company by the Trustee under the deed, in the presence of Y. Z., Solicitor for the Company, and will be paid off at par at the registered office of the Company on the 1st July, 19..

[Here follow the numbers of the bonds drawn.]

Such Bonds will be paid together with accrued interest. The drawn bonds together with all immatured coupons attached must be lodged at the registered offices of the Company four clear days for examination.

The Bonds so drawn will cease to bear interest on and after the 1st July, 19..

Dated this 6th day of June, 19..

JAMES SMITH,
Secretary.

The statutory provisions governing the issue and re-issue of debentures, and the registration of charges, etc., are briefly as follows:—

S. 73 provides that (*a*) the register of holders of debentures shall, except where duly closed, be open to inspection by any registered debenture holder, or shareholder of a company, for not less than two hours per day; (*b*) every registered debenture holder or shareholder may require a copy of the register or any part thereof, on payment of sixpence per hundred words; (*c*) a copy of any trust deed shall be forwarded to every debenture holder at his request, on payment of one shilling or such less sum as the company may prescribe, in the case of a printed deed, or, if the deed is not printed, on payment of sixpence per hundred words. Where a company is in default, the Court may, by order, compel immediate inspection.

S. 74 declares that irredeemable debentures, or debentures redeemable on the happening of a contingency however remote, or on the expiration of a period however long, any rule of equity to the contrary notwithstanding, are valid, and so removes a doubt that at one time existed whether such debentures were not void on the ground that the indefinite or remote

time of redemption was, in effect, a clog upon the equity of redemption.

S. 75 gives power to a company that has redeemed debentures to re-issue the debentures, or to issue others to take their place, unless provision to the contrary express or implied is contained in the articles, or in any contract entered into by the company, or unless the company has by resolution or some other act shown an intention to cancel the debentures. The section also provides that (*a*) the person entitled to a re-issue of redeemed debentures shall have the same priorities as if the debentures had not been redeemed; (*b*) particulars of redeemed debentures that can be re-issued shall be included in every balance sheet of the company; (*c*) debentures deposited with bankers as security for advances shall not be deemed to have been redeemed by reason only that the company's account with the bankers has ceased to be in debit; (*d*) the re-issue of debentures or the issue of debentures to take the place of other debentures is to be treated for the purposes of stamp duty as the issue of new debentures.

By S. 76, a contract to take up and pay for debentures of the company may be enforced by an order for specific performance of the contract.

By S. 77, bearer debentures issued in Scotland are valid notwithstanding the statute of the Scots Parliament of 1696, chapter twenty-five.

By S. 78, where, in the case of a company registered in England, a receiver is appointed on behalf of the holders of debentures secured by a floating charge, or possession is taken of assets subject to the charge, and the company is not in course of winding up, then debts which under Part V of the Act are preferential to all other debts must be paid before any payment is made in respect of debenture interest or capital. Any payments so made shall be recouped as far as may be out of assets available for payment of the general creditors.

S. 79 provides for registration of all charges created by a company; declares that, unless the prescribed particulars of the charge, together with the instrument, if any, creating it, are delivered to the registrar for registration, within twenty-one days of its creation, any security or undertaking conferred thereby is void against the liquidator and any creditor of the company, but that the money secured by the charge shall immediately become payable; defines the kinds of charges to

which its provisions apply, and lays down rules for (*a*) charges created out of the United Kingdom upon property outside the United Kingdom, (*b*) charges created in the United Kingdom upon property outside the United Kingdom, (*c*) charges upon property situate in Scotland or N. Ireland which to be rendered valid must be registered in the country where the property is situated; says that a negotiable instrument given to secure payment of a company's book debts is not a charge on those book debts, and that debentures entitling a holder to a charge on land is not for the purposes of this section to be deemed an interest in land; lays down the procedure to be followed when a series of debentures is issued which confers any charge to the benefit of which the holders of the series are entitled *pari passu*; directs that where any commission, allowance, or discount is paid or made, directly or indirectly, by a company, to any person in consideration of his subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any debentures, the particulars required to be sent for registration shall include the amount or rate per cent. of the commission, discount or allowance. The section concludes with the proviso that debentures given as security for any debt of the company shall not be treated as the issue of debentures at a discount, and with sundry interpretations of words used in the section.

By S. 80, the duty of satisfying S. 79 is upon the company, but registration of any charge requiring registration may be effected on the application of any person interested therein, and if registration is effected by an interested person other than the company, that person can recover from the company any fees he has had to pay to the registrar. The penalty for failure to send the required particulars for registration is stated in this section.

By S. 81, a company registered in England that acquires property subject to a charge of such a kind that if the charge had been created by the acquiring company after the property had come into its possession, it would have had to have been registered, must, under penalty for default, send particulars for registration, together with a certified copy of the charging instrument, if any, within twenty-one days after the acquisition is completed.

S. 82 enacts that the registrar shall, with respect to each

company, keep a register in the prescribed form, of all charges requiring registration, and states the particulars that he shall enter in the register. The registrar must give a certificate of registration, and this shall be conclusive evidence of compliance with the requirements of the Act as to registration. The register must be kept open for inspection by any person on payment of a fee not exceeding one shilling. In addition to the register, the registrar must keep a chronological index in the prescribed form of the charges entered in the register.

By S. 83, a copy of every certificate of registration must, under penalty for default, be endorsed by the company on every debenture or certificate of debenture stock issued by the company, the payment of which is secured by the charge so registered.

S. 84 authorises the registrar, on satisfactory evidence being given that the debt for which a registered charge was given has been paid, to order that a memorandum of satisfaction shall be entered on the register; and if required, to furnish the company with a copy of the memorandum.

By S. 85, the court is empowered to extend the time for registration or to order rectification of the register, in certain circumstances.

By S. 86, if any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a person under power conferred by any instrument, he must, within seven days of the order or of the appointment, give notice of the fact to the registrar, and the registrar must enter the fact in the register of charges; similarly, notice of the fact that a receiver or manager has ceased to act must be given by the receiver or manager, and the registrar must enter the notice.

S. 87 enacts that every company shall keep at its registered office a copy of every instrument creating any charge that requires to be registered, but that in the case of a series of uniform debentures, a copy of one such is sufficient.

By S. 88, every limited company must, under penalty for failure so to do, keep at its registered office a register of charges on all property of the company, whether a fixed or a floating charge, giving (*a*) a short description of the property charged, (*b*) the amount of the charge, and, (*c*) except in the case of bearer securities, the names of the persons entitled thereto.

By S. 89, the copies of instruments, and the register of charges kept by the company must be open to the inspection of any member or creditor of the company for not less than two hours per day without fee, and to any other person on payment of a fee not exceeding one shilling. A penalty is attached by the section where inspection is refused, and the Court may, in relation to a company registered in England, compel immediate inspection.

S. 90 enacts that the provisions of Part III of the Act Registration of Charges with Registrar of Companies) shall extend to charges on property in England which are created, and to charges on property in England which is acquired, after the commencement of this Act by a company (whether a company within the meaning of this Act or not) incorporated outside England which has an established place of business in England.

S. 91 contains provisions as to charges created, and charges on property acquired, by a company, before commencement of the Act.

These sections, viz. SS. 73–78, which contain special provisions as to debentures, and SS. 79–91, forming Pt. III of the Act which deal with the registration of charges by both the registrar and the issuing company, are so extremely important that it is thought well to reproduce them here *in extenso* :—

Special Provisions as to Debentures.

S. 73.—(1) Every register of holders of debentures of a company shall, except when duly closed, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that not less than two hours in each day shall be allowed for inspection.

For the purposes of this subsection, a register shall be deemed to be duly closed if closed in accordance with provisions contained in the articles or in the debentures or, in the case of debenture stock, in the stock certificates, or in the trust deed or other document securing the debentures or debenture stock, during such period or periods, not exceeding in the whole thirty days in any year, as may be therein specified.

(2) Every registered holder of debentures and every holder of shares in a company may require a copy of the register of the holders of debentures of the company or any part thereof on payment of sixpence for every hundred words required to be copied.

(3) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of one shilling or such less sum as may be prescribed by the company,

or, where the trust deed has not been printed, on payment of sixpence for every hundred words required to be copied.

(4) If inspection is refused, or a copy is refused or no forwarded, the company and every officer of the company who is in default shall be liable to a fine not exceeding five pounds, and further shall be liable to a default fine of two pounds.

(5) Where a company is in default as aforesaid, the court may by order compel an immediate inspection of the register or direct that the copies required shall be sent to the person requiring them.

S. 74.—A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the commencement of this Act, shall not be invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

S. 75.—(1) Where either before or after the commencement of this Act a company has redeemed any debentures previously issued, then—

(*a*) unless any provision to the contrary, whether express or implied, is contained in the articles or in any contract entered into by the company; or

(*b*) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

the company shall have, and shall be deemed always to have had, power to re-issue the debentures, either by re-issuing the same debentures or by issuing other debentures in their place.

(2) On a re-issue of redeemed debentures the person entitled to the debentures shall have, and shall be deemed always to have had, the same priorities as if the debentures had never been redeemed.

(3) Where a company has power to re-issue debentures which have been redeemed, particulars with respect to the debentures which can be so re-issued shall be included in every balance sheet of the company.

(4) Where a company has either before or after the passing of this Act deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(5) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the passing of this Act, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued:

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly

stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

(6) Where any debentures which have been redeemed before the date of the commencement of this Act are re-issued subsequently to that date, the re-issue of the debentures shall not prejudice any right or priority which any person would have had under or by virtue of any mortgage or charge created before the date of the commencement of this Act, if section one hundred and four of the Companies (Consolidation) Act, 1908, as originally enacted, had been enacted in this Act instead of this section.

S. 76. A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

S. 77. It is hereby declared that, notwithstanding anything contained in the statute of the Scots Parliament of 1696, chapter twenty five, debentures to bearer issued in Scotland are valid and binding according to their terms.

S. 78.—(1) Where, in the case of a company registered in England, either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding-up are under the provisions of Part V of this Act relating to preferential payments to be paid in priority to all other debts, shall be paid out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) The periods of time mentioned in the said provisions of Part V of this Act shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(3) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

Registration of Charges with Registrar of Companies.

S. 79.—(1) Subject to the provisions of this Part of this Act, every charge created after the fixed date by a company registered in England and being a charge to which this section applies shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge, together with the instrument, if any, by which the charge is created or evidenced, are delivered to or received by the registrar of companies for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a charge becomes void under this section the money secured thereby shall immediately become payable.

(2) This section applies to the following charges :—

(*a*) a charge for the purpose of securing any issue of debentures;
(*b*) a charge on uncalled share capital of the company;

(*c*) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale;
(*d*) a charge on land, wherever situate, or any interest therein;
(*e*) a charge on book debts of the company;
(*f*) a floating charge on the undertaking or property of the company;
(*g*) a charge on calls made but not paid;
(*h*) a charge on a ship or any share in a ship;
(*i*) a charge on goodwill, on a patent or a licence under a patent, on a trademark or on a copyright or a licence under a copyright.

(3) In the case of a charge created out of the United Kingdom comprising solely property situate outside the United Kingdom, the delivery to and the receipt by the registrar of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced, shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and twenty-one days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence have been received in the United Kingdom, shall be substituted for twenty-one days after the date of the creation of the charge, as the time within which the particulars and instrument or copy are to be delivered to the registrar.

(4) Where a charge is created in the United Kingdom but comprises property outside the United Kingdom, the instrument creating or purporting to create the charge may be sent for registration under this section notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.

(5) Where a charge comprises property situate in Scotland or Northern Ireland and registration in the country where the property is situate is necessary to make the charge valid or effectual according to the law of that country, the delivery to and the receipt by the registrar of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced, together with a certificate in the prescribed form stating that the charge was presented for registration in Scotland or Northern Ireland, as the case may be, on the date on which it was so presented shall, for the purposes of this section, have the same effect as the delivery and receipt of the instrument itself.

(6) Where a negotiable instrument has been given to secure the payment of any book debts of a company the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a charge on those book debts.

(7) The holding of debentures entitling the holder to a charge on land shall not for the purposes of this section be deemed to be an interest in land.

(8) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled pari passu is created by a company, it shall for the purposes of this section be sufficient if there are delivered to or received by the registrar within twenty-one days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars :—

(*a*) the total amount secured by the whole series; and
(*b*) the dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined; and
(*c*) a general description of the property charged; and
(*d*) the names of the trustees, if any, for the debenture holders;

together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series:

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

(9) Where any commission, allowance, or discount has been paid or made either directly or indirectly by a company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate per cent. of the commission, discount, or allowance so paid or made, but omission to do this shall not affect the validity of the debentures issued:

Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this subsection be treated as the issue of the debentures at a discount.

(10) In this Part of this Act—

(*a*) the expression "charge" includes mortgage;
(*b*) the expression "the fixed date" means in relation to the charges specified in paragraphs (*a*) to (*f*), both inclusive, of subsection (2) of this section, the first day of July, nineteen hundred and eight, and in relation to the charges specified in paragraphs (*g*) to (*i*), both inclusive, of the said subsection, the commencement of this Act.

S. 80.—(1) It shall be the duty of a company to send to the registrar of companies for registration the particulars of every charge created by the company and of the issues of debentures of a series, requiring registration under the last foregoing section, but registration of any such charge may be effected on the application of any person interested therein.

(2) Where registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.

(3) If any company makes default in sending to the registrar for registration the particulars of any charge created by the company, or of the issues of debentures of a series, requiring registration as aforesaid, then, unless the registration has been effected on the application of some other person, the company and every director, manager, secretary or other person, who is knowingly a party to the default shall be liable to a fine not exceeding fifty pounds for every day during which the default continues.

S. 81.—(1) Where after the commencement of this Act a company registered in England acquires any property which is subject to a charge of any such kind as would, if it had been created by the

company after the acquisition of the property, have been required to be registered under this Part of this Act, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the registrar of companies for registration in manner required by this Act within twenty-one days after the date on which the acquisition is completed :

Provided that, if the property is situate and the charge was created outside Great Britain, twenty-one days after the date on which the copy of the instrument could in due course of post, and if despatched with due diligence, have been received in the United Kingdom shall be substituted for twenty-one days after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the registrar.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine of fifty pounds.

S. 82.—(1) The registrar of companies shall keep, with respect to each company, a register in the prescribed form of all the charges requiring registration under this Part of this Act, and shall, on payment of the prescribed fee, enter in the register with respect to such charges the following particulars :—

(*a*) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in subsection (8) of section seventy-nine of this Act;

(*b*) in the case of any other charge—

(i) if the charge is a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company, the date of the acquisition of the property; and

(ii) the amount secured by the charge; and

(iii) short particulars of the property charged; and

(iv) the persons entitled to the charge.

(2) The registrar shall give a certificate under his hand of the registration of any charge registered in pursuance of this Part of this Act, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this Part of this Act as to registration have been complied with.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding one shilling for each inspection.

(4) The registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the charges entered in the register.

S. 83.—(1) The company shall cause a copy of every certificate of registration given under the last foregoing section to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the charge so registered :

Provided that nothing in this subsection shall be construed as requiring a company to cause a certificate of registration of any charge so given to be endorsed on any debenture or certificate of

debenture stock issued by the company before the charge was created.

(2) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock which under the provisions of this section is required to have endorsed on it a copy of a certificate of registration without the copy being so endorsed upon it, he shall, without prejudice to any other liability, be liable to a fine not exceeding one hundred pounds.

S. 84. The registrar of companies may, on evidence being given to his satisfaction that the debt for which any registered charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall, if required, furnish the company with a copy thereof.

S. 85. The court, on being satisfied that the omission to register a charge within the time required by this Act, or that the omission or misstatement of any particular with respect to any such charge or in a memorandum of satisfaction, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the court just and expedient order that the time for registration shall be extended, or, as the case may be, that the omission or misstatement shall be rectified.

S. 86 —(1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days from the date of the order or of the appointment under the said powers, give notice of the fact to the registrar of companies, and the registrar shall, on payment of the prescribed fee, enter the fact in the register of charges.

(2) Where any person appointed receiver or manager of the property of a company under the powers contained in any instrument ceases to act as such receiver or manager, he shall, on so ceasing, give the registrar of companies notice to that effect, and the registrar shall enter the notice in the register of charges.

(3) If any person makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Provisions as to Company's Register of Charges and as to Copies of Instruments creating Charges.

S. 87. Every company shall cause a copy of every instrument creating any charge requiring registration under this Part of this Act to be kept at the registered office of the company :

Provided that, in the case of a series of uniform debentures, a copy of one debenture of the series shall be sufficient.

S. 88.—(1) Every limited company shall keep at the registered office of the company a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company, giving in each case a short description of the property charged, the amount of the charge, and, except in the case of securities to bearer, the names of the persons entitled thereto.

(2) If any director, manager, or other officer of the company,

knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a fine not exceeding fifty pounds.

S. 89.—(1) The copies of instruments creating any charge requiring registration under this Part of this Act with the registrar of companies, and the register of charges kept in pursuance of the last foregoing section, shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day shall be allowed for inspection) to the inspection of any creditor or member of the company without fee, and the register of charges shall also be open to the inspection of any other person on payment of such fee, not exceeding one shilling for each inspection, as the company may prescribe.

(2) If inspection of the said copies or register is refused, any officer of the company refusing inspection, and every director and manager of the company authorising or knowingly and wilfully permitting the refusal, shall be liable to a fine not exceeding five pounds, and a further fine not exceeding two pounds for every day during which the refusal continues.

(3) If any such refusal occurs in relation to a company registered in England, the court may by order compel an immediate inspection of the copies or register.

Application of Part III. to Companies incorporated outside England.

S. 90. The provisions of this Part of this Act shall extend to charges on property in England which are created, and to charges on property in England which is acquired, after the commencement of this Act by a company (whether a company within the meaning of this Act or not) incorporated outside England which has an established place of business in England.

Transitional Provision as to Matters required to be registered under this Act, but not under former Acts.

S. 91.—(1) It shall be the duty of a company within six months after the commencement of this Act to send to the registrar of companies for registration the prescribed particulars of—

(*a*) any charge created by the company before the date of the commencement of this Act and remaining unsatisfied at that date, which would have been required to be registered under the provisions of paragraphs (*g*), (*h*) and (*i*) of subsection (2) of section seventy-nine of this Act or under the provisions of section ninety of this Act, if the charge had been created after the commencement of this Act; and

(*b*) any charge to which any property acquired by the company before the commencement of this Act is subject and which would have been required to be registered under the provisions of section eighty-one of this Act or under the provisions of section ninety of this Act, if the property had been acquired after the commencement of this Act.

(2) The registrar, on payment of the prescribed fee, shall enter the said particulars on the register kept by him in pursuance of this Part of this Act.

(3) If a company fails to comply with this section, the company

and every director, manager, secretary or other officer of the company, or other person who is knowingly a party to the default shall be liable to a fine not exceeding fifty pounds for every day during which the default continues :

Provided that the failure of the company shall not prejudice any rights which any person in whose favour the charge was made may have thereunder.

(4) For the purposes of this section the expression "company" includes a company (whether a company within the meaning of this Act or not) incorporated outside England which has an established place of business in England.

Charges on land must be registered at the Land Registry Office. This duty will be attended to by the company's solicitors (see *Land Registration Act*, 1925, S. 60).

For the accounting principles involved in the issue and redemption of debentures, and the modes of providing for redemption, the student is referred to L. C. Cropper's *Higher Book-keeping and Accounts* (Macdonald and Evans).

Debenture Issue.—An issue of debentures proceeds upon much the same lines as an issue of shares, and it would therefore seem unnecessary specially to detail the procedure. Where debentures are to be paid up by instalments, provisional scrip is not uncommonly issued to the applicant after he has paid the application and allotment moneys, the scrip being subsequently exchanged for definitive bonds or debenture stock certificates when all the instalments have been paid. The stamp duty on a scrip certificate is twopence. It is a bearer security, fully negotiable, the legal ownership of which can be transferred by delivery alone. The provision as to a minimum subscription before a first public share issue can be made has no application to debenture issues.

Debenture Registers.—A company that issues registered debentures or debenture stock will keep a register of the debentures or debenture stock holders. These registers are in form similar to share registers. The Act does not make it compulsory to keep such registers, but, in S. 73 it recognises that they may have to be kept, and it is the usual practice to keep them.

Directors Exercising Borrowing Powers.—A company's borrowing powers are usually exercised by the directors at their discretion, under authority of an article empowering them to exercise all such powers of the company as are not by the Act or the articles required to be exercised by the company in

general meeting (*see* Table A, Art. 67). But, occasionally, articles reserve exercise of the company's borrowing powers to the company in general meeting, and, in others, directors may be empowered to borrow up to a certain amount, but not more than that amount, without express authority of the company, given in general meeting.

Charge to Secure Overdraft.—Where a company gives a charge upon its assets by way of security for an overdraft on its current account, and subsequently gives a second charge on the same assets to a third party, the bank will, on receipt of notice of the second charge, in order to avoid operation of the rule laid down in *Devaynes* v. *Noble, Clayton's Case* [1816], 1 Mer. 572, rule off the company's current account in its books, and strike a balance as at that date. In view of the decision in *Deeley* v. *Lloyds Bank* [1912], App. Cas. 756, the bank will also obtain the company's consent to the opening of a distinctly new account for all future transactions. By so doing, the bank's security will be security for the full amount of the overdraft as ascertained at the date of receipt of notice.

RECEIVERS

A receiver is a person appointed for the collection or protection of the property subject to a mortgage or debenture charge. By S. 306, a body corporate (this does not include a firm in Scotland) is disqualified for appointment as receiver of the property of a company unless acting under an appointment made before 3rd August, 1928.

There are two methods of appointing a receiver—(1) by the mortgagee or debenture holder, (2) by the Court. An appointment by the parties themselves has the advantage of being simple and inexpensive. The person so appointed is an agent of the parties—either the mortgagor or the mortgagee—while a receiver appointed by the Court is not an agent of the parties but an officer of the Court, and so has a stronger position, as interference with his possession of the mortgaged property is a contempt of Court (*re Maidstone Palace of Varieties* [1909], 2 Ch. 283).

Appointment out of Court.—Debentures usually contain an express provision authorising the debenture holder, or a stated majority in cases where there are a number of debenture

holders, to appoint a receiver. The receiver then has the powers given by the debentures. Sometimes it is stated merely that the debenture holder shall have the power in that respect of a mortgagee. By S. 109 of the *Law of Property Act*, 1925, a mortgagee whose power of sale has become exercisable may by writing "appoint such person as he thinks fit to be receiver" of the mortgaged property. The person so appointed has "power to demand and recover all the income of which he is so appointed receiver by action, distress or otherwise in the name either of the mortgagor or of the mortgagee," "and to give effectual receipts for the same and to exercise any powers which may have been delegated to him by the mortgagee pursuant to this Act." A receiver appointed by virtue of the statutory power is deemed to be the agent of the mortgagor.

The receiver so appointed is, if so directed by the mortgagee, to keep the property insured against fire, to retain out of the money received by him such commission not exceeding 5 per cent. as his appointment specifies, and, out of the moneys received by him, he is to discharge rents, taxes, rates and outgoings, and keep down all annual sums payable out of the property, and the interest on mortgages having priority to the mortgage under which he is appointed, the cost of repairs which the mortgagee in writing directs him to execute, and in payment of the interest on the mortgage; and, again, "if so directed," in or towards the discharge of the principal money due to the mortgagee. The residue of the money he is to pay to the person who but for his possession would have been entitled to receive the income: that is, in effect, the mortgagor.

The power of sale, the existence of which is the condition on which a mortgagee can appoint a receiver, arises where the mortgage has been called in by three months' notice and is not paid, or where interest is in arrear for two months, or there has been a breach of some clause contained in the mortgage deed other than the covenant for the payment of principal. Where a mortgage deed provides that this power shall arise upon an act of bankruptcy being committed by the mortgagor the leave of the Court is required for the appointment. Debentures usually provide that a receiver may be appointed in other circumstances, *e.g.* if the company is wound up, or ceases to carry on business, or distress or execution be levied on the company's property.

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Where debentures give a floating charge only, the holders are not mortgagees within the meaning of the *Law of Property Act*, 1925, for the purpose of appointing a receiver, and must rely on express powers in their instrument of charge, or else obtain an appointment by the Court. Where, however, there is a trust deed to secure the debentures, the trustees, even in the absence of a special power, may be able to exercise the statutory power of appointment.

The person who appoints a receiver must within seven days of the appointment file with the registrar notice of the appointment, and the receiver appointed should satisfy himself that this has been done (S. 86). The receiver must file half-yearly abstracts of his accounts, and on ceasing to act must file notice of the fact (S. 86), and a further abstract of his account (S. 310). As from the date of his appointment, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or manager or the liquidator of the company, being a document on or in which the name of the company appears, must contain a statement that a receiver or manager has been appointed (S. 308). A receiver appointed out of Court is an agent only and is not *prima facie* personally liable in respect of transactions properly entered into by him as receiver. He should, like other agents, be careful in contracting to make it clear that he contracts as agent only. Where the debenture trust deed provides (as it should for the protection of the debenture holders) that a receiver appointed out of Court shall be the agent of the company, and the company goes into liquidation, the receiver is personally liable on contracts subsequently entered into by him; for the principal on whose behalf he was appointed is no longer capable of contracting. If he subsequently makes contracts as agent for the debenture holders they may be liable on them (*Robinson Printing Co.* v. *Chic* [1905], 2 Ch. 123). The power of appointing a receiver usually provides that he shall have authority to carry on the business of the company. Persons entering into contracts with him would naturally stipulate that he should be personally liable, for otherwise their only remedy would be against the company, and that, generally, would be valueless.

As the receiver is generally the agent of the company he is in no better position than the company as regards obtaining

a supply of gas, water, etc. without payment of arrears. He must give notice of his appointment to tenants of, and debtors to, the company, for otherwise they may pay to the company and obtain a good discharge. His appointment does not terminate the company's contracts. The receiver is only liable for rates and taxes for the period during which he is in occupation. Rates are apportionable, and for the period before his occupation the remedy is against the company only.

If the receiver sells freehold or leasehold property, it is usually necessary for the company to execute the conveyance or assignment, for the appointment does not vest the company's property in the receiver; but where there is a trust deed the trustees can generally make a title conveying under their power of sale.

Receivers under Floating Charge.—Where a receiver is appointed *under a floating charge*, the debts of the company referred to in S. 264—which have priority in a winding-up—are entitled to a similar priority at the hands of the receiver. He must, therefore, pay these debts out of assets in his hands in priority to the principal or interest due on the debentures (S. 78).

Receivers appointed by the Court.—A receiver appointed by the Court has been described as an impartial person appointed by the Court to collect and receive pending the proceedings the rents, issues and profits of land or personal estate, or other things in question, which it does not seem reasonable to the Court that either party should collect or receive or where a party is incompetent to do so (*Kerr on Receivers*, p. 4). The appointment may be made when the company issuing debentures has made default in payment of interest after the due date, or at such other times as the debentures become payable. But, in addition to this, the Court will appoint a receiver on the application of a debenture holder where the assets charged are "in jeopardy"; and, perhaps, jeopardy is the most frequent ground of application. That exists where creditors are pressing, or a winding up is imminent, or the company's funds or credit is exhausted, and creditors are threatening, or where the company proposes to dispose of its whole undertaking, or to distribute among shareholders a reserve fund which is its sole asset. The mere fact that the security is insufficient is not enough to establish a case

of jeopardy where no creditors are pressing. If the application is opposed, the existence of the alleged "jeopardy" will be closely examined. The meaning of "jeopardy" in this connection is discussed in *New York Taxicab Co.* [1913], 1 Ch. 1.

The appointment is usually obtained on motion in Court, though it may be made in chambers where the parties consent. If there is no opposition to the person proposed by the debenture holder to be appointed, the Court will usually appoint him. Where there is a dispute, the matter will be referred to chambers to select a person, but the nominee of the plaintiffs is usually appointed unless there is substantial ground for objection.

The receiver is usually required to give security within a short time after appointment, and his appointment lapses on failure to do so within the fixed, or extended, time. In urgent cases he is authorised to act at once on the undertaking of the person applying for the appointment to be responsible for his actions. The amount of the security is fixed having regard to the sum which the receiver is likely to receive. Usually double the amount of the annual income is fixed, plus the amount of the capital which he might be expected to receive. Where the amount is under £2,000 the bond of the receiver and his sureties is accepted, but for a larger sum a recognisance is required. In practice the sureties are now nearly always one of the guarantee societies or insurance companies. If the receiver is paid for his services, the premium on the bond or recognisance is not allowed out of the estate.

A receiver appointed by the Court is not the agent of any of the parties, but is appointed on behalf of all parties, and he is an officer of the Court. He should at once take possession of all personal property, and collect the rents and profits of real property, but the appointment does not vest in him any estate or interest in the real property, and, if the property is sold, the conveyance must be made by the persons in whom the legal estate is vested. The possession being the possession of the Court cannot be interfered with or disturbed without the leave of the Court. If it is desired to take proceedings, the permission of the Court must be obtained. It is the practice always to appoint the receiver subject to the interest of any prior incumbrancer, and, if a prior incumbrancer takes possession, this is not such an interference as the Court will

restrain. (*Underhay* v. *Read* [1887], 29 Q.B.D. 209; *re Metropolitan Amalgamated Estates* [1912], 2 Ch. 497.)

The appointment of a receiver by the Court operates as a dismissal of all the servants of the company, and it will probably be necessary for him to re-engage them on the same terms as before (*Reid* v. *Explosives Co.* [1887], 19 Q.B.D. 264).

The receiver may exercise all such acts of ownership as to the receipt of rents, compelling payment of debts, managing and letting land and houses, and making the property as productive for the parties as possible, as the owner himself might do. If a tenant refuses to attorn to the receiver, *i.e.* to admit that the latter is in the position of landlord and pay rent to him, the Court may order the tenant to do so. A letting of property by the receiver must not exceed three years without leave of the Court; if a lease for a longer period is proposed, the sanction of the Court must be obtained, and the lease will usually be executed by the person having the legal estate or the power of leasing. Small or ordinary repairs may be executed by the receiver without leave of the Court, but special expenditure should not be incurred without its sanction.

It may be necessary to commence an action to recover property subject to the debenture, but the receiver must not institute or defend proceedings without the permission of the Court. He should not himself make application to the Court; this should be done through the solicitor of one of the parties, usually the party who obtained the appointment of Receiver.

Debts which are preferential under the Act of 1929 must be discharged by a receiver, and the provisions of the *Workmen's Compensation Acts* as to insurance against liability under those Acts also apply to him. A receiver who failed to pay debts which are made preferential would be personally liable in damages to the preferential creditors.

A receiver appointed by the Court is not bound to carry out contracts into which the company has entered, and he should apply to the Court for directions in each case. The Court will not sanction breaches of contract merely to enable a receiver to dispose of the company's goods more profitably elsewhere. In giving its decision, the Court will have regard to the effect on the goodwill of the company, if it is of any value, and also to the interests of the debenture holders (*re Newdigate Colliery* [1912], 1 Ch. 468; and *In re Great Cobar*,

Ltd. [1915], 1 Ch. 682). Where it is necessary to borrow large sums for the purpose of carrying out the company's contracts and the profits to the company would be trifling, the Court will give leave to abandon the contracts. But leave to disclaim does not prevent the company from being liable in damages for the breach.

Borrowing by a receiver is frequently necessary for the purpose of winding up the business of the company. Where borrowing is necessary for the preservation of the property charged by the debentures, the Court will sanction borrowing: *e.g.* where a landslip had occurred on a foreign railway, and the foreign Government would have forfeited the railway if repairs were not executed, the Court sanctioned borrowing the sums necessary for that purpose (*Greenwood* v. *Algeciras Railway Co.* [1894], 2 Ch. 205). But it will not sanction borrowing to carry on a business which is merely speculative (*Securities and Properties Corporation* v. *Brighton Alhambra* [1893], 62 L J. Ch. 566).

The only security which a lender obtains is a charge on the company's assets, though he may, of course, stipulate for the personal liability of the receiver. The charge which is given ranks after the receiver's right to remuneration, the costs of administration, and possibly the plaintiff's costs of action, but ranks in priority to the debentures.

Where a business is to be carried on the receiver is usually appointed manager also. This appointment is always made for a limited time only, and can be made only when the charge given by the debentures includes the business of the company. Contracts made by the receiver or manager appointed by the Court are his own contracts solely; he is personally responsible upon them; and the company and the debenture holders are not bound by them. Even if he signs, *e.g.*, "The A. B. Company, per Q. R., Receiver," the contract is not the contract of the company. The receiver is entitled to an indemnity out of the assets against all liability so incurred (*Burt* v. *Bull* [1895], 1 Q.B. 276); *In re Glasdir Copper Mines* [1906], 1 Ch. 365).

The receiver cannot himself make a call upon the shareholders of the company even when the unpaid capital is included in the security. Application must be made to the Court, which, in proper cases, will direct the liquidator to make a call, and authorise the receiver to receive the amounts

payable (*Fowler* v. *Broad's Patent Night Light Co.* [1893], 1 Ch. 724).

The appointment by the Court of a receiver "supersedes the company in the conduct of its business; deprives it of all power to enter into contracts in relation to that business, or to sell, pledge or otherwise dispose of the property put into the possession or under the control of the receiver and manager. Its powers in these respects are entirely in abeyance" (*Moss S.S. Co.* v. *Whinney* [1912], A.C. 254).

The receiver must pass his accounts in the judge's chambers from time to time as directed by the order appointing him. The balances appearing on his accounts have usually to be lodged in Court. When he neglects to pass his accounts, his remuneration may be disallowed, and he may be charged interest on the balances retained by him.

A receiver is in a fiduciary position towards the persons in whose interest he is appointed. He cannot purchase any part of the property without the sanction of the Court, nor will he be authorised to bid at a sale unless special circumstances are shown, or all parties consent, for he has opportunities of acquiring information accessible only to himself. A purchase made by him in his own name, or in the name of a trustee for him, may be set aside (*Taylor* v. *Davies* [1920], App. Cas. 636).

A receiver is liable to make good any loss incurred owing to his negligence, or not having acted with such a degree of prudence as would be expected from a private individual in relation to his own affairs.

A receiver may pay money temporarily into a bank to a separate account, and is not liable for loss occasioned by the failure of the bank; but if he pays money in his hands as receiver to his own account and mixes it with his own moneys he is liable if a failure should occur. He is not answerable, while acting as manager, for trade losses, so long as he carries on the business in the usual and proper manner, in accordance with the directions of the Court; but he is liable for all losses occasioned by neglect to carry out such orders. He is liable to imprisonment for contempt of Court for failure to pay into Court the balances on his account.

The receiver's remuneration is fixed by a Master in Chambers when the accounts are passed. He is usually

allowed a commission on the gross amount of his receipts at rates varying from 2 per cent. to 5 per cent. in proportion to the trouble involved. In other cases a fixed salary is allowed. The Court may, on the application of the liquidator, by order fix the remuneration of any person who, under the powers contained in any instrument, has been appointed receiver or manager of the property of the company, and may from time to time, on an application made either by the liquidator or by the receiver or manager, vary or amend any order so made (S. 309). Special remuneration may be allowed if extraordinary trouble and expense are incurred.

The receiver can only be discharged by an order of Court. When a company goes into liquidation, a receiver appointed in a debenture holder's action is sometimes discharged, and the liquidator appointed in his place; but this will not be done if the assets are clearly insufficient to meet the debenture holders' claims, or if the nature of the assets is such that they are readily realisable by the receiver himself.

As regards real property, it is necessary under the *Land Charges Act* for a receiver, whether appointed by debenture holders or by the Court, to register the order appointing him. The person obtaining the appointment must give notice to the registrar of companies within seven days, under penalty of a fine of five pounds for each day during which the default continues. Notice of the receiver's ceasing to act must also be filed (S. 86).

CHAPTER XIV

ARRANGEMENTS AND RECONSTRUCTIONS. AMALGAMATIONS AND ABSORPTIONS

THE term " Reconstruction " is used in a very wide sense in the commercial world, and is applied generally, if not always accurately, to signify almost any form of company reorganisation.

In previous chapters there have already been dealt with—

(1) Alteration of Share Capital under S. 50;
(2) Variation of rights of holders of special classes of shares under S. 61 (*see* p. 83).
(3) Reduction of Share Capital under S. 55;
(4) Alterations in the Objects clause of the Memorandum under S. 5.

An arrangement may be entered into with creditors in the case of a voluntary winding-up, under S. 251. This procedure, rarely applicable to any but the simplest case, is given in the words of the Act, on p. 554.

Reconstruction may also be desirable for a number of reasons, of which the following are typical :

(1) To effect a reorganisation of the share capital and rights of members.
(2) To cancel paid-up share capital which has been lost, or is unrepresented by available assets, and usually, at the same time, to make provision for acquiring new capital;
(3) To effect a settlement or compromise with creditors or members, or any class of creditors or members.

The reconstruction may be effected in one of the following ways :

(1) By a private Act of Parliament. This method is, however, of very limited application, since it involves great expense, and would be resorted to only when no

other method is available (cf. p. 477 *re* Statutory Companies);

(2) By a sale of the assets or part of them under (*a*) Powers contained in the Memorandum, or (*b*) S. 234.

(3) By a scheme of arrangement under S. 153.

Where it is desired to secure a monopoly by eliminating competition, or to safeguard supplies of raw materials, technical operations, or markets, or to effect economies in management, etc., or otherwise to rationalise an industry, it may be expedient to amalgamate a number of existing businesses into one new large company, or for one company to acquire by absorption the whole of the other businesses, or, where it is deemed advisable that each business shall retain its separate entity, for one company to acquire a controlling interest in the share capital of the others.

It is necessary to remind the student that company reconstruction may be of a simple kind, effected under the powers conferred by S. 153 or S. 234 of the Act, or it may be so complicated as to make skilled legal advice essential to its safe conduct. In any case solicitors will have to be employed. For example, a reconstruction may involve reduction of capital, as well as a simultaneous arrangement under S. 153. In such cases it is necessary to follow the procedure laid down by SS. 55–58 for effecting a reduction of capital in addition to that prescribed by S. 153.

In any suggested arrangement for a reconstruction, amalgamation or absorption, it is essential to obtain in advance the opinions of the majority of the shareholders or creditors concerned, in order to facilitate negotiations, and to avoid any subsequent hitch in the scheme. The whole proposition should be cut and dried, so far as is possible, before any definite application is made to the members, creditors, or the Court for final approval. Possible dissentients should be tactfully handled with the aim of meeting their objections. The preliminary steps may make or mar the scheme, and must therefore receive thoughtful attention.

Reconstruction under Powers in Memorandum.—Any reconstruction which involves (*a*) the winding-up of a company, and (*b*) the formation of a new company to acquire its business or the transfer of the business to an existing company, and (*c*) the division of the proceeds amongst the members of the transferor

company, cannot be effected under powers contained in the memorandum and articles so as to deprive dissentient shareholders of their rights under S. 234. Sale of all the property or undertaking of a company at a given moment may be (*see* S. 5, s.-s. (1 *f*)), but the sale of the whole undertaking coupled with division of proceeds cannot be, a corporate object, and any provision which seeks to dispossess a corporator of his status unless he submits to a liability in excess of the limit of liability on his shares is *ultra vires* (*Bisgood* v. *Henderson's Transvaal Estates* [1908], 1 Ch. 743). Reconstruction under powers of sale conferred by the memorandum and articles can only be effected under SS. 153–154.

Reconstruction under S. 234.—(1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not (in this section called " the transferee company "), the liquidator of the first-mentioned company (in this section called " the transferor company ") may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect, or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section.

(4) If the liquidator elects to purchase the members'

interest, the purchase-money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for winding up, or for appointing liquidators; but, if an order is made within a year for winding up the company by or subject to the supervision of the court, the special resolution shall not be valid unless sanctioned by the court.

(6) For the purposes of an arbitration under this section the provisions of the *Companies Clauses Consolidation Act*, 1845, or, in the case of a winding-up in Scotland, the *Companies Clauses Consolidation (Scotland) Act*, 1845, with respect to the settlement of disputes by arbitration, shall be incorporated with this Act; and in the construction of those provisions this Act shall be deemed to be the special Act, and "the company" shall mean the transferor company, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator, or, if there is more than one liquidator, then of any two or more of the liquidators (S. 234).

In a creditors' voluntary winding up, the liquidator cannot exercise the powers conferred by S. 234 except with the sanction either of the court or of the committee of inspection (S. 243). The powers conferred by S. 234 are frequently invoked when a company is in need of fresh working capital, and this cannot be raised by the usual methods. It is likely that the section will be utilised to a greater extent than hitherto in cases of reorganisation or reduction of capital, enlargement of objects, etc., as the expenses formerly involved in registering a new company with a view to reconstruction are not now in point, having regard to the *Finance Act*, 1927, S. 55, as amended by the *Finance Act*, 1928, S. 31 and *Finance Act*, 1930, S. 41. In certain circumstances these sections give relief from capital and transfer stamp duty in case of reconstructions or amalgamations (*see* p. 586).

Fresh working capital is usually provided for under such schemes by allotting, say, one £1 share credited with 15*s.* paid in the new company for every £1 share fully paid in the old, the new company calling up the 5*s.* per share at once. An

issue to the public may also follow. Both these may be underwritten, usually by the old company, in which case the underwriters may reserve the right to rescind the underwriting agreement if the dissentients exceed a stated fraction of the whole.

Procedure.—If necessary, ascertain the opinion of at least the largest shareholders on the scheme.

Deliver to the registrar of companies for registration a statutory declaration of solvency (*see* p. 548).

Convene an extraordinary general meeting, sending a copy of the scheme with the notice, to pass the following as Special Resolutions :

(*a*) That the company be wound up voluntarily;

(*b*) That . . . . . be appointed liquidator [an ordinary or extraordinary resolution would suffice for the appointment, but it is convenient to include the whole in one resolution], with power to sell the undertaking to a new (or existing) company on the terms of a scheme of reconstruction submitted to the meeting, a copy of which is initialed by the chairman for identification. The notice should state that the procedure is under S. 234.

File copies of Special Resolutions and notice of appointment, and insert notice of winding-up resolution in the *Gazette*.

Provide for dissentient shareholders.

Prepare the agreement for sale.

Register the new company with power in its Memorandum to purchase the undertaking of the old company in accordance with the scheme. If the name of the old company is to be taken, the liquidator should give a written consent for filing with the new company's documents (on form No. 14). If an existing company is taking over, the agreement can be entered into immediately; otherwise it may be advisable to interpolate an agreement with a trustee for the new company (*see* Chap. III) (*Hester & Co.* [1875], 44 L.J., Ch. 747).

Issue to the shareholders of the old company a copy of the scheme, a form of acceptance of the shares, and a form of renunciation. Where advantage is being taken of the relief from stamp duties provided by *Finance Act*, 1927, S. 55, however, it may be inadvisable to allow renunciations in view of

the decision in *Tillotson* v. *Commissioners of Inland Revenue* [1933], 1 K.B. 134 (*see* p. 589).

Distribute proceeds and complete dissolution of old company.

Special notice of the resolution must be given to the shareholders, stating that a sale is intended under S. 234 (*Imperial Bank of China* v. *Bank of Hindustan* [1868], 6 Eq. 91). The agreement for reconstruction may compensate directors for loss of office, etc., but the proposed payment to directors under the agreement must be clearly disclosed to the members of the company and the proposal be approved by the company (S. 150, s.-s. (1)). (*See* p. 231.)

There is some doubt as to whether the word "property" used in S. 234 includes uncalled capital. In *Clinch* v. *Financial Corporation* [1868], 4 Ch., App. 117, it was held that uncalled capital was not included. But it is competent for directors to call up unpaid capital immediately prior to winding up. The debts thus created are property of the company and transferable (*Sankey Brook Co.* [1870], 10 Eq. 381). But such questions as this rarely arise in proceedings under S. 234.

Under S. 234 the assets of the transferor company may be sold to a *company* whether incorporated under the Companies Act or not; so that a sale may be made under this section to a foreign company, but not to an individual. But a contract of sale may be entered into with a person acting as agent or trustee for the transferee company, provided that he makes no personal profit out of the transaction (*In re Hester & Co.* [1875], 44 L.J., Ch. 747).

Debenture holders commonly accept debentures in the new company; other creditors also agree to a novation, *i.e.* they accept the new company as their debtor in place of the old. Those debenture holders and creditors who demur should be paid out.

Dissentients.—Members may assent to the scheme, or abandon all interest under it (in which case they may take no steps whatever), or dissent. To entitle a member to dissent, he should strictly observe the provisions of S. 234, s.-s. (3), and in his notice state both alternatives, either of which the liquidator may follow at his option. Where under s.-ss. (3) and (6), arbitration is resorted to in order to determine the value of a dissentient member's interest, examination of officers provided

for by S. 214 is not allowed for that purpose (*British Building Stone Co.* [1908], 2 Ch. 450).

Dissentient shareholders may also petition the Court for an order for winding up by, or under the supervision of, the Court, and if the proposed scheme is unjust, the Court may grant the petition. In that case the scheme will be subject to the sanction of the Court, and the Court will protect the rights of the minority (*In re Consolidated South Rand Mines Deep* [1909], 1 Ch. 491), but the petition must be presented before the agreement has been executed (*Imperial Bank of China* [1866], 1 Ch. App. 339).

Dissentient creditors may apply for winding up by or under the supervision of the Court; and if there is a likelihood of such a petition being presented, the liquidator should himself apply for a supervision order, since by S. 234 (5) if an order for winding up by or subject to the supervision of the Court is made within a year from the passing of the special resolution, the resolution is not valid unless sanctioned by the Court. For one year, therefore, after the passing of the special resolution, there may be a possibility that the scheme may be nullified. The sanction must be given by the order to wind up or by a subsequent order; it cannot be given by an antecedent order (*re Callao Bis Co.* [1889], 42 Ch. D. 169).

Executors of a deceased member may exercise the rights of dissentients even if they have not elected to be registered as members (*Llewellyn* v. *Kasintoe Rubber Estates* [1914], 2 Ch. 670).

The Articles cannot preclude dissentients from exercising their statutory rights (*Payne* v. *Cork Co.* [1900], 1 Ch. 308; *Bisgood* v. *Henderson's Transvaal Estates* [1908], 1 Ch. 743). A shareholder in the transferor company cannot be compelled in a reconstruction under S. 234 to accept shares in the transferee company which carry a liability for calls, but if he refuses, he loses all interest in the shares, unless an interest in them has been reserved to him by the scheme. Where there is a liability on the new shares, it is the practice to fix a reasonable time within which shareholders must decide whether they will take up the shares. Shares not taken up within the appointed time are then at the disposal of the transferor company or the liquidator, or, if so provided in the scheme, the transferee company.

Although the contract of sale may decide the considera-

tion to be paid, it cannot dictate the mode of its distribution among the transferor company's members. The distribution must be according to the rights of those members as conferred upon them by the Memorandum and Articles (*Griffith* v. *Paget* [1877], 5 Ch.D. 894), and where special classes of shares carrying special rights exist, difficulties may arise. Where preference shares carry preferential rights in the distribution of assets, then, unless the Memorandum and Articles empower the proposed mode of distribution, the holders of such shares must consent unanimously to the distribution proposed, otherwise the dissentients' claims must be satisfied, or the scheme be abandoned. If, however, the rights are fixed by the Memorandum, S. 153 might be resorted to, under legal advice, and, if by the Articles, the Articles might be altered to permit of the proposed distribution; subject to S. 61 (*see* p. 83)

If share warrants have been issued by the transferor company, advertisement of all notices is essential, and a longer time must be given to warrant holders in which to exercise their option to take shares in the new company than is ordinarily necessary for the holders of share certificates.

It is advisable that the shares in the new company should be allotted direct to applicant members of the old company. If the shares are allotted to the liquidator, he has to incur the expense of executing transfers, etc.; moreover, if the shares are not fully paid, he may be left with some of them, and may be put upon the " B " list of contributories in respect of those transferred, if the new company should be wound up within a year.

The method advised is for the members of the old company to receive a form of application and a form of renunciation (but see p. 391 as to the latter). Provision should be made that the forms are to be forwarded to the liquidator, within a specified period of time, along with the relevant share certificate (s), which he will cancel. The liquidator then hands the forms to the new company, which allots the shares, following the same procedure as is required in an ordinary allotment. Allotment should not be made until after the time set for application has elapsed. Any shares not taken up should be offered to the members taking shares in the new company, and also be advertised for sale to the general public,

a combined tender and application form being used for the purpose.

Provision must be made for dealing with fractions of shares where these arise. It is usual to arrange for certain members to purchase the fractions, or they can be adjusted in cash.

The provisions of S. 42 of the Act (as to filing returns of allotments) must be complied with, and if the shares are allotted direct to the old company's members it may be necessary to execute a contract between the transferee company and a trustee for the allottees.

It should be readily seen that in an amalgamation or absorption the procedure of the transferor company is the same as that outlined above, *i.e.* under S. 234.

Where the transaction is an acquisition of a controlling interest, *i.e.* of a preponderance of the shares, however, the transaction so far as the acquiring company is concerned simply amounts to a purchase of shares for cash or other consideration, and, in the case of the company whose members are parting with the control, a transfer from its members to one new member (the purchasing company) of the shares so purchased. *See* S. 155, p. 397, as to dissentients.

A company can sell its assets if powers so to do are contained in the Memorandum so long as it continues a going concern, the effect being merely to substitute new assets for old. There would appear to be nothing to stop a company that had so sold the whole of its assets from subsequently going into liquidation and distributing the proceeds. But unless a considerable interval of time separated the sale and the passing of the special resolution to wind up, and the whole of the company's members were perfectly agreed, such a transaction might easily be upset on the ground that it was an evasion of S. 234.

Reconstruction under S. 153.—S. 153 enables a company to come to an arrangement or compromise with all or any class of its members or its creditors, subject to the approval of the requisite majority and the approval of the Court. It also enables a company to reorganise its capital, where the rights of the members are fixed by the memorandum. The wording of S. 153 is as follows:—

S. 153.—(1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between

the company and its members or any class of them, the court may, on the application in a summary way of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs.

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

(3) An order made under subsection (2) of this section shall have no effect until an office copy of the order has been delivered to the registrar of companies for registration, and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made, or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(4) If a company makes default in complying with subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one pound for each copy in respect of which default is made.

(5) In this section the expression "company" means any company liable to be wound up under this Act, and the expression "arrangement" includes a re-organisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods.

S. 154 contains provisions for facilitating reconstruction and amalgamations of companies, and S. 155 gives power to acquire the shares of shareholders who dissent from a scheme on a contract involving the transfer of shares approved by the majority. These sections are given in full below :—

S. 154.—(1) Where an application is made to the court under the last foregoing section of this Act for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as "a transferor company") is to be transferred to another company (in this section referred to as "the transferee company"), the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters :—

(*a*) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;

(*b*) the allotting or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

(*c*) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(*d*) the dissolution, without winding up, of any transferor company;

(*e*) the provision to be made for any persons, who within such time and in such manner as the court direct, dissent from the compromise or arrangement;

(*f*) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause an office copy thereof to be delivered to the registrar of companies for registration within seven days after the making of the order, and if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

(4) In this section the expression "property" includes property, rights and powers of every description, and the expression "liabilities" includes duties.

(5) Notwithstanding the provisions of subsection (5) of the last foregoing section, the expression "company" in this section does not include any company other than a company within the meaning of this Act [*i.e.* it excludes companies not registered either under the Act or under the earlier Acts of 1856, 1857, 1862 or 1908, and also excludes companies registered in Northern Ireland or the Irish Free State or elsewhere (*see* S. 380)].

S. 155.—(1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as "the transferor company") to another company, whether a company within the meaning of this Act or not (in this section referred to as "the transferee company"), has within four months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than nine-tenths in value of the shares affected, the transferee company may, at any time within two months after the expiration of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and where such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company:

Provided that, where any such scheme or contract has been so approved at any time before the commencement of this Act, the court may by order, on an application made to it by the transferee company

within two months after the commencement of this Act, authoris notice to be given under this section at any time within fourteen day after the making of the order, and this section shall apply accordingly except that the terms on which the shares of the dissenting share holder are to be acquired shall be such terms as the court may b the order direct instead of the terms provided by the scheme o contract.

(2) Where a notice has been given by the transferee company unde this section and the court has not, on an application made by th dissenting shareholder, ordered to the contrary, the transferee com pany shall, on the expiration of one month from the date on whicl the notice has been given, or, if an application to the court by th dissenting shareholder is then pending, after that application has beer disposed of, transmit a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or othe consideration representing the price payable by the transferee com pany for the shares which by virtue of this section that company i entitled to acquire, and the transferor company shall thereupor register the transferee company as the holder of those shares.

(3) Any sums received by the transferor company under thi section shall be paid into a separate bank account, and any such sum and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect o which the said sums or other consideration were respectively received

(4) In this section the expression "dissenting shareholder" includes a shareholder who has not assented to the scheme or contrac and any shareholder who has failed or refused to transfer his share to the transferee company in accordance with the scheme or contract

It is now settled practice that reconstructions may be carriec out under S. 153 without the necessity of winding up as under S 234, and that, upon application under S. 154, the court may mak the necessary orders providing for the transfer of the property and the allotment of shares to members of the old company (*see In re Star Tea Co.* [1930], W.N. 4).

Procedure.—Prepare the scheme[1] of arrangement anc ascertain the views of the larger shareholders or creditors (o class thereof), as the case may be.

Make summary application to the Court for an order tc convene the necessary meeting.

Call the meeting of members, or creditors (or class), as directed by the Court, enclosing with the notice a copy of the scheme and a form of proxy.

Prepare a list of those entitled to attend the meetings showing in each case the values attached to their shares o debts (as the case may be).

[1] The scheme should contain a clause authorising the applicant (who is commonly the secretary or solicitor) to assent to any modific ations in the scheme which the Court may deem fit to impose, otherwise fresh meetings will have to be held to sanction the amended scheme.

Hold the meeting, and check the majority in number to see that it is also a three-fourths majority in value of those of the *class* who are present, and vote, either in person or by proxy, as per list.

Petition [1] the Court for sanction to carry out the scheme (the petition cannot precede the meeting). When the Court makes the order sanctioning the scheme, all creditors or members (or class) as the case may be, and the company are bound thereby,[2] as soon as an office copy of the order has been delivered to the registrar of companies for registration.

Where the scheme is with creditors, it is a common practice, though not essential, to hold a meeting of the company to approve it, in order to give the Court no grounds for refusing its sanction.

The subsequent procedure depends upon the scheme, but SS. 154 and 155 are explicit, and the procedure thereunder depends upon the order of the Court, which must be followed. The rights of dissentients under S. 154, s.-s. (1 *e*), and S. 155 should be particularly noted.

It should be noted that where in a reorganisation of capital it is proposed to alter the privileges attached by the memorandum to any particular class of share, *e.g.* preference shares, and the memorandum does not provide for such alteration, the reorganisation can be effected only by the above procedure under S. 153 (cf. S. 61—p. 83).

Technicalities may be waived, and a company be bound in a matter *intra vires* by the unanimous agreement of the whole of its members (*Express Engineering Works* [1920], 1 Ch. 466; *Oxted Motor Co.* [1921], 3 K.B. 32; *Parker & Cooper* v. *Reading* [1926], 1 Ch. 975). In *Anglo-Spanish Tartar Refineries* [1924], W.N. 222, none of the advertisements directed by an order were inserted, but it was proved that thirty out of the thirty-one shareholders received notices, and practically the whole of the shares were accounted for at the meetings; the Court overlooked the technical breach caused by the oversight, and allowed the matter to proceed without convening further meetings.

[1] *See* note on p. 398.

[2] Where an arrangement is carried out without liquidation, the Court cannot restrain actions against the company, or prevent a judgment creditor from levying execution on the company's property (*Booth* v. *Walkden Spinning Co.* [1909], 2 K.B. 368), but *see* S. 155, s.-s. (1 *c*).

Every person who has a pecuniary claim against the company, whether actual or contingent, is a creditor (*Midland Coal, etc. Co.* [1895], 1 Ch. 267). Holders of bearer debentures who wish to vote must produce them at or before the meeting (*Wedgwood Coal Co.* [1877], 6 Ch. 627). Each class must be confined to those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest (*Sovereign Life Assurance Co.* v. *Dodd* [1892], 2 Q.B. (C.A.) 573).

Proxies can only be given to persons who are themselves members of the particular class.

The petition must state the date of incorporation of the company; the registered office; objects; that the company has carried on business since incorporation; particulars of capital; reference to a Schedule in which are recited the facts leading up to, and the effect of, the scheme; a recitation of the order to summon the meetings; advertisements; the number of persons present at the meetings in person and by proxy; the result of the meetings; and any difficulties arising as to the voting. Evidence by affidavit must be produced as to posting the notices, forms of proxy, and copies of the scheme. The chairman's report is usually also required.

An arrangement under S. 153 may be entered into by debenture holders or other creditors whereby funding certificates, shares or debentures are accepted in lieu of cash in respect of debts, or arrears of interest; or whereby arrears of interest are forgone; the advantage of proceeding under this section being that the minority is bound. Persons who have guaranteed the company's debts, however, are not released in respect of the claims of those creditors who have not agreed to the scheme, but by paying the debts of such creditors the guarantors are subrogated to their rights under the scheme.

Where a reconstruction provides that the creditors are to be satisfied in full immediately, their consent is not necessary; but their sanction is essential if there is a proposal for a composition, deferred payment or the acceptance of shares or debentures in a new company.

In *United Provident Assurance Co.* [1910], 2 Ch. 477, it was held that separate meetings must be convened where different amounts have been paid up upon shares, or calls have been paid

in advance, since the different liabilities attaching to the shares created different classes of shareholders.

In an arrangement where a new company takes over the liabilities the Court may provide that the creditors can enforce their rights against the new company, although they are not parties to the sale agreement (S. 154, s.-s. (1 *c*)).

The Court has regard to a scheme in its entirety, and will sanction any fair scheme, if made *bona fide* in the interests of the creditors (*re Alabama Railway Co.* [1891], 1 Ch. 213), and will not sanction a scheme under S. 153, if the proper procedure is under S. 234, *e.g.*, to impose a further liability on the holders of fully paid shares, by reason of the fact that the shares in the new company are to be issued as partly paid.

A scheme requiring each shareholder to hand over a portion of his fully paid shares as consideration for the purchase of another undertaking was sanctioned in the case of *Guardian Assurance Co.* ([1917], 1 Ch. 431).

Where the proposal is in effect one for reduction of capital, S. 55 must be complied with, as well as S. 153 (*Peebles Hotel-Hydropathic* [1920], S.C. 303; *Guardian Assurance Co., supra*).

In *Anglo-Continental Supply Co., Ltd.* [1922], 2 Ch. 734, Mr. Justice Astbury adopted the following propositions :

(1) When a so-called scheme is really and truly a sale, etc., under S. 234 *simpliciter*, that section must be complied with and cannot be evaded by calling it a scheme of arrangement under S. 153 (*General Motor Cab Co.* [1913], 1 Ch. 377 ; *Guardian Assurance Co.* [1917], 1 Ch. 431).

(2) Where a scheme of arrangement cannot be carried through under S. 234, though it involves (*inter alia*) a sale to a company within that section for " shares, policies, and other like interests " and for liquidation and distribution of the proceeds, the Court can sanction it under S. 153 if it is fair and reasonable in accordance with the principles upon which the Court acts in these cases, and it may, but only if it thinks fit, insist as a term of its sanction on the dissentient shareholders being protected in manner similar to that provided for in S. 234 (*Canning Jarrah Timber Co.* (*Western Australia*) [1900], 1 Ch. 708; *Sandwell Park Colliery Co.* [1914], 1 Ch. 589).

(3) Where a scheme of arrangement is one outside S. 234 entirely the Court can and *a fortiori* will act as in proposition (2), subject to the conditions therein mentioned.

The Court will disregard the dissent of a class of shareholders if the value of the company's assets shows that those shareholders can have no interest therein (*In re Tea Corporation* [1904], 1 Ch. 12).

The notice to be given to dissentient shareholders under S. 155, is Form No. 100 of the Companies (Forms) Order, 1929, supplemented by S.R. & O. 1929 No. 1103.

For the purposes of S. 155, where not less than nine-tenths of the shareholders in the transferor company approve a scheme involving the transfer of the company's shares to a transferee company, the offer must *prima facie* be taken to be a fair one, and the Court will not " order otherwise " unless it is affirmatively established that, notwithstanding the views of a very large majority of shareholders, the scheme is unfair (*In re Hoare & Co.* [1934], 150 L.T. 374).

CHAPTER XV

OFFICE ORGANISATION AND MANAGEMENT

ONLY in the smallest business is it possible for any one man to perform all the detailed routine necessary for its proper and remunerative running. As a business increases in size and scope, assistants have to be introduced, and in order to ensure smooth and harmonious working, adequate organisation is essential. In many businesses the system has been allowed to grow without any attempt to adapt it to the varying needs of the concern, with the almost inevitable result that confusion arises through the overlapping of duties, and the delay in dealing with matters for which no one feels he is responsible.

To ensure that an adequate system of organisation is installed to fit the business, some one person must be directly responsible for the working of the whole. Under him those assistants who are in charge of others should have well-defined spheres of action, each dovetailed into and harmonising with the others, like the cogs in a smoothly running machine. Every employee must know exactly to whom and for what he is responsible.

Interference by those in authority should be avoided. If an order is to be given to a clerk, it must be given through the proper person, to whom the clerk is responsible. In no other way can friction be avoided. Also, no departmental heads should be allowed to interfere in another department. These simple rules, carried out in a thorough manner, need not involve "red-tape" methods. If the routine is carefully impressed on each new employee, and any changes properly talked over by all concerned before their introduction, a very little tact on the part of those in authority should ensure success. It is particularly important that any complaint, supposed grievance or sign of unrest should be investigated at once, and the matter adjusted. Such things grow by keeping, whereas a friendly or, if necessary, a firm, chat with those concerned should remove any trace of unpleasantness.

The task of organiser-in-chief frequently devolves on the

secretary, and it is therefore proposed to indicate the special points to which, if he is to be successful in his efforts, he must direct his attention.

It may be taken for granted that any person who is appointed as secretary to a company of any size and importance has already a sound commercial education, and a certain amount of practical experience. Every opportunity must be seized to amplify both, and opportunity should not be lacking. The experience of others should also be utilised, both by extensive reading, by attendance at business and trade exhibitions, and by observation of the methods of those with whom his business brings him into contact. The method of "trial and error," formerly looked upon as the only way in which to gain experience, is expensive, and cannot now be tolerated to any marked degree.

A natural intuition enables some men to make an immediate success in any post to which they may be appointed. Such a type of person is, however, rare, and the average man must work more gradually, acquiring as he goes the habits of logically considering cause and effect, looking ahead, analysing facts, studying statistics and other commercial information, retaining memoranda of useful facts, making up his mind and sticking to his decisions where he is right, but gracefully admitting his error where he is wrong. Moreover, he must cultivate the habit of character-reading, and of memorising the weak and strong points of those with whom he is brought in contact. In controlling a staff, this habit is of incalculable value.

He must keep abreast of all developments, and be ready not only to adapt himself or the business to changed conditions, but also to introduce any improvements that will make his company's products more saleable, or reduce the costs, or otherwise be advantageous to the business, and incidentally, of course, to the organiser. In other words, the secretary, as organiser, must be ambitious, not only for himself, but for the business and those around him; and, particularly as he advances in years, he must endeavour to avoid that so-called "conservatism" which, in many cases, has opposed the introduction of modern devices and systems, without inquiry into their merits. For example, the opposition of so-called astute business men to the typewriter, when it first became a commercial proposition, is almost unbelievable, yet to-day this most useful

machine is found in the home as well as in the office, and is a commonplace part of the ordinary equipment—so much so that the present generation look upon it in much the same way as they look upon trains or electric light, *i.e.* as something essential to the ordinary business of life.

Improvements are taking place daily, and, the organiser, instead of looking suspiciously upon new ideas, should train his own imagination to seek out and invent improvements for himself. Even a small adaptation of an old idea may create economy in working.

On the other hand, of course, the organiser must not be too easily swayed by the enthusiasm of the salesmen who exhibit new inventions for his consideration. By all means let the organiser have the merits and methods of working of such devices demonstrated to him, but he should be alert to detect any demerits, with special reference to his own business, before deciding to instal any of them. Again, exponents of many of the office "systems" which have been placed on the market sometimes overlook the fundamental fact that a system can only be successfully installed where it is capable of being adapted to existing conditions, and that, in a large organisation, sweeping changes can only be made after a period of the most careful planning and training of the staff. Supersession should be gradual, not violent.

On the personal side, an organiser must inspire respect in those with whom he comes in contact. This involves a capacity for self-control even under the most exacting conditions. A man of quiet demeanour, especially if he also possesses firmness and impartial fairness, can always do more with his staff, in the long run, than one prone to sarcasm, anger or brow-beating. A little praise is worth a great deal of fault-finding, and a firm reprimand when needed soon produces the desired effect on the staff, particularly if they have found that their principal takes a real interest in their work, their progress, and their studies.

Selection of Staff.—It is always a problem whether a vacancy should be filled by promotion or by importing new blood. The infusion of the latter is always worthy of consideration, but employees are entitled to look for promotion, and unless there is reasonable prospect of advancement, the best employees will not stay with the business. Vacancies in the lower grades must necessarily be filled by new employees. The cost of

training these recruits, owing to delays, errors, etc., and the time lost by others in demonstration, renders frequent change expensive. Maximum efficiency can hardly be looked for under such conditions.

Engaging Employees.—One of the most difficult tasks is the engagement of the staff. In no branch of secretarial work is there required a greater concentration on the job in hand, and no effort should be spared in the endeavour to find the most suitable man for the appointment.

In the first place, when a vacancy occurs, either an advertisement will be inserted in the most suitable newspaper or trade journal likely to be read by the class of applicant desired, or an employment agency specialising in that class will be approached. In either case, details should be given of the vacant post, and of the minimum information required from the applicants. The advertisement should set out clearly the type of man or woman who is required. Far too much so-called economy is practised in such advertisements by concerns which, in other directions, spend fortunes in advertising. A clear advertisement is far more likely to attract the right kind of applicant, and the cost of the advertisement is relatively small in comparison to the capitalised value of the asset which the business acquires in securing the right employee. If an employment agency worthy of the name has been communicated with, they select a few persons from those on their books likely to prove suitable, and arrange for them to be interviewed. This method limits the field of possible applicants, but saves the time of the person responsible for the appointment.

If an advertisement has been inserted, it is usually a very heavy task to peruse and sort out the applications. An astonishingly high proportion has usually to be rejected as unsuitable, owing to the failure of the applicants to give the information demanded in the advertisement. Others are rejected because of their bad penmanship (where this is of prime importance), poor acquaintance with the rules of grammar, obvious lack of the minimum experience, or other deficiencies apparent from their applications. From those that remain, the most promising should be invited to attend for an interview at a specified time and place.

The question of references is always one that requires adequate consideration. Those who rely upon their own

powers of observation, knowledge of character and intuition in selecting a candidate without references do so at their own risk. Conversely, reliance upon copy references enclosed with applications is just as dangerous. At least, the originals should be inspected, and if, at the interview, the applicant makes a favourable impression, these originals should be verified, preferably by an interview with the person who gave the reference, if this is possible. Some sort of reference is usually given, unless the employee leaves under very serious circumstances. What such references are worth depends upon the moral code of the persons giving them. Most firms of high standing refuse to give written references to employees when leaving their service, but keep a record of all employees, so that when referred to they can give a reliable and honest opinion.

The questions that an applicant should be asked at an interview naturally vary with the position that is to be filled. In a large business, where employees have frequently to be engaged, it is of great assistance to require each applicant to fill up a standard form prior to the interview, or to have a standard questionnaire for each class of employee, so that the same particulars of each applicant may be taken and compared.

The application form may take the following or similar form :

PRACTICE COMPANY, LIMITED.

Application for post as.....

Full name .....
Address ..... Telephone No. .....
Date and place of birth.....
Nationality .....Are you married ? .....
If so, number of children ..... Other dependents .....
If single, do you live with parents ? ..... Any dependents ? .....
Do you own your house ? ..... Have you other income ? .....
Do you know of anything which would prevent our securing a fidelity bond on your behalf ?.....
Details of education .....
.....
What games do you play ? .....
Are you now studying ; if so, what ? .....
What examinations have you passed ? .....
What diplomas or degrees do you hold ? .....
Nature of present employment (if any) .....
Present (or last) salary .....
Have you previously been in our employment ? .....
Have you any friends or relations on our staff ? If so, who ? .....

PREVIOUS EMPLOYMENT.

Dates.		Employer's Name.	Post	Immediate Supervisor.	Salary.	Reason for Leaving.
From.	To.					

Names and addresses of persons to whom reference may be made :

(1) .....

(2) .....

(3) .....

In order to enable a proper review to be made of the applicants, and to assist in the final selection, it is advisable to have standard records of the interviews, in some such form as the following :

PRACTICE COMPANY, LIMITED.

Interviewer's Report.

By.....

Applicant's name .....

Post in view .....

First general impression .....

.....

Personal appearance .....

Any peculiarity or characteristic which impressed you .....

.....

Did you form any instinctive liking for the applicant ?.....

Why ? .....

Do you think him fitted for the post ?.....

What do you consider him best fitted to do ? .....

.....

Healthy ? ..... Self-reliant ? ..... Alert ? .....

Loyal ? ..... Courteous ? ..... Neat ? .....

Tactful ? ..... Respectful ? ..... Ambitious ?.....

Expresses himself well ? ..... Optimistic ? .....

Apparent age ? ..... Home conditions .....

Did he seem well-bred ?.....

Would you like to associate with him ? .....

Would you be prepared personally to employ him ?.....

Salary required.....

Any other observations .....

.....

.....

.....

Every endeavour should be made to make the applicants feel at ease during the interview. A man applying for a post is naturally inclined to be nervous, and every allowance should be made for this human failing. It does not follow that he will be nervous or lacking in self-confidence in his business dealings. The man, also, who, apparently full of confidence, places his hat on the interviewer's desk and his gloves somewhere else, and, generally, displays bad taste, may equally be suffering from an exaggerated effort to hide nervousness, although it is more likely that he is naturally bumptious and unsuitable. Experience and acute observation, a kindly and friendly manner, will soon overcome the nervousness which is only temporary, and enable the interviewer to decide whether or not the applicant is worthy of consideration. Much will depend upon the post the applicant is called upon to fill. The qualities desired in a traveller, for example, will be different from those desired in an internal audit clerk. The would-be traveller should be a good talker, able to " sell " his abilities, just as he would his goods; the audit clerk, quieter, more reticent, though equally alert—each thus possessing a natural asset for the post he seeks.

Other things being equal, preference should be given, as a general rule, to the applicant who shows evidence of having made a genuine attempt to acquire knowledge, *e.g.* by having attended classes, obtained suitable certificates, become a member of his professional or trade association, etc. It is a mistake to think, as it is not unknown for employers to do, that such an applicant is too genuinely ambitious, and will therefore only use the position, if it is given to him, as a stepping-stone to a better one elsewhere. On the contrary, in most cases he is likely to prove a most satisfactory employee, using every endeavour to make himself really valuable to the business, and prove himself worthy of advancement. If he ultimately discovers that the way to promotion is barred, then he will undoubtedly move on, but not without having paid his dividends in the business while in its service.

The salary or wage asked for in an application should not be a deciding factor. An applicant suitable for the post is usually at a loss to know how much to ask. He may be tempted to assess it at a low figure, thinking that he will thus be more likely to be engaged, or he may assess it high to impress his worth. In either case, the person responsible for the appoint-

ment will usually have no difficulty in fixing the salary satisfactorily. The diffident applicant will be the more anxious to justify the increase which should be given to him as soon as possible; the applicant who places a high value on his services will, in most cases, be prepared to accept a smaller amount than that suggested, and will feel no disappointment.

There is a great deal of misconception on the question of remuneration. It is undoubtedly a great mistake to expect the best results from poorly-paid workers. These cannot be expected to have the stamina or the facilities for self-improvement enjoyed by those better remunerated. On the other hand, employees who are too highly paid tend to be expensive in many ways: not only because they are not earning their remuneration, but also because they are apt to get too high ideas of their own worth, with the result that there is dissatisfaction on both sides. A malcontent also reacts on the other members of the staff.

The best man for the job is always worth more than the next best, and this should be suitably recognised. When dealing with Union members, other aspects, of course, must be considered. This is not the place to discuss such questions, nor is it necessary, because the person engaging employees where Union rates are involved must necessarily make himself thoroughly acquainted with the trade agreements.

The actual final decision may rest with the Board of Directors, in which case the secretary (or other official responsible) will select about three applicants for an interview by the Board. For many office positions, at least, the secretary will make his own engagements, and must make the final choice himself. For subordinate positions, the departmental head is frequently allowed, either to choose applicants for the secretary or managing director to make the final choice, or actually to engage his own staff.

Written agreements are essential where a responsible position is to be filled. One copy should be given to the employee, and one retained by the company. By S. 4, *Statute of Frauds*, if the agreement is one which cannot be performed within a year of its being entered into, the agreement must be in writing. The agreement should show the terms of service and the period of notice, and be signed by both parties. The agreements should be standardised so far as is practicable, as this facilitates

reference. They should be stamped (6*d.* adhesive if affixed before being signed, otherwise 6*d.* impressed on each; if under seal: 10*s.* impressed on original, 5*s.* on copy).

Where disputes arise under contracts of service, whether these contracts are verbal or in writing, the secretary will be well advised to consult a solicitor. The law of master and servant is not simple, and the services of a lawyer will prove economical in the long run, leaving the secretary free to pursue his normal duties, and absolving him from the possibility of making expensive legal mistakes.

Where manual labourers are concerned, the secretary should take an opportunity of consulting an authoritative treatise on the *Truck Acts*, which are designed to prevent illegal deductions from wages, and to ensure payment in legal tender.

It is imperative that a complete record should be kept of each employee, preferably on cards arranged alphabetically or numerically (necessitating alphabetical index and cross references). This record should show the references received and given, concise details of the agreement, rates of remuneration, date of engagement, date and reason for leaving, duties, conduct, and other relevant information.

Training Employees.—Departmental heads or experienced clerks are usually entrusted with the training of new members of the staff, but care must be taken to choose suitable men for the purpose. Periodical staff lectures and informal chats are now common means of increasing the general efficiency, and outside experts may be engaged from time to time to introduce variety and stimulate discussion. Where a detailed knowledge of involved routine is required, some businesses employ an experienced member of the staff to compile an office manual descriptive of the routine and the reasons for it. It may be a very remunerative outlay to pay for commercial classes for selected employees.

Accommodation.—In an existing business it is unfortunately frequently found that the office staff has grown without any commensurate increase in accommodation—each additional member being fitted in somewhere. Where this is the case there is seldom any attempt made so to arrange the desks or tables as to ensure a continuous flow of the work. An efficient organiser, however, rearranges his staff and increases his accommodation as occasion demands.

In selecting new premises many things have to be considered which are easily overlooked if the pecuniary aspect is the only one to which prominence is given. If a new building is to be erected, it is advisable for the person responsible for the organisation of the office, *e.g.* the secretary, to consult with the architect about the office requirements, and to inspect the plans before these are passed, so as to ensure that adequate provision has been made to meet those requirements, and that room has been left for expansion in the future.

Let us now consider the most important aspects in some detail :—

The Site.—The nature of the business, coupled, of course, with relative values and the sites available, should largely determine the exact location. Where constant reference takes place between factory and office, it may be necessary for these to be in one building or adjacent to each other, although internal telephones render this point of less importance than formerly.

The factory must naturally be in a situation having adequate facilities for transport. Formerly, the factory had to be adjacent to a railway or a canal, but nowadays it is often more important that it should be near a good road. If road transport is an important factor, the advantages of cheaper sites, healthier surroundings, and freedom from restrictions may impel the Directors to decide on a factory at some distance from a town. The costing department may then be at the factory, but it may be advisable to have the offices in a spot much more accessible to customers, salesmen, and others who have to visit them. Postal arrangements have also to be considered. A country place may only have one or two deliveries and collections each day, and those at inconvenient times. Moreover, a post office must be within a reasonable distance. The position of the bank and the trade centre; facilities for principals and assistants getting to and from their business in all weathers; the proximity of housing accommodation for all grades, etc., are some of the other points that may arise.

Certain classes of businesses must be in specified areas, *e.g.* the textile industry is naturally situated in Lancashire and Yorkshire by climatic dictation; coal and iron industries also have their sites fixed by Nature. But, even in these industries, the offices may be partly segregated, and it is usual to have branches in a few, at least, of the large towns. Some industries

are wholly controlled from their London offices; in other cases the London offices are, in fact, mere branches. Generally speaking it pays to have offices in a good position—it impresses both strangers and employees. Custom, however, frequently limits the choice to a particular area in the town.

The Building.—The modern tendency is towards the elimination of small rooms and compartments. Such divisions of space waste valuable room. Time, also, is wasted in passing from one small room to another. Moreover, they are difficult and expensive properly to light, heat and ventilate, and they make adequate supervision difficult. Nowadays, it is customary to segregate only those employees whose work would disturb others, *e.g.* those operating labour-saving machines, typewriters, etc. The principals must, of course, have private rooms for interviews, telephone calls, etc. Where partitions are desirable, they should be so constructed that supervision over the general office can be exercised, while the necessary privacy is still preserved. Consultation with any builder worth his salt will usually provide a solution of any difficulty.

Wherever possible, provision should be made for the maximum entrance of daylight, necessarily involving large windows. If other buildings are near enough to obscure any window, reflectors properly fitted are a remedy for this defect. The aspect is also a factor, *e.g.* a south aspect is naturally more cheerful and allows more daylight to enter than a north aspect, but is warmer in summer.

The artificial lighting should be sufficient and properly installed so as to ensure adequate light for all. The lights themselves must be so arranged as to minimise the possibility of eye-strain; and they must be free from glare and dazzle. Both natural and artificial light give the most efficient results when passing over the left shoulder on to the work in progress. The rooms should be decorated in light and pleasing colours which reflect as much light as possible.

Ventilation and sanitation require consideration if the best is to be got out of the staff. Approximately one-third, at least, of each week-day has to be spent in the office, yet many employers entirely overlook this vital factor. Floor space per employee should seldom be less than one hundred square feet on an average, so as to allow for files and other equipment.

Heating is in the same category, and provision is necessary

both for winter and for summer. An equable temperature should be aimed at, as either a too hot or a too cold room mitigates against the maximum efforts of those compelled to work in it. Overcrowding must be avoided and every step taken to ensure that the air is kept moving. The use of deodorising and disinfectant sprays is now common.

Where there is a proper lift service, the question of the choice of floor is not vitally important, but if only stairs are available, it is essential to study the effect on likely callers, apart from the comfort of the staff. Safeguards in the way of fire-escapes are also worthy of consideration. Board of Trade or Local Authorities' requirements must, of course, be complied with.

The secretary usually finds that where new accommodation is required, it automatically devolves upon him to explore the possibilities, and report to the Board. In addition to the points already indicated, the report should deal with the condition of the property; the nature of the neighbourhood, and whether the building is on an island site, at a corner, or in a busy thoroughfare, and so on; whether tramcars or omnibuses pass the door; what extraneous noises are heard in the rooms; whether passing traffic shakes the building; the terms upon which the premises can be acquired; whether they are leasehold or freehold; what restrictions there are upon the tenants; who is responsible for repairs; what alterations are necessary; the present state of the buildings and the possible liability for dilapidations; the rateable value and the trend of values and rates in the district, and whether this value is likely to continue; the net annual value for income tax, etc.

A strong-room is a valuable adjunct to the building. Elongated pigeon-holes should be provided in it, or in steel cabinets, for taking loose-leaf ledgers, etc. It is of material assistance to the staff if a wheeled truck is available for transporting the books to and from the storage point each evening and morning.

Furniture, etc.—The telephone exchange should be placed in a separate compartment to prevent leakage of conversations, telephone numbers, etc. The actual telephones must be in quiet positions—removed from danger of interruption by outside noises, and from possibility of being overheard by customers or other callers. Where many internal connections are required,

consideration should be given to automatic systems, of which there are many on the market. Not only are these cheaper in the long run, but they are great economisers of time in effecting connections. Extensions of the external telephone should be provided wherever their use is justified, but it is false economy to place one on each desk where only a few calls per day are put through from one room. Duplicate lines may also be necessary. Rules cannot be laid down ; each business must decide what is most suitable for its peculiar circumstances.

Whether desks or tables are used constitutes a problem in itself. Probably the best way of deciding this point is to obtain the catalogues of representative suppliers, and to discount their eulogies ! It is also a problem to decide whether drawers shall be the rule or the exception. Drawers are made the receptacles of unfinished work, of jobs put off " until later," of accumulations of papers which should be in their proper files, and so on. It is not unusual for an office to be turned upside-down and the whole staff disorganised in the search for an important document which is ultimately found in a drawer of the desk used by the person who wants the document—he having placed it where he would be sure to find it ! Desks fitted with card records, etc., are invaluable in appropriate cases.

On the other hand, those who continually require a certain type of paper, or form, *e.g.* typists, should have their supplies ready to hand, so that no time is wasted. In this case the drawers should be distinctly labelled, and used only for their proper purpose.

Desks should be chosen for use, *e.g.* a ledger-keeper will be more comfortable at a sloping desk; typewriter tables must be lower, at a height scientifically adjusted so as to eliminate fatigue, etc.

Sufficient attention is rarely paid to the choice of chairs for office use. It used to be thought that a degree of physical discomfort was beneficial to mental activity, but it is now generally realised that bodily discomfort actually uses up energy which should be otherwise employed. The chairs should be chosen to give the users freedom from this discomfort, and, for this purpose, should be adjustable to the stature of the user, and to the work for which they are used—giving support to the small of the back, and allowing the sitter to alter his posture when he finds it desirable.

Departments.—By "department" is meant the logical unit of organisation into which certain functions or groups of functions can conveniently be gathered under executive supervision. The main departments, in a business of moderate size, are normally: Office; Buying; Selling; Accounts; Cash; and Works. In planning out the scheme of organisation, it is not generally desirable to multiply the departments more than is absolutely necessary. When the provisional allocation of personnel to those departments is considered, it can then be seen what sub-departments are essential. The office is the secretary's domain. The heads of the buying, selling and works departments are usually responsible direct to the general manager, managing director or Board. In many instances, the chief accountant is responsible direct to the manager, etc. for the accounts and cash departments, though these may, in some instances, come under the purview of the secretary.

The secretary's office is suitably divided into:—

The secretary's main department, responsible for minutes, register of members, mortgages, etc., the seal, and all matters of a private and confidential nature; usually under the control of an assistant secretary, who should be encouraged to familiarise himself with the whole of the secretary's duties so that he can confidently act as secretary during the latter's absence.

The correspondence and filing department, unless, as may be more convenient in many instances, these duties are carried out by the other departments involved. This department deals with all inwards and outwards correspondence, typing, filing, etc. under a chief clerk. Mailing may be the function of a separate department, or be incorporated in the correspondence department.

The transfer department, under the registrar, responsible for all matters relating to application and allotment, transfers, share certificates, etc. under a chief transfer clerk, responsible to the registrar. The latter is directly responsible for the register of members, all correspondence with shareholders, registration of shareholders' instructions, payment of dividends, etc., returns to the Registrar of Joint Stock Companies, and so on.

The secretary himself, to whom the heads of the departments are directly responsible, has sufficient to do controlling

the whole, attending the meetings of Directors and of members, conducting negotiations and legal matters for the company, and generally keeping his finger on the pulse of the business so that he can supply his Directors, and particularly the chairman, with prompt and accurate information.

The accounts and cash departments should have independent personnel; but are conveniently made responsible to the accountant, who takes no part himself in the receipt or payment of cash or the writing up of routine records. He should be fully occupied in controlling the whole, and in the preparation of financial and statistical statements, periodical profit and loss accounts, balance sheets, etc. In large businesses he is rarely responsible to the secretary, but to the manager or the Board. But, in any case, he and the secretary must work harmoniously in the interests of the company. Close co-operation is necessary in all departments, but here particularly so. Adequate co-ordination of tasks and departments is essential to prevent any loss of time in one department through non-receipt of documents or information from another department.

Every member of the staff must be encouraged to acquaint himself with the duties, and method of carrying them out, of the person immediately superior to him, so that there can never be any serious disorganisation owing to sudden illness or death.

In reorganising an existing system, it is desirable to obtain from each employee a report of his principal and subsidiary duties, showing from whom he receives and to whom he passes his work, the time spent on each of the various duties, what use is subsequently made of his work (so far as he knows), to whom he is directly responsible, and what suggestions he has to offer for shortening the time or increasing the value of his work. These reports can then be classified and analysed, and form a most valuable commentary on the existing system, from which the improved one can more readily and efficiently be evolved. In superimposing the new system, care must be taken to avoid dislocation or disturbance of the routine work. This is best effected by circulating the new forms and instructions for study by the staff an adequate period before the appointed date of the change. In addition, small meetings should be held for the explanation of details, and the answering of any relevant queries.

Welfare Schemes, Co-partnerships, etc.—Every effort should be made to foster the interest of the employees in the company. Co-partnership schemes in infinite variety have been tried, with varying degrees of success. The essential points to be considered are, briefly :

(1) Whether the scheme shall provide that the employees be given shares in the company in their own names, or shares vested in trustees for the scheme until the employee retires, or special certificates of no value except as indications of the holders' rights in the co-partnership distribution; or that a bonus be paid in cash.

(2) What proportion of the profits shall be made available for the employees—this may be an agreed percentage or what remains after a certain dividend has been paid. Provision is usually made restricting the issue of new shares unless the scheme is safeguarded in the operation.

(3) How the employees shall share—on the basis of salaries alone, or adjusted for length of service or the position held—and what control (if any) the employees shall have in the management, *e.g.* voting power, seats on the Board of Directors, etc.

(4) Whether a separate pension fund shall also be inaugurated.

Other schemes of welfare are concerned with the provision o canteens, sports grounds and libraries; in encouraging the employees to attend technical classes; and, generally, to give every assistance to the employees to fit themselves, both physically and mentally, for the better performance of their duties. On all social and sports committees, the Directors and the various departments should be equitably represented.

A " suggestion box " may be installed, and prizes offered for those suggestions of which use can be made.

Filing.—In no department of an office is efficiency more important than in the filing department. Business is dependent upon records, correspondence, and memoranda of the spoken word. It is obviously not sufficient merely to keep all documents, etc.; they must be kept in such a way that they can be immediately produced when required. Delay in producing a document may seriously prejudice negotiations, or may even involve unpleasant consequences to the business.

At the least, it is disturbing both to the person requiring the document and to those who have to search for it. There have, therefore, been evolved very efficient means of filing documents, but not without many experiments in various methods.

It is not necessary to detail here those " methods " which are now practically obsolete, *e.g.* pigeon-holes, bundles tied up with tape, etc.; modern methods only will be dealt with.

The system most general in application is undoubtedly Vertical Filing, which can be used for storing all descriptions of papers, *e.g.* letters, invoices, orders, estimates, quotations, catalogues, news cuttings, etc. The remarks which follow are applicable to correspondence, but little adaptation is necessary to make the system applicable to any other class of document.

The central feature is the " folder "—a sheet of manilla folded so that one edge projects above the other. On this projection is written the identifying description of the contents. This may be a number, a name, or a subject, whichever method is most suitable for the particular business. The relevant correspondence is placed in the appropriate folder in the order of dates.

The folders are placed vertically one behind the other, in the selected order, in the drawer of a cabinet made for the purpose. Guide cards are placed at convenient intervals so as to facilitate reference. By this system it is obviously a simple matter to find any document, and the folder containing it can be removed and replaced without disturbing any other papers. Moreover, the folder contains all the relevant papers in date order.

The method of classifying the folders must receive careful consideration, particularly where correspondence is heavy. The main thing to bear in mind is that instant production should always be possible.

Numerical Classification.—Owing to its immense scope, the Numerical Classification is probably most popular. Each folder is given a number, and filed in rotation, and a card index to them is kept in the simplest form, showing the name and address and number of each correspondent. The same number can then be used for all records—accounts, orders, etc.

Any other useful information regarding credit arrangements, etc. can conveniently be shown on the cards.

At first sight it might look as if this classification would involve too much reference to the index, but practice shows that the staff very quickly memorise the numbers of the correspondents, and can find a number even quicker than a name, without risk of confusing initials or descriptions.

Alphabetical Classification.—The Alphabetical Classification under which the name is put upon each folder, which is then placed in alphabetical order, is suitable only for private papers, or where not more than some six hundred correspondents are involved. Even with a subdivided alphabet this method is cumbersome when expanded.

Alphabetical-numerical Classifications are becoming more popular, since they give the advantages of the numerical system without the necessity for a separate index. Each letter or sub-letter has its own set of numbers; an index card is placed behind the guide card to each alphabetical section, bearing all the names and numbers of the folders which appear in numerical order behind it. This system makes it more simple to correlate accounts kept on the loose-leaf system, which can then bear the same number, but still appear in their proper alphabetical section.

It is usual for only short and differently spaced tabs to project on the folder, so that reference is facilitated—the folders being so arranged that no two successive ones have their tabs immediately behind each other. If the guiding tabs are so spaced as to be five in a row, the terminal numbers must come in alignment, *i.e.* 3, 13, 23, 33, and so on, are all in the same relative position. Under the numerical systems it is very simple to replace any folder in its proper place; moreover, the absence of any folder can be seen at a glance.

The *Geographical Classification* is useful, particularly where travellers or agents are employed. The whole correspondence of any district is thus easily accessible. Within the Geographical Classification, one of the other methods is employed.

Subject Classification.—For municipal and professional purposes, Subject Classification frequently is the prime factor, and, under each subject, the Alphabetical Classification is employed. In many instances a Subject Classification is used

in addition to another system—copies of all inward, and extra carbon copies of outward, correspondence being made for this purpose.

When a folder becomes too full or out of use for any reason, it can be taken away *en bloc*, or the whole or part of the contents can be removed to a transfer case, and marked to correspond with the current folder, so that it may be immediately accessible. Some professional firms periodically bind permanently into books all papers relating to permanent matters, *e.g.* contracts, etc.

It is economical to have a periodical inspection of the folders, and to extract for destruction all routine correspondence that has only a passing value, *e.g.* acknowledgments of orders which have been fulfilled and paid for, etc. This should be done only by a responsible person who can be trusted to discriminate, as, otherwise apparently innocent threads in an important negotiation may be inadvertently destroyed.

The folders may be provided with special devices for retaining the papers in position. These are extremely useful where frequent reference is required to a series of letters, preventing their being misplaced or lost. The general principle is the provision of two metal prongs, which pass through two holes punched in the paper. A fibre or metal strip is then placed on top of the papers (the prongs passing through holes in the strip) and the prongs bent down over the strip. Other folders have a spring inserted in the fold, which is stiffened, and automatically grips the papers. Whilst it is easier to insert or remove papers from these folders, the papers are more apt to become loose when least expected. Many other devices are used in folders, including gummed tabs, tapes, etc. Inspection of specimens must decide which is the best folder for use in any particular case.

Various makes of box and spike files are available, but these are too bulky for general application, although eminently useful in particular cases. Special safes should be provided for important documents; although, where possible, it is better to keep these documents at the bank—copies being kept in the office for reference.

Card Systems.—Cards may be adapted for the purpose of keeping any records which require frequent handling. They can be classified in any of the ways already mentioned for filing,

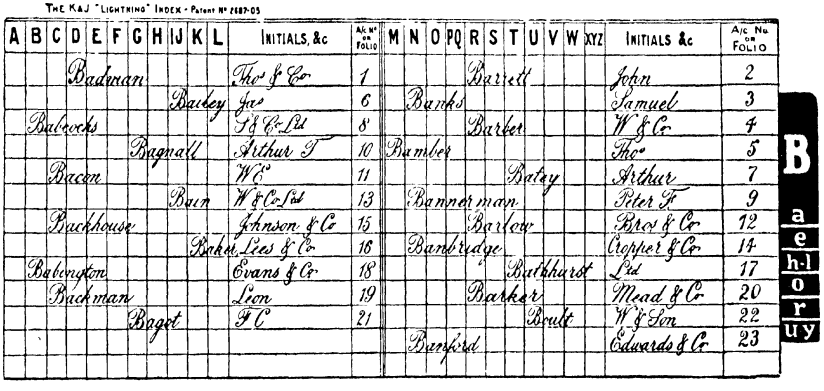
and may bear the same numbers, or references, as the relevant file. The cards are stored on their edges in drawers of suitable size, or may be kept in special trays. These trays are so made that the cards are held by clips that allow each card to project beyond the next—the headings thus being visible at a glance. The cards lie flat, and since the clips are hinged, either side may be entered up without the cards being removed.

Each card being a complete unit, several persons can refer to different units at once—an advantage over a bound book, which can be handled by only one person at a time. Where necessary, the cards can be distributed over the staff at rush periods. The classification is accurate and permanent. When one card is full, its successor can be put behind it or in its place, whereas, in a bound book, a new page somewhere else in the book is required. It is impracticable so to space out a book as to provide for all eventualities. By means of a master index and colour systems, the same cards may be classified in as many different ways as are required.

Out-of-date or obsolete matter is removed to special drawers or trays, so that all the cards in the current list are alive. There is no need for a new index each time a new "book" is opened, as the classification is permanent, unless it is desired to adopt a new classification, which a rearrangement of the *existing* cards makes remarkably simple. Expansion is unlimited; new cards can be inserted as and when required, in their proper position. Coloured detachable tabs can be used for indicating cards requiring special attention on special days, and for similar purposes.

Indexing.—The most elementary type of index, the alphabetical, is inadequate for the requirements of a business of any size. When, say, 250 names or over have to be indexed, the alphabet should be subdivided, *e.g.* "A" into "Aa–Am" and "An–Ay." When there are over 500 names the subdivisions must be more, either by taking into account the third or fourth letters, or by adopting the "vowel" system. Under the vowel system a word is indexed primarily under the initial letter, and secondly under the first vowel in the word. The letter "y" is usually included as a vowel for this purpose. For example, "Brown" is indexed under "Bo," "Barts" under "Ba," "Bryant" under

"By," etc. Where more numerous names are involved, it is recommended that a numerical or alphabetical-numerical classification should be adopted, although the master-index (if any) must adopt one of the alphabetical arrangements. The "K. & J." lightning index is worth examination. By it, each letter of the alphabet is subdivided into 22 divisions, thus



KENRICK AND JEFFERSON'S "LIGHTNING INDEX" SHOWING THE $\frac{B}{a}$ INDEX LEAF WITH THE NAMES CLASSIFIED UNDER THE FIRST THREE LETTERS OF EACH NAME.

Loose-leaf Books.—These have much the same advantages as cards. Objections to both cards and loose-leaf books are raised on the grounds that cards or sheets may be accidentally or intentionally destroyed or replaced, thus facilitating fraud. It is considered, however, that fraud is just as likely to arise under a bound-book system, and, in any case, the prevention of fraud is a matter for internal check whatever system is used. Objection has also been raised on the ground that the legal status of loose records is doubtful, and, at least in the absence of adequate precautions, there may be something in this objection, as applied to some books (*see* below). The fact that sheets are gummed or stitched in a book, however, does not necessarily enhance their value as evidence. In a binder, the sheets can be secured with a Yale or similar pattern lock under the sole care of a responsible official. Proper safeguards must be taken to control the issue and use of new sheets. In a court of law, accounting entries would always have to be substantiated by other evidence, if disputed.

The Register of Members is more conveniently kept in loose-leaf form. The accounts can then be kept together in alphabetical order, and a separate index (necessary with bound books (S. 96, *see* p. 126)) be dispensed with.

The Minute Book is in another category—there seems less reason for its being in loose-leaf form. Typewriters which will write in bound books are available, or the minutes can be typed and pasted in—the Chairman initialling each sheet so that his initials overtop its edge and the page on which it is pasted. In *Hearts of Oak Assurance Co.* v. *Flower & Sons* [1936], Ch. 76, it was held that the loose-leaf minute book recording the minutes of meetings of the Board of Directors, was not admissible in evidence under S. 120, as the loose-leaf book was not a book within the meaning of that Section. It should be noted, however, that the usual safeguards were not present, and there is therefore a doubt as to how far this case would apply to a loose-leaf book kept locked with the usual check upon the insertion, etc., of new pages.

Organising the Filing Department.—A problem calling for very careful consideration is the choice between centralisation of all files in a special department and departmental filing. The latter is more economical in some ways. Files can be produced more quickly, and the spare time of the filing clerks utilised in other ways. The organiser must weigh up the position from the individual view-point of his business.

There are many advocates of inwards and outwards records, in a register, of all letters. It is thought, however, that such a register is to-day a cumbersome device even if departmentalised. A more efficient device is that in which a number is given to each letter, as it is opened, by a numbering machine. A slip can then be attached, showing the departments through which the letter must pass, and who is responsible for dealing with it. The typist gives the same number to the reply and every letter can then be traced, preferably being checked up each evening or first thing on the following morning. The slips can be printed, so that the pen can be drawn through those names, etc. not concerned, and the initials of the responsible parties can be set against their proper lines.

Every outwards letter must have its subject-matter indicated at the head. If an inwards letter refers to two subjects, two separate letters in reply may be desirable to facilitate filing

and future reference. Similarly, it may be necessary to make copies of the inwards letters where these deal with more than one subject.

Different coloured folders, tabs, etc. are of the utmost value in segregating subjects, companies (where several are housed in one office), and so on. A distinctly coloured card for insertion in the place of any removed folder or document forms an effective reminder that it must be returned.

Definite responsibility for filing must be allocated, and it should be a rigid rule that no one other than the responsible clerk be allowed access to the files, so that he alone can be praised or blamed, as the case may be. Moreover, a receipt exacted for every file taken out of the department is found to be a valuable preventative of misplaced files and papers. The clerk in charge of the filing department must be the only person authorised to establish a new file or folder.

Arrangements should be made for all inwards correspondence to be delivered to certain responsible officials of the staff, who must attend at stated times to open the letters, etc. Registered letters should be recorded in a register in which a note is made of the person to whom they are handed for attention.

In opening the letters, it is advisable to tear the envelopes completely open, once the contents have been extracted, as a safeguard against overlooking enclosures. The envelope should be attached to the missive wherever there is any doubt as to the sender or the addressee. Letter and enclosures should be sorted out on trays for the appropriate departments or persons who have to deal with them. Similarly, there should be a system whereby any document to be passed from one department to another is placed on its appropriate tray, which is collected at stated intervals by messengers.

All letters as they are opened should be date-stamped. It is useful if the stamp provides spaces for the initials of those responsible for attending to the letter. When the letter is passed to the filing department, the initialled date-stamp shows that the letter is ready for filing.

Every remittance in the form of a cheque, etc. should be crossed with the name of the company's bankers immediately it is extracted from its envelope. A note of the amount can be made on the covering letter, and the remittance handed to the cash department.

All letters should be replied to on the day of receipt, even if only an acknowledgment can be sent. Those responsible should get as much of the correspondence as possible into the hands of the typists in the morning. This minimises the necessity for working overtime, which is frequently the result of bad management.

Particular care must be taken to see that all enclosures are put in the appropriate envelope. A line placed at the side of the typed passage referring to an enclosure, and a coloured "Encl." tab gummed on the letter are useful reminders.

A system which has some popularity in America provides for a special staff to deal with the incoming mail, who must start say one hour before the remainder of the staff, so that there is no delay in getting to work. The special staff leave earlier at night. Similarly, the staff responsible for the outgoing mail start later in the morning and finish later at night. This idea is worthy of consideration in a large office.

Letters.—As already mentioned, good letters foster business. The following points should be noted.

Every letter must be properly dated (month written in full), laid out and spaced.

A heading is generally advisable to show the exact subject of the letter, otherwise the first paragraph should introduce it immediately. Reference should be made to previous correspondence.

Hackneyed so-called "commercial" phrases are meaningless, and should be rigorously excluded, *e.g.* "Thanking you in anticipation," "Yours of even date," etc. The body of the letter should be orderly, stating briefly but completely the information which it is desired to convey in a courteous and business-like manner. As a general rule, a letter should contain nothing which would not be said verbally. Even if the letter is a complaint, or a denial of a complaint, there is every reason why no effort should be spared which will smooth the course of the correspondence or negotiations. The effect on the recipient should always be borne in mind.

Correct punctuation, spelling and paragraphing are essential, and care should be taken to make the sentences as simple and concise as possible. In regard to the choice of words—a long word is, generally but not always, less desirable than a short

word that conveys the same meaning. Many unnecessarily long words in a letter are apt to create a ponderous impression, and, as often as not, prevent the reader from clearly and easily grasping the sense. On the other hand, repetition of the same word, unless for emphasis, or to prevent ambiguity, is irritating to an educated reader. Ambiguity is to be sedulously avoided, so also is the insertion of irrelevant matters.

Form Letters.—In all offices of any size, recurrent matters requiring the same stereotyped reply, *e.g.* notices of lien, notices of lodgment of transfer, acknowledgments of communications, etc., can be dealt with by means of standardised "form" letters. These may be printed or cyclostyled, so that merely the minimum details have to be filled in before dispatch. Sufficient supplies should be kept to cover a reasonable period.

In other cases, standard paragraphs can be given to typists so that they can deal with the bulk of the communication—only the initial and/or closing paragraphs being dictated to meet individual cases. By this means the best possible letter is more likely to be written, irrespective of the state of mind or health of the writer.

Envelopes.—For routine despatches, *e.g.* invoices, statements, etc., special "self-folding" forms can be obtained. These do away with the necessity for envelopes; or "window-envelopes" may be used to save rewriting the name and address on the cover. Not only does this economise time and labour, but it minimises the likelihood of errors.

Window-envelopes must not be used indiscriminately, however, as, although their use is becoming more general, the commercial world still associates them with circulars, accounts, statements, etc.; and an important letter placed in such an envelope may be placed on one side unlooked at, or even torn up and put into the waste-paper basket.

Post Cards.—For a few formal acknowledgments and routine matters, *e.g.* reservation of representative's rooms at hotels, notices of change of telephone number, notices of removal, etc., post cards are economical, but beyond this they are better not used. Their contents are more or less public, and private or important communications should be conveyed under cover.

Business Reply Envelopes and Cards.—Mention must here be made to the system whereby a licence can be obtained from

the Post Office to enclose with letters a business reply envelope or card (printed in accordance with the regulations) which enables the correspondent to reply without paying postage. The addressee of the business reply envelope or card pays the postage, and is required to deposit a sum sufficient to cover the probable charges for a selected period. Upon each card or letter returned to the licensee, a fee of ½d. is charged in addition to the normal postage. This may result in considerable savings where stamped proxy forms are sent out, as postage will only be payable on those returned. The benefit in advertising is obvious.

A similar system is in operation in respect of telegrams, of which full details can be obtained at the Post Office. A system whereby the recipient can accept liability for telephone calls is of great advantage where representatives want to get in communication with their headquarters.

CHAPTER XVI

MECHANICAL DEVICES

MECHANICAL labour-saving and time-saving devices for office work are becoming more and more essential. Not only can much detail work be done more efficiently and quickly by machine than by hand, but many of the machines can be effectively handled by inexperienced juniors. It is not proposed to deal exhaustively with every kind of device and machine that can profitably be used in an office, but the following descriptions will serve to call attention to some of the most important.

Addressing Machines.—This is one of the best labour-saving appliances at present in use. The addresses are either perforated on fibre stencils or embossed on metal plates. The stencils or plates pass automatically through the machine when in use, and are automatically reassembled in the same order in an empty drawer, or frame, which can then be placed on the machine as a full drawer or frame for the next use. Metal plates print through an inked ribbon; most stencils are inked from the back, the ink passing through the perforations. The operator can see each address as it is printed, and special fittings are available for repeating, or skipping any addresses that are to be omitted. By means of assorted tabs on different stencils, any selected groups may be printed without extracting the stencils. The machine is operated by hand, foot or electrical power. With the electrically operated machine, as high a speed as 3,000 per hour can be obtained.

The uses to which the machine may be put are very varied. The most general are for addressing envelopes and wrappers, *e.g.* for circulars, advertisements, catalogues and price-lists; preparing monthly statements so that the book-keeper merely has to insert particulars of the accounts; preparing wages sheets, etc. A master stencil can be used to print advertisements, *e.g.* on postcards, the addresses on the cards being printed at a separate " run " through the machine.

In the registration department, a stencil or plate can be made out immediately on allotment or registration of a transfer or any change of membership or of address. The stencil or plate thus facilitates the preparation of allotment and call letters, notices, dividend tops and warrants, circulars, etc. Even the certificates and register headings (loose-leaf only) can be so prepared. In none of the work is the convenience of the machine more apparent than in the preparation of the Annual List and Summary. A further saving is effected by the use of window envelopes, as the extra addressing of envelopes is avoided.

The machines are largely used by insurance companies for the preparation of renewal notices, receipts, agents' lists, etc. The stencils or plates for these purposes are frequently large, and a "cut-off" attachment enables any given part of the stencil or plate to be printed.

Duplicators.—A duplicator is a machine for producing copies of an original document in large quantities.

The most elementary form of duplicator in use to-day is the flat clay or gelatine model. A tray or box contains a gelatine substance, which, when damped, will receive an impression of any document placed on it and pressed down by means of a roller, provided a special ink is used. Papers pressed on this impression, one at a time, record an exact copy. The number of copies which can be so taken is very limited, and the later copies show a marked falling off in distinctness. As a result, the use of this type of duplicator is very limited.

A development of this machine is the Flat Stencil Model. A wax stencil is cut on a typewriter or with a special pen, and fixed on a wire frame. The paper is placed in a marked position beneath the stencil, and an inked roller passed over the wire, thus forcing the ink through the stencil on to the copy. The wire frame is usually fitted with a spring so that it rises as soon as the roller is removed, thus freeing the copy, and allowing the insertion of a new piece of paper for the next copy. Many more copies can be prepared than with the flat gelatine model; the copies are good, and the process cheap, but operation is slow.

The same principle is applied to a Rotary Model—the stencil being placed on a cylindrical drum. The required

number of sheets can be placed on a feed-tray, and when the handle is turned, the paper is (usually automatically) fed into the machine, which is also automatically inked. Each turn of the handle produces a copy. A cyclometer may be attached for counting the sheets printed. If a non-absorbent paper is used, the sheets require to be dried, unless an interleaving device is employed automatically to let fall a blotter on each sheet as it emerges. This can be done by hand, but would then slow down the output. Little experience is necessary to operate the machine, and it is undoubtedly the cheapest method of producing large numbers of copies. It may be electrically driven, if the amount of work to be done justifies the additional expense.

In cutting stencils on a typewriter, a typist experienced in this work is advisable, otherwise the effect may be patchy until the right "touch" is obtained. Small mistakes in typing may be remedied by means of the application of a special fluid which melts the stencil, and so allows the correct letters to be inserted.

The Type Duplicator.—This is a machine very similar to the Rotary Duplicator, but in lieu of the stencil a "form" is used, fitted with grooves into which the letters are inserted by means of a little metal fork, which holds a line of type at a time from an alphabetically arranged fount. This form is then fixed round the rotary drum. Flat models are also used.

The setting up is done by hand, and considerable speed can be acquired. The printing is done through an inked ribbon broad enough to cover the type, and the method is similar to that used on a typewriter.

Whilst, by this method, it takes longer to prepare the machine, once the type is set as many copies as are required can be run off in almost perfect imitation of typewriting. By means of a block the signature may be reproduced, if necessary in another coloured ink. Special blocks enable illustrations, drawings, etc. to be copied, either separately or in the body of the document.

With a typewriter, using the same size and style of type, and a similarly inked ribbon, the names and addresses of the addressees can be "matched-in," giving every appearance of individually typed letters. In practice, the matching-in is

very often carelessly done, and more attention should be paid to this point.

Many businesses use this type of machine for duplicating all the forms required for internal use, *e.g.* petty cash voucher forms; pay-rolls, etc. Price-lists, notifications of changes in prices or trade discounts, letters of allotment, dividend tops, house organs (newspapers or magazines) are further examples of what can be done by the Type Duplicator.

For more advanced work, where the appearance of printing is required, many office printing machines are available. These are naturally more costly, but enable a business to print its own letter headings, statements, etc. at a smaller cost than outside printing. After a short training, as many as 6,000 copies per hour may be turned out under favourable conditions. Smaller stocks of stationery can be carried, as a fresh supply can be quickly run off. For rush work and confidential or secret printing the advantage is obvious.

Dating and Numbering Machines.—These are self-explanatory and essential tools in most offices, for any purpose where serial numbering has to be done, *e.g.* folioing, inwards letters, share transfers, etc. Such numbering machines are inexpensive, and are usually capable of numbering in duplicate or triplicate, *e.g.* a top copy and one or two under-copies.

Franking Machines.—The franking machine impresses on the letter (or other document) not only a postage stamp, but in some machines, a cancellation and post mark also. The machines are approved by the Post Office, who set a special detachable meter to the number of impressions for which payment is made, and lock and seal it. The meter is small and compact, and easily attached to the machine, and when it is "empty," *i.e.* has exhausted the impressions for which it was set, automatically locks the machine, which cannot then be operated until detached and re-set. In some types of machines a separate meter is required for each denomination of stamps; in others, the movement of a lever changes the denomination.

Machines can be obtained for hand or power operation, and devices may be attached for sealing letters, printing advertisements, slogans or other matter on the envelopes, etc.

The Post Office shares in the saving which is effected by

these machines, and their use must be considered by all large users of the post.

Copying Machines.—These are devices for taking an exact copy of any document. The copying press, formerly so popular, is now seldom found except in solicitors' and similar offices, and even there it is being superseded by more modern devices. By this method every letter to be copied has to be written or typed in copying ink. The letter is then placed in a copying book, facing a sheet of specially thin paper. A waterproof sheet is placed behind the original, and another behind the blank sheet. The blank sheet is slightly damped, and the whole submitted to pressure in a hand-press. An exact copy is impressed through the damp sheet. The process is slow and unsatisfactory; either too much or too little water results in a poor copy, and too much water may ruin the original as well.

Ordinary carbon copies, taken when typing by the simple expedient of placing a sheet of carbon paper between the original and another sheet, are general to-day. Where alterations are made when signing the original, however, unless the carbon is left between the papers throughout, there is always a danger that the copy will not be correspondingly altered.

For this reason the Roller Copying Machines have been devised. A roll of copying paper passes through rollers, and the letters to be copied are automatically fed into the machine, brought into contact with the paper on the roll, which takes an exact impression of the letters, complete with all alterations and signatures made before copying. The originals emerge unsoiled, and the copies are automatically cut from the roll.

A specially inked ribbon must be used on the typewriter for this method. The copying paper is automatically damped in the machine. An additional advantage is that several copies of each letter can be made—a very useful thing for filing purposes.

Dictating Machines.—The use of these machines effects a considerable saving of the dictator's time. He can go at his own speed, search out his facts, dictate them as they are found, and take up interrupted dictation at a moment's notice. The stenographer does not lose time by passing from room to room, or by puzzling over and wrongly transcribing hastily written notes, or by waiting idle while the dictator looks out

his points. Moreover, work dictated out of business hours is available for typing first thing in the morning—a valuable means of filling up time until the arrival of the "head."

The principle is an adaptation of that of the gramophone. The dictator talks into a mouthpiece, and his words are recorded on a wax cylinder at any speed that he chooses. Removing the mouthpiece from its hook usually starts the motor; replacing the mouthpiece stops it. When the dictator wants to pause, he can, by means of a small clutch, put out of action the mechanism that drives the recording tool along the revolving cylinder. If the dictator wishes to hear what he has already dictated, or any part of it, he can do so, and also make, either by a written note or by further dictation, the necessary amendments—the position of which can be indicated by reference to the graduated scale. The dictator should leave a space at the beginning of each record so that he can, if necessary, indicate to the typist that alterations may be expected at certain points.

For typing, the cylinder is placed on a transcribing machine, which the typist starts and stops by means of a pneumatic foot-control, and the record is conveyed by ear-phones worn by the typist, who can alter the speed to suit her convenience. A sound modifier controls the volume of sound. Having no need to refer to written notes, the typist can go straight ahead, and, when the work is finished, can check it by re-hearing the whole record. An automatic shaving machine pares off the top wax, and the cylinder can be used again.

An invention is now available which can be attached to an ordinary telephone and will record the conversation of the persons at both ends of the line.

Adding and Calculating Machines.—These machines vary in size, type and method of operation to such an extent that there is hardly an office of any size which could not advantageously utilise one or other of them. Additions and other calculations involve experienced clerks in soul-destroying drudgery which a junior can perform with a machine, not only much quicker, but with a greater degree of accuracy. In choosing a machine, however, it is advisable to examine a variety of makes in order to obtain that most suitable for the work to be performed. The machine may be listing or non-listing—the former making a typed list of the figures. Some

list only when a lever is operated; others are electrically controlled. What can be done with some of them gives one quite an uncanny feeling. For example, balances may be held in the machine whilst other additions are made in order to find separate sub-totals. Some are operated by keys, in which case automatic control-keys prevent errors arising through incompletely depressed keys; others by a crank which is turned the number of times there are units—levers controlling the tens, hundreds, etc. when these have to be operated. Desk models are now available.

Such machines can be obtained for calculations affecting almost any type of unit, *e.g.* money, weights, measures, etc. The calculation of interest, percentages, discounts, exchange, apportionments, freights, extensions of stock sheets, invoices, etc., wages and all straight calculations can thus be greatly facilitated, with a tremendous increase in accuracy.

A simpler form of calculating machine, the Slide Rule, is rarely used in offices, although it is undoubtedly a very valuable and easily learned labour-saving device, particularly where round figures suffice, as, *e.g.*, the compilation of statistics. The Slide Rule would doubtless be employed a great deal more if its nature and use were better understood by those to whom it is a mere name. One disadvantage the Rule has, however, is that it involves very close work, and the possibility of eye-strain must not be overlooked.

The oldest form of calculating machine, which is still in general use in oriental countries, and even in some continental businesses, is the Abacus. In this country, this bead frame is only seen in the Kindergarten, but an expert can efficiently use it for all calculations that a non-listing adding machine can do, and at an amazing speed as well.

Cheque Protectors.—A writing in ink, and particularly typewriting, can be erased from cheques by skilful forgers, and alterations have been known to be most ingeniously carried out. The Banks take every precaution they can by means of special paper, printed crossings, etc., but even these have not excluded all dangers. The cheque protector perforates or crushes the fibres of the cheque, thus making alteration impossible, and so confident are many manufacturers of their machines that they actually issue a free insurance policy covering the purchaser against any possibility of loss through

fraudulent alteration of details filled in by means of their device. The machines write a complete word at a time, and it is quicker to "machine" the amount than to write it. Moreover, any currency can be used. These machines are very inexpensive.

Signagraphs.—This is an instrument by which one man can sign a number of cheques, letters, etc. in one operation. The user handles a special pen-holder just as he would an ordinary pen, but the operation causes from five to twenty fountain pens, set in two parallel rows, to respond simultaneously. By an automatic system of endless chains and the turn of a handle a fresh lot of documents are brought into position. By some models as many as 10,000 signatures per hour may be affixed. Special machines are also available for endorsing cheques, etc.

There is another apparatus of a different kind, viz. the Todd cheque-signer. Electrically operated, it requires the attention of one employee only. The whole apparatus is enclosed in a locked cabinet. The signature affixed by it, combined as it is with an intricate background and the photographic likeness of an official product, or trade-mark, is the most non-counterfeitable known. Sheets of cheques fed into one model are signed, cut and stacked in numerical order at the rate of 7,500 an hour. With practice much higher speeds are attainable. Two Yale locks, and a built in meter, which records every cheque passing through the machine, simplify supervision. A smaller model signs 1,200 cheques an hour. These machines are very popular in the United States of America among city and state governments, railways, insurance companies, etc., where the number of cheques to be drawn annually may run into hundreds of thousands. The strain upon the executive officers, and the waste of their valuable time expended in the mechanical work of cheque signing is by the use of these machines entirely eliminated.

Book-keeping Machines.—The wonderful progress achieved in the manufacture of calculating machines has been extended to the evolution of book-keeping machines. Many of these machines combine a typewriter with an adding and calculating machine, and the results are not only a great saving of time, but an increase in accuracy and legibility. One machine can, at one operation, make out a number of documents, by means

of carbon copies, and careful planning of forms. For example, the receipt, ledger posting slip, and cash book entry can be made at once, and the cash book totals accumulated to the end of the page and to the end of the day; similarly, advice note, invoice and duplicate for file, works order, and gate-keeper's "Outwards Order" can be done at one operation, and the totals accumulated. Perhaps the most impressive saving is in connection with the taking out of balances. The machine will take up the existing balance from the cash ledger slips and invoices, returns notes, etc. The debits and credits are entered by the machine in the statement and the ledger, the debits and credits being automatically added at the same time and listed, and the balance extended and listed. The daily Sales Sheet can be prepared at the same time, and an accumulation of balances be left in the machine to prove the whole of the postings. Each account is thus balanced daily without risk of error, since errors are thrown up daily at the evening proof. The accounts are thus kept up to date and in balance without the mental strain involved in non-machine accounting, and overtime is reduced to a minimum.

For use in appropriate circumstances, there are also cash registers, automatic coin-counting and sorting machines, and also those adapted for giving change and paying out. The last-named are very useful for paying out wages or filling the pay envelopes. For the collation and sorting of statistics, wages, branch returns or other masses of detail, special machines are also available. The general principle of these is usually that cards are punched with holes in the appropriate sections, by means of a similar machine to a typewriter. The cards are placed in a sorting machine, and divided by it into the required groups, through the agency of selector pins and function levers, or by electrical contact wherever there is a hole through which the current can pass. A tabulating machine then totals the results of each group. In a smaller way the sorting can be done by means of an ordinary knitting needle, where the cards are punched to suit.

In the factory or warehouse or similar place where any considerable body of workmen, or even, in some cases, clerks, is employed, mechanical time-recording clocks should be in operation. Each man is given a numbered card, which is kept in a rack. Every time he enters (or leaves) the works

he must take the card from the out (in) rack, place it in the clock in the indicated position, and then put the card in the in (out) rack. The clock records on the card the exact time, thus keeping an indisputable check on the time worked. Supervision is, of course, necessary to prevent an employee stamping his friends' cards. The cards can have spaces for evaluating the time and deductions, etc., and so serve as the wage cards. There are other types of time-recording, *e.g.* the Tape Machine, where the record is kept in the machine, and the worker must sign in a space provided, and turn a handle to record the time against his name, which is automatically wound out of sight; or he must turn or press a special key (engraved with his number), so recording number and time. The former is chiefly used for clerks; the latter is hardly practicable where movement is frequent, owing to the amount of clerical labour involved in segregating and collating the times. Many other types are in operation, but it is thought unnecessary to describe them here; details should be obtained from the manufacturers. All clocking devices should be synchronised with a master clock in the main office to prevent dissatisfaction among the workers, which must arise if the clocks disagree.

The typewriter itself is now so common, even in the home, that it does not seem necessary to describe its many uses. A modern development is the provision of "continuous" stationery on rolls fixed to an attachment to the typewriter. Carbon paper is interleaved, and there is a considerable saving of the typist's time. Electric carriages are also available whereby the typist's hands need never leave the keyboard except to extract completed work. There is one machine, also, which is not so well known. In this machine a stencil is first prepared, resembling a record for a player-piano. In reproducing what is required, the machine is operated by the record. Any additions, *e.g.* names and addresses, personal paragraphs, can be inserted by manual operation of the typewriter in the usual way—the record being automatically stopped until the insertion is completed, after which it continues in the proper position on the paper. One girl can operate three machines at about 100 words per minute. Each letter is thus individually, though automatically, typed.

Luminphor.—This is a glass plate specially treated with a compound that is able to absorb or radiate light. It enables

anyone to make exact photographic copies of any document or illustration, without the aid of a camera. Exact copies of ledger accounts can be given to customers without the trouble and time otherwise necessary in copying the details. The time saved in sending out detailed statements may be very considerable.

" Recordak " Machine.—This has been specially devised to deal with modern accounting and record-keeping problems, and applies the photographic method of recording information on miniature film.

By feeding documents into a chute by hand, a motor-driven machine enables photographs of documents to be taken at high speed. The copies of cheques, drafts, certificates, warrants, receipts, insurance policies, invoices, etc., are made on film 16 mm. wide by means of a camera inside the machine. The only limiting factors on document sizes are the width and thickness—the length is immaterial.

The speed at which documents are photographed is determined by the dexterity of the operator in feeding them into the machine. Under actual working conditions speeds of 4,000 to 6,000 per hour, when the documents are about 3 inches long, are not infrequently obtained, but whatever the length of the documents the machine will photograph them as fast as they can be fed into it.

Once a batch of documents has been photographed and the film developed, a detailed record, taking up an extremely small amount of space, is available for reference and eventual filing and storage.

The average space occupied by a " Recordak " spool of film is approximately 1 per cent. of that required for storage of the original documents photographed. When reference has to be made to the documentary record on the film, the special projector provided with the machine throws on a self-contained screen a full-size, easily read facsimile of the original. With suitable indexing and filing, documents can be traced and projected very rapidly.

If required, it is always possible to produce at any time from the photographic record a permanent, full-size paper copy of any document. Both the film and any paper copies made from the film are, of course, always accurate and require no checking.

Teleprinter.—On this machine, a message can be typed, which is automatically recorded in type at the other end of the telegraph line. This can be used between any two offices by arrangement with the post office.

Loud-speaker Inter-office Telephones.—These enable conversations to take place between offices without the inconvenience of holding an instrument.

Of the numerous other labour-saving appliances in use, the following notes briefly indicate what can be done with them; all are sufficiently advertised to enable those interested to learn where they may be obtained. They can be seen in operation at the various Business Efficiency Exhibitions held from time to time, and the makers are always anxious for an opportunity to demonstrate the advantages of their product in an inquirer's own office.

Stamp-affixing Machine.—This machine automatically feeds out, moistens, cuts off and counts the stamps as it affixes them to the letters. Machines for affixing insurance or receipt stamps also automatically cancel the stamps. Portable and also fixed machines are made, and special rolls of stamps may be obtained from the Post Office for use in them. As an additional safeguard against pilfering, a self-locking device may be attached to prevent unauthorised use. Models are supplied with extra stamp cases to carry different denominations of stamps, although, where the mail is large enough to justify it, dispatch is facilitated if separate machines are employed, unless a non-portable machine is chosen, in which case a machine is supplied to hold seven denominations, and a lever switches from one to the other as required.

Stamping machines can also be obtained which impress a printed cancellation stamp in lieu of affixing an adhesive stamp.

Envelope-sealing Machines.—These are chiefly valuable where the size and shape of envelope is uniform, although adjustment is provided for in some machines for larger or smaller envelopes of the same shape. An inexpensive contrivance for manual use is also on the market. This consists of a flanged metal tongue with a sponge attached, fed from a reservoir in the handle. It is a valuable time-saver.

Perforating Machines.—These machines punch small round holes in the material so as to form any number, design,

or wording provided for in the die. In offices they are used to perforate stamps to make pilfering by the staff difficult. Although this will not alone prevent their use on private correspondence, it minimises the risk of the stamps being sold. These perforating machines are also used to date incoming invoices, letters, etc., and to cancel share certificates, paid coupons, etc.

Stapling Machines.—Machines can be obtained which fasten papers by a tongue and groove clip made in the paper itself, by metal eyelets, by ready-made staples, or by staples made in the machine itself. Machines can be made to staple almost any material.

Tape-moistening Machines.—A variety of these may be obtained, varying in type and usefulness. The tendency towards using gummed tape rather than string renders some such machine essential where many parcels have to be made up.

Desk or Work Organisers.—A great feature is now made of multiple folders, which enable the user to keep his desk clear. The pockets are labelled according to the particular requirements of the user, *e.g.* pockets may be provided for "Items for Agenda," "Meetings," "Statistics," "To-day's Mail," etc. in the case of the secretary. Papers are thus kept together, and in a convenient and classified place, where they can be found and attended to at once when the appropriate times arrives.

A similar convenience is the Sorter, which may have any required number of pockets, labelled alphabetically, or in any other required classification. This is particularly useful for sorting letters, etc. preparatory to filing. Desk trays are useful for holding pins, paper clips, rubber bands, etc.

NOTE.—For further details and illustrations of many of the machines mentioned in this chapter, and of many others not mentioned, the reader is referred to the standard work on the subject, *Modern Office Appliances*, by Vincent E. Jackson, published for the Office Appliance Trades Association by Macdonald and Evans.

CHAPTER XVII

PRÉCIS WRITING AND REPORTS

PRÉCIS WRITING

THE amount of business which has to be undertaken by the Board of Directors at the periodical meetings is, in a big company, too great to enable each director to peruse in detail every document in an involved correspondence, every detail in a prolonged series of negotiations, and so on. Moreover, a hasty perusal would usually be totally insufficient to enable him to grasp the whole of the salient points.

It is thus obvious that by some means the secretary should place before the Board these salient points in their most readily understandable and concise form. He does this by means of précis, summaries and reports.

A précis (French, *précis* = precise; Latin, *præcidere*, to cut short) is literally, an abstract, abridgment or summary. In its commercial sense it means a condensed narrative of a series of documents or other matter so drafted as to show in as short a space and concise a manner as possible all the salient features of those documents or matter.

To construct a really good précis requires a great deal of practice, and the exercise of accurate judgment in discriminating between the really relevant and the superfluous, whilst omitting nothing essential to a full understanding of the whole matter.

In preparing to make a précis of a series of documents, of a speech, of a number of conveyances, of a series of minutes or other subject-matter, it is essential to master the whole by at least two preliminary readings of all the matter. This being done, a further survey should be made; this time the salient points should be underlined, so as to form a skeleton of the whole. The skeleton must then be revised so as to discard anything which is not essential to the précis, which can then readily be prepared. In discarding documents, etc.

it must be remembered that certain letters (as an example) which were of the utmost importance when they were written or received may have entirely lost their importance in the light of subsequent events. Until sufficient practice has made the writer efficient, he may find it practically essential to make a rough outline from his skeleton before proceeding to the final draft.

A précis must be as short [1] as is consistent with completeness, but it must be a continuous narrative, lucidly and grammatically expressed, concise but complete, expressing the exact shade of meaning of the original. Long sentences are to be avoided where simple ones will suffice, but disjointed simple sentences must be guarded against. Ambiguity is fatal, and redundancy or circumlocution spoils a précis. Sentences may be reduced into words, paragraphs into sentences.

Moreover, the writer must adhere strictly to the facts with which he is dealing. He must not make any addition to or comment upon those facts. This does not necessarily mean that the same order of ideas must be adhered to. If, by changing the order, a better and more logical review is obtained, it is permissible so to depart from the original, so long as connection of ideas is properly maintained.

A précis should be in the past tense and conversations be converted into reported, or indirect, speech. In a long précis, proper paragraphing is of great assistance. If dates are vital, as they may well be in legal work, due regard must be had to them in the précis.

A very important point to remember is that every précis *must* have a heading. Without this essential feature a précis loses most of its value. The object of it is to save time, and much time will be wasted if the reader has to search through several précis, without headings, before he finds the one he wants.

Précis writing is an art, the acquisition of which is well worth while. The aspirant to the highest posts in the secretarial profession is accordingly advised to cultivate his powers in this direction.

[1] Examination candidates will find it a good rule to endeavour to make the précis not longer than one-third of the original.

Reports

The secretary is often called upon to make reports to his directors on very diverse matters—matters which, not infrequently call for thorough and lengthy preliminary investigation, *e.g.* as to suitable premises for a new branch; complaints at a provincial office; suspected irregularities; the best method of raising additional capital; the position and prospects of a business which it is proposed to finance or take over; office organisation; threatened strikes; stock deficiencies, and so on. In many instances, too, the secretary has to prepare the material of the Directors' Annual Report to the members.

Such reports, to be of any use, must be most carefully prepared with a full knowledge of all the facts. If the services of an expert are obviously necessary, then he should be consulted.

The usual form of report is the letter or the narrative, setting out facts, agreements and conclusions in numbered paragraphs. Where the facts are involved and numerous, it is advisable to give, in a simpler form, an outline of those facts and the conclusions arrived at, referring at the appropriate points to detailed supporting schedules.

The collection of the facts is necessarily preliminary to the drafting of the report, but it assists in determining what information is required if the aim of the report is first set out. The whole of the facts already known should be tabulated and scrutinised to ascertain what further details are required. For example, if it is proposed to reorganise the office, it is essential that the existing organisation should be fully set out—its advantages and disadvantages being unequivocally detailed.

Where cost has to be considered, present and estimated future costs must be detailed. Where practicable, reference to similar organisations may advantageously be made.

Armed with the facts, the report writer must decide the logical order in which to marshal them. The ideal is to lead up to a logical and forceful conclusion, showing beyond a shadow of doubt the opinion of the writer, except in those cases where he is not required to give his conclusions, but merely to state the facts, so that his directors may arrive at

an entirely unbiassed decision. The latter type of report is often most difficult to draft, since the writer, necessarily immersed in the facts, is tempted, even if unconsciously, to give to those facts his own interpretation.

If a statutory report is required, the provisions under which it is prepared must be stated.

The following is a useful skeleton :—

(*a*) Title of the report. This must be sufficiently indicative to differentiate the report from other reports.

(*b*) A recital of the statutory requirements, or the resolution from which the report derives its being.

(*c*) The facts and data on which it is based, with references to supporting schedules.

(*d*) Where applicable, the conclusions (findings) and proposals or recommendations, with a draft of the resolution recommended to the Board.

If several different matters have to be dealt with, the report should be suitably subdivided, and a sub-heading be given to each section.

NOTE.—The best manual of Précis Writing is *A Practical Guide to Précis Writing and Indexing*, by G. O. E. Lydall, L.L.A., published by Macdonald and Evans at 3*s*. net.

CHAPTER XVIII

POWERS OF ATTORNEY

A POWER of attorney is a written authority by one person, called the principal, or donor, to another called the attorney, or donee, to act in his stead. It empowers the attorney to do acts which the principal would otherwise do in person. Powers of attorney are sometimes divided into (*a*) general powers, enabling the attorney to manage the principal's whole business, and (*b*) special powers enabling him to do particular acts only.

These instruments need not be under seal in the case of individuals, but in the case of English companies it is essential that the power should be given under seal. Foreign and colonial companies, however, which have no common seal, do not come within this rule (*Colonial Gold Reef* v. *Free State Rand* [1914], 1 Ch. 382). The power when executed remains in the hands of the attorney. In *Hibberd* v. *Knight* [1848], 2 Ex. 11, Baron Parke said, "The power of attorney is the deed of the attorney to whom it is given, and he is to keep it, and under it to show that he has authority for what he has done."

No particular form of authority is necessary provided that it complies with ordinary legal requirements. But several bodies have a regular printed form which they adopt. In particular, the Bank of England have a form of power of attorney for the transfer of stock upon which they act, and they recognise no other. This is issued to stockbrokers upon application at the Bank, and, when executed, it is lodged there at the Power of Attorney Office.

Every power of attorney must be construed according to the express words of the instrument, but the attorney has implied authority to do anything necessary and incidental to the work specified. An attorney is, in a sense, trustee for his principal, and is not allowed to entrust the work to a sub-

agent, or to make a profit out of his duties, except with the principal's consent.

Trade customs are admissible to interpret, but not to vary, the terms of the written instrument. The usages of the Stock Exchange may be implied in a power of attorney for the sale of stock, and other trade usages will be implied according to the trade with which the particular instruments may deal. But such usages are only implied if (1) they are reasonable and (2) they are known to the principal.

Where a power of attorney is to be exercised out of Great Britain and Northern Ireland it will be construed, as between the principal and the attorney, according to the law of the place where the power itself is executed, but as regards third parties according to the law of the place where the acts are to be done. A power of attorney given in a foreign country to be exercised here will be construed, as regards third parties, according to English law. "The general rule," said Lord Mansfield in *Robinson* v. *Bland*, 1. W.B.L. 258, "established *ex comitate et jure gentium*, is that the place where the contract is made and not where the action is brought is to be considered in expounding and enforcing a contract. But the rule admits of an exception where the parties at the time of making the contract had a view to a different kingdom." The exception alluded to is illustrated in later cases.

Thus where D. & W., a Spanish firm in Havannah, effected an insurance through M., a Spaniard in London, with a London underwriter, on D. & W.'s ship, the principal's name not being disclosed, the rights and liabilities of D. & W. were governed by English law (*Maspons* v. *Mildred* [1882], 9 Q.B.D. 530).

In *Chatenay* v. *Brazilian Submarine Telegraph Co.* [1891], 1 Q.B. 79, where a Brazilian subject executed a power of attorney in Brazil in the Portuguese language to a London broker to buy and sell shares, Lindley, M.R., stated the law in this respect as follows: "If he (the principal) buys and sells shares in England, he must buy and sell shares according to English law, and he must deal with people to whom he must produce an English translation of this document. He and they are to act upon a proper English translation, and not upon the original Portuguese."

The Companies Act, 1929, makes special provision for the appointment of attorneys by limited companies. For,

by S. 31, a company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in the United Kingdom; and every deed signed by such an attorney, on behalf of the company, and under his seal, shall bind the company, and have the same effect as if it were under its common seal. By S. 32, s.-s. (1): a company whose objects require or comprise the transaction of business in foreign countries may, if authorised by its articles, have for use abroad an official seal, which shall be a facsimile of the common seal, with the addition on its face of the name of the territory, district or place where it is to be used. And by s.-s. (3): a company having such an official seal may, by writing under its common seal, authorise any person appointed for the purpose in the foreign country to affix the seal to documents to be executed by the company in such place abroad. The authority of such agent as between the company and any person dealing with the agent continues during the period mentioned in the instrument, or if no period is mentioned, until notice of revocation is given to the person dealing with the agent (s.-s. 4).

By means of a power of attorney executed by the company the local directors will be authorised to affix the seal in manner provided by the section.

Apart from these statutory instances, frequent occasions arise in which the company itself, or a director or shareholder, may find it necessary to execute powers of attorney: *e.g.* where a director is leaving England, and wishes to appoint another to execute documents in his absence, or where it is necessary to get in property situated abroad. Precedents for these appointments will be found in the standard books of Precedents on the subject of Agency, or among general forms applicable to companies.

The powers of an agent can in no circumstances exceed the powers of his principal; consequently, where any act is required to be done by the agent under seal, the appointment of the agent must be by power of attorney under seal. In circumstances where no seal is necessary, a written appointment would be sufficient, or the agent might even be appointed by word of mouth, or his agency be inferred from the usage of trade, or from the conduct of the parties. But as acts in connection

with limited companies usually require a seal, the appointment would usually be by power of attorney under seal.

The power of attorney should be executed under seal of the appointer, and should be signed by him in the presence of two witnesses. It should be stamped with the proper stamp duty, which, in this country, is ten shillings (*Stamp Act*, 1891, Schedule, and *Finance Act*, 1917, S. 30).

A company has an implied power to appoint agents for general purposes, but the acts authorised must be within the objects of the company as defined by the memorandum of association. As regards directors, their power to execute powers of attorney depends on the articles, which are usually wide enough to allow them to do so. If not, leave must be obtained by a resolution of the company in general meeting.

Any person, including an infant or other person with limited capacity, can be appointed as agent if he is of sound mind and capacity. Any person of contractual capacity can also appoint an agent, and this extends to married women. For by the *Law of Property Act*, 1925, S. 129, s.-s. (1), which reproduces the *Conveyancing Act*, 1881, S. 40, a married woman, whether an infant or not, has power, as if she were unmarried and of full age, by deed, to appoint an attorney on her behalf for the purpose of executing any deed, or doing any other act which she might herself execute or do, and the provisions of this Act relating to instruments creating powers of attorney apply thereto. Apart from this statutory exception, it is a general rule that an infant cannot execute a valid power of attorney. A power of attorney executed by a person who at the time of signing is of unsound mind and incapable of understanding what he is doing is void (*Daily Telegraph Co.* v. *McLaughlin* [1904], A.C. 776).

There may be joint principals and joint attorneys. As regards the latter, the practice of the Inland Revenue to require a 10*s.* stamp in respect of each attorney, unless they were members of the same firm, has been met by S. 56 of the *Finance Act*, 1927. This section provides that double duty shall not be charged by reason only that more persons than one are named in the instrument as donors or donees, or that these powers relate to more than one matter.

There are two important rules of construction in connection with powers of attorney.

(1) *Recitals in a power of attorney control the generality of the operative part of the instrument.*

In *Danby* v. *Coutts & Co.* [1885], 29 Ch.D. 500, the document ran, " Whereas I am about to return to South Australia and am desirous of appointing an attorney during my absence from England in the management of my estate " : then, in the operative part, the plaintiff appointed an attorney, and gave him power to manage the estate. The attorney acted under the power not only when the plaintiff was abroad, but when he had returned home. It was held that the attorney's acts after the plaintiff returned home were invalid by reason of this rule. But where there is no ambiguity, the operative part will have effect without regard to the recitals.

(2) *Where authority is given in the instrument to do special acts and a general authority to do other acts follows in the instrument, the general authority is limited to the acts which are done in connection with, and are necessary to the special acts.*

Thus *In re Wallace* [1884], 14 Q.B.D. 22, a power of attorney authorised the agent " To commence and carry on or to defend or in equity all actions, suits or other proceedings touching anything in which I or my ships or other personal estate may be in anywise concerned." Here it was held that the power included an authority to the agent to sign a bankruptcy petition against the debtor of the principal.

But in *Jonmenjoy Coondoo* v. *Watson* [1884], 9 App. Cas. 561, a power of attorney gave to the holders authority " To sign for me and in my name and on my behalf any and every contract or agreement acceptance or other document " required for the purpose of negotiating, signing and transferring Government promissory notes and for purchasing the same. Here it was held that the power enabled the agent to sell or purchase the notes, but did not give a general authority so as to enable him to pledge them.

In *Bryant* v. *La Banque du Peuple* [1893], A.C. 170, the agent was authorised to make contracts of sale and purchase of chartered vessels and to employ servants, and, as incidental thereto, to do certain acts specified, including the endorsement of bills. It was held that this did not enable the agent to borrow on behalf of the principal, as this was not necessary for the purposes of the power.

In *Hambro* v. *Burnand* [1904], 2 K.B. 10, B. held a power of

attorney to underwrite for his principals certain risks at Lloyd's. He underwrote a particular risk in order to assist a company in which he was financially interested. The risk appeared to be in the ordinary course of business, and the act was within the actual authority conferred on him, although his motive was to benefit himself and not his principals. The Court of Appeal held that his principals were bound. This case must be distinguished from *Reckitt's case* (*infra*), in which the attorney's act was *not* within the authority conferred on him, and the principal was held *not* to be bound.

The position of bankers who honour cheques drawn upon a principal by the attorney in payment of the attorney's private debt has been recently considered by the House of Lords.

In *Reckitt* v. *Barnett, Pembroke, & Slater* [1929], A.C. 176, R., the principal, gave a power of attorney to T. to sign cheques in R.'s name. R. subsequently wrote a letter to his bankers stating that he wished the power "to cover the drawing of cheques upon you by T. without restriction." T. drew a cheque as R.'s attorney in favour of defendants, but in payment of a debt of his own (as the defendants knew). This was done without R.'s sanction, and R. sued the defendants for the amount of the cheque. The House of Lords held (1) that the power of attorney and letter conferred no authority on the attorney T. to use R.'s money to pay T.'s private debts, but that the authority was limited to the management of R.'s private affairs, and that the cheque for the payment of T.'s private debt was outside the authority, and (2) that the defendants having notice that R.'s money was being applied to T.'s private debt could not hold the proceeds of the cheque. T. also drew cheques in the name of R. "by his attorney." These he paid into his own bank (the M. bank) and was credited with the amounts. R. sued the M. bank for conversion. The cheques were crossed and the bank relied on S. 82 of the *Bills of Exchange Act*, 1882. It was held that the bank had notice from the form of the cheques that the money did not belong to T. and that they were negligent in making no inquiries, and that they were not protected by S. 82 of the *Bills of Exchange Act* (*Midland Bank* v. *Reckitt* [1933], A.C. 1).

Where persons taking cheques drawn by an attorney know or must be supposed to know the terms of the authority, they are put upon inquiry, whether the authority is being abused or

not: *John* v. *Dodwell & Co.* [1918], A.C. 563, which was followed by the House of Lords in *Reckitt's case* (*supra*). But where the agent is acting within his apparent authority in drawing a cheque, and there is no reason to assume fraud or irregularity, the principal is bound, so that he cannot recover if the cheque is honoured by his bankers, and he suffers loss. In *Corporation Agencies* v. *Home Bank of Canada* [1927], A.C. 318, the director and secretary of a company fraudulently drew cheques on the company and paid them into the director's private account with the defendants, who obtained payment for him. The company failed to recover from the bank, as the director had apparent authority, and the bank had no notice of any irregularity. The question in every case is that of "notice" or "no notice" to the defendants.

A clause in the power of attorney by which the principal agrees "to ratify and confirm whatever the attorney shall do or purport to do" will not avail to extend the authority actually given. It can only affect persons who are aware of it and act on the strength of it (*Midland Bank* v. *Reckitt*, supra).

Execution under Power.—The *Law of Property Act*, 1925, S. 123, provides that the donee of the power of attorney (*i.e.* the agent) may, if he thinks fit, "execute or do any assurance, instrument, or thing in and *with his own name and signature* and *under his own seal*, where sealing is required, by the authority of the donor of the power; and every assurance, instrument and thing so executed and done shall be as effectual and 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." This section, which replaces the *Conveyancing Act*, 1881, S. 46, enables the agent to sign in his own name and with his own seal; but in spite of this it is usual to sign in the name of the principal so as to avoid any question of personal liability upon the agent, as the effect of the section in this respect is not clear. Certainly an attorney executing a deed under a power of attorney should do so in the name of his principal, and then no precise form of words is necessary.

By the *Law of Property Act*, 1925, S. 74, s.-s. (2), the Board of Directors or the Governing Body of a corporation aggregate may appoint an agent to execute on its behalf instruments not under seal in matters within the power of the corporation, and, by s.-s. (3), where a person is authorised under power of

attorney to convey property in the name of a corporation he may, as attorney, execute the conveyance by signing the name of the corporation in the presence of a witness, and affixing his own seal. Such execution will take effect in the same manner as a conveyance executed by the corporation. This section applies to instruments " wherever executed," so that it covers deeds executed or powers granted outside the United Kingdom.

Determination of Power.—Powers of attorney may be brought to an end either by the act of the principal, who may revoke the power, or by the act of the attorney, who may renounce his authority. But this is subject to exceptions hereafter mentioned, and to the terms of the instrument itself, which may declare the power to be irrevocable. They may also be determined by lapse of the period, or fulfilment of the object, for which the authority was given : or by the death or bankruptcy of either party.

Revocation may be by deed or parol, but where the power of attorney is executed under seal it should also be revoked by instrument under seal. Renunciation by the attorney may cause difficulty, and in order to avoid this a clause is often inserted in the power providing that another person shall take over his duties in the event of renunciation or death, etc.

Where the authority given by the instrument creating the power is coupled with an interest it will be irrevocable by the principal, even if there is no express declaration to that effect in the instrument. The meaning of this rule can best be deduced from the decided cases, of which the following will serve as illustrations :

In *Frith* v. *Frith* [1906], A.C. 254, it is pointed out that where the authority is given to an individual to do a thing, the doing of which confers a benefit on him, the authority ceasing when the benefit is reaped, the authority is irrevocable. For instance, where the donee of a power has authority to apply for shares in the company which the donee is promoting for the purpose of purchasing the donor's property, the donor cannot revoke that authority before the benefit is reaped. So, in *Olympic Fire, etc. Co.* [1920], 2 Ch. 341, authority given by an underwriter to a syndicate employed by him enabling them to apply for shares was held to be a continuing authority coupled with an interest which he was not entitled to withdraw.

Death.—Except where the authority is coupled with an

interest in the way described, the death of the principal will revoke the authority of the agent, and the death of the agent also puts an end to the authority. The same result follows where the principal is a corporation and its corporate existence is ended by liquidation: see *Salton* v. *New Beeston Cycle Co.* [1900], 1 Ch. 43, in which it was held that the dissolution of a company acts as revocation of authority in the same way as the death of an individual.

Bankruptcy.—The agent's authority is also revoked by the first act of bankruptcy committed by the principal within three months next before the date of the presentation of a bankruptcy petition upon which the principal is afterwards adjudicated bankrupt, but it is not revoked where the authority is given in the course of mutual dealings between the principal and agent, until the agent has notice of an available act of bankruptcy at the time credit was given (*Bankruptcy Act*, 1914, S. 31). *Bona fide* transactions, such as payments by the agent to creditors of the principal, or payments to him for the benefit of the principal, are also protected, if they take place before the date of the receiving order, and if the agent has no notice of an available act of bankruptcy by the principal at the time (*Bankruptcy Act*, 1914, S. 45).

By the *Law of Property Act*, 1925, S. 127, the following provisions are made, where a power is expressed to be irrevocable for a fixed time in the instrument creating it.

This section reproduces the *Conveyancing Act*, 1882, S. 9.

S. 127, s.-s. (1). 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:

(i) The power shall not be revoked for and during that fixed time either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, disability [1] or bankruptcy of the donor of the power; and

(ii) Any act done within that fixed time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, disability or bankruptcy of the donor of the power, had not been done or happened; and

(iii) Neither the donee of the power, nor the purchaser, shall at any time be prejudicially affected by notice either during or after that fixed time of anything done by the donor of the power during that fixed time without the concurrence of the donee of the power, or of the death, disability or bankruptcy of the donor of the power, within that fixed time.

[1] *Disability* means inability to do any legal act.

Payment by Attorney in good faith without notice.—The law as to estoppel of a person who holds another out as having authority to bind him is well stated by Brett J. in *Drew* v. *Nunn* (1878), 4 Q.B.D. 667, as follows: "The holding out of another person as agent is a representation upon which, at the time when it was made, third parties had a right to act. The principal cannot escape from the consequences of the representation which he made; he cannot withdraw the agent's authority as to third persons without giving them notice of withdrawal. The principal is bound, although he retracts the agent's authority, if he has not given notice, and the latter wrongfully enters into a contract on his behalf." But 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: *Bryant* v. *La Banque du Peuple* [1893], App. Cas. 177, per Lord Macnaghten.

If the attorney has not had notice of revocation, acts done under the power will bind the principal. The *Law of Property Act*, 1925, S. 124, s.-s. (1), renders the acts of the attorney under the power binding in spite of the death, lunacy, bankruptcy of the principal, or of the revocation of the power, if he acted without notice. But, by s.-s. (3), any person interested has the same rights against the payee as he would have had against the attorney, if the payment had not been made. The section is set out in full below.

S. 124. (1) Any person making any payment or doing any act, in good faith, in pursuance of a power of attorney, shall not be liable in respect of the payment or act by reason that before the payment or act the donor of the power had died or become subject to disability or bankrupt, or had revoked the power, if the fact of death, disability, bankruptcy, or revocation was not at the time of the payment or act known to the person making or doing the same.

"Bankruptcy" includes "winding up" in the case of companies: see S. 205, s.-s. (1), of the same Act.

(2) A statutory declaration by an attorney to the effect that he has not received any notice or information of the revocation of such power of attorney by death or otherwise shall, if made immediately before or within three months after any such payment or act as aforesaid, be taken to be conclusive proof of such non-revocation at the time when such payment or act was made or done.

Where the donee of the power of attorney is a corporation aggregate, the officer appointed to act for the corporation in the execution of the power may make the statutory declaration in like manner as if that officer had been the donee of the power.

Where probate or letters of administration have been granted to any person, as attorney for some other person, this section applies as if the payment made or acts done under the grant had been made or done under a power of attorney.

This subsection is new, and affords useful protection in doubtful cases. For, as secretaries will note, the declaration is conclusive. The third paragraph of this subsection is also important, and covers the case of a probate granted in this country to the attorney on behalf of the executor of a deceased foreign stockholder. Its effect is to extend the protection of S. 124 (1), so that, in the event of the death of the foreign executor, the grant to the attorney is not determined, and "any persons making any payment or doing any act in good faith" in pursuance of the power will not be liable.

(3) This section does not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer if the payment had not been made by him.

(4) This section applies to payments and acts made and done before or after the commencement of this Act, and in this section "power of attorney" includes a power of attorney implied by statute.

The *Law of Property Act*, 1925, S. 126, provides:

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:

(i) The power shall not be revoked at any time either by any act done by the donor of the power without the concurrence of the donee of the power, or by the death, disability or bankruptcy of the donor of the power; and

(ii) Any act done at any time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, disability or bankruptcy of the donor of the power, had not been done or happened; and

(iii) Neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power without the concurrence of the donee of the power, or the death, disability or bankruptcy of the donor of the power.

This section prevents the revocation of a power of attorney executed by a company, which would take place automatically upon notice of winding-up proceedings (*Companies Act*, 1929, SS. 173, 229 and 258, and *re Oriental Bank* [1884], 28 Ch.D. 634).

This section (which reproduces the *Conveyancing Act*, 1882, S. 8) is extended in the case of purchasers of property, by S. 128 of the *Law of Property Act*, 1925, which is new :

(1) A power of attorney given for valuable consideration may be given, and shall be deemed to have been always capable of being given, to a purchaser of property or any interest therein, and to the persons deriving title under him thereto, and those persons shall be the duly constituted attorneys for all the purposes of the power, but without prejudice to any right to appoint substitutes given by the power.

(2) This section applies to powers of attorney created by instruments executed after the thirty-first day of December, eighteen hundred and eighty two.

(3) This section does not authorise the persons deriving title under the donee of the power to execute, on behalf of the registered proprietor, an instrument relating to registered land to which effect is to be given on the register unless the power is protected by a caution or other entry on the register.

The above section, which is retrospective, chiefly affects purchasers of property and questions of title. Coupled with S. 126 (L.P.A.) it renders an irrevocable power of attorney practically equivalent to " property."

Filing.—The *Supreme Court of Judicature (Consolidation) Act*, 1925, S. 219, provides as follows with regard to the filing of powers of attorney. [These provisions will take effect (s.-s. 5) " wherever effected," that is to say, even if the power is granted, or the deed executed, out of the United Kingdom] :

(1) An instrument creating a power of attorney, the execution of which has been verified by affidavit, statutory declaration, or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the Central Office.

(2) A separate file of instruments so deposited shall be kept, and any person may search that file, and inspect every instrument so deposited, and an office copy thereof shall be delivered out to him on request.

(3) A copy of an instrument so deposited may be presented at the office, and may be stamped or marked as, and when so stamped and marked shall become, an office copy.

(4) An office copy of an instrument so deposited shall without further proof be sufficient evidence of the contents of the instrument and of the deposit thereof in the Central Office.

(5) Rules of Court may be made for the purposes of this section regulating the practice of the Central Office, and prescribing, with the concurrence of the Treasury, the fees to be taken therein.

As regards clause (4) *supra*, this merely obviates the necessity for producing an original instrument by making an office copy sufficient evidence of the contents. It does not make the office copy evidence either of the truth of the contents

or of the identity of the person by whom the original was made (*O'Kane* v. *Mullan* [1925], N. Ir. 1).

This filing is only necessary in the case of powers relating to land to which the *Law of Property Act*, 1925, S. 125, applies, which is as follows:

> (1) Where an instrument creating a power of attorney confers a power to dispose of or deal with any interest in or charge upon land, the instrument or a certified copy thereof or of such portions thereof as refer to or are necessary to the interpretation of such power shall be filed at the Central Office pursuant to the statutory enactment in that behalf, unless the instrument only relates to one transaction and is to be handed over on the completion of that transaction:
>
> Provided that, if the instrument relates to land or a charge registered under the *Land Registration Act*, 1925, the instrument or a certified copy thereof or of such portions thereof as aforesaid shall be filed at the Land Registry, and it shall not be necessary to file it at the Central Office unless it also relates to land or a charge not so registered, in which case the instrument or a certified copy thereof or of such portions thereof as aforesaid shall be filed at the Central Office and an office copy shall be filed at the Land Registry.

A deed of revocation of the power may also be deposited at the Central Office and the revocation be noted.

> (2) Notwithstanding any stipulation to the contrary, a purchaser of any interest in or charge upon land (not being land or a charge registered as aforesaid) shall be entitled to have any instrument creating a power of attorney which affects his title, or an office copy thereof or of the material portions thereof delivered to him free of expense.
>
> (3) This section only applies to instruments executed after the commencement of this Act, and no right to rescind a contract shall arise by reason of the enforcement of the provisions of this section.

Forged Powers of Attorney.—Where a power of attorney is forged it has no effect, but the agent is liable on an implied warranty of authority on the principle of *Collen* v. *Wright* [1857], 8 E. and B. 647. In *Starkey* v. *Bank of England* [1903], A.C. 114, a broker applied to the Bank for a power of attorney for the sale of Consols, believing himself to be instructed by the stockholder. The Bank transferred the Consols to a purchaser on a power of attorney to which the stockholder's signature was forged. It was held that the broker must be taken to have warranted that he had authority from the stockholder, and that he was liable to indemnify the Bank against the stockholder's claim for restitution. The same result followed in *Lord Mayor of Sheffield* v. *Barclay*

[1905], A.C. 392. These cases, however, depend on an implied warranty, and they do not affect the rule that no title can be acquired under a forged instrument. If a corporation negligently leaves its common seal in the hands of its secretary, and the secretary, by affixing the seal to a forged power of attorney, transfers stock belonging to the corporation, the corporation is not bound by the transfer (*Merchants of the Staple of England* v. *The Bank of England* [1887], 21 Q.B.D. 160).

The rule of law is now firmly established that a principal is liable for the fraud of his agent acting within the scope of his authority, whether the fraud is committed for the agent's benefit or not. Formerly, the principal was only liable on proof that the agent's fraud was for the principal's benefit, but since *Lloyd* v. *Grace Smith & Co.* [1912], A.C. 716, the wider rule has prevailed, and the principal is responsible accordingly.

CHAPTER XIX

THE LEGAL POSITION OF THE SECRETARY

THE secretary is the link between the directors and the shareholders, the medium through which the company communicates with the outside world. While the directors are the brains of the company, the secretary is its ears, eyes and hands. He has responsibility in plenty, but he is an agent only, and cannot act for the company without authority from the directors. He is, however, an " officer " of the company within the meaning of the Act and, as such, is liable to the penalties imposed, *e.g.*, by Sections 42, 80 and 365 of the Act. He is moreover a " chief officer " for the purpose of making statutory returns or a statement of affairs under section 181; but an assistant secretary is not regarded as a principal or chief officer.

The secretary is not in a fiduciary position to the company in the same way as a director. In *Newlands* v. *National Employment Accident Association* [1885], 54 L.J., Q.B. 428, Lord Esher said, " A secretary is a mere servant: his position is that he is to do what he is told, and no person can assume that he has any authority to represent anything at all: nor can anyone assume that statements made by him are necessarily to be accepted as trustworthy without further inquiry, any more than in the case of a merchant it can be assumed that one who is only a clerk has authority to make representations to induce persons to enter into contracts." The same doctrine was enunciated in *Barnett, Hoares* v. *South London Tramways* [1887], 18 Q.B.D. 815.

Again, in *Houghton & Co.* v. *Nothard Lowe and Wills* [1928], A.C. 1, where it was held that a letter written by the secretary, purporting to confirm an arrangement not otherwise ratified by his company was not binding on the company, Lord Dunedin said: " The knowledge of directors is in ordinary circumstances the knowledge of the company. The knowledge of a mere official like the secretary would only be the knowledge of the company if the thing of which knowledge is predicated was a thing within the ordinary domain of the secretary's duties."

Contracts.—It follows that the secretary is not in a position to enter into contracts in the absence of such express or implied authority, and it turns upon a construction of the Articles of

Association in each case whether the directors are entitled to delegate their powers to him to enter into a contract.

The position of third persons dealing with the company requires careful consideration, and, except in cases of contracts of trifling importance, they cannot safely enter into contracts purporting to be made on behalf of the company by the secretary alone.

It is true that persons dealing with a limited company are not bound to inquire whether the internal arrangements prescribed in the Articles of Association have been carried out. They are entitled to assume regularity in the proceedings : *Royal British Bank* v. *Turquand* (6 E. & B. 327). But this doctrine is subject to two limitations. First, it has no application in the case of a document which is a forgery, as in *Ruben* v. *Great Fingall Consolidated* [1906], A.C. 439 (*see* p. 461 *infra*). Secondly, the principle does not apply against a company, except for acts done by persons in the position of directors. It does not apply, therefore, to branch managers or to other officials of the company such as the secretary. This is expressed by Lord Sumner in *Houghton & Co.* v. *Nothard Lowe and Wills* (*supra*) at p. 20 : "The mind, so to speak, of a company is not reached or affected by information merely possessed by its clerks, nor is it deemed automatically to know everything that appears in its ledgers. What a director knows or ought to know in the course of his duty may be the knowledge of the company, for it may be deemed to have been duly used so as to lead to the action, which a fully informed corporation would proceed to take on the strength of it." So where holders of a bill of exchange sued a company on the bill which had been fraudulently accepted on its behalf by a branch manager, it was held that the company was not liable. For though the directors had power to delegate, the plaintiffs knew nothing of such power, and were therefore not entitled to rely on its supposed exercise : *Kredit Bank Cassel* v. *Schenkers* [1927], 1 K.B. 826. applying the judgment of the Court of Appeal in *Houghton & Co.'s case* [1927], 1 K.B. 246.

As regards contracts, therefore, it is only when he clearly is endowed with the requisite authority that the secretary will be empowered—in the words of the *Companies Act*, 1929, S. 29, s.-s. 1—to sign on behalf of the company as a "person

acting under its authority express or implied," or "to enter into a parol contract not reduced to writing on behalf of the company."

Bills of Exchange.—The secretary should always sign a bill of exchange "for and on behalf of" the company. If he does so, or otherwise clearly indicates that he signs in a representative capacity, whether he signs as drawer, endorser or acceptor, he will not be personally liable. "But the mere addition to his signature of words describing him as an agent or as filling a representative capacity" will not exempt him from personal liability (*Bills of Exchange Act*, 1882, S. 26, s.-s. 1).

By the same Section (s.-s. 2), "in determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted." The effect of this is that if the principal is not clearly indicated by the agent, the agent himself is liable rather than that the bill should be ineffective.

A promissory note given by the secretary of a railway company in return for a loan to the company was signed "For the X. Railway Company, A.B. Secretary." The secretary was held not to be personally liable, for, clearly, the form of the note, notwithstanding that it began with the words "I promise to pay," indicated that it was made by the secretary not on his own behalf but in a representative capacity for the railway company (*Alexander* v. *Sizer* [1869], L.R. 4, Ex. 102). The position was explained clearly by Lord Ellenborough in an old case, *Leadbitter* v. *Farrow* [1816], 5 M. & S. 349: "Is it not a universal rule that a man who puts his name to a bill of exchange thereby makes himself personally liable unless he states upon the face of the bill that he subscribes it for another or by procuration of another, which are words of exclusion? Unless he says plainly 'I am the mere scribe' he becomes liable."

In signing a bill of exchange for the company the secretary must be careful to see that the name of the company is spelt correctly, and that the word "limited" appears after it. In *Penrose* v. *Martyr* [1858], E.B. & E. 499, a bill was addressed to the Saltash Steam Packet Company (the word "limited" being omitted), and the secretary signed "J. M., Secretary to the said Company." He was held personally liable on the

acceptance on the ground that the company was not properly described. The same result followed in *Atkins & Company* v. *Wardle* [1889], 58 L.J., Q.B. 377, where the company's name was not fully set out by the agent who signed for it. *See* also S. 93, s.-s. 4, of the *Companies Act*, 1929. These cases serve as a warning of the need of care where the secretary has to fill in Bills of Exchange on behalf of the company, adding his own name. But the presence of the company's name on the bill renders the company liable as principal, for a bill of exchange or promissory note shall be deemed to have been made, accepted, or endorsed on behalf of a company if made, accepted, or endorsed in the name of, or by or on behalf or on account of the company, by any person acting under its authority (S. 30, *Companies Act*, 1929).

Statute of Frauds.—On those occasions when he is in a position to contract as an authorised agent or when he is consulted by the directors on questions of contract, the secretary must bear in mind the provisions of the *Statute of Frauds*, S. 4, which provides that no action shall be brought, *inter alia*, upon any of the following contracts, " unless evidenced by some memorandum or note in writing, signed by the party to be charged, or by his agent authorised thereto " :

(1) a contract for the sale or other disposition of land or any interest therein;

(2) an agreement not to be performed within the space of one year from the making of it.

The provision which requires writing in a contract concerning lands is now incorporated in the *Law of Property Act*, 1925, S. 40, which is in similar terms.

Again, the *Sale of Goods Act*, 1893, S. 4, provides that " a contract for the sale of any goods of the value of ten pounds or upwards shall not be enforceable by action unless the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless a note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf." The words " accept " and " receive " in this section have special meanings, which the student will find explained in any good text-book dealing with mercantile law.

Failure to comply with these provisions does not in itself make the contract invalid. It merely makes the contract unenforceable by action. In some cases, *e.g.* a contract relating to land, the defect will be cured if the contract is partly performed, inasmuch as a decree of specific performance may then be sought from the Courts. Thus, if A. verbally agrees to sell to B. a piece of land, and B. in accordance with the agreement is allowed to go into possession of part of it, that will be part performance by A. sufficient to entitle him to require specific performance.

No particular form of memorandum is required to satisfy these requirements as to writing, so long as the parties and the particulars of the contract are clearly stated, and there is a signature by the party to be charged or his duly authorised agent.

In the case of the secretary as with other agents, it is a question of fact in each case whether he is a duly authorised agent or not.

The memorandum need not even be contained in one document. Thus where a manager, acting within the scope of his authority, wrote a letter referring to an unsigned document which contained the terms of the contract, that was held to be a sufficient memorandum although he was not expressly authorised to sign the letter as a record of the contract (*John Griffiths Corporation, Ltd.*, v. *Humber & Co.* [1899], 2 Q.B. 414).

Misrepresentation.—The company is not liable for the fraud or misrepresentation of the secretary unless it is committed in the course of his duty. It is within the duties of the secretary to certify transfers of shares, provided that the certificates are deposited in the office. But if the secretary fraudulently certifies that the certificates are so deposited, when they are not, the company is not bound by his action. It is open to the company to show that the proposed transferor had no shares to transfer, and if this is proved, the transferee has no right of action against the company (*Whitechurch (George)* v. *Cavanagh* [1902], A.C. 117; and *Kleinwort Sons & Co.* v. *Assocd. Automatic Machine Corpn.* [1934], W.N. 65). (Cf. *Peterborough Trust* v. *Steel Industries of Great Britain* [1934], 78 Sol. Jo. 861.)

In fact, there would appear to be very few cases in which the company incurs responsibility for the fraud of the secretary. In *Ruben* v. *Great Fingall Consolidated* [1906], A.C. 439, the seal of the company was fraudulently affixed by the secretary to a share certificate, and the signatures of the two directors were

forged by him. It was held that the company was not liable for refusing to register the transferees as owners of the shares. " The secretary of the company," said Lord Macnaghten, " who is a mere servant may be the proper hand to deliver out certificates which the company issues in due course, but he can have no authority to guarantee the genuineness or validity of a document which is not a deed of the company." It was suggested in that case that the secretary's duty was to warrant on behalf of the company the genuineness of the documents he delivered. But there was no evidence of any such authority being given by the company, and the House of Lords refused to imply it.

Similarly, a person who has been induced by the fraudulent statements of the secretary to take shares in the company will have no remedy against the company or the directors, but only against the secretary personally.

The position as regards the company is the same whether the misrepresentations made by the secretary are fraudulent or innocent. The company is not liable except in those rare cases when it can be shown that the representations were made by the secretary either with authority or in the course of his duty. The secretary will himself be liable if the representations are fraudulent. But if they are innocent, the position is not plain. No action for damages will lie, and the only possible remedy which would appear to be available is an action for breach of an implied warranty of authority against the secretary.

Breaches of duty which are not connected with contract are known in law as " torts." It used to be the considered view that a principal is only answerable for the servant's torts if committed in the course of his duty and for the principal's benefit. But that view was dispelled by the judgments of the House of Lords in *Lloyd* v. *Grace Smith & Co.* [1912], A.C. 716, and it is now clear that the principal is liable for the fraud of his agent committed in the course of his duty, whether the fraud is committed for the benefit of the principal or not. To this extent the liability of a company for fraud or misrepresentation of its secretary acting in the course of his duty is increased, but it is difficult to reconcile *Kleinwort Sons & Co. case* (*supra*, p. 461) with *Lloyd* v. *Grace Smith & Co.*

In cases where the tort results in a contract, the law is that a

company will not be allowed to retain the benefit of a contract which has been induced by the misrepresentation, even if innocent, of the secretary or other agent (*Hughes* v. *Liverpool Victoria Legal Friendly Society* [1916], 2 K.B. 482).

Other Acts of Misfeasance.—The same rule must be applied in estimating legal liability for other acts of misfeasance committed by the secretary in the course of his duty. So far as he himself is concerned it is no excuse to say that he was acting on behalf of the company, and, although the company may incur liability for his acts, he is also liable if the party wronged chooses to sue him rather than the company. It is often difficult to decide in a given case whether the company is liable for the secretary's acts, but a good general rule can be laid down that the company is liable for wrongs committed by the secretary when he is acting within the scope and in the course of his employment. So where libellous statements are made by the secretary within these limits, the company will be liable. But if the secretary made the statements on a privileged occasion, then the plaintiff will have to prove malice on the part of the secretary as servant of the company in order to succeed. Can this malice, if proved against him, be imputed to the company itself? For some time this was a matter of doubt. But it is now settled law that the company may be held liable for a malicious libel published by the secretary or other servant if he is acting within the scope of the above rule. Nor is it necessary that the secretary should have authority, express or implied, to make the statements in question. If he was acting in the course of his authorised employment when he wrote them, the company is liable in damages (*Citizen Life Assurance Company* v. *Brown* [1904], A.C. 423).

Secret Commission.—The secretary is liable to account to the company for money received by way of secret commission, and must pay it over with interest at 5 per cent. from the date of receipt. In *McKay's case* [1875], 2 Ch.D.1, the secretary of a company in making a contract with the vendor of a business was promised 600 fully paid shares as a reward for his share in the transaction. He was held liable to pay to the company the highest value of these shares during the time when they were held by him.

The secretary in such a case could plead the Statute of Limitations, and the company's claim against him would be

barred after six years from the time when they knew of the secret commission.

Dual Capacity.—Where a person is acting as secretary of two companies, and notice comes to him as secretary of one company, it does not necessarily operate as legal notice to him in his capacity of secretary to the other company, unless it was his duty as secretary of the first company to give notice to the second. For example, the fact that the party entitled to notice of dishonour of a bill of exchange must from his position be aware of such dishonour cannot relieve the party who is bound to give such notice from the necessity of doing so (*re Fenwick, Stobart & Co.* [1902], 1 Ch. 507).

Dismissal from Office.—The secretary, like any other servant, is entitled to proper notice of dismissal, or to a payment of salary by way of damages in default of notice. The period of notice will usually be fixed by the contract of employment, and provision as to this should be made when it is drawn up. If there is no such provision, then the company must give him " reasonable " notice (*re African Association and Allen* [1910], 1 K.B. 396). No definite rule can be laid down as to this, as all the circumstances of the case must be taken into consideration. But six months' notice would be sufficient in the case of most companies, although in the case of a small company, where the duties of the secretary were slight or the work was " part time " only, three months', or even less than three months' notice might be held to be enough. A more difficult legal problem arises when the company is put into liquidation or a receiver is appointed by the Court.

In *Reid* v. *Explosives Co.* [1887], 19 Q.B.D. 264, it was held that the appointment by the Court of a receiver and manager operated to dismiss the company's servants, and that the plaintiff, who was manager of the business, was therefore entitled to bring an action for wrongful dismissal. As, however, the receiver had, in fact, continued his services for six months or more at the same salary, he was unable to recover damages, because he had suffered none.

There is no doubt that a compulsory winding-up order has the same effect as the appointment of a receiver (*Chapman's case* [1866], L.R. 1, Eq. 346), and the rule applies when the liquidator, without continuing the business, employs the servants in analogous duties with a view to reconstruction

(see *Oriental Bank Corporation* [1886], 32 Ch.D. 366, where *Chapman's case* was followed). But the position of the company's servants, including the secretary, after the passing of a resolution for a voluntary winding up, is not so clear.

In *Midland Counties District Bank* v. *Attwood* [1905], 1 Ch. 357, it was held that a voluntary winding up did not discharge the company's servants, because it differed from compulsory winding up, in that it made no change in the personality of the employer. But this reasoning is unsound, because both in a voluntary or in a compulsory winding up the personality of the company remains the same until it is dissolved, although the business ceases from the commencement of the winding up. The decision in *Midland Counties District Bank* v. *Attwood* (*supra*) led to the view that a voluntary winding up in no circumstances operated so as to discharge a company's servants and to give them an immediate right to claim a sum by way of damages for wrongful dismissal. But that view was disapproved by the Court of Appeal in *Reigate* v. *Union Manufacturing Co.* (*Ramsbottom*), [1918], 1 K.B. 592, and the legal position now seems to be as follows: A voluntary winding up does not *necessarily* act as a discharge to the company's servants. It does so if the servant is a manager or commercial agent, and the circumstances of the winding up are such that the company can no longer carry on business, and so cannot carry out the contract with the servant. The servant can then either claim damages at once as on a repudiation of the contract of employment, or wait until the contract would naturally terminate. But the winding up does *not* operate as a discharge where there is no such breach of contract, and in the case of the secretary it would appear that the rule still applies that a voluntary winding up is not in itself a discharge.

So far as the obligations of the secretary are concerned, as distinct from his rights under the contract with the company, it is clear that where he is discharged owing to the effect of the winding-up order, or the appointment of a receiver, he is also released from his obligations under the contract. In *Measures Brothers* v. *Measures* [1910], 2 Ch. 248, the manager of a company who had been appointed to serve for seven years had entered into a restrictive covenant in his contract of employment not to engage in or be interested in any competing business for seven years after ceasing to hold office under the

company. It was held that as the company could no longer carry out the contract in his favour owing to the making of a winding-up order he was no longer bound by the restrictive covenant and was therefore released from it.

When the receiver is appointed not by the Court in a debenture holder's action, but under powers contained in the nstrument of charge, the appointment does not in itself interfere with the contracts of employment between the company and its servants. The receiver is the agent either of the debenture holders, or of the company, according to the terms of the instrument of charge: *Robinson Printing Co.* v. *Chic* [1905], 2 Ch. 123. The receiver, however, in order to prevent misunderstanding will usually explain to the secretary that his services will still be required. Should the company subsequently go into liquidation, the above remarks as to the effect of liquidation on the secretary's contract of employment will apply; and it is to be particularly observed that in the case of voluntary liquidation superseding the receivership, the authority of the receiver to act on behalf of the company is terminated. The company only exists for the purpose of being beneficially wound up (*Companies Act*, 1929, S. 228). The receiver's authority to carry on the business of the company is at an end, and as from the date of the resolution for winding up he is personally liable for any contracts into which he may enter (*Thomas* v. *Todd* [1926], 2 K.B. 511).

Before leaving this branch of the subject, reference should be made to S. 264 of the *Companies Act*, 1929, by which a clerk or servant (including a secretary) is entitled to priority in a winding up for wages or salary (up to £50) in respect of services rendered to the company during four months before the commencement of the winding up. But the rule does not apply to a part-time secretary who performs his duties by means of a clerk (*Cairney* v. *Back* [1906], 2 K.B. 746). That date in the case of a compulsory winding up is the winding-up order itself (S. 264, s.-s. 7), and in the case of a voluntary winding up it is the passing of the winding-up resolution.

Penalties.—This chapter would be incomplete without reference to the fines and penalties which a secretary may incur for breach of the various provisions of the *Companies Act*, 1929, which affect him. These provisions are fully set out in tabular form in Appendix I, pp. 620 *et sqq*.

CHAPTER XX

INSURANCE

It is not proposed to discuss the law relating to insurance in this chapter. Where, by reason of the nature of his employment, it is necessary for the secretary to be thoroughly acquainted with any particular branch or branches of insurance business, special text-books must be studied, and special examinations should be passed, *e.g.* those of the Institute of Actuaries or of the Insurance Institute. No more is intended here than to mention the different classes of insurance which can be effected, and which the secretary of a limited company may, in the course of his duty, find it advisable to effect. When any particular kind of insurance is necessary, the insuring companies transacting that sort of business, or Lloyd's insurance brokers, will, on request, furnish particulars of the facilities afforded. But the secretary should be careful to see that the policy in express terms secures to his company the exact measure of protection desired, and, if he is in doubt, consult the company's solicitors on the point.

With the exception of life assurance, all insurance contracts are contracts of indemnity, and it is the duty of those responsible for a company's affairs to safeguard its interests by providing indemnities against all happenings which might seriously and adversely affect the undertaking. For normal risks, the premium is so relatively small that it is false economy not to cover those risks by insuring against them. Some large companies provide their own insurances by a reserve built up by appropriations out of profits.

A secretary should bear in mind the risks to which his company is liable, and see that the protection against them is adequate. On his accepting office, and thereafter from time to time, he should review all insurances, and, where necessary, obtain further cover. On the other hand, excess cover should be reduced to current needs.

The Contract.—Contracts of insurance are of the class *uberrimae fidei*, i.e. the utmost good faith must be observed when entering into them. It is therefore incumbent upon the person proposing to effect an insurance to disclose all facts which would influence the prospective insurer in any way when deciding to accept or reject the proposal. In general, the proposer is required to answer truly and to the best of his knowledge and belief all questions contained in the prospective insurer's proposal form, and voluntarily to disclose any facts not brought out by the questions, which the proposed insurer ought to know in order rightly to estimate the risk involved. This proposal form, duly filled in by the applicant, is then usually incorporated by reference in the policy, and any misrepresentations contained therein, or material omissions therefrom may give the insurer the right to avoid the policy, which is the evidence of the contract.

It is incumbent on the insured to take such care to avoid loss as a reasonable business man would exercise, *i.e.* he must not neglect reasonable precautions, as evidence of good faith.

The secretary should satisfy himself that every insurance policy taken out contains conditions satisfactory to the company, and no conditions which are likely to deprive the company of the benefit of the contract. It is also obviously desirable to retain an exact copy of the proposal form.

Premiums must be paid within the days of grace allowed, otherwise the policy will lapse, possibly with serious consequences. Where insurances are numerous, it is desirable to have an easily accessible record of them, giving details of the policies, and of their renewal dates, and the days of grace allowed for renewal.

In the event of a loss, immediate notice must be given to the insurer. The insurer usually reserves the option to replace or reinstate the property lost, damaged or destroyed instead of paying its agreed cash value.

Average.—Cover must be adequate, otherwise when a loss occurs, the company will be considered as having acted as its own insurer to the amount by which the total value of the subject-matter insured exceeds the actual sum for which it is insured, so that if the loss is partial, the company must bear its proportion of the loss, in the ratio that the amount uninsured bears to the total value of the subject-matter of the

insurance, *i.e.* the loss is "averaged" over the insurance company and the company assured in the proportions which each is insuring.

Examples :—

(*a*) A company insures its stock against loss by fire in the amount of £10,000. A fire occurs and stock valued at £6,000 is destroyed. At the time of the fire, the value of the whole stock at risk is £15,000.

In such case, the company could not at the highest recover more than $\frac{10}{15}$ths of the loss, *i.e.* £4,000.

(*b*) A company insures against burglary to the total amount of £3,000 in respect of its two shops, although the stock carried at *each* shop is valued at £3,000. The directors have acted on the assumption that both shops will not be likely to be burgled at the same time, but have not realised that they are asking the insurance company to cover two risks at the price of one. If a burglary occurs the insurers will not pay out more than half the loss.

Average may be barred by an express provision in the contract, but, in any case, there cannot be recovered a greater sum than the amount of the loss, no matter how much the sum insured may exceed the loss. An agreed value may be placed on the subject-matter at the time of effecting the policy, otherwise the value has to be determined at the time of the loss, and agreed with the assessors of the insurers.

Life Assurance.—Usually a company insures only the life of a director or other official, or person whose death would be a serious financial blow to the company, *e.g.* where the official is the only person completely acquainted with a secret process which it is impolitic to disclose to others, or where he has lucrative connections which the company will lose on his decease. When it is desirable to make provision for such a loss, it is usually the simplest course for the person in question to effect an insurance to the desired amount on his own life, and then to assign the policy to the company immediately, by a properly executed deed of assignment which should be drawn up by the company's solicitors. Notice of the assignment should immediately be given to the insurer, for such notice operates, so far as the insurer is concerned, to give the assignee priority of charge on the proceeds of the policy, and enables

him to sue the insurer in his own name, without joining the assignor as a party to the suit; and the policy should, of course, be in the assignee company's safe keeping. If the company itself effects the insurance, it should take care to see that the policy admits that the company has an insurable interest in the life at the time the insurance is effected, otherwise it may be difficult to prove such an interest when a claim arises. An insurable interest can exist only if the company derives definite financial benefit from a continuance of the life assured, and would suffer definite financial loss on cessation of that life.

Fire Insurance.—Cover should be procured against loss by fire of buildings (if owned), plant and machinery, stock, furniture and fittings, documents, etc.; in fact everything of value which would be damaged or destroyed by fire. Extra cover may be advisable to cover the cost of re-writing books, replacing documents, etc.

The insured must have an insurable interest in the subject-matter from the inception of the contract to the date of the loss, and the policy can be assigned only with the insurer's consent.

In fire and similar classes of insurance, the certificate of value of a reputable valuer is usually accepted by the insurer as evidence of the correctness of the declared values at the time of the issue of the policy, and may prevent subsequent disputes. When dealing with stock or similar assets, the value of which fluctuates from time to time, this is impracticable, but in appropriate cases it is a reasonable precaution to have the values admitted by the company. Where the value of the subject-matter insured is admitted and a policy to equal value is taken out, no question can afterwards arise as to the adequacy of the sum assured.

Marine Insurance.—The contract of marine insurance is, theoretically, a contract of indemnity. Whereas in the case of fire insurance the indemnity is, speaking generally, regarded as limited to the actual loss sustained, in marine insurance it is ordinarily based on values agreed upon in advance, which values may be greater or less than the values actually at risk. In consideration of the payment of a certain sum called the " Premium " the underwriter agrees to indemnify the assured against loss or damage caused by certain specified perils, sometimes called perils of the sea, but which would be more accurately described as " perils insured against," inasmuch as

some of the risks insured against are not sea risks at all. (*Marine Insurance: Its Principles and Practice*, by Frederick Templeman.)

A company which owns or has occasion to charter ships, consign goods abroad, or is otherwise interested in anything which may be lost or suffer damage in or incidental to a marine adventure, may insure against losses accruing to the ship, cargo, freight or other subject-matter during a given voyage (voyage policy), or for a given length of time (time policy).

In marine insurance the insurable interest must exist at the time of the loss, though not necessarily at the time the insurance is effected, and the policy may be assigned, and may also be subsequently adopted, by any person who, during the currency of the risk, may have, or may acquire, an insurable interest in a part or the whole of the subject-matter insured.

Marine insurance is a highly involved and technical subject, for information on which the reader is advised to refer to a specialised treatise. When cover is required, a broker should be consulted as to the best method of effecting it.

Large shipping companies, *e.g.* the Peninsular and Oriental Steam Navigation Company, build up their own insurance funds from reserves, and act as their own insurers. Smaller companies effect insurances on hulls, etc. through Lloyd's underwriters. Large shippers usually take out through Lloyd's a policy termed an " open " or a " floating " policy, for a sum commensurate with the size of their shipping transactions, and, as each shipment is made, declare to the broker through whom the policy is effected the name of the carrying vessel, its destination, the consignees, the nature of the goods and the mode of packing, and the invoice value, plus an addition of, say, ten per cent. When the total value of these declarations reaches the sum insured under the policy, a fresh one is taken out.

Burglary.—The conditions of any burglary policy should be carefully perused, since the ordinary policy against burglary covers only the loss by burglary and housebreaking as such, and then only of the insured's own property. Any property held in trust or on commission is covered only if separately mentioned, and the following risks *inter alia* are excluded :

(*a*) Theft by the business staff of the insured, or by persons lawfully on the premises.

(*b*) Thefts following fire or explosion, hostilities, riot, strikes, etc.

(*c*) Loss or damage which can be insured against by a fire or plate-glass policy.

(*d*) Bonds, securities, stamps, business books, patterns, moulds, coins, etc.

If the above or other usually excluded risks are to be covered, special provision must be made in the policy. (*See also* Fidelity Guarantee.)

It is common in burglary insurance to insure for a sum less than the total value of the subject-matter, since the loss of the whole subject-matter in this way is unlikely, but it must be remembered that average will operate, unless specially excluded by arrangement and the terms of the policy (*see* p. 468). Naturally, a higher premium is payable where average is excluded.

The risk of shop-lifting, appropriation of stock by employees, etc. may be made the subject of separate insurance.

Parcels.—Insurance against loss of parcels in transit may be conveniently effected by means of books of coupons, one coupon to be affixed to each parcel dispatched. Cover may be obtained, but at high rates, to cover pilferage from the company's own vehicles. A Lloyd's policy can also be taken out to provide against these risks.

Registered Post.—Although Registration by Post is a form of insurance, the sender has no *legal* right to compensation, and it is customary, where valuable articles have to be sent by post, to insure in the ordinary way. A provisional premium is paid, and on despatching each packet the insured sends an advice to the insurer the same day, declaring the name and address of the consignee, and the value of the parcel. The premium is adjusted from time to time (*cf.* Floating Policy, p. 471).

These policies may be extended to cover losses in respect of packets delivered by the company's own messengers.

Travellers' Baggage.—Insurance under this head may be effected, subject to specified conditions and exceptions. Each case is treated on its own merits. Usually it is effected through the railway or shipping company by which the baggage is conveyed.

Plate Glass.—Windows, counters, show-cases, hot-houses

and all other glass work may be insured against breakage, whether from accident, hostility, hail-storm or other natural phenomenon, and since plate and other glass is expensive, this precaution is very necessary. Fire and burglary policies should be inspected to see how far they cover plate-glass risks.

Boilers.—In a factory or a building warmed by central heating, the risk of damage by burst boilers, etc., not only to the company's own property but to the persons or property of third parties, should be covered. This may be included in the fire policy, or be a separate policy. Works boilers should be covered, as a matter of course. The insurers are prepared to undertake the periodical inspections required by the Factory Act, 1911, and to indemnify against breakdowns, etc.

Excess Bad Debts.—Insurance is only undertaken by a few companies and underwriters. Some are prepared to cover the risk on any particular account on its own merits, others on the whole of the customers. Usually, the insured is required to bear the first ten per cent. or more of any bad debt, and the premium varies with the class of business and customer, and with the amounts insured.

Consequential Loss.—The ordinary fire policy covers no more than loss or damage to the subject-matter insured. It is therefore desirable to insure against losses arising as a consequence of the fire, *e.g.* payment of standing charges (rent, rates, and taxes; interest on loans, mortgages, etc.; salaries of permanent staff, etc.), increased working expenses (rent of temporary premises, hire of machines, etc.) and loss of net profits. It is a condition of a reasonable premium that the books are regularly audited, so that proper standards can be arrived at for the purpose of ascertaining the loss.

Workmen's Compensation.—The employer incurs liability under various Acts for accidents, etc. arising to staff, workmen, charwomen, window-cleaners and others, and adequate insurance cover is essential. It is not possible here to detail the legal requirements, and the secretary should refer to the *Employers' Liability Acts* and the *Workmen's Compensation Acts* and to the insurance companies on the matter.

Third Party Liability.—This is very similar to workmen's compensation, and the same remarks are applicable. The injury that may be caused to the property and/or person of others by reason of collision or a running down accident, fire

or other disaster can never be foreseen, and it is therefore essential to seek and obtain as full protection as can reasonably be necessary.

Fidelity Guarantee.—It is a wise precaution to insure against loss arising through the fraud or dishonesty or breach of trust of all officers and employees of the company. Personal suretyship is difficult to obtain, and may be most unsatisfactory. The insurers require a most detailed proposal, and make exhaustive inquiries regarding each person included in or added to the policy, and acceptance of the proposal is to some extent a guarantee of the honesty, and the past record of the employee.

Other Insurances.—Cover may be obtained to guarantee repayment of loans, etc., titles under leases, and issues of share capital; against forged transfers; live-stock risks, motor-car accidents, etc., and other risks. Any unusual risk can usually be covered at Lloyd's, even if it is not within the scope of an insurance company's business. All motor vehicles used on the roads must be insured at least against third party risks.

CHAPTER XXI

STATUTORY COMPANIES

A STATUTORY company is a company incorporated by a private or special Act of Parliament. Such companies are invariably formed to construct and carry on works of a public character such as canals, railways, docks and harbours, water-works, gas-works, electricity works, tramways. The construction of works of this kind commonly necessitates the acquisition of land, and the commission of acts prejudicially affecting other people's use and enjoyment of their property, technically termed "nuisances." The private Act by which such companies are created invests them where necessary with compulsory powers to acquire land, and to commit those acts which, but for the private Act, would be nuisances, subject to payment of compensation for the land acquired, or for the nuisance committed.

Until the year 1845, by which time statutory companies had greatly increased, mainly owing to the development of canal and railway construction, the special Act by which such companies were constituted had not only to set out comprehensively what may be termed its charter, defining its constitution and powers—comparable with the memorandum of a registered company—but also the provisions regulating its internal management—comparable with the articles of a registered company. In 1845 the Legislature passed an Act, entitled *The Companies Clauses Act,* consolidating the provisions which hitherto had usually been inserted in the special Acts creating companies formed for carrying on undertakings of a public nature, and thenceforth the provisions contained in that Act were, save so far as Parliament, in special cases and to limited extent, may have authorised the provisions to be varied or excluded by the special Act, incorporated by reference into the special Act constituting such a company. In 1863 another consolidating Act was passed, and in 1869,

1888 and 1889, short Acts amending that of 1863. All these Acts, the short title of which is the *Companies Clauses Acts*, 1845 to 1889, now regulate all companies incorporated by special Act of Parliament. The object of these Acts, and of other Clauses Acts referred to below, is to introduce uniformity in the management of statutory companies, and to avoid the necessity of repeating in every special Act the provisions which experience has shown to be best adapted to these companies.

It has been said that the constitution and powers of a statutory company, as defined in its special Act, are comparable with the memorandum of a registered company, and the provisions of the *Companies Clauses Acts* with the articles of a registered company. It is necessary, however, to add that both are far more rigid than the memorandum and articles of a registered company. The student is aware that the memorandum of a registered company may be altered in various ways, as provided by the Act of 1929, and that any article of such a company may be altered by special resolution. But no alteration in the constitution and powers, or in the provisions for the internal management of, a statutory company, as laid down in its private Act, is possible unless a further private enabling Act is passed by Parliament. A statutory company may, however, where applicable, utilise the additional powers conferred by other Acts, *e.g.* the *Railway Companies Powers Act*, 1864; the *Regulation of Railways Act*, 1868; the *Railways Act*, 1921; the *Gas and Waterworks Facilities Act*, 1870; the *Railways (Electric Power) Act*, 1903; the *Gas Regulation Act*, 1920; the *Public Utility Companies (Capital Issues) Act*, 1920, the *Electricity (Supply) Act*, 1926, etc.

The powers of a statutory company are restricted to those conferred upon it by Parliament, and the exercise of those powers is limited to the purposes sanctioned by Parliament. "It must be now considered as a well-settled doctrine that a company incorporated by Act of Parliament for a special purpose cannot devote any part of its funds to objects unauthorised by the terms of its incorporation" (per Cranworth L.C. in *Hawkes* v. *Eastern Counties Railway Co.* [1885], 5 H.L.C. 331). Powers, however, which are incidental to or consequential upon those authorised by statute may be implied, and will not be held by the Courts to be *ultra vires* (*Deuchar* v. *Gas, Light & Coke Co.* [1925], A.C. 691).

In addition to the general provisions contained in the *Companies Clauses Acts*, 1845–1869, many other Clauses Acts have been passed containing general provisions applicable to Railways; Land; Gas-works; Water-works; Harbours, Docks and Piers; Electric Lighting, and the provisions of such of these Acts as may be appropriate to any particular statutory undertaking are incorporated in the special Act creating the company.

The framing of a private Bill, and getting it passed by Parliament as a private Act, is a tedious, highly technical and costly process committed to a class of persons known as Parliamentary Agents. At least five persons must be associated as promoters of the undertaking for which a private Act of incorporation is sought. There must be public advertisement in the *Gazette* and local newspapers of the intention to bring the Bill before Parliament. This is the signal for all who object to the project, *e.g.* public authorities and other bodies, such as, *e.g.*, an already established railway, canal company, electricity undertaking, etc., whose receipts are likely to be lessened by the new competitor for public favour, and all those whose rights in or over property are likely to be injuriously affected by the Bill being passed and the undertaking established, to organise opposition to the Bill. The opposition will also employ parliamentary agents. Counsel will be retained on both sides. Witnesses will be examined before Committees of both Houses. The Bill will be most carefully examined in Committee in the light of all the established facts, and, though approved in principle, will not be passed into law unless there are introduced into it provisions safeguarding existent rights, which, as proved in evidence, would be prejudiced by the carrying out of the undertaking.

The following is a brief digest of the main provisions of the *Companies Clauses Acts*, 1845–1889.

Shares.—The capital of the company shall be divided into shares of the prescribed number and amount, numbered in arithmetical progression, beginning with number one; and every such share shall be distinguished by its appropriate number (S. VI). Unless authority so to do is conferred by the special Act, a company may not issue preference shares or guarantee a dividend on any part of its share capital.

It is usual for the special Act to provide that a share shall

not vest in the shareholder, *i.e.* shall not become his property so as to be capable of transfer, or a certificate be issued in respect of it, until one-fifth of the nominal value has been paid up. But such a provision does not affect the liability of the shareholder to pay for the share in full.

Register of Shareholders.—A register of shareholders must be kept, and contain the names and holdings, with the distinctive numbers, and the amounts paid up thereon, of every shareholder, in alphabetical order. It must be authenticated by the Common Seal being fixed thereto at the first ordinary meeting, or next succeeding meeting, and at each ordinary meeting of the company (S. IX). The names of joint holders should all be entered in the register.

Shareholders Address Book.—This book is also compulsory, and the secretary must enter in alphabetical order the names, addresses and descriptions of every shareholder. It is open to the inspection of every shareholder (or the clerk or agent of a corporate shareholder) gratis. Copies of the whole or any part may be demanded at a charge not exceeding sixpence per hundred words (S. X).

Certificates.—On demand, the holder of any share is entitled to a certificate under the Common Seal, specifying the share of the undertaking to which he is entitled. The certificate must be in the form prescribed in Schedule A annexed to the Act, or to the like effect, and the prescribed amount, or a charge not exceeding two shillings and sixpence, may be demanded by the company for such certificate. The prescribed form is as follows :

.....Company.

Number.....

THIS IS TO CERTIFY that ..... of ..... is the proprietor of the share number ..... of the .... Company, subject to the regulations of the said company.

Given under the Common Seal of the said company, the ..... day of ..... in the year of our Lord ..... (S. XI).

The certificate is *primâ facie* evidence of title, but the want

of a certificate does not prevent the holder of any share from disposing of it (S. XII).

A worn-out or damaged certificate may be cancelled and exchanged for a new one, and where a certificate is lost or destroyed a similar certificate may be issued on satisfactory proof being given of the loss or destruction of the original. The company may make the same charge as for the original certificate, and the secretary must record the substitution in the Register of Shareholders (S. XIII).

Transfer.—Transfers must be made by deed, duly stamped, in which the consideration is truly stated. The form of deed is given in Schedule B of the Act, but a form to the like effect will suffice. The secretary must enter particulars of the transfer in the Register of Transfers, and endorse the entry on the deed of transfer, and shall on demand deliver a new certificate to the purchaser. If the transferee so requests, an endorsement of the transfer, signed by the secretary, must be made on the certificate, and this has then all the effect of a new certificate. A charge of an amount prescribed by the special Act, or, if none is prescribed, a sum not exceeding two shillings and sixpence, may be made for endorsing the deed of transfer, including the new certificate, or endorsement of the old certificate (SS. XIV–XV).

No shareholder shall be entitled to transfer any share on which a call is unpaid, or unless he has paid all calls for the time being due on every share held by him (S. XVI). If a transfer is inadvertently registered, it is valid, and the transferor becomes an ordinary debtor for the unpaid call (*In re Hoylake Railway, ex parte Littledale* [1874], 9 Ch.D. 257). It has been held that directors may take the business of a Board meeting in whatsoever order they decide, and may make the business of a call their first business, in order to restrain threatened transfers, and so prevent the holders from escaping liability on the shares (*Gilbert's case* [1870], 5 App. Cas. 559).

The register of transfers may be closed for the period prescribed in the special Act; if none is prescribed, then for a period not exceeding fourteen days previous to each ordinary meeting. Seven days' notice must be given by advertisement in a newspaper of the intention to close the register. Any transfer made during the time the transfer books are closed shall, as between the company and the party claiming under

the transfer, be considered as made subsequently to the ordinary meeting (S. XVII).

Transmission.—Any transmission in consequence of death, bankruptcy, etc. must be authenticated by a declaration in writing, or in such other manner as the directors require. The declaration must state the manner in which, and the party to whom, the share(s) is (are) transmitted, and must be made and signed by a credible person before a Justice, or a Master or a Master Extraordinary of the High Court of Chancery. It must be left with the secretary, who must enter the person entitled under the transmission in the Register of Shareholders. The prescribed fee or, if none is prescribed, a sum not exceeding five shillings, may be charged for registration. Until a person entitled under a transmission is thus registered he cannot be recognised as the owner of, or receive dividends or vote in respect of, the shares.

Where the transmission arises through the marriage of a female shareholder, the declaration must contain a copy of the marriage register and declare the identity of the wife with the holder of the share; and where the transmission arises by will or intestacy, probate or letters of administration must be produced with the declaration. The secretary must make an entry of the declaration in the Register of Transfers (SS. XVIII–XIX).

Trusts.—The company is not bound to see to the execution of any trust, whether express, implied or constructive, to which shares may be subject, and the receipt of the registered holder or of one of joint holders is a sufficient discharge for any dividend or other sum paid in respect of the share, notwithstanding any trust to which the share may be subject, and whether or not the company has had notice of such trust. The company is not bound to see to the application of the money paid upon any such receipt (S. XX).

Calls.—Calls must be paid at the times and places appointed by the company. Twenty-one days' notice at least must be given of any call. No call must exceed the prescribed amount, if any, or be made at less than the prescribed interval, if any. Moreover, the aggregate amount of calls made in any one year must not exceed the prescribed amount, if any. Where calls are in arrear, the shareholder is liable for interest thereon from the day appointed for payment to the day of

payment, at the rate allowed by law. The company may receive amounts in advance of calls, and may allow interest at such rate not exceeding the legal rate of interest for the time being, as is agreed between the shareholder and the company.

Calls may be enforced by action. Proof must be given that the defendant was the holder of shares at the time of the call, that the call was made, and that proper notice of the call was given. The production of the Register of Shareholders is *primâ facie* proof of membership and holding (SS. XXI–XXVIII).

Forfeiture.—At any time after two months from the appointed day for payment of calls, the directors may forfeit shares on which the calls remain unpaid. Twenty-one days' notice of the intention to forfeit must be given by post or by hand to the holder at his usual or last place of abode. If the holder is abroad or his usual or last place of abode is not known, or if, through non-registration of a declaration of a transmission known by the directors to have taken place, the address of the persons to whom the shares have been transmitted is not known, the directors may give notice of their intention to forfeit in the *Gazette* and in one newspaper, at least twenty-one days before forfeiture. Before a forfeited share can be sold the declaration of forfeiture must be confirmed at a general meeting held not less than two months after the notice of intention to forfeit has been given. After such confirmation, the directors may sell the forfeited shares by auction or private contract, either separately or together, and any shareholder may purchase any forfeited share so sold. The provisions regarding evidence of forfeiture, etc. are similar to those in Table A. The company must not sell more shares of the defaulter than are necessary to pay the arrears of calls and interest and expenses due at the time of sale. Any sum realised in excess thereof must, on demand, be paid to the defaulter. If the arrears of calls and interest and expenses be paid after forfeiture and before sale, the shares revert to the defaulter (SS. XXIX–XXXV). Until actual sale, forfeited shares are thus no more than a security to the company.

Creditors.—If any execution has been issued against the company, and sufficient cannot be found whereon to levy it, the execution may be made against any shareholders in respect of shares not fully paid, but an Order of the Court must first

be obtained, and sufficient notice in writing must be given to the persons sought to be charged of the intention to apply for such an order. For this purpose any person entitled to such an execution may inspect the Register of Shareholders gratis. If by reason of any such execution any shareholder shall have paid more money than is due from him in respect of calls, the directors must forthwith reimburse him out of the company's funds (SS. XXXVI–XXXVII).

Borrowing.—If the special Act authorises the company to borrow on mortgage or bond, the company may, subject to the restrictions in the special Act, borrow such sums as are authorised from time to time in general meeting, not exceeding in the whole the sum prescribed, and may as security mortgage the undertaking and future calls, or give bonds.

A company that has paid off authorised borrowings on mortgage or bond may re-borrow the amount paid off, but may not, without the authority of a general meeting, exercise the power of re-borrowing unless the re-borrowed money is used to pay off any existing mortgage or bond.

Where by its special Act the company is restricted from borrowing on mortgage or bond until some definite part of its capital is subscribed or paid up, or where the borrowing requires the authority of a general meeting, the certificate of a justice that the capital has been subscribed or paid up, or a copy of the resolution passed at the general meeting, certified by one of the directors as a true copy, shall be sufficient evidence that the capital has been subscribed or paid up, or that the resolution was duly passed.

Every mortgage or bond shall be by deed under the common seal of the company, duly stamped, and wherein the consideration shall be truly stated. Such deed may be according to the form in Schedule (C) or (D) annexed to the Act, or to the like effect.

Mortgages have no preference one above another by reason of priority of the date of any mortgage or of the meeting at which the same was authorised.

No mortgage shall, unless it is expressly so provided, preclude the company from receiving and applying any calls to be made by the company to the purposes of the company, even though the mortgage should comprise future calls on the shareholders.

A Register of Mortgages and Bonds must be kept by the secretary, and particulars of the number and date of any mortgage or bond, the sums secured, and the names and holdings of the parties must be entered within fourteen days after the date of the instrument. Any shareholder, mortgagee or bond creditor, or any person interested in any such mortgage or bond, may inspect the register gratis. [This right appears to include the right to take copies or extracts, either personally or by an agent (*Mutter* v. *Eastern, etc. Railway Co.* [1888], 38 Ch.D. 92).]

Transfers of bonds or mortgages must be made by deed according to the form in Schedule E annexed to the Act, or to the like effect, and be registered with the company within thirty days of execution, or of arrival in Great Britain or Northern Ireland. The secretary must enter the transfer as in the case of an original mortgage, and the company may demand the prescribed fee for entering, or, if no sum is prescribed, two shillings and sixpence. Interest shall be paid at the periods appointed in the instrument, otherwise half-yearly, and in preference to any dividends payable to the shareholders. Interest on a mortgage or bond may be transferred only by deed, duly stamped.

If no date for repayment of the principal money with the interest thereof is fixed and inserted in the mortgage deed or bond, then at the expiration of twelve months from its date, or at any time thereafter, the person entitled thereto may, by giving six months' previous notice in writing, demand repayment of the principal with the interest accrued. The notice must be delivered to the secretary or left at the principal office of the company. Similarly, the company may at any time pay off the money borrowed, giving six months' notice to the mortgagee or bondholder, either to him in person, or by leaving the notice at his residence, or, if he is unknown or cannot be found, by public advertisement in the *Gazette* and in some other paper. Where the company gives notice of repayment, interest ceases upon the expiration of the notice, unless on demand of payment in pursuance of the notice the company fails to pay the principal and interest due at the date when the notice expired.

Where the special Act entitles mortgagees to enforce payment by the appointment of a receiver, then, if, after demand

in writing for payment, interest remains unpaid for a period of thirty days, or, in the case of the principal, after a period of six months, application may be made to two Justices, who by order in writing may appoint some person to receive the whole or a sufficient part of the earnings of the company in trust for the unpaid debenture or bondholders until sufficient shall have been received to discharge their claims in respect of interest, or of principal and interest in full, and also the cost of the receivership. As soon as the claims are satisfied the receivership is at an end. But the appointment of a receiver in this way does not prejudice the right of unpaid mortgagees or bondholders to sue the company [nor does it override the jurisdiction of the High Court to appoint a receiver].

The books of account of the company shall be open at all reasonable times to the inspection of mortgagees and bondholders, with liberty to take extracts free of charge [and, apparently, this right may be exercised by a solicitor, accountant or other agent on the mortgagee's or bondholder's behalf] (SS. XXXVIII–LV).

Sections XXXVIII to LV do not empower the company to borrow on mortgage or bond, but merely regulate such borrowing. The company, where authorised, may borrow in other ways, *e.g.* by an issue of debenture stock (see *Companies Clauses Act*, 1863). A trading company has implied power to borrow. Any other company's borrowing powers depend upon express or implied powers conferred by its memorandum, or upon the provisions of its special Act. When works requiring expenditure are authorised, and no provision is made for raising the necessary money, power to borrow may be implied (*Wenlock* v. *River Dee Co.* [1887], 36 Ch.D. 675).

Consolidation of Shares into Stock.—The company may from time to time, with the consent of three-fifths of the votes of the shareholders present in person or by proxy at any general meeting of the company, provided due notice has been given of the intention to propose the resolution, convert all or any part of its existing share capital into capital stock. The shares must be fully paid. Transfers of shares into stock can be made in the usual way. The transfer fee is as prescribed, or not exceeding two shillings and sixpence. A Register of Holders of Consolidated Stock must be kept to record the names of stockholders and their holdings, and be

open to inspection of share and stock holders at all reasonable times. Stockholders are entitled to vote, and are qualified to act as directors and for other purposes exactly as if they held an equivalent amount of shares (SS. LXI–LXIV).

Application of Capital.—All moneys raised by the company, whether by subscription of the shareholders, or by loan or otherwise, must be applied first in paying the costs and expenses of, or incidental to, securing the special Act, and secondly in carrying the purposes of the company into execution (S. LXV).

General Meetings.—Unless otherwise prescribed by the special Act, the first general meeting must be held within one month after the passing of the special Act, and subsequent meetings at the times prescribed in the Act, or if no times are prescribed, in February and August in each year, or at such other periods as are appointed by order of a general meeting. If no special place is prescribed, the directors may determine the place of meeting. Such meetings are ordinary meetings, and no matters except those appointed by this or the special Act shall be transacted at any ordinary meeting, unless special notice has been given in the advertisement convening the meeting. Every general meeting other than an ordinary meeting is an extraordinary meeting. Directors may call extraordinary meetings as they think fit, but no business not set forth in the notice convening extraordinary meetings may be entered upon thereat.

The prescribed number of shareholders holding in the aggregate shares to the prescribed amount may require the directors to call an extraordinary meeting by a written requisition, fully expressing the object of the meeting, and signed by the prescribed number; if no number is prescribed, then twenty or more members holding not less than one-tenth of the capital may requisition an extraordinary meeting. The requisition must be left at the company's office, or be given to at least three directors, or be left at their last or usual place of abode. The directors must convene the meeting within twenty-one days after such notice, otherwise the requisitionists may call the meeting, giving fourteen days' public notice thereof. [In a proper case, the Court will direct a single director to call a meeting (*Channel Collieries Trust* v. *Dover, St. Margaret's, etc., Light Railway Co.* [1914], 1 Ch. 568).]

Fourteen clear days' public notice at least must be given of all meetings by advertisement specifying the place, day and hour of the meeting, and, in the case of extraordinary meetings, and of ordinary meetings, if the business to be transacted is other than that appointed by the special Act or this Act to be done at ordinary meetings, the notice must specify the purpose of the meeting (SS. LXVI–LXXI).

Quorum.—To constitute a meeting the prescribed quorum must be present. If no quorum is prescribed, it consists of shareholders holding not less than one-twentieth of the capital, and being in number not less than one for every £500 of such required proportion of the capital, unless that number would be more than twenty, in which case twenty shareholders holding not less than one-twentieth of the capital is a quorum. If a quorum is not present within one hour of the appointed time, no business may be transacted other than the declaring of a dividend if that is one of the objects of the meeting, and, except in the case of a meeting for the election of directors, the meeting stands adjourned *sine die* (S. LXXII).

Chairman.—At general meetings, the chairman of the Board is to be chairman, or in his absence the deputy chairman (if any) or, if both are absent, one of the directors chosen for the purpose by the meeting. If all the directors are absent, a shareholder elected by a majority of those present shall be chairman (S. LXXIII). At an adjourned meeting, only business uncompleted at the original meeting may be transacted (S. LXXIV).

Votes.—Voting proceeds according to the scale prescribed by the special Act; if no scale is prescribed, then a shareholder has one vote for every share up to ten, an additional vote for every five shares beyond the first ten up to one hundred, and an additional vote for every ten shares held beyond the first hundred. No shareholder may vote unless he has paid all the calls then due upon his shares. Votes may be given personally, or by proxies, being shareholders authorised by writing according to the form in Schedule F annexed to the Act, or in a form to like effect. A corporate shareholder may appoint as proxy under its common seal any one of its body though not personally a shareholder in the company, and all matters are settled by the majority of votes of those present, including proxies. The chairman has a casting vote (SS. LXXV–LXXVI).

No person can vote as proxy unless the proxy form has been transmitted to the secretary within the period prescribed, or, if none is prescribed, not less than forty-eight hours before the time of the meeting (S. LXXVII). The chairman's decision whether a proxy is to be accepted or rejected is binding until shown to be wrong (*Indian Zoedone Co.* [1884], 26 Ch.D. 70).

The first of joint holders only may vote. The committee of a lunatic, or the guardian of an infant may vote either personally or by proxy (SS. LXXVIII–LXXIX). Whenever the consent of any particular majority of votes is required to authorise any proceeding, proof that the required majority has been cast shall be required only in the event of a poll being demanded, otherwise a duly minuted declaration of the chairman that the resolution was carried is sufficient proof (S. LXXX).

Directors.—The number of directors shall be the number prescribed by the special Act. If the Act provides for alteration in the number, the company in general meeting may increase or reduce the number within the limits prescribed, if any, and determine the rotation and quorum. Unless otherwise provided, the first directors hold office until the first ordinary meeting in the year following that in which the special Act is passed, and at that meeting the shareholders may in person or by proxy continue in office all or any of them, or elect a new body of directors, or directors to supply the places of those not continued in office, the directors appointed by the special Act being eligible as members of such new body. At the first ordinary meeting in each subsequent year, the shareholders may fill vacancies caused by retirements. Directors neither removed nor disqualified nor resigned, and those elected at any meeting continue in office until others are elected in their stead. If the general meeting fails to elect directors, the existing directors continue in office.

Qualification.—No person is capable of being a director unless he is a shareholder and holds the prescribed number (if any) of shares. No director may hold any other office or place of trust or profit under the company, or be interested in any contract with it.

Vacation of Office.—If a director at any time accepts any other office or place of trust or profit under the company, or

is directly or indirectly concerned in any contract with the company, or participates in any manner in the profits of any work to be done for the company, his office of director becomes vacant and he must cease from voting or acting as director. The fact of a director being a shareholder in an incorporated joint stock company having contracts with the company is not a disqualification, but the director must not vote on any question as to any contract with such joint stock company.

Rotation.—At the end of the first year after the first election of directors, the prescribed number shall retire, or, if no number is prescribed, one-third of the directors; at the end of the second year, the prescribed number, or one-half of the remainder; at the end of the third year, the prescribed number, or the remainder. Those to retire must be determined by ballot among the directors, unless they otherwise agree. Thereafter, each year, one-third of the directors, being those longest in office, shall retire. Retiring directors are eligible for re-election. The directors may fill casual vacancies in the directorate.

Powers of Directors.—The directors shall have the management of the company, and they may lawfully exercise all the powers of the company in accordance with and subject to the provisions of the special Act, and the Act of 1845, except such matters as are directed by those Acts to be transacted by the company in general meeting, such as the choice and removal of directors; the fixing of the directors' remuneration, and that of the auditors, treasurer, and secretary; the determination of the amounts to be borrowed on mortgage; increase of capital; and declaration of dividends.

Meetings of Directors.—Directors shall hold meetings at such times as they shall appoint, and may meet and adjourn meetings as they think proper. Any two directors may require the secretary to call a meeting. The prescribed quorum must be present, or, if no quorum is fixed, it must consist of at least one-third of the directors. All questions are to be determined by a majority of votes, and, where voting is equal, the chairman has a casting vote. At the first meeting of directors after the passing of the special Act, and at the first meeting after each annual appointment of directors, one of their number must be chosen to act as chairman. A deputy

chairman may also be chosen. Vacancies in these offices may be filled by the directors. Directors may appoint committees, and delegate to them such powers as they think fit. The powers of directors or of a committee of their appointing to enter into contracts are similar to those exercised by directors of joint stock companies.

Minutes.—Proper minutes must be kept in books appropriated to the purpose of all meetings of directors and committees and of the company, and must be signed by the chairman of the particular meeting. Informalities in the appointment of directors do not invalidate proceedings.

Liability.—So long as directors act within their powers, they are not personally liable for anything they may do on behalf of the company, and are to be indemnified out of the company's assets for all *intra vires* acts. Directors for the time being may apply the funds and capital of the company for the purposes of such indemnity, and, if necessary, make calls upon capital not paid up (SS. LXXXI–C).

Auditors.—Unless by the special Act auditors are to be appointed otherwise than by the company, auditors are to be elected annually in general meeting. If no number is prescribed, two must be elected in the same manner as directors are elected. Every auditor must hold at least one share, unless some other qualification is prescribed. One auditor retires annually, but is eligible for re-election. Vacancies are filled in general meeting. In the event of no auditors being elected, the existing auditors continue in office.

The directors must deliver to the auditors the half-yearly or other periodical accounts and balance sheet at least fourteen days before the ensuing general meeting at which they are to be presented. The auditors may appoint such accountants and other persons as they think fit, at the company's expense, to assist them in their examination of the accounts, and must either make a special report on them, or confirm the same. The report or confirmation must be read with the directors' report at the general meeting (SS. CI–CVIII). [It is open to the auditors if they disagree upon the accounts to employ separate accountants and make independent reports thereon (*Steele* v. *Sutton Gas Co.* [1883], 12 Q.B. 68).]

Officers.—Before any person is entrusted with the custody or control of moneys, whether he be treasurer, collector or

other officer, he must give security for the faithful execution of his office. Every officer must account to the directors from time to time on demand, and deliver statements duly vouched, and hand over the moneys shown to be due. A summary remedy is provided for failure so to do. Officers refusing to account, etc. may be imprisoned. But proceedings taken against any officer do not discharge any surety of the officer (SS. CIX–CXIV).

Accounts.—The directors must cause true and full accounts to be kept; the books must be balanced at the periods prescribed, otherwise, at least fourteen days before each ordinary meeting, and an exact balance sheet made up. The balance sheet must be examined by at least three directors, and be signed by the chairman, or deputy chairman. [A profit realised on sale of part of the undertaking (if sold under power contained in the special Act) may in some cases be distributed as dividend under S. 116 of the *Companies Clauses Act*, 1845 (*Cross* v. *Imperial Continental Gas Association* [1923], 2 Ch. 553).]

Shareholders may inspect the books and balance sheet at the principal office of the company during the fourteen days prior to, and one month after, each ordinary meeting unless the special Act prescribes some other period; and may take copies of, or extracts from, them. Shareholders cannot inspect the books at other times except on a written order signed by three directors.

The directors must produce to the shareholders the balance sheet and the auditors' report at the ordinary meeting (SS. CXV–CXIX).

Dividends.—At every ordinary meeting at which it is intended to declare a dividend, the directors must submit a scheme showing the profits of the company since the previous declaration, and how it is proposed that the profits should be divided. A dividend may be declared according to the scheme, but may not be made if it will in any degree reduce the company's capital stock. Before apportioning the profits to be divided, directors may set aside a reserve for contingencies, or for enlarging, repairing or improving the works of the undertaking. No dividends shall be paid on shares on which calls are in arrear (SS. CXX–CXXIII).

Bye-Laws.—The company may make bye-laws for regu-

lating the conduct of its officers and servants, and for the due management of the company, and alter or repeal the same. The bye-laws must be in writing under the common seal, and a copy be given to every officer or servant affected. Fines may be imposed for breach of the bye-laws. No bye-law may be repugnant to the laws of that part of the country where it is to have effect, or to this Act, or the special Act (SS. CXXIV–CXXVII).

Arbitration.—Provision is made in certain cases for submitting disputes to arbitration, and for the appointment of arbitrators (SS. CXXVIII–CXXXIV).

Notices to the Company.—Any summons, notice, writ or other proceeding at law may be served by being left at, or posted to, the principal office of the company, or by being given personally to the secretary, or, if there is no secretary, to any director. Notices to be served by the company upon shareholders, unless expressly required to be served personally, may be posted to their registered or last known addresses in such time as to permit of its delivery within the period, if any, prescribed, and proof of posting is sufficient proof of the serving of the notice. Notices must be given to the first of joint holders.

All notices required to be given by advertisement must be advertised in the prescribed newspaper; if none is prescribed, then in a newspaper circulating in the district in which the company's principal place of business is situated. Notices may be authenticated by the signatures of two directors, or by the treasurer or secretary of the company, and need not be under seal. The secretary or treasurer may prove for debts in bankruptcy on behalf of the company (SS. CXXXV–CXXXIX).

Special Act.—Copies of the special Act must be kept at the principal office, and in the case of railways, canals, etc., the works of which shall not be confined to one town or place, be deposited in the offices of the Clerks of the Peace in the counties, and in the office of the Town Clerk of every borough or city where the works extend. Such copies must be available for inspection and copying by all persons interested, after the expiration of six months from the date when the Act is passed. Penalties are imposed for failure to keep or deposit copies (S. CLXI).

The Companies Clauses Act, 1863

The Act of 1845, a digest of the main provisions of which has been given above, applied to England and Ireland (now Northern Ireland). But an Act was passed in the same year, containing substantially the same provisions, which applied only to Scotland. The Act of 1863 (*see infra*) applies to England, Scotland and Northern Ireland, when its provisions are incorporated into the special Act constituting the company, except Part III of the Act, which, by the *Companies Clauses Act*, 1869, S. 3, as amended by the Act of 1869, now applies to "any company having power to raise money on mortgage or bond by virtue of any Act of Parliament, but not having power to create and issue debenture stock."

Forfeiture and Surrender of Shares.—Power is given to cancel forfeited shares where the directors are unable to sell them for a sufficient sum to pay the arrears with interest and expenses thereon. The cancellation must be made by the company in general meeting held not less than two months after notice of forfeiture has been given. The defaulter remains liable to pay the calls in arrear with interest and expenses due up to the time of cancellation, and the company may sue him for the amount, less value of the shares at that date. If the defaulter pays the amount due before the meeting passes a resolution for cancellation the shares revert to him.

The company in general meeting may, with the consent of the holder, cancel any forfeited shares upon which any sum remains unpaid; and upon such cancellation all liabilities and rights with respect to the shares are then extinguished.

The company may accept surrenders of shares not fully paid, but may not pay or refund any money to the shareholder for or in respect of the surrenders. New shares may be issued in lieu of surrendered or cancelled shares (Part I).

Creation of New Shares or Stock.—Where the company has power by its special Act to raise additional capital by the issue of new ordinary shares or stock, or by both, a general meeting may, by the prescribed, or by a three-fifths majority, create and issue new ordinary shares or stock, or both, subject to such regulations as the meeting may determine. Similarly, where the company has power to create and issue new preference shares or stock, or both, it may, with the like sanction

create and issue either or both, subject to such conditions as the meeting may determine. The interest on preference shares or stock may not exceed the rate prescribed in the special Act, or 5 per cent. per annum, if no rate is prescribed. Such shares or stock are not cumulative [nor are they preferential in a winding up, unless the special Act makes them so]. Certificates of preference shares or stock must clearly state the terms and conditions to which they are subject. A company may cancel new shares or new stock that it has created and subsequently determined not to issue. If, at the time of issue of new shares or new stock, the ordinary shares or stock stand at a premium, then, unless the company otherwise determines, the new issues must first be offered at par to the existing ordinary share or stock holders in proportion to their holdings of such shares or stock. Directors have power in certain cases to enlarge the time for the acceptance of the offer of new shares or stock. Subject to the provisions as to offering new ordinary shares or stock to existing share or stock holders, the company may dispose of new shares and stock at such times, to such persons, on such terms and conditions, and in such manner as the directors think advantageous to the company (Part II).

Debenture Stock.—Where the company is authorised by its special Act to create and issue debenture stock, it may, with the sanction of the prescribed majority, or by a three-fifths majority, raise all or any part of the money authorised to be raised on mortgage or bond by the creation and issue of debenture stock, and may attach to the stock so created such fixed and perpetual preferential interest payable half-yearly or otherwise as the company thinks fit. Debenture stock with its interest has priority over all shares or ordinary stock of the company. The payment of arrears of interest may be enforced in England and Northern Ireland by the appointment of a receiver, and in Scotland of a judicial factor, or by action or suit against the company. Debenture stock holders are not entitled to be present at meetings or to vote thereat, and the holding of such stock confers no qualification. Money raised by debenture stock must be applied exclusively either in paying off money due on mortgage or bond, or else to the same purposes as it would be applied if it had been raised by mortgage or bond. A Register of Debentures must be kept, showing the names and addresses of the holders and the

respective amounts held by them. The register must be open at all reasonable times to inspection by every mortgagee, bondholder, debenture stock holder, shareholder, and stock holder of the company, and no fee for inspection may be charged. Certificates must be issued to each debenture stock holder. The company must keep separate and distinct accounts, showing how much money has been received on account of debenture stock, and how much borrowed or owing on mortgage or bond, or which the company has power so to borrow, has been paid off by debenture stock, or raised thereby, instead of being borrowed on mortgage or bond. The company's powers of borrowing and re-borrowing shall be extinguished to the extent of the money raised by the issue of debenture stock (Part III).

Change of Name of Company.—The company's name can be changed only by special Act, and, where the name is so changed, Part IV of the Act continues the powers of the company, and all its rights against, and obligations to, other persons, just as if the name of the company had not been changed.

The Companies Clauses Act, 1869

Sections 1 and 5 of this Act amend sections of the Act of 1863 by the deletion of certain words in the 1863 Act. These words have been omitted from the brief digest of the 1863 Act given above. The effect of S. 3 of this Act is stated on p. 492. By S. 2, debenture stock authorised, but not issued before 2nd August, 1869, shall not be issued on terms other than those on which it might have been issued if the 1869 Act had not been passed, unless the issue on other terms is authorised by the company in manner provided by the Act of 1863. By S. 4, money borrowed in order to pay off existing mortgages or bonds and applied to that purpose is deemed to be money borrowed within and not in excess of the company's statutory borrowing powers.

SS. 6, 7, and 8, read as follows :—

Any shares forming part of the capital (whether original or additional) authorised to be raised by any special Act of a company passed before the present session which have not been disposed of may be disposed of in manner provided by Part II of the *Companies Clauses Act*, 1863, as amended by this Act, and that part, as so amended, shall be deemed incorporated with such special Act accordingly (S. 6).

Provided, that any shares, the creation whereof has been authorised by a company, but which have not been issued before the passing of this Act, shall not be issued on any terms other than those whereon the same might have been issued if this Act had not been passed unless and until the issue thereof on terms other than as aforesaid is after the passing of this Act authorised in manner provided by Part II of the *Companies Clauses Act*, 1863 (S. 7).

Provided always, that this Act shall not be construed to alter or extend the provisions of any Act relating to share capital in respect of which the amount of profits to be divided is limited to a fixed rate per centum upon the paid-up capital of the company (S. 8).

The *Companies Clauses Consolidation Act*, 1888, is a short Act amending S. 76 of the Act of 1845 relating to proxies of corporate bodies, and containing forms of proxy papers. The Act of 1889 slightly amends that of 1888.

The Companies Act, 1929

A statutory company may register under the above Act subject to the provisions contained in Part IX of the Act. As to the winding up of a statutory company, it is to be observed that such a company may be wound up, if registered under the Act of 1929, in manner laid down by that Act; if unregistered, and within the definition of S. 337 of the Act of 1929, then in accordance with Part X of that Act. Apart from these modes, a statutory company can only be wound up by special Act of Parliament. But, by the *Light Railways Act*, 1912, the Minister of Transport may, in cases, make an order for the winding up of a light railway; and, by the *Electricity (Supply) Act*, 1922, a company whose whole undertaking has been transferred to a joint electricity authority may be wound up. In both these cases, the winding-up is governed by the *Companies Act*, 1929, as if the company had passed a special resolution to wind up voluntarily. Further, where a railway company has abandoned its whole undertaking, a warrant may be granted under the *Abandonment of Railways Act*, 1869, and the company can then be wound up as an unregistered company under the *Companies Act*, 1929.

The text of Parts IX and X of the *Companies Act*, 1929, is as follows :—

PART IX

Companies Authorised to Register under this Act

321.—(1) With the exceptions and subject to the provisions mentioned and contained in this section,—

(*a*) Any company consisting of seven or more members, which was in existence on the second day of November eighteen hundred and sixty-two, including any company registered under the *Joint Stock Companies Acts*; and

(*b*) Any company formed after the date aforesaid, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act, or of letters patent, or being a company within the stannaries, or being otherwise duly constituted according to law, and consisting of seven or more members;

may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee; and the registration shall not be invalid by reason that it has taken place with a view to the company being wound up.

Provided that:—

(i) A company registered in any part of the United Kingdom under the *Companies Act*, 1862, or the *Companies (Consolidation) Act*, 1908, shall not register in pursuance of this section:

(ii) A company having the liability of its members limited by Act of Parliament or letters patent, and not being a joint stock company as hereinafter defined, shall not register in pursuance of this section:

(iii) A company having the liability of its members limited by Act of Parliament or letters patent shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee:

(iv) A company that is not a joint stock company as hereinafter defined shall not register in pursuance of this section as a company limited by shares:

(v) A company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the regulations of the company) at a general meeting summoned for the purpose:

(vi) Where a company not having the liability of its members limited by Act of Parliament or letters patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person or by proxy at the meeting:

(vii) Where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceased to be a member, and of the costs and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(2) In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

322. For the purposes of this Part of this Act, as far as relates to registration of companies as companies limited by shares, a joint stock company means a company having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed

amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons, and such a company when registered with limited liability under this Act shall be deemed to be a company limited by shares.

323. Before the registration in pursuance of this Part of this Act of a joint stock company there shall be delivered to the registrar the following documents:—

(1) A list showing the names, addresses, and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number:

(2) A copy of any Act of Parliament, royal charter, letters patent, deed of settlement, contract of copartnery, cost book regulations, or other instrument constituting or regulating the company; and

(3) If the company is intended to be registered as a limited company, a statement specifying the following particulars:—

(*a*) The nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists;

(*b*) The number of shares taken and the amount paid on each share;

(*c*) The name of the company, with the addition of the word "limited" as the last word thereof; and

(*d*) In the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

324. Before the registration in pursuance of this Part of this Act of any company not being a joint stock company, there shall be delivered to the registrar—

(1) A list showing the names, addresses, and occupations of the directors or other managers (if any) of the company; and

(2) A copy of any Act of Parliament, letters patent, deed of settlement, contract of copartnery, cost book regulations, or other instrument constituting or regulating the company; and

(3) In the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

325. The list of members and directors and any other particulars relating to the company required to be delivered to the registrar shall be verified by a statutory declaration of any two or more directors or other principal officers of the company.

326. The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint stock company as hereinbefore defined.

327. No fees shall be charged in respect of the registration in pursuance of this Part of this Act of a company if it is not registered as a limited company, or if before its registration as a limited company the liability of the shareholders was limited by some other Act of Parliament or by letters patent.

328. When a company registers in pursuance of this Part of this Act with limited liability, the word "limited" shall form and be registered as part of its name.

329. On compliance with the requirements of this Part of this Act with respect to registration, and on payment of such fees, if any, as are payable under the Tenth Schedule to this Act, the registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited, and thereupon the company shall be so incorporated, and any banking company in Scotland so incorporated shall be deemed to be a bank incorporated, constituted, or established by or under Act of Parliament.

330. All property, real and personal (including things in action), belonging to or vested in a company at the date of its registration in pursuance of this Part of this Act, shall on registration pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

331. Registration of a company in pursuance of this Part of this Act shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the company before registration.

332. All actions and other legal proceedings which at the time of the registration of a company in pursuance of this Part of this Act are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place:

Provided that execution shall not issue against the effects of any individual member of the company on any judgment, decree, or order obtained in any such action or proceeding: but, in the event of the property and effects of the company being insufficient to satisfy the judgment, decree, or order, an order may be obtained for winding up the company.

333. (1) When a company is registered in pursuance of this Part of this Act, the following provisions of this section shall have effect:

(2) All provisions contained in any Act of Parliament or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles.

(3) All the provisions of this Act shall apply to the company, and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows:—

(*a*) Table A shall not apply unless adopted by special resolution;

(*b*) The provisions of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered;

(*c*) Subject to the provisions of this section the company shall not have power to alter any provision contained in any Act of Parliament relating to the company;

(*d*) Subject to the provisions of this section the company shall not have power, without the sanction of the Board of Trade, to alter any provision contained in any letters patent relating to the company;

(*e*) The company shall not have power to alter any provision contained in a royal charter or letters patent with respect to the objects of the company;

(*f*) In the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid;

(*g*) In the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid; and, in the event of the death, bankruptcy, or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, to the heirs and legatees of heritage of the heritable estate in Scotland of deceased contributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply:

(4) The provisions of this Act with respect to—

(*a*) the registration of an unlimited company as limited;

(*b*) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up;

(*c*) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up;

shall apply notwithstanding any provisions contained in any Act of Parliament, royal charter, or other instrument constituting or regulating the company:

(5) Nothing in this section shall authorise the company to alter any such provisions contained in any instrument constituting or regulating the company, as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act:

(6) Nothing in this Act shall derogate from any power of altering its constitution or regulations which may by virtue of any Act of Parliament or other instrument constituting or regulating the company, be vested in the company.

(7) In this section the expression "instrument" includes deed of settlement, contract of co-partnery, cost-book regulations and letters patent.

334.—(1) Subject to the provisions of this section, a company registered in pursuance of this Part of this Act may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(2) The provisions of this Act with respect to confirmation by the court and registration of an alteration of the objects of a company shall so far as applicable apply to an alteration under this section with the following modifications:—

(*a*) There shall be substituted for the printed copy of the altered memorandum required to be delivered to the registrar of companies a printed copy of the substituted memorandum and articles; and

(*b*) On the registration of the alteration being certified by the registrar the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum, and those articles and the company's deed of settlement shall cease to apply to the company.

(3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.

(4) In this section the expression "deed of settlement" includes any contract of copartnery or other instrument constituting or regulating the company, not being an Act of Parliament, a royal charter, or letters patent.

335. The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of a company registered in pursuance of this Part of this Act, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

336. Where an order has been made for winding up a company registered in pursuance of this Part of this Act, no action or proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

PART X

Winding Up of Unregistered Companies

337. For the purposes of this Part of this Act, the expression "unregistered company" shall include any trustee savings bank certified under the Trustee Savings Banks Act, 1863, and any partnership, whether limited or not, any association and any company with the following exceptions:—

(1) a railway company incorporated by Act of Parliament, except in so far as is provided by the Abandonment of Railways Act, 1850, and the Abandonment of Railways Act, 1869, and any Acts amending them;

(2) a company registered in any part of the United Kingdom under the Joint Stock Companies Acts or under the Companies Act, 1862, or under the Companies (Consolidation) Act, 1908, or under this Act;

(3) a partnership, association or company which consists of less than eight members and is not a foreign partnership, association or company;

(4) a limited partnership registered in England or Northern Ireland.

338.—(1) Subject to the provisions of this Part of this Act, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the following exceptions and additions:—

(*a*) If an unregistered company has a principal place of business situate in Northern Ireland, it shall not be wound up under this Part of this Act unless it has a principal place of business situate in England or Scotland or in both England and Scotland:

(*b*) An unregistered company shall, for the purpose of determining the court having jurisdiction in the matter of the winding up, be deemed to be registered in England or Scotland, according as its principal place of business is situate in England or Scotland; or if it has a principal place of business situate in both countries, to be registered in both countries; and the principal place of business situate in that part of Great Britain in which proceedings are being instituted shall, for all the purposes of the winding up, be deemed to be the registered office of the company:

(*c*) No unregistered company shall be wound up under this Act voluntarily or subject to supervision:

(*d*) The circumstances in which an unregistered company may be wound up are as follows:—

(i) If the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

(ii) If the company is unable to pay its debts;

(iii) If the court is of opinion that it is just and equitable that the company should be wound up:

(*e*) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts:—

(i) If a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager, or principal officer of the company, or by otherwise serving in such manner as the court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor;

(ii) If any action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the secretary, or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, the company has not within ten days after service of the notice paid, secured, or compounded for the debt or demand, or procured the action or proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceeding and against all costs, damages, and expenses to be incurred by him by reason of the same;

(iii) If in England or Northern Ireland execution or other process issued on a judgment, decree, or order obtained in any court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied;

(iv) If in Scotland the inducie 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;

(v) If it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts:

(*f*) The court having jurisdiction to wind up a railway company

under the *Abandonment of Railways Act*, 1850, and the *Abandonment of Railways Act*, 1869, and the Acts amending them, shall be the High Court or the Court of Session, according as the railway was authorised to be made in England or Scotland, and the special provisions of those Acts shall apply to the winding up with the substitution of references to this Act for references to the *Companies Acts*, 1862 and 1867:

Provided that, subject to any order made under section fifty-seven of the *Supreme Court of Judicature (Consolidation) Act*, 1925, and without prejudice to the power to make orders of transfer under that Act, the jurisdiction of the High Court under this provision shall be exercised by the Chancery Division of that Court and provision may be made by general rules for regulating the exercise of the said jurisdiction:

(*g*) A petition for winding up a trustee savings bank may be presented by the National Debt Commissioners, or by a commissioner appointed under the *Trustee Savings Banks Act*, 1887, as well as by any person authorised under the other provisions of this Act to present a petition for winding up a company:

(*h*) In the case of a limited partnership the provisions of this Act with respect to winding up shall apply with such modifications if any, as may be provided by rules made by the Lord Chancellor with the concurrence of the President of the Board of Trade, and with the substitution of general partners for directors.

(2) Where a company incorporated outside Great Britain which has been carrying on business in Great Britain ceases to carry on business in Great Britain, it may be wound up as an unregistered company under this Part of this Act, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

(3) Nothing in this Part of this Act shall affect the operation of any enactment which provides for any partnership, association, or company, being wound up, or being wound up as a company or as an unregistered company, under any enactment repealed by this Act, except that references in any such first-mentioned enactment to any such repealed enactment shall be read as references to the corresponding provision (if any) of this Act.

339.—(1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid:

Provided that, in the case of an unregistered company within the stannaries, a past member shall not be liable to contribute to the assets of the company if he has ceased to be a member for two years or more either before the mine ceased to be worked or before the date of the winding-up order.

(2) In the event of the death, bankruptcy, or insolvency of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, to the heirs and legatees of heritage of the heritable estate in Scotland of deceased contributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply.

340. The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

341. Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

342. The provisions of this Part of this Act with respect to unregistered companies shall be in addition to and not in restriction of any provisions hereinbefore in this Act contained with respect to winding up companies by the court, and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act:

Provided that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part of this Act.

CHAPTER XXII

WINDING-UP

SINCE a company incorporated under the *Companies Act*, 1929, is the creature of statute, it can be brought to an end only in the manner laid down by statute. A company may be brought to an end either (*a*) by being removed from the register of joint stock companies because it is defunct (S. 295), or (*b*) by being wound up under the provisions contained in Part V of the Act of 1929, and the Companies (Winding-Up) Rules, 1929, made in pursuance of that Act, or (*c*) by order of the court in connection with a scheme for reconstruction under S. 154, s.-s. 1(*d*) (*see* p. 397).

As to removal from the register on the ground that the company is defunct, S. 295 provides as follows:

(1) Where the registrar of companies has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the *Gazette* with a view to striking the name of the company off the register.

(3) If the registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the *Gazette*, and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the registrar has reasonable cause to believe that either no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months, the registrar shall publish in the *Gazette* and send to the company or the liquidator, if any, a like notice as is provided in the last preceding subsection.

(5) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by

the company, strike its name off the register, and shall publish notice thereof in the *Gazette*, and on the publication in the *Gazette* of this notice the company shall be dissolved:

Provided that—

(*a*) the liability (if any) of every director, managing officer, and member of the company shall continue and may be enforced as if the company had not been dissolved; and

(*b*) nothing in this subsection shall affect the power of the court to wind up a company the name of which has been struck off the register.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the court on an application made by the company or member or creditor before the expiration of twenty years from the publication in the *Gazette* of the notice aforesaid may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and upon an office copy of the order being delivered to the registrar for registration the company shall be deemed to have continued in existence as if its name had not been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director or officer of the company, or, if there is no director or officer of the company whose name and address are known to the registrar of companies, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

Jurisdiction to Wind Up.—The courts having jurisdiction to wind up companies registered in England (England includes Wales) are, by S. 163, the High Court, the Chancery Courts of the counties palatine of Lancaster and Durham, and the County Courts exercising bankruptcy jurisdiction. The Metropolitan County Courts have no such jurisdiction, and the winding up of companies whose registered offices are within the Metropolitan area is now taken in the Chancery Division of the High Court. If the paid-up capital of the company exceeds £10,000, the High Court, or, where the company's office is within the jurisdiction of a Palatine Court, either the High Court or the Palatine Court has the jurisdiction. When the company's paid-up capital does not exceed £10,000, and its registered office[1] is within the jurisdiction of a County Court exercising

[1] The expression "registered office" here means the place which has longest been the registered office during the six months immediately preceding the presentation of the petition for winding up.

bankruptcy jurisdiction, winding-up proceedings must be begun in that County Court. The jurisdiction formerly exercised by the Stannaries Court is now exercised by the County Courts of Cornwall. Nothing contained in S. 163 shall invalidate a proceeding by reason of its being taken in a wrong court (s.-s. 7). By S. 165, s.-s. (2), the Lord Chancellor, or any judge of the High Court having jurisdiction under the Act, has authority to transfer winding up proceedings from one court to another.

In Scotland, the Court of Session has the powers of the English High Court; the Sheriff Court that of the County Court (S. 166).

Companies that may be Wound Up.—The companies that may be wound up under the Act are those registered under Parts I and IX of the Act; also, under Part VIII of the Act, companies formed and registered under the earlier Companies Acts, referred to as " existing companies," and defined in S. 380 as " a company formed and registered under the *Joint Stock Companies Acts*, the *Companies Act*, 1862, or the *Companies (Consolidation) Act*, 1908, but does not include a company registered under the said enactments in Northern Ireland or the Irish Free State "; also, by S. 317, every company registered but not formed under the *Joint Stock Companies Acts*, the *Companies Act*, 1862, or the *Companies (Consolidation) Act*, 1908; also, every unlimited company registered as limited in pursuance of the *Companies Act*, 1879, or S. 57 of the *Companies (Consolidation) Act*, 1908 (S. 318); and, finally, unregistered companies, defined in S. 337 of Part X of the Act (*see* p. 500). Railways incorporated by Act of Parliament are excluded by S. 337, " except in so far as is provided by the *Abandonment of Railways Act*, 1850, and the *Abandonment of Railways Act*, 1869, and any Acts amending them." It is to be noted that limited partnerships are now wound up under the *Bankruptcy Act*, 1914. The text of Parts IX and X of the Act is given *in extenso* at pp. 495 to 503.

Modes of Winding Up.—An unregistered company may be wound up by the court for the following reasons :

(1) If the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs.

(2) If the company is unable to pay its debts.

(3) If the court is of opinion that it is just and equitable that the company should be wound up (S. 338).

An unregistered company may register under Part IX of the Act, and then wind up voluntarily (see *infra*).

Other companies may be wound up in one of three ways, viz.:

Compulsorily by the Court; or
Voluntarily; or
Voluntarily, but subject to the supervision of the Court (S. 156).

A company may be wound up compulsorily by the court for the following reasons:

(*a*) If the company has by special resolution resolved that the company be wound up by the court.

(*b*) If default is made in delivering the statutory report to the registrar or in holding the statutory meeting (this does not apply to a private company).

(*c*) If the company does not commence its business within a year from its incorporation, or suspends its business for a whole year.

(*d*) If the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven.

(*e*) If the company is unable to pay its debts.

(*f*) If the court is of opinion that it is just and equitable that the company should be wound up (S. 168).

A company may be wound up voluntarily:

(i) When the period, if any, fixed for the duration of the company by the articles expires, or the event, if any, occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily.

(ii) If the company resolves by special resolution that the company be wound up voluntarily.

(iii) If the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up (S. 225).

The voluntary winding up of a company is no bar to the right of any creditor or contributory to have the company wound up by the court, but in the case of an application by a contributory the court must be satisfied that the rights of the contributories will be prejudiced by the voluntary winding up (S. 255).

A winding up begun voluntarily by resolution of the company may, by order of the court, be continued as a voluntary winding up subject to the supervision of the court. Such an order may be made on the petition of creditors or contributories of the company (SS. 256 and 257).

Of the reasons given above for the winding up of a company, (1), (*b*), (*c*), (*d*), and (i) are questions of fact. But, as to (*b*), the court may, instead of making an order for compulsory winding up, direct that the statutory report be filed or the meeting be held, and order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default (S. 171, s.-s.2). And, as regards (*c*), there may be special and temporary reasons for the non-commencement, or the suspension, of business that may lead the court to refuse to make a winding-up order, should the great majority of the members wish to continue the business. Where the membership of the company is reduced below the statutory minimum, the two or the seven as the case may be, and the company carries on business for more than six months while the number is so reduced, (*d*) above, the Act, by S. 28, makes every person who is a member of the company, and is cognisant of the fact that the membership is so reduced, severally liable for the whole of the company's debts contracted after the six months, for which he may be sued without joinder of the other members. This provision would seem a sufficient deterrent to such an illegal reduction of membership, as it does not appear that a company has been compulsorily wound up on this ground. A winding up by reason of (i) above is of infrequent occurrence, but if a term is set to the company's existence by its articles, a resolution to wind up should be passed on the expiration of the term, and if no such resolution is passed, the court may on the application of a member order the company to be wound up under the " just and equitable " rule. A company has been ordered to be wound up where the articles provided that in a certain event the company should wind up, and the event

happened (*American Pioneer Leather Co.* [1918], 1 Ch. 556). The resolution for winding up is in this case an ordinary resolution, and, when passed, a copy of it authenticated by the company's solicitor should be sent to the registrar for registration (S. 118).

Windings up by reason of (*a*), (ii), and (iii) above are the result of the company's own deliberate acts and call for no comment. There remain a winding up (1) by reason that the company is unable to pay its debts, and (2) where in the opinion of the court it is just and equitable that the company should be wound up.

(1) This is by far the most common ground for winding up, whether the order is made on the petition of a creditor, or the company, being harassed by its creditors, of its own volition passes a special or extraordinary resolution to wind up. By S. 169 a company shall be deemed to be unable to pay its debts :

> (1) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company, by leaving it at the registered office of the company, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or
>
> (2) If, in England or Northern Ireland, execution or other process issued on a judgment decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
>
> (3) If, in Scotland, the inducæ 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; or
>
> (4) If it is proved to the satisfaction of the court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

In practice, where a petitioning creditor shows that he has repeatedly applied to the company for payment without success, that is, in the absence of evidence that the debt is disputed, sufficient evidence that the company is unable to pay its debts, and ground for granting an order to wind up.

(2) The court has found it just and equitable that a company should be wound up on a variety of grounds, *e.g.* where the company was in its inception fraudulent (*In re T. E. Brinsmead & Sons* [1897], 1 Ch. 45); where the members were so hopelessly divided that the business could not be carried on (*Yenidje*

Tobacco Co. [1916], 2 Ch. 426); where the company was carrying on an illegal business (*re International Securities Corporation* [1907], 25, T.L.R. 31). But the chief reason perhaps is because the substratum of the company no longer exists, in other words, the purpose for which the company is formed has been accomplished, or cannot be carried out (*see German Date Coffee Co.* [1882], 20 Ch.D. 169; *Red Rock Gold Mining Co.* [1889], 61 L.T. 785, etc.), etc.

Compulsory Winding-Up Order.—This is obtained by petitioning the court as provided for by S. 170. It will be seen from that section that the petition may be presented by (*a*) the company, (*b*) a creditor or creditors, (*c*) a contributory or contributories, (*d*) all or any of these parties in combination, (*e*) the official receiver, in cases where the company is being wound up voluntarily or subject to supervision in England. Petitions by the company are unusual, since a company can pass a special or extraordinary resolution to wind up whenever the members think it advisable to do so. Petitions by contributories are also uncommon for the same reason. The court has allowed a petition by the official receiver in *In re Jubilee Sites Syndicate* [1899], 2 Ch. 204, for the reasons stated in S. 170, s.-s. (2). The vast majority of petitions for compulsory winding up are presented by creditors. The commencement of a compulsory winding up dates from the presentation of the petition (S. 175).

S. 170 reads as follows:

(1) An application to the court for the winding up of a company shall be by petition, presented subject to the provisions of this section either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately: Provided that—

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

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

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

(*b*) A winding up petition shall not, if the ground of the petition is default in delivering the statutory report to the registrar,

or in holding the statutory meeting, be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held; and

(c) The court shall not give a hearing to a winding up petition presented by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and until a *primâ facie* case for winding up has been established to the satisfaction of the court.

(2) Where a company is being wound up voluntarily or subject to supervision in England, a petition may be presented by the official receiver attached to the court as well as by any other person authorised in that behalf under the other provisions of this section, but the court shall not make a winding up order on the petition unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

(3) Where under the provisions of this Part of this Act any person as being the husband of a female contributory is himself a contributory, and a share has during the whole or any part of the six months mentioned in proviso (*a*) (ii) to subsection (1) of this section been held by or registered in the name of the wife, or by or in the name of a trustee for the wife or for the husband, the share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the husband.

By S. 178:

An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

The effect of a winding-up order is to make void every disposition of the company's property (including things in action), and every transfer of shares, or alteration in the status of the members, made after commencement of the winding up [the date of presentation of the petition], unless the Court otherwise orders (S. 173).

On the making of a winding-up order, or before the order is made, if there is danger of the company's assets being taken in execution, the official receiver is appointed provisional liquidator, or the court may appoint one (or more) other fit person(s) to act as provisional liquidator(s) (SS. 183 and 184). Until some other person is appointed liquidator, the official receiver acts as provisional liquidator, and, as soon as the winding-up order is made, he takes possession of the company's assets, and orders the directors to furnish him with a statement in the prescribed form, verified by affidavit, by one of the directors and the secretary or other chief officer, and showing particulars of its assets, debts, and liabilities, the names, residences, and

occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require (S. 181, s.-s. 1).

On receipt of this statement, the official receiver summarises it, and appends to it his own observations. Any person stating himself in writing to be a creditor or contributory of the company is entitled either himself or by his agent to inspect the report on payment of the prescribed fee (S. 181, s.-s. 6). The official receiver also makes a report to the court as to the causes of the company's failure, and whether further inquiry into the promotion, formation, or failure of the company or the conduct of the business is desirable (S. 182, s.-s. 1); and as soon as possible calls the first, and separate, meetings of creditors and contributories, at which they determine whether or not an application is to be made to the court to appoint a liquidator in the place of the official receiver (S. 185); and whether or not a committee of inspection shall be appointed to act with the liquidator, and who are to be members of the committee (S. 198). Creditors must prove their debts before they can vote at this meeting, and the voting may be by proxy. If the court approves, it gives effect to the wishes of the creditors and contributories, or, in case of difference, makes such an order as it thinks fit. If no liquidator is appointed by the court, the official receiver continues to act (S. 185).

A liquidator other than the official receiver must notify his appointment to the registrar of joint stock companies, and give security in the prescribed manner to the Board of Trade, otherwise he cannot act (S. 186).

The powers of the liquidator are set out in S. 191. Some of these powers the liquidator may exercise on his own authority, others can be exercised only by sanction of the court, or of the committee of inspection. But the exercise of all his powers is subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers. So also may the liquidator himself. As regards questions of administration, the liquidator is under the control of the Board of Trade.

Voluntary Winding Up.—The great majority of companies are wound up in this way, much less than 10 per cent.

being wound up by the court, or voluntarily under supervision of the court. If the period expires or the event happens which by the articles determines the company's existence, an ordinary resolution is sufficient, otherwise the resolution for winding up may be a special resolution or an extraordinary resolution. If the company is insolvent and harassed by its creditors, it is preferable to proceed by extraordinary resolution, since the passing of a special resolution requires twenty-one days' notice, but the extraordinary resolution must expressly state that the company "cannot by reason of its liabilities continue its business" (S. 225). In all other cases, the resolution for winding-up must be special. The commencement of the winding up dates from the passing of the resolution (S. 227). Due notice must be given of any such resolution, and the meeting must be convened by resolution of the directors passed at a duly constituted board meeting (*In re Haycraft Gold Reduction Co.* [1900], 2 Ch. 230). A printed copy of the resolution, signed by the chairman of the meeting or other responsible officer, must be forwarded to the registrar for registration within fifteen days of its being passed (S. 118, s.-s. 4), and be advertised in the *Gazette* in London or Edinburgh as the case may require within seven days after it is passed.

Voluntary Winding Up under Supervision.—When a company has passed a resolution for voluntary winding up, the court may make an order that the voluntary winding up shall continue, but subject to such supervision of the court, and with such liberty for creditors, contributories or others to apply to the court, and generally on such terms and conditions as the court thinks just (S. 256). In making such an order the court may have regard to the wishes of creditors and contributories (S. 288). The obtaining of a supervision order is sometimes advisable, inasmuch as (*a*) no action can be proceeded with or commenced against the company without leave of the court (S. 177), and (*b*) the court may appoint an additional liquidator to act with the voluntary liquidator (S. 259). When making a supervision order the court usually insists upon the voluntary liquidator filing with the registrar quarterly statements detailing the progress of the winding up, and also that he shall make no payments for expenses and services, including his own charges and expenses, out of the assets coming to his hand unless such charges and expenses are allowed by the registrar.

Methods of Winding Up Contrasted.

	Voluntary.	*Supervision.*	*Compulsory.*
The winding up commences on the date of	The passing of the resolution for voluntary winding up.		Presentation of petition (or if a resolution for voluntary winding up preceded the petition, then the date of such resolution).
The liquidator is appointed by	In a members' voluntary winding up, the company in general meeting; in a creditors' winding up, as provided by S. 239; otherwise by the court (S. 249). (*See* pp. 515–8.)	The court (usually the same person as was acting in the voluntary liquidation).	The court on nomination by separate meetings of creditors and contributories.
The list of contributories is settled by	The liquidator.	The liquidator, or as ordered by the court.	The liquidator as an officer of the court. Notice must be given to contributories.
Calls may be made by	The liquidator.	Do	The liquidator with the sanction of the Committee, or by summons to court.
Accounts are passed by	The company in general meeting; and (in a creditors' voluntary winding up) the creditors in duly convened meeting.	As ordered by the court—usually by company.	Board of Trade audit.
The company is dissolved	Three months after notice of final meeting registered with registrar.	Date of the court order.	Date of filing order of dissolution.
The liquidator is released by	The company in general meeting or creditors' meeting.	The court.	The Board of Trade.

Voluntary Winding Up

The secretary of a company is most interested in this mode of winding up. It is not only the most common method adopted, but it frequently falls to him to act as liquidator in a voluntary winding up, as, for example, upon a reconstruction of the company under S. 234, etc. And he is

required to be familiar with the various problems that may arise in this connection, *e.g.* when some company debtor to the company of which he is secretary goes into voluntary liquidation and he is called upon to safeguard his company's interests. A voluntary winding up may be desirable on other grounds than that of insolvency, *e.g.* for the purpose of reconstructing the company, or for amalgamating one company with another.

Consequences of Voluntary Liquidation.—When a company is wound up voluntarily the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof: Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved (S. 228).

When a company has passed a resolution for voluntary winding up, it shall give notice of the resolution by advertisement in the *Gazette* (S. 226). This, of course, is in addition to sending a copy to the registrar of companies for registration.

The copy for the *Gazette* must be signed by the chairman of the meeting, and be authenticated by a solicitor.

By S. 230, where it is proposed to wind up a company voluntarily, the majority of the directors (not being less than two) may at a Board meeting make a statutory declaration (Form No. 39B) that they have made full inquiry into the company's affairs, and are of the opinion that the company will be able to pay its debts in full within a period not exceeding twelve months from the commencement of the winding up. If such a declaration is delivered to the registrar of companies for registration before the date on which the notices of the meeting at which the resolution for winding up is to be proposed are sent out, the winding up is a "members' voluntary winding up"; if the declaration is not made and registered, the winding up is a "creditors' voluntary winding up."

Members' Voluntary Winding Up.—In a members' voluntary winding up:—

(1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them:

(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in

general meeting, or the liquidator, sanctions the continuance thereof (S. 232).

A vacancy in the office of liquidator may, subject to any arrangement with the creditors, be filled by the company in general meeting, which may be convened by any contributory or a continuing liquidator (S. 233).

The liquidator must call a general meeting at the end of each year, and lay before it an account of his intromissions during the preceding year (S. 235), and again when the affairs of the company are fully wound up (S. 236).

Creditors' Voluntary Winding Up.—In a creditors' voluntary winding up—

The company must cause a meeting of the creditors to be held on the day, or the day following the day, on which there is to be held the meeting at which the resolution for winding up is to be proposed; the notices must be sent out simultaneously with the notices of the meeting of the company. Notice must also be advertised in the *Gazette*, and in two local newspapers. The directors must prepare a statement of affairs and appoint one of their number to preside at the meeting (S. 238).

The creditors and the company may nominate a person to be liquidator. If different persons are nominated, the creditors' nominee shall be liquidator, but application may be made to the court for an order directing that the company's nominee shall be liquidator instead of or jointly with the creditors' nominee, or appointing some other person (S. 239).

The creditors at their meeting may appoint a committee of inspection, not exceeding five in number, and if they do, then the company may in general meeting appoint persons (not exceeding five) to serve on the committee. The creditors can remove the company's nominees to the committee, subject to the court's determining otherwise (S. 240).

By S. 240 the committee have the powers laid down by S. 199 (except s.-s. 1) and S. 201 (*see* pp. 540–1); and they, or the creditors, if no committee is appointed, may fix the liquidator's remuneration. On the appointment of the liquidator, the powers of the directors cease, except so far as the committee, or, if there is no committee, the creditors, sanction the continuance thereof (S. 241). The creditors may fill any vacancy in the office of liquidator, except where the latter was appointed

by the court (S. 242). It is the duty of the liquidator to call meetings of the company and of the creditors at the end of each year and when the company's affairs are fully wound up, and to lay his account before them (SS. 244 and 245).

Provisions Common to Members' and Creditors' Winding Up.—The following provisions are applicable to every voluntary winding up :—

Subject to the provisions of the Act as to preferential payments, the property of the company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu*, and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company (S. 247).

Briefly, it is the duty of the liquidator to pay debts having regard to the preferences created by Statute (pp. 558–60), and then to return their capital to the contributories according to the rights laid down in the Memorandum and Articles. It is unlikely that any surplus will then be left, but if there should be, it is distributable among all the shareholders, preference and ordinary alike; and the former are only precluded when the Memorandum or Articles negative their right (*In re Metcalfe & Sons* [1933], Ch. 142).

The liquidator may—

(*a*) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and, in the case of a creditors' voluntary winding up, with the sanction of either the court or the committee of inspection, exercise any of the powers given by paragraphs (*d*), (*e*) and (*f*) of s.-s. (1) of S. 191 of the Act to a liquidator in a winding up by the court :

(*b*) without sanction, exercise any of the other powers given to a liquidator in a winding up by the court (*see* p. 536) :

(*c*) exercise the powers of the court under the Act of settling a list of contributories, and the list of contributories shall be *primâ facie* evidence of the liability of the persons named therein to be contributories [notwithstanding that notice to the contributories is not required by statute, it should always be given] :

(*d*) exercise the power of the court of making calls :

(*e*) summon general meetings of the company for the purpose

of obtaining the sanction of the company by special or extraordinary resolution or for any other purpose he may think fit:

(*f*) pay the debts of the company and adjust the rights of the contributories among themselves:

(*g*) when several liquidators are appointed, any power given by the Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two (S. 248).

If from any cause whatever there is no liquidator acting, the court may appoint a liquidator. The court may, on cause shown, remove a liquidator, and appoint another (S. 249).

The liquidator shall, within twenty-one days after his appointment, deliver to the registrar of companies for registration a notice of his appointment in the form prescribed by the Board of Trade (S. 250) [Form No. 39C or 39D].

The liquidator's remuneration may be by way of a percentage on the amounts realised and distributed, or a lump sum as fixed by the company in general meeting, or by the court on application by the liquidator, and is payable as part of the costs of the liquidation. No body corporate may be appointed liquidator (S. 278).

Section 252 enables the liquidator to consult the court on any question of difficulty arising in the winding up.

Section 268 (*see* p. 561) restricts the rights of execution creditors. *See* also S. 269, and (for Scotland) S. 270. The liquidator is empowered to disclaim onerous property (S. 267).

He is not obliged to do so, and incurs no personal liability if he carries through the company's contracts. In this his position differs from that of a receiver appointed by the Court, who is personally liable on contracts (p. 384) (*Stead Hazel & Co.* v. *Cooper* [1933], 1 K.B. 840). The reason is that the liquidator acts in the interests of the company, whereas the receiver acts in the interests of debenture holders. It is true that by S. 267 the liquidator is now given power to disclaim any contract of the company which he thinks to be onerous, but his position as regards liability was not thereby altered (*Stead Hazel & Co.* v. *Cooper, supra*).

Voluntary winding up does not affect actions, but the court may stay them on application by the liquidator, who is usually required to admit the creditor to prove for the costs of the action

in addition to his claim. If the liquidator disputes the company's liability, the court usually refuses to stay (*Currie* v. *Consolidated Kent Collieries* [1906], 1 K.B. 134). As to Scotland, *see* S. 253 (p. 555).

In a solvent company, interest runs on interest-bearing debts notwithstanding the voluntary liquidation. In the case of an insolvent company, claims for interest should only be admitted to the date of the commencement of the liquidation (*re Thomas Salt & Co.* [1908], 98 L.T. 558).

The liquidator in a creditors' voluntary winding up may from time to time summon, hold and conduct meetings of creditors for the purpose of ascertaining their wishes (*Companies (Winding up) Rules*, 1929, Rule 125 (2)). He must summon all meetings of creditors and contributories by giving not less than seven days' notice of the time and place in the *Gazette* and in a local paper, and shall, not less than seven days before the day appointed for the meeting, send by post to every person appearing by the company's books to be a creditor of the company, notice of the meeting of creditors, and to every contributory notice of the meeting of contributories (R. 127).

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

Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the court against it, and the court may thereupon, as it thinks just, amend, vary, or confirm the arrangement (S. 251).

[Compromises may also be made under S. 191 (*see* S. 248 (1) or S. 153 (*see* p. 536).]

Liability of Members.—The liability of the members of a company that is being wound up is governed by SS. 157 to 162.

By S. 157 :—

(1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges, and expenses of the winding up, and for the adjustment of the rights of the

contributories among themselves, subject to the provisions of sub-section (2) of this section and the following qualifications :—

(*a*) A past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up :

(*b*) A past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member :

(*c*) A past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act :

(*d*) In the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member :

(*e*) In the case of a company limited by guarantee, no contribution shall, subject to the provisions of sub-section (3) of this section, be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up :

(*f*) Nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract :

(*g*) A sum due to any member of a company, in his character of a member, by way of dividends, profits, or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company; but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) In the winding up of a limited company, any director or manager, whether past or present, whose liability is, in pursuance of this Act, unlimited, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company :

Provided that—

(*a*) A past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up;

(*b*) A past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;

(*c*) Subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding up.

(3) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

By S. 158, the term " contributory " means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory (S. 158).

By S. 159, the liability of a contributory shall create a debt (in England of the nature of a specialty) accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability (S. 159).

In the case of the death of a contributory, S. 160 provides as follows :—

(1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives, and the heirs and legatees of heritage of his heritable estate in Scotland, shall be liable on a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly :

(2) where the personal representatives are placed on the list of contributories, the heirs or legatees of heritage need not

be added but they may be added as and when the court thinks fit.

(3) if in England the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory, and for compelling payment thereout of the money due.

If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories, then by S. 161—

(1) his trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and

(2) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

By S. 162.

(1) The husband of a female contributory married before the date of the commencement of the *Married Women's Property Act*, 1882, or the *Married Women's Property (Scotland) Act*, 1881, as the case may be, shall, during the continuance of the marriage, be liable, as respects any liability attaching to any shares acquired by her before that date, to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be a contributory accordingly.

(2) Subject as aforesaid, nothing in this Act shall affect the provisions of the *Married Women's Property Act*, 1882, or the *Married Women's Property (Scotland) Act*, 1881.

(The position of a married woman as regards contractual liability is now governed by the *Law Reform (Married Women and Tortfeasors) Act*, 1935, whereunder her liability is made equivalent to that of any other person.)

Those persons who were members of the company at the commencement of the winding up are placed upon the " A " list, those who have been members within the previous twelve months upon the " B " list. It should be noted that the liability of those on the " B " list is doubly limited, *i.e.* to the amount unpaid by his " A " contributory, *and* only if, after exhausting

the " A " list, there is insufficient money to pay debts which were incurred before he ceased to be a member. If called upon by a " B " contributory to do so, the liquidator must marshal the debts to show that they were incurred before the " B " contributory ceased to be a member. The money called up from " B " contributories forms part of the general assets, however, and need not be specifically allocated to the payment of such debts (*Webb* v. *Whiffin* [1871], L.R. 5, H.L. 724).

All costs, charges, and expenses incurred in a voluntary winding up, including the remuneration of the liquidator, are payable in priority to all other claims (S. 254).

Where a company is being wound up voluntarily and an order is made for winding up by the court, then, unless the court on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken (S. 175).

Summary of Procedure in a Members' Voluntary Winding Up.—Deliver to the registrar of companies a statutory declaration of solvency (Form No. 39B).

Hold meeting to pass resolution to wind up.

Advertise notice of resolution to wind up in the *Gazette*, within seven days after it has been passed.

Within fifteen days, deliver to the registrar of companies for registration a copy of the special resolution, unless an ordinary resolution suffices (*see* p. 513), when a printed copy of that must be delivered, and, within twenty-one days, notice of the appointment of a liquidator (Form No. 39C).

Prepare lists of creditors showing amount of claims.

Proceed to get in and realise the assets.

Settle the list of contributories.

Advertise in the *Gazette* and local papers for creditors, allowing, say, six weeks in which they may prove their debts.

The liquidator may fix a certain day, not less than fourteen days from the date of the notice, on or before which the creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debt is proved. In addition to the advertisement, notice should be sent to the last known address of each person who, to the knowledge of the liquidator, claims to be a creditor and whose claim has not been admitted. If any claim is disputed, the liquidator should apply to the court to adjudicate.

Make such calls as are necessary.

Call meeting of company at end of every year from commencement of liquidation.

Pay secured creditors out of the proceeds of their securities.

Pay costs (including liquidator's remuneration).

Pay preferential creditors. As to these, *see* S. 269 of the Act, and the supplementary and explanatory matter within square brackets, at pp. 558–60.

Pay ordinary creditors (dividends may be declared as the liquidator thinks fit).

Repay capital, adjusting rights of contributories among themselves.

Distribute any surplus.

Call final meeting of company, by advertisement in *Gazette* at least one month previously (this is compulsory), and notice to each shareholder (this is optional), setting out business to be transacted, viz. to decide upon approval of liquidator's account, custody and disposal of books and papers, payment of unclaimed balances into the Companies Liquidation Account at the Bank of England, and release of liquidator.

Deliver to the registrar, within one week after the meeting return of the meeting, and also a copy of the account, and any extraordinary or special resolution passed.

Three months after the registration of the account and return the company is deemed to be dissolved.

It has not been considered necessary to include the full provisions of the Winding-up Rules, 1929, since anyone engaged in or concerned with a creditors' voluntary winding up, or a winding up by or under the supervision of the court, will obtain a copy of these Rules for reference. The decided cases on liquidation are too numerous to be adequately dealt with in one chapter; and the authors are of the opinion that, should necessity arise, a treatise specially dealing with company law and/or liquidations will have to be obtained.

It is thought well to reproduce here *in extenso* Part V of the Act relating to winding up, with the exception of S. 295 dealing with defunct companies, which has been quoted at p. 504. The student's attention is drawn to the amplification of S. 260 dealing with the effect of an order for winding up under supervision, at p. 556, and also to the supplementary and illustrative matter on the subject of preferential payments in a winding up (S. 264), enclosed within square brackets, at pp. 559–60.

PART V.

WINDING UP.

(i) PRELIMINARY.

Modes of Winding Up.

Modes of winding up.

156.—(1) The winding up of a company may be either—

(i) by the court; or

(ii) voluntary; or

(iii) subject to the supervision of the court.

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

Contributories.

Liability as contributories of present and past members.

157.—(1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges, and expenses of the winding up and for the adjustment of the rights of the contributories among themselves, subject to the provisions of sub-section (2) of this section and the following qualifications :—

(*a*) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up :

(*b*) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member :

(*c*) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act :

(*d*) in the case of a company limited by shares no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member :

(*e*) in the case of a company limited by guarantee, no contribution shall, subject to the provision of sub-section (3) of this section, be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up :

(*f*) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract :

(*g*) a sum due to any member of a company, in his character of a member, by way of dividends, profits, or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company;

but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) In the winding up of a limited company, any director or manager, whether past or present, whose liability is, in pursuance of this Act, unlimited, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company: Provided that—

(*a*) a past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up:

(*b*) a past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office:

(*c*) subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding up.

(3) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

Definition of contributory.

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

Nature of liability of contributory.

159. The liability of a contributory shall create a debt (in England and Ireland of the nature of a specialty) accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

Contributories in case of death of member.

160.—(1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives, and the heirs and legatees of heritage of his heritable estate in Scotland, shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(2) Where the personal representatives are placed on the list of contributories, the heirs or legatees of heritage need not be added, but they may be added as and when the court thinks fit.

(3) If in England the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory, and for compelling payment thereout of the money due.

Contributories in case of bankruptcy of member.

161. If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories—

(1) his trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory

accordingly, and may be called on to admit to prove against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and

(2) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

Provision as to married women.

162.—(1) The husband of a female contributory married before the date of the commencement of the *Married Women's Property Act*, 1882, or the *Married Women's Property (Scotland) Act*, 1881, as the case may be, shall, during the continuance of the marriage, be liable, as respects any liability attaching to any shares acquired by her before that date, to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be a contributory accordingly.

(2) Subject as aforesaid, nothing in this Act shall affect the provisions of the *Married Women's Property Act*, 1882, or the *Married Women's Property (Scotland) Act*, 1881.

(ii) Winding Up by the Court.

Jurisdiction.

Jurisdiction to wind up companies registered in England.

163.—(1) The High Court shall have jurisdiction to wind up any company registered in England.

(2) In the case of a company whose registered office is situate within the jurisdiction of the Chancery Court of the County Palatine of Lancaster or the Chancery Court of the County Palatine of Durham, the palatine court shall have concurrent jurisdiction with the High Court to wind up the company.

(3) Where the amount of the share capital of a company paid up or credited as paid up does not exceed ten thousand pounds, the county court of the district in which the registered office of the company is situate shall, subject to the provisions of this section, have concurrent jurisdiction with the High Court to wind up the company.

(4) Where a company is formed for working mines within the stannaries and is not shown to be working mines beyond the limits of the stannaries or to be engaged in any other undertaking beyond those limits, or to have entered into a contract for such working or undertaking, the court exercising the stannaries jurisdiction shall, whatever may be the amount of the capital of the company and wherever the registered office of the company is situate, have concurrent jurisdiction with the High Court to wind up the company.

(5) The Lord Chancellor may by order exclude a county court from having jurisdiction under this Act, and for the purposes of that jurisdiction may attach its district, or any part thereof, to any other county court, and may revoke or vary any such order.

In exercising his powers under this section, the Lord Chancellor shall provide that a county court shall not have jurisdiction under this Act unless it has for the time being jurisdiction in bankruptcy.

59 & 60 Vict. c. 45.

An order made under this provision shall not affect any jurisdiction or powers vested in any county court under or by virtue of the Stannaries Jurisdiction (Abolition) Act, 1896.

(6) Every court in England having jurisdiction under this Act to wind up a company shall for the purposes of that jurisdiction have all the powers of the High Court, and every prescribed officer of the court shall perform any duties which an officer of the High Court may discharge by order of the judge thereof or otherwise in relation to the winding up of a company.

(7) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong court.

(8) For the purposes of this section, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding-up.

Conduct of winding-up business in High Court in England. 15 & 16 Geo. 5. c. 49.

164.—(1) Subject to any order made under section fifty-seven or section sixty A. of the Supreme Court of Judicature (Consolidation) Act, 1925, and without prejudice to the power to make orders of transfer under that Act, the jurisdiction of the High Court to wind up companies in England under this Act shall, as the Lord Chancellor may from time to time by general order direct, be exercised either by such judge or judges of the Chancery Division of the High Court as the Lord Chancellor may assign for the purpose or by the judge or judges for the time being exercising the bankruptcy jurisdiction of the High Court.

(2) The Lord Chancellor may give directions as aforesaid either generally or with respect to any specified classes of cases.

(3) Provision may be made by general rules for regulating the exercise of the said jurisdiction of the High Court under this Act.

Transfer of proceedings from one court to another and statement of case by county court.

165.—(1) The winding up of a company by the court in England or any proceedings in the winding up may at any time and at any stage, and either with or without application from any of the parties thereto, be transferred from one court to another court, or may be retained in the court in which the proceedings were commenced, although it may not be the court in which they ought to have been commenced.

(2) The powers of transfer given by the foregoing provisions of this section may, subject to and in accordance with general rules, be exercised by the Lord Chancellor or by any judge of the High Court having jurisdiction under this Act, or, as regards any case within the jurisdiction of any other court, by the judge of that court.

(3) If any question arises in any winding up proceeding in a county court which all the parties to the proceeding, or which one of them and the judge of the court, desire to have determined in the first instance in the High Court, the judge shall state the facts in the form of a special case for the opinion of the High Court, and thereupon the special case and the proceedings, or such of them as may be required, shall be transmitted to the High Court for the purposes of the determination.

Jurisdiction to wind up companies in Scotland.

166.—(1) The Court of Session shall have jurisdiction to wind up any company registered in Scotland.

(2) When the Court of Session is in vacation, the jurisdiction conferred on that court by this section may, subject to the provisions of this Act, be exercised by the Lord Ordinary on the Bills.

(3) Where the amount of the share capital of a company

paid up or credited as paid up does not exceed ten thousand pounds, the sheriff court of the sheriffdom in which the registered office of the company is situate shall have concurrent jurisdiction with the Court of Session to wind up the company:

Provided that—

(a) it shall be lawful for the Court of Session, if it appears to the court having regard to the amount of the assets of the company expedient to do so, to remit to any sheriff court any petition presented to the Court of Session for winding up any such company, or to require any such petition presented to a sheriff court to be remitted to the Court of Session; and

(b) it shall be lawful for the Court of Session to require that any such petition as aforesaid presented to one sheriff court be remitted to another sheriff court; and

(c) in a winding up in the sheriff court it shall be lawful for the sheriff court to submit a stated case for the opinion of the Court of Session on any question of law arising in that winding up.

(4) For the purposes of this section, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

Power in Scotland to remit winding up to Lord Ordinary.

167. Where the Court of Session makes a winding-up order, it may, if it thinks fit, at any time direct all subsequent proceedings in the winding up to be taken before one of the permanent Lords Ordinary, and remit the winding up to him accordingly, and thereupon that Lord Ordinary shall, for the purposes of the winding up, have all the powers and jurisdiction of the court:

Provided that the Lord Ordinary may report to the division of the court any matter which may arise in the course of the winding up.

Cases in which Company may be wound up by Court.

Circumstances in which company may be wound up by court.

168. A company may be wound up by the court if—

(1) the company has by special resolution resolved that the company be wound up by the court:

(2) default is made in delivering the statutory report to the registrar or in holding the statutory meeting:

(3) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year:

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

(5) the company is unable to pay its debts:

(6) the court is of opinion that it is just and equitable that the company should be wound up.

Definition of inability to pay debts.

169. A company shall be deemed to be unable to pay its debts—

(1) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company, by leaving it at the registered office of the company, a demand under his hand requiring the company to pay the sum so

due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or

(2) if, in England or Northern Ireland, execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(3) if, in Scotland, the induciæ 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; or

(4) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

Petition for Winding Up and Effects thereof.

Provisions as to applications for winding up.

170.—(1) An application to the court for the winding up of a company shall be by petition, presented subject to the provisions of this section either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately:

Provided that—

(*a*) A contributory shall not be entitled to present a winding-up petition unless—

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

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

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

(*c*) The court shall not give a hearing to a winding-up petition presented by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a *primâ facie* case for winding up has been established to the satisfaction of the court.

(2) Where a company is being wound up voluntarily or subject to supervision in England, a winding-up petition may be presented by the official receiver attached to the court as well as by any other person authorised in that behalf under the other provisions of this section, but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary

winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

(3) Where under the provisions of this Part of this Act any person as being the husband of a female contributory is himself a contributory, and a share has during the whole or any part of the six months mentioned in proviso (*a*) (ii) to subsection (1) of this section been held by or registered in the name of the wife, or by or in the name of a trustee for the wife or for the husband, the share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the husband.

Powers of court on hearing petition.

171.—(1) On hearing a winding-up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where the petition is presented on the ground of default in delivering the statutory report to the registrar or in holding the statutory meeting, the court may—

(*a*) instead of making a winding-up order, direct that the statutory report shall be delivered or that a meeting shall be held; and

(*b*) order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default.

Power to stay or restrain proceedings against company.

172. At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the company, or any creditor or contributory, may—

(*a*) where any action or proceeding against the company is pending in the High Court or Court of Appeal in England or Northern Ireland, apply to the court in which the action or proceeding is pending for a stay of proceedings therein; and

(*b*) where any other action or proceeding is pending against the company, apply to the court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding;

and the court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

Avoidance of dispositions of property, &c. after commencement of winding up.

173. In a winding up by the court, any disposition of the property of the company, including things in action, and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

Avoidance of attachments, &c in case of English company and in case of effects in England of Scottish company.

174.—(1) Where any company registered in England is being wound up by the court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

(2) The provisions of this section shall, so far as relates to any estate or effects of the company situate in England, apply in the case of a company registered in Scotland as it applies in the case of a company registered in England.

Commencement of Winding Up.

Commencement of winding up by the court.

175.—(1) Where before the presentation of a petition for the winding up of a company by the court a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

Consequences of Winding-up Order.

Copy of order to be forwarded to registrar.

176. On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall make a minute thereof in his books relating to the company.

Actions stayed on winding-up order.

177. When a winding-up order has been made, or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose.

Effect of winding-up order.

178. An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

Official Receiver in English Winding Up.

Official receiver in bankruptcy to be official receiver for winding-up purposes.

179.—(1) For the purposes of this Act so far as it relates to the winding up of companies by the court in England, the term "official receiver" means the official receiver, if any, attached to the court for bankruptcy purposes, or, if there is more than one such official receiver, then such one of them as the Board of Trade may appoint, or, if there is no such official receiver, then an officer appointed for the purpose by the Board.

(2) Any such officer shall for the purpose of his duties under this Act be styled "the official receiver."

Appointment of official receiver by Court in certain cases.

180. If in the case of the winding up of any company by the court in England it appears to the court desirable, with a view to securing the more convenient and economical conduct of the winding up, that some officer, other than the person who would by virtue of the last foregoing section of this Act be the official receiver, should be the official receiver for the purposes of that winding up, the court may appoint that other officer to act as official receiver in that winding up, and the person so appointed shall be deemed to be the official receiver in that winding up for all the purposes of this Act.

Statement of company's affairs to be submitted to official receiver.

181.—(1) Where the court in England has made a winding-up order or appointed a provisional liquidator, there shall, unless the court thinks fit to order otherwise and so orders, be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts, and liabilities, the names, residences, and occupations of its creditors, the

securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the secretary or other chief officer of the company, or by such of the persons hereinafter in this subsection mentioned as the official receiver, subject to the direction of the court, may require to submit and verify the statement, that is to say, persons—

(*a*) who are or have been directors or officers of the company;
(*b*) who have taken part in the formation of the company at any time within one year before the relevant date;
(*c*) who are in the employment of the company, or have been in the employment of the company within the said year, and are in the opinion of the official receiver capable of giving the information required;
(*d*) who are or have been within the said year officers of or in the employment of a company, which is, or within the said year was, an officer of the company to which the statement relates

(3) The statement shall be submitted within fourteen days from the relevant date, or within such extended time as the official receiver or the court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official receiver or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the court.

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding ten pounds for every day during which the default continues.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court and shall, on the application of the liquidator or of the official receiver, be punishable accordingly.

(8) In this section the expression "the relevant date" means in a case where a provisional liquidator is appointed, the date of his appointment, and, in a case where no such appointment is made, the date of the winding up order.

Report by official receiver.

182.—(1) In a case where a winding-up order is made, the official receiver shall, as soon as practicable after receipt of the statement to be submitted under the last foregoing section, or, in a case where the court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the court—

(*a*) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities; and

(*b*) if the company has failed, as to the causes of the failure; and

(*c*) whether in his opinion 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.

(2) The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

(3) If the official receiver states in any such further report as aforesaid that in his opinion a fraud has been committed as aforesaid, the court shall have the further powers provided in sections two hundred and sixteen and two hundred and seventeen of this Act.

Liquidators.

Power of court to appoint liquidators.

183. For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators.

Appointment and powers of provisional liquidator.

184.—(1) Subject to the provisions of this section, the court may appoint a liquidator provisionally at any time after the presentation of a winding-up petition.

(2) Where the proceedings are in England, the appointment of a provisional liquidator may be made at any time before the making of a winding-up order, and either the official receiver or any other fit person may be appointed.

(3) Where the proceedings are in Scotland, the appointment of a provisional liquidator may be made at any time before the first appointment of liquidators.

(4) Where a liquidator is provisionally appointed by the court, the court may limit and restrict his powers by the order appointing him.

Appointment, style, &c. of liquidators in England.

185. The following provisions with respect to liquidators shall have effect on a winding-up order being made in England:—

(1) The official receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such:

(2) The official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver:

(3) The court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matter aforesaid, the court shall decide the difference and make such order thereon as the court may think fit:

(4) In a case where a liquidator is not appointed by the

court, the official receiver shall be the liquidator of the company:

(5) The official receiver shall by virtue of his office be the liquidator during any vacancy:

(6) A liquidator shall be described, where a person other than the official receiver is liquidator, by the style of "the liquidator," and, where the official receiver is liquidator, by the style of "the official receiver and liquidator," of the particular company in respect of which he is appointed, and not by his individual name.

Provisions where person other than official receiver is appointed liquidator.

186. Where in the winding up of a company by the court in England a person other than the official receiver is appointed liquidator, that person—

(1) shall not be capable of acting as liquidator until he has notified his appointment to the registrar of companies and given security in the prescribed manner to the satisfaction of the Board of Trade:

(2) shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

Provisions as to liquidators in Scotland.

187. The following provisions with respect to the liquidators shall have effect in a winding up by the court in Scotland:—

(1) The court may determine whether any and what security is to be given by a liquidator on his appointment:

(2) A liquidator shall be described by the style of "the official liquidator" of the particular company in respect of which he is appointed and not by his individual name:

(3) Where an order has been made for winding up a company subject to supervision, and an order is afterwards made for winding up by the court, the court may by the last-mentioned or by any subsequent order appoint any person who is then liquidator, either provisionally or permanently, and either with or without any other person, to be liquidator in the winding up by the court.

General provisions as to liquidators

188.—(1) A liquidator appointed by the court may resign or, on cause shown, be removed by the court.

(2) Where a person other than the official receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the court may direct, and, if more such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the court directs.

(3) A vacancy in the office of a liquidator appointed by the court shall be filled by the court.

(4) If more than one liquidator is appointed by the court, the court shall declare whether any act by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(5) Subject to the provisions of section two hundred and seventy-eight of this Act, the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

189.—(1) Where a winding-up order has been made or where a provisional liquidator has been appointed, the liquidator, or the provisional liquidator, as the case may be, shall take into his custody, or under his control, all the property and things in action to which the company is or appears to be entitled. Custody of company's property.

(2) In a winding up by the court in Scotland, if and so long as there is no liquidator, all the property of the company shall be deemed to be in the custody of the court.

190. Where a company is being wound up by the court, the court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name, and thereupon the property to which the order relates shall vest accordingly, and the liquidator may, after giving such indemnity, if any, as the court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property. Vesting of property of company in liquidator.

191.—(1) The liquidator in a winding up by the court shall have power with the sanction either of the court or of the committee of inspection— Powers of liquidator.

(*a*) to bring or defend any action or other legal proceeding in the name and on behalf of the company:

(*b*) to carry on the business of the company, so far as may be necessary for the beneficial winding-up thereof:

(*c*) to appoint a solicitor or law agent to assist him in the performance of his duties:

(*d*) to pay any classes of creditors in full:

(*e*) to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable:

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

(2) The liquidator in a winding up by the court shall have power—

(*a*) to sell the real and personal property and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels:

(*b*) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other docu-

ments, and for that purpose to use, when necessary, the company's seal:

(c) to prove, rank, and claim in the bankruptcy, insolvency, or sequestration of any contributory, for any balance against his estate, and to receive dividends in the bankruptcy, insolvency, or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors:

(d) to draw, accept, make, and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made, or indorsed by or on behalf of the company in the course of its business:

(e) to raise on the security of the assets of the company any money requisite:

(f) to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself:

(g) to appoint an agent to do any business which the liquidator is unable to do himself:

(h) to do all such things as may be necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator in a winding up by the court of the powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

(4) In the case of a winding up in Scotland, the court may provide by any order that the liquidator may, where there is no committee of inspection, exercise any of the powers mentioned in paragraph (*a*) or paragraph (*b*) of subsection (1) of this section without the sanction or intervention of the court.

(5) In a winding up by the court in Scotland, the liquidator shall, subject to general rules, have the same powers as a trustee on a bankrupt estate.

Exercise and control of liquidator's powers in England.

192.—(1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by the court in England shall, in the administration of the assets of the company and in the distribution thereof among its creditors, 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, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be 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.

(3) The liquidator may apply to the court in manner prescribed for directions in relation to any particular matter arising under the winding up.

(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

Books to be kept by liquidator in England.

193. Every liquidator of a company which is being wound up by the court in England shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books.

Payments of liquidator in England into bank.

194.—(1) Every liquidator of a company which is being wound up by the court in England shall, in such manner and at such times as the Board of Trade, with the concurrence of the Treasury, direct, pay the money received by him to the Companies Liquidation Account at the Bank of England, and the Board shall furnish him with a certificate of receipt of the money so paid:

Provided that, if the committee of inspection satisfy the Board of Trade that for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Board shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments shall be made in the prescribed manner.

(2) If any such liquidator at any time retains for more than ten days a sum exceeding fifty pounds, or such other amount as the Board of Trade in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Board, he shall pay interest on the amount so retained in excess at the rate of twenty per cent. per annum, and shall be liable to disallowance of all or such part of his remuneration as the Board may think just, and to be removed from his office by the Board, and shall be liable to pay any expenses occasioned by reason of his default.

(3) A liquidator of a company which is being wound up by the court in England shall not pay any sums received by him as liquidator into his private banking account.

Audit of liquidator's accounts in England.

195.—(1) Every liquidator of a company which is being wound up by the court in England shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Board of Trade, or as they direct, an account of his receipts and payments as liquidator.

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.

(3) The Board shall cause the account to be audited and for

the purpose of the audit the liquidator shall furnish the Board with such vouchers and information as the Board may require, and the Board may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be filed and kept by the Board, and the other copy shall be delivered to the court, and each copy shall be open to the inspection of any creditor, or of any person interested.

(5) The Board shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributory.

Control of Board of Trade over liquidators in England.

196.—(1) The Board of Trade shall take cognizance of the conduct of liquidators of companies which are being wound up by the court in England, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules, or otherwise with respect to the performance of his duties, or if any complaint is made to the Board by any creditor or contributory in regard thereto, the Board shall inquire into the matter, and take such action thereon as they may think expedient.

(2) The Board may at any time require any liquidator of a company which is being wound up by the court in England to answer any inquiry in relation to any winding up in which he is engaged, and may, if the Board think fit, apply to the court to examine him or any other person on oath concerning the winding up.

(3) The Board may also direct a local investigation to be made of the books and vouchers of the liquidator.

Release of liquidators in England.

197.—(1) When the liquidator of a company which is being wound up by the court in England 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 has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among 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.

(2) Where the release of a liquidator is withheld the court may, on the application of any creditor or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(3) An order of the Board of Trade releasing the liquidator shall discharge him 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 any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the liquidator has not previously resigned or been

removed, his release shall operate as a removal of him from his office.

Committees of Inspection.

Meetings of creditors and contributories to determine whether committee of inspection shall be appointed.

198.—(1) When a winding up order has been made by the court in England, it shall be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not an application should be made to the court for appointing a liquidator in place of the official receiver, to determine further whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed.

(2) When a winding-up order has been made by the court in Scotland, the liquidator shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the court 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:

Provided that, where the winding-up order has been made on the ground that the company is unable to pay its debts, it shall not be necessary for the liquidator to summon a meeting of the contributories.

(3) The court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matters aforesaid the court shall decide the difference and make such order thereon as the court may think fit.

Constitution and proceedings of committee of inspection.

199.—(1) A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the court:

Provided that, where in Scotland a winding-up order has been made on the ground that a company is unable to pay its debts, the committee shall consist of creditors or persons holding general powers of attorney from creditors.

(2) The committee shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories, of which seven days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

Powers of Board of Trade in England where no committee of inspection.

200. Where in the case of a winding up in England there is no committee of inspection, the Board of Trade may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorised or required to be done or given by the committee.

Additional powers of committee of inspection in Scotland.

201. In the case of a winding up in Scotland, the committee of inspection shall, in addition to the powers and duties conferred and imposed on it by this Act, have such of the powers and duties of commissioners on a bankrupt estate as may be conferred and imposed on committees of inspection by general rules.

General Powers of Court in case of Winding Up by Court.

Power to stay winding up.

202.—(1) The court may at any time after an order for winding up, on the application either of the liquidator, or the official receiver, or any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

(2) On any application under this section the court may, before making an order, require the official receiver to furnish to the court a report with respect to any facts or matters which are in his opinion relevant to the application.

Settlement of list of contributories and application of assets.

203.—(1) As soon as may be after making a winding-up order, the court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities:

Provided that, where it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

Delivery of property to liquidator.

204. The court may, at any time after making a winding-up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the court directs, to

the liquidator any money, property, or books and papers in his hands to which the company is *primâ facie* entitled.

Payment of debts due by contributory to company and extent to which set-off allowed

205.—(1) The court may, at any time after making a winding-up order, make an order on any contributory for the time being on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The court in making such an order may—

(*a*) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and

(*b*) in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance.

(3) In the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

Power of court to make calls.

206.—(1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

(2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

Payment into Bank of moneys due to the company.

207.—(1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into the Bank of England or any branch thereof to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All moneys and securities paid or delivered into the Bank of England or any branch thereof in the event of a winding up by the court shall be subject in all respects to the orders of the court.

Order on contributory conclusive evidence.

208.—(1) An order made by the court on a contributory shall (subject to any right of appeal) be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons, and in all proceedings, except proceedings in Scotland against the heritable estate of a deceased contributory, in which case the order shall be only *primâ facie* evidence for the purpose of charging his heritable estate,

unless his heirs or legatees of heritage were on the list of contributories at the time of the order being made.

Appointment in England of special manager.

209.—(1) Where in proceedings in England the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court, and the court may on such application, appoint a special manager of the said estate or business to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.

(2) The special manager shall give such security and account in such manner as the Board of Trade direct.

(3) The special manager shall receive such remuneration as may be fixed by the court.

Power to exclude creditors not proving in time.

210. The court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved.

Adjustment of rights of contributories.

211. The court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

Inspection of books by creditors and contributories.

212. The court may, at any time after making a winding-up order, make such order for inspection of the books and papers of the company by creditors and contributories as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

Power to order costs of winding up to be paid out of assets.

213. The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges, and expenses incurred in the winding up in such order of priority as the court thinks just.

Power to summon persons suspected of having property of company.

214.—(1) The court may, at any time after the appointment of a provisional liquidator or the making of a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs, or property of the company.

(2) The court may examine him on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The court may require him to produce any books and papers in his custody or power relating to the company, but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful impediment (made known

to the court at the time of its sitting, and allowed by it), the court may cause him to be apprehended and brought before the court for examination.

Attendance of director of company at meetings of creditors, &c. in Scotland.

215. In the winding up by the court of a company registered in Scotland, the court shall have power to require the attendance of any director or other officer of the company at any meeting of creditors or of contributories or of a committee of inspection for the purpose of giving information as to the trade, dealings, affairs or property of the company.

Power in England to order public examination of promoters, directors, &c.

216.—(1) Where an order has been made in England for winding up a company by the court and the official receiver has made a further report under this Act stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that that person, director or officer shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director or officer thereof.

(2) The official receiver shall take part in the examination, and for that purpose may, if specially authorised by the Board of Trade in that behalf, employ a solicitor with or without counsel.

(3) The liquidator, where the official receiver is not the liquidator, and any creditor or contributory, may also take part in the examination either personally or by solicitor or counsel.

(4) The court may put such questions to the person examined as the court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the court may put or allow to be put to him.

(6) A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the official receiver's report, and may at his own cost employ a solicitor with or without counsel, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him:

Provided that, if any such person applies to the court to be exculpated from any charges made or suggested against him, it shall be the duty of the official receiver to appear on the hearing of the application and call the attention of the court to any matters which appear to the official receiver to be relevant, and if the court, after hearing any evidence given or witnesses called by the official receiver, grants the application, the court may allow the applicant such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The court may, if it thinks fit, adjourn the examination from time to time.

(9) An examination under this section may, if the court so directs, and subject to general rules, be held before any judge of county courts, or before any officer of the Supreme Court, being an

official referee, master, or registrar in bankruptcy, or before any district registrar of the High Court named for the purpose by the Lord Chancellor, or, in the case of companies being wound up by a Palatine Court, before a registrar of that court, and the powers of the court under this section may be exercised by the person before whom the examination is held.

Power in England to restrain fraudulent persons from managing companies

217.—(1) Where an order has been made in England for winding up a company by the court, and the official receiver has made a further report under this Act stating that, in his opinion, a fraud has been committed by a person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, on the application of the official receiver, order that that person, director or officer shall not, without the leave of the court, be a director of or in any way, whether directly or indirectly, be concerned in or take part in the management of a company for such period, not exceeding five years, from the date of the report as may be specified in the order.

(2) The official receiver shall, where he intends to make an application under the last foregoing subsection, give not less than ten days' notice of his intention to the person charged with the fraud, and on the hearing of the application that person may appear and himself give evidence or call witnesses.

(3) It shall be the duty of the official receiver to appear on the hearing of an application by him for an order under this section and on an application for leave under this section and to call the attention of the court to any matters which appear to him to be relevant, and on any such application the official receiver may himself give evidence or call witnesses.

(4) If any person acts in contravention of an order made under this section, he shall, in respect of each offence, be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds, or to both such imprisonment and fine.

(5) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made.

Power to arrest absconding contributory.

218. The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit the United Kingdom, or otherwise to abscond, or to remove or conceal any of his property for the purpose of evading payment of calls, or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested, and his books and papers and moveable personal property to be seized, and him and them to be safely kept until such time as the court may order.

Powers of court cumulative.

219. Any powers by this Act conferred on the court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

Delegation to liquidator of certain powers of court in England.

220. Provision may be made by general rules for enabling or requiring all or any of the powers and duties conferred and imposed on the court in England by this Act in respect of the following matters—

(1) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
(2) the settling of lists of contributories and the rectifying of the register of members where required, and the collecting and applying of the assets;
(3) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;
(4) the making of calls;
(5) the fixing of a time within which debts and claims must be proved;

to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court:

Provided that the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either the special leave of the court or the sanction of the committee of inspection.

Dissolution of company.

221.—(1) When the affairs of a company have been completely wound up, the court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) The order shall within fourteen days from the date thereof be reported by the liquidator to the registrar of companies who shall make in his books a minute of the dissolution of the company.

(3) If the liquidator makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding five pounds for every day during which he is in default.

Enforcement of and Appeal from Orders.

Order for calls on contributories in Scotland.

222.—(1) Where an order, interlocutor, or decree has been made in Scotland for winding up a company by the court, it shall be competent to the court, on production by the liquidators of a list certified by them of the names of the contributories liable in payment of any calls, and of the amount due by each contributory, and of the date when the said amount became due, to pronounce forthwith a decree against those contributories for payment of the sums so certified to be due, with interest from the said date till payment, at the rate of five per cent. per annum in the same way and to the same effect as if they had severally consented to registration for execution, on a charge of six days, of a legal obligation to pay those calls and interest.

(2) Any such decree may be extracted immediately, and no suspension thereof shall be competent, except on caution or consignation, unless with special leave of the court.

Enforcement throughout United Kingdom of orders made in winding up.

223.—(1) Any order made by the court in England for or in the course of winding up a company shall be enforced in Scotland and Northern Ireland in the courts that would respectively have jurisdiction in respect of that company if registered in Scotland or Northern Ireland and in the same manner in all respects as if the order had been made by those courts.

(2) In like manner orders, interlocutors, and decrees made by the court in Scotland for or in the course of winding up a company shall be enforced in England and Northern Ireland by the courts which would respectively have jurisdiction in respect of that company if registered in that part of the United Kingdom where the order is required to be enforced, and in the same manner in all respects as if the order had been made by those courts.

(3) Where any order, interlocutor, or decree made by one court is required to be enforced by another court, an office copy of the order, interlocutor, or decree shall be produced to the proper officer of the court required to enforce the same, and the production of an office copy shall be sufficient evidence of the order, interlocutor, or decree, and thereupon the last-mentioned court shall take the requisite steps in the matter for enforcing the order, interlocutor, or decree, in the same manner as if it had been made by that court.

Appeals from orders in Scotland.

224.—(1) Subject to the provisions of this section and to rules of court, an appeal from any order or decision made or given in the winding up of a company by the court in Scotland under this Act shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the court in cases within its ordinary jurisdiction.

(2) In regard to orders or judgments pronounced in Scotland by the Lord Ordinary on the Bills in vacation—

(*a*) no order or judgment under the provisions of this Act specified in the First Part of the Eighth Schedule to this Act shall be subject to review, reduction, suspension, or stay of execution; and

(*b*) every other order or judgment (except as hereinafter mentioned) shall be subject to review only by reclaiming note, in common form, presented within fourteen days from the date of the order or judgment:

Provided that orders or judgments under the provisions of this Act specified in the Second Part of the Eighth Schedule to this Act shall, from the dates of those orders or judgments, and notwithstanding any reclaiming note against them, be carried out and receive effect until the reclaiming note is disposed of by the court.

(3) In regard to orders or judgments pronounced in Scotland by a permanent Lord Ordinary to whom a winding up has been remitted, any such order or judgment shall be subject to review only by reclaiming note in common form, presented within fourteen days from the date of the order or judgment, but should a reclaiming note not be presented and moved during session, the provisions of this section in regard to orders or judgments pronounced by the Lord Ordinary on the bills in vacation shall apply to the order or judgment.

(4) Nothing in this section shall affect the provisions of this Act in reference to decrees in Scotland for payment of calls in the winding up of companies, whether voluntarily or by or subject to the supervision of the court.

(iii) Voluntary Winding Up.

Resolutions for, and commencement of Voluntary Winding Up.

Circumstances in which company may be wound up voluntarily.

225.—(1) A company may be wound up voluntarily—

(*a*) When the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company

in general meeting has passed a resolution requiring the company to be wound up voluntarily:

(*b*) If the company resolves by special resolution that the company be wound up voluntarily:

(*c*) If the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

(2) In this Act the expression "a resolution for voluntary winding up" means a resolution passed under any of the provisions of subsection (1) of this section.

Notice of resolution to wind up voluntarily.

226.—(1) When a company has passed a resolution for voluntary winding up, it shall, within seven days after the passing of the resolution, give notice of the resolution by advertisement in the *Gazette*.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine, and for the purposes of this subsection the liquidator of the company shall be deemed to be an officer of the company.

Commencement of voluntary winding up.

227. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up.

Consequences of Voluntary Winding Up.

Effect of voluntary winding up on business and status of company

228. In case of a voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof:

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

Avoidance of transfers, &c., after commencement of voluntary winding up

229. Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, shall be void.

Declaration of Solvency.

Statutory declaration of solvency in case of proposal to wind up voluntarily.

230.—(1) Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors may, at a meeting of the directors held before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out, make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within a period, not exceeding twelve months, from the commencement of the winding up.

(2) A declaration made as aforesaid shall have no effect for the purposes of this Act unless it is delivered to the registrar of companies for registration before the date mentioned in subsection (1) of this section.

(3) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Act referred to as "a members' voluntary winding up," and a winding up in the case of which a declaration has not been made and

delivered as aforesaid is in this Act referred to as "a creditors' voluntary winding up."

Provisions applicable to a Members' Voluntary Winding Up.

Provisions applicable to a members' winding up.

231. The provisions contained in the five sections of this Act next following shall apply in relation to a members' voluntary winding up.

Power of company to appoint and fix remuneration of liquidators.

232.—(1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof.

Power to fill vacancy in office of liquidator.

233.—(1) If a vacancy occurs by death, resignation, or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

Power of liquidator to accept shares, &c. as consideration for sale of property of company.

234.—(1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not (in this section called the "transferee company") the liquidator of the first-mentioned company (in this section called the "transferor company") may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company

(3) If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect, or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section.

(4) If the liquidator elects to purchase the member's interest the purchase money must be paid before the company is dis-

solved, and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators; but, if an order is made within a year for winding up the company by or subject to the supervision of the court, the special resolution shall not be valid unless sanctioned by the court.

(6) For the purposes of an arbitration under this section the provisions of the *Companies Clauses Consolidation Act*, 1845, or, in the case of a winding up in Scotland, the *Companies Clauses Consolidation (Scotland) Act*, 1845, with respect to the settlement of disputes by arbitration, shall be incorporated with this Act; and in the construction of those provisions this Act shall be deemed to be the special Act, and "the company" shall mean the transferor company, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator, or, if there is more than one liquidator, then of any two or more of the liquidators. 8 & 9 Vict. c. 16. 8 & 9 Vict. c. 17.

Duty of liquidator to call general meeting at end of each year

235.—(1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding ten pounds.

Final meeting and dissolution.

236.—(1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement in the *Gazette*, specifying the time, place, and object thereof, and published one month at least before the meeting.

(3) Within one week after the meeting, the liquidator shall send to the registrar of companies a copy of the account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator shall be liable to a fine not exceeding five pounds for every day during which the default continues:

Provided that, if a quorum is not present at the meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall be deemed to have been complied with.

(4) The registrar on receiving the account and either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved:

Provided that the court may, on the application of the liqui-

dator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the registrar an office copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Provisions applicable to a Creditors' Voluntary Winding Up.

Provisions applicable to a creditors' winding up.

237. The provisions contained in the eight sections of this Act next following shall apply in relation to a creditors' voluntary winding up.

Meeting of creditors.

238.—(1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised once in the *Gazette* and once at least in two local newspapers circulating in the district where the registered office or principal place of business of the company is situate.

(3) The directors of the company shall—

(*a*) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of creditors to be held as aforesaid; and

(*b*) appoint one of their number to preside at the said meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) of this section shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(6) If default is made—

(*a*) by the company in complying with subsections (1) and (2) of this section;

(*b*) by the directors of the company in complying with subsection (3) of this section;

(*c*) by any director of the company in complying with subsection (4) of this section;

the company, directors or director, as the case may be, shall be liable to a fine not exceeding one hundred pounds, and, in the case

of default by the company, every officer of the company who is in default shall be liable to the like penalty.

Appointment of liquidator.

239. The creditors and the company at their respective meetings mentioned in the last foregoing section of this Act may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator:

Provided that in the case of different persons being nominated any director, member, or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors.

Appointment of committee of inspection.

240.—(1) The creditors at the meeting to be held in pursuance of section two hundred and thirty-eight of this Act or at any subsequent meeting, may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number:

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(2) Subject to the provisions of this section and to general rules, the provisions of sections one hundred and ninety-nine (except subsection (1)) and two hundred and one of this Act shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the court.

Fixing of liquidators' remuneration and cessor of directors' powers.

241.—(1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

(2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof.

Power to fill vacancy in office of liquidator.

242. If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by or by the direction of, the court, the creditors may fill the vacancy.

Application of S. 234 to a creditors' voluntary winding up.

243. The provisions of section two hundred and thirty-four of this Act shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up, with the modification that the powers of the liquidator under the said

section shall not be exercised except with the sanction either of the court or of the committee of inspection.

Duty of liquidator to call meetings of company and of creditors at end of each year.

244.—(1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding ten pounds.

Final meeting and dissolution.

245.—(1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors, for the purpose of laying the account before the meetings, and giving any explanation thereof.

(2) Each such meeting shall be called by advertisement in the *Gazette*, specifying the time, place, and object thereof, and published one month at least before the meeting.

(3) Within one week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the registrar of companies a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator shall be liable to a fine not exceeding five pounds for every day during which the default continues:

Provided that, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(4) The registrar on receiving the account and in respect of each such meeting either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of three months from the registration thereof the company shall be deemed to be dissolved:

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the registrar an office copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Provisions applicable to every Voluntary Winding Up.

Provisions applicable to every voluntary winding up.

246. The provisions contained in the nine sections of this Act ext following shall apply to every voluntary winding up whether members' or a creditors' winding up.

Distribution of property of company.

247. Subject to the provisions of this Act as to preferential ayments, the property of a company shall, on its winding up, e applied in satisfaction of its liabilities *pari passu*, and, subject o such application, shall, unless the articles otherwise provide, e distributed among the members according to their rights and nterests in the company.

Powers and duties of liquidator in voluntary winding up

248.—(1) The liquidator may—

(*a*) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and, in the case of a creditors' voluntary winding up, with the sanction of either the court or the committee of inspection, exercise any of the powers given by paragraphs (*d*), (*e*) and (*f*) of subsection (1) of section one hundred and ninety-one of this Act to a liquidator in a winding up by the court :

(*b*) without sanction, exercise any of the other powers by this Act given to the liquidator in a winding up by the court :

(*c*) exercise the power of the court under this Act of settling a list of contributories, and the list of contributories shall be *primâ facie* evidence of the liability of the persons named therein to be contributories :

(*d*) exercise the power of the court of making calls :

(*e*) summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purpose he may think fit.

(2) The liquidator shall pay the debts of the company and nall adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given y this Act may be exercised by such one or more of them as may e determined at the time of their appointment, or, in default f such determination, by any number not less than two.

Power of court to appoint and remove liquidator in voluntary winding up.

249.—(1) If from any cause whatever there is no liquidator cting, the court may appoint a liquidator.

(2) The court may, on cause shown, remove a liquidator and ppoint another liquidator.

Notice by liquidator of his appointment.

250.—(1) The liquidator shall, within twenty-one days after is appointment, deliver to the registrar of companies for registra- on a notice of his appointment in the form prescribed by the oard of Trade.

(2) If the liquidator fails to comply with the requirements of nis section he shall be liable to a fine not exceeding five pounds r every day during which the default continues.

Arrangement when binding on creditors.

251.—(1) Any arrangement entered into between a company pout to be, or in the course of being, wound up and its creditor nall, subject to the right of appeal under this section, be binding n the company if sanctioned by an extraordinary resolution, and

on the creditors if acceded to by three-fourths in number and value of the creditors.

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

Power to apply to court to have questions determined or powers exercised.

252.—(1) The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls, or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.

(2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

Power of court in Scotland to stay proceedings against company.

253.—(1) If the court, on the application of the liquidator in the winding up of a company registered in Scotland, so directs, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose.

(2) Nothing in this section shall be taken to affect the practice or powers of the court as existing immediately before the commencement of this Act with respect to the staying of proceedings against a company registered in England and in course of being wound up.

Costs of voluntary winding up

254. All costs, charges, and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

Saving for rights of creditors and contributories.

255. The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the court, but in the case of an application by a contributory, the court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

(iv) Winding Up subject to Supervision of Court.

Power to order winding up subject to supervision.

256. When a company has passed a resolution for voluntary winding up, the court may make an order that the voluntary winding up shall continue but subject to such supervision of the court, and with such liberty for creditors, contributories, or others to apply to the court, and generally on such terms and conditions, as the court thinks just.

Effect of petition for winding up subject to supervision.

257. A petition for the continuance of a voluntary winding up subject to the supervision of the court shall, for the purpose of giving jurisdiction to the court over actions, be deemed to be a petition for winding up by the court.

Application of SS. 173 and 174 to winding up subject to supervision.

258. A winding up subject to the supervision of the court shall, for the purposes of sections one hundred and seventy-three and one hundred and seventy-four of this Act, be deemed to be a winding up by the court.

Power of court to appoint or remove liquidators.

259.—(1) Where an order is made for a winding up subject to supervision the court may by that or any subsequent order appoint an additional liquidator.

(2) A liquidator appointed by the court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position, as if he had been duly appointed in accordance with the provisions of this Act with respect to the appointment of liquidators in a voluntary winding up.

(3) The court may remove any liquidator so appointed by the court or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal, or by death or resignation.

Effect of supervision order.

260.—(1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the court, exercise all his powers, without the sanction or intervention of the court, in the same manner as if the company were being wound up altogether voluntarily:

Provided that the powers specified in paragraphs (*d*), (*e*) and (*f*) of subsection (1) of section one hundred and ninety-one of this Act shall not be exercised by the liquidator except with the sanction of the court or, in a case where before the order the winding up was a creditor's voluntary winding up, with the sanction of either the court or the committee of inspection.

(2) A winding up subject to the supervision of the court is not a winding up by the court for the purpose of the provisions of this Act which are set out in the Ninth Schedule to this Act, but, subject as aforesaid, an order for a winding up subject to supervision shall for all purposes be deemed to be an order for winding up by the court:

Provided that where the order for winding up subject to supervision was made in relation to a creditor's voluntary winding up in which a committee of inspection had been appointed, the order shall be deemed to be an order for winding up by the court for the purpose of section one hundred and ninety-nine (except subsection (1) thereof) and section two hundred and one of this Act, except in so far as the operation of those sections is excluded in a voluntary winding up by general rules.

NINTH SCHEDULE

PROVISIONS WHICH DO NOT APPLY IN THE CASE OF A WINDING UP SUBJECT TO SUPERVISION OF THE COURT.

Statement of Companies affairs to be submitted to Official Receiver.

Report by Official Receiver.

Power of Court to appoint Liquidator.

Appointment and powers of provisional Liquidator.

Appointment, style, &c., of Liquidators in English winding up.

Provisions where person other than Official Receiver is appointed Liquidator.

Provisions as to Liquidators in Scottish winding up.

General provisions as to Liquidators.

Exercise and control of Liquidators' powers in England.

Books to be kept by Liquidator in English winding up.

Payments of Liquidator in English winding up into bank.

Audit of Liquidators' accounts in English winding up.
Control of Board of Trade over Liquidators in England.
Release of Liquidators in England.
Meeting of creditors and contributories to determine whether committee of inspection shall be appointed.
Constitution and proceedings of committee of inspection.
Powers of Board of Trade where no committee of inspection in England.
Additional powers of committee of inspection in Scotland.
Appointment in England of special manager.
Power in England to order public examination of promoters, directors, &c.
Power in England to restrain fraudulent persons from managing companies.
Delegation to Liquidator of certain powers of court in England.
Power in England to appoint Official Receiver as receiver for debenture holders or creditors.

(v) Provisions applicable to every Mode of Winding Up.

Proof and Ranking of Claims.

Debts of all descriptions to be proved.

261. In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

Application of bankruptcy rules in winding up of insolvent English companies.

262. In the winding up of an insolvent company registered in England the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy in England, with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

Ranking of claims in Scotland. 3 & 4 Geo. 5. c. 20.

263. In the winding up of a company registered in Scotland, the following provisions of the Bankruptcy (Scotland) Act, 1913, that is to say,

(*a*) the provisions of sections forty-five to sixty-two regarding voting and ranking for payment of dividends;
(*b*) sections ninety-six and one hundred and five, which respectively relate to the reckoning of majorities and to the interruption of prescription;

shall so far as is consistent with this Act apply in like manner as they apply in the sequestration of a bankrupt's estate, with the substitution of references to winding up for references to sequestration, of references to the court for references to the sheriff, of references to the liquidator for references to the trustee, and of

references to the company for references to the bankrupt, and with any other necessary modifications.

264.—(1) In a winding up there shall be paid in priority to all other debts— Preferential payments.

(*a*) All parochial or other local rates due from the company at the relevant date, and having become due and payable within twelve months next before that date, and all assessed taxes, land tax, property or income tax assessed on the company up to the fifth day of April next before that date, and not exceeding in the whole one year's assessment;

(*b*) All wages or salary (whether or not earned wholly or in part by way of commission) of any clerk or servant in respect of services rendered to the company during four months next before the relevant date, not exceeding fifty pounds;

(*c*) All wages of any workman or labourer not exceeding twenty-five pounds, whether payable for time or for piece work, in respect of services rendered to the company during two months next before the relevant date:

Provided that, where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the relevant date;

(*d*) Unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has at the commencement of the winding up under such a contract with insurers as is mentioned in section seven of the *Workmen's Compensation Act*, 1925, rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act accrued before the relevant date; 15 & 16 Geo. 5. c. 4.

(*e*) Unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts due in respect of contributions payable during the twelve months next before the relevant date by the company as the employer of any persons under either—

(i) the *National Health Insurance Act*, 1936; or

(ii) the *Widows', Orphans' and Old Age Contributory Pensions Act*, 1936; or 15 & 16 Geo. 5 c. 70.

(iii) the *Unemployment Insurance Act*, 1935.

(2) Where any compensation under the *Workmen's Compensation Act*, 1925, is a weekly payment, the amount due in respect thereof shall, for the purposes of paragraph (*d*) of subsection (1) of this section, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the said Act.

(3) Where any payment on account of wages or salary has been made to any clerk, servant, workman or labourer in the employment of a company out of money advanced by some person for that purpose, that person shall in a winding up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which that clerk, servant, workman or labourer would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(4) The foregoing debts shall—

(*a*) Rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and

(*b*) In the case of a company registered in England, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(5) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of the debts to which priority is given by paragraph (*c*) of subsection (1) of this section formal proof thereof shall not be required except in so far as is otherwise provided by general rules.

(6) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding-up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(7) In this section the expression "the relevant date" means—

(*a*) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be would up voluntarily, the date of the winding-up order; and

(*b*) in any other case, the date of the commencement of the winding up.

[The following have been held to have priority:

Workmen paid by commission (*Earle's Shipbuilding Co.* [1901], W.N. 78); commercial traveller paid by commission (*re Klein* [1906], 22 T.L.R. 664; W.N. 168); an opera singer engaged to sing during an opera season at a certain sum for each performance (*Winter German Opera* [1907], 23 T.L.R. 662); a chemist engaged for certain days in the week at a weekly wage to produce certain formulæ (*G. H. Morrison & Co.* [1912], 106 L.T. 731).

In *Beeton & Co.* ([1913], 2 Ch. 279), a director, under power in the articles, also held an office in the company at a fixed salary, and was held to be a preferential creditor for the salary.

On the other hand, a managing director is not a clerk, or servant, and his fee as such is not preferential (*re Newspaper Proprietary Syndicate* [1900], 2 Ch. 349). A secretary is not preferential in respect of the salary of a clerk whom he employs to assist him (*Cairney* v. *Back* [1906], 2 K.B. 746). If the services can be performed at the convenience of the employee, the latter is not preferential (*Beeton & Co., supra*).]

[*Crown Debts.*—In general the Crown has a right to payment of debts due to it in priority to all others, but it has been held that this prerogative is inconsistent with and abrogated by the provisions of Acts of Parliament which give certain specified debts priority over all others, including Crown debts. In a winding up (and for the purposes of SS. 247 and 262) the Crown is therefore preferential only for the debts specifically mentioned in S. 264 (1) (*a*) (*H. J. Webb & Co.* (*Smithfield, London*) [1922], 2 Ch. 369; see also *Food Controller* v. *Cork* [1923], A.C. 647).]

Effect of Winding Up on antecedent and other Transactions.

Fraudulent preference

265.—(1) Any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly.

(2) For the purposes of this section, the commencement of the winding up shall be deemed to correspond with the presentation of the bankruptcy petition in the case of an individual.

(3) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

(4) In the application to Scotland of this section, the expression "fraudulent preference" includes any alienation or preference which is voidable by statute or at common law on the ground of insolvency or notour bankruptcy, and the expression "bankruptcy petition" means petition for sequestration.

Effect of floating charge.

266. Where a company is being wound up, a floating charge on the undertaking or property of the company creating within six months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum.

Disclaimer of onerous property in case of company wound up in England

267.—(1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, may, with the leave of the court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such ex-

tended period as may be allowed by the court, disclaim the property :

Provided that, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest, and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights of liabilities of any other person.

(3) The court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the court thinks just.

(4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such further period as may be allowed by the court, given notice to the applicant that he intends to apply to the court for leave to disclaim, and, in the case of a contract, if the liquidator, after such an application as aforesaid, does not within the said period or further period disclaim the contract, the company shall be deemed to have adopted it.

(5) The court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The Court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the court thinks just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose :

Provided that, where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee by demise, including a chargee by way of legal mortgage, except upon the terms of making that person—

(*a*) subject to the same liabilities and obligations as those to which the company was subject under the lease in

respect of the property at the commencement of the winding up; or

(*b*) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date;

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the court shall have power to vest the estate and interest of the company in the property in any person liable either personally or in a representative character, and either alone or jointly with the company to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

(7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

(8) This section shall not apply in the case of a winding up in Scotland.

Restriction of rights of creditor as to execution or attachment in case of company being wound up in England.

268.—(1) Where a creditor has issued execution against the goods or lands of a company or has attached any debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the company unless he has completed the execution or attachment before the commencement of the winding up:

Provided that—

(*a*) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall for the purposes of the foregoing provision be substituted for the date of the commencement of the winding up; and

(*b*) a person who purchases in good faith under a sale by the sheriff any goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator.

(2) For the purposes of this section, an execution against goods shall be taken to be completed by seizure and sale, and an attachment of a debt shall be deemed to be completed by receipt of the debt, and an execution against land shall be deemed to be completed by seizure and, in the case of an equitable interest, by the appointment of a receiver.

(3) In this section the expression "goods" includes all chattels personal, and the expression "sheriff" includes any officer charged with the execution of a writ or other process.

(4) This section shall not apply in the case of a winding up in Scotland.

Duties of sheriff as to goods taken in execution.

269.—(1) Where any goods of a company are taken in execution, and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that a provisional liquidator has

been appointed or that a winding-up order had been made or that a resolution for voluntary winding up has been passed, the sheriff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

(2) Where under an execution in respect of a judgment for a sum exceeding twenty pounds the goods of a company are sold or money is paid in order to avoid sale, the sheriff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days, and if within that time notice is served on him of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company and an order is made or a resolution is passed, as the case may be, for the winding up of the company, the sheriff shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.

(3) In this section the expression "goods" includes all chattels personal, and the expression "sheriff" includes any officer charged with the execution of a writ or other process.

(4) This section shall not apply in the case of a winding up in Scotland.

Effect of diligence within 60 days of winding up in case of Scottish company, and in case of effects in Scotland of English company.

270.—(1) In the winding up of a company registered in Scotland, the following provisions shall have effect:—

(*a*) The winding up shall, as at the date of the commencement thereof, be equivalent to an arrestment in execution and decree of furthcoming, and to an executed or completed poinding, and no arrestment or poinding of the funds or effects of the company executed on or after the sixtieth day prior to that date shall be effectual, and those funds or effects or the proceeds of those effects if sold shall be made furthcoming to the liquidator:

Provided that any arrester or poinder before that date, who is thus deprived of the benefit of his diligence shall have preference out of those funds or effects for the expense *bona fide* incurred by him in such diligence:

(*b*) The winding up shall, as at the date aforesaid, be equivalent to a decree of adjudication of the heritable estates of the company for payment of the whole debts of the company, principal and interest, accumulated at the said date, subject to such preferable heritable rights and securities as existed at the said date and are valid and unchallengeable, and the right to poind the ground hereinafter provided:

(*c*) The provisions of sections one hundred and eight to one hundred and thirteen and of section one hundred and sixteen of the *Bankruptcy (Scotland) Act*, 1913, shall, so far as is consistent with this Act, apply to the realisation of heritable estates affected by such heritable rights and securities as aforesaid; and for the purposes of this Act the words "sequestration" and "trustee" occurring in those sections shall mean respectively "winding up" and "liquidator," and the expression "the Lord

Ordinary or the court" shall mean "the court as defined by this Act with respect to Scotland:

(*d*) No pointing of the ground which has not been carried into execution by sale of the effects sixty days before the date aforesaid shall, except to the extent hereinafter provided, be available in any question with the liquidator:

Provided that no creditor who holds a security over the heritable estate preferable to the right of the liquidator shall be prevented from executing a pointing of the ground after the date aforesaid, but that pointing shall in competition with the liquidator be available only for the interest on the debt for the current half-yearly term, and for the arrears of interest for one year immediately before the commencement of that term.

(2) The provisions of this section shall, so far as relates to any estate or effects of the company situate in Scotland, apply in the case of a company registered in England as it applies in the case of a company registered in Scotland.

Offences antecedent to or in course of Winding Up.

Offences by officers of companies in liquidation.

271.—(1) If any person, being a past or present director, manager or other officer of a company which at the time of the commission of the alleged offence is being wound up, whether by or under the supervision of the court or voluntarily, or is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up—

(*a*) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company; or

(*b*) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up; or

(*c*) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up; or

(*d*) within twelve months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of ten pounds or upwards, or conceals any debt due to or from the company; or

(*e*) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of ten pounds or upwards; or

(*f*) makes any material omission in any statement relating to the affairs of the company; or

(*g*) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof; or

(*h*) after the commencement of the winding up prevents the

production of any book or paper affecting or relating to the property or affairs of the company; or

(*i*) within twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of, any book or paper affecting or relating to the property or affairs of the company; or

(*j*) within twelve months next before the commencement of the winding up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company; or

(*k*) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently parts with, alters, or makes any omission in, or is privy to the fraudulent parting with, altering, or making any omission in, any document affecting or relating to the property or affairs of the company; or

(*l*) after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before the commencement of the winding up attempts to account for any part of the property of the company by fictitious losses or expenses; or

(*m*) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for; or

(*n*) within twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; or

(*o*) within twelve months next before the commencement of the winding up or at any time thereafter pawns, pledges, or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging, or disposing is in the ordinary way of the business of the company; or

(*p*) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up;

he shall be guilty of a misdemeanour and shall, in the case of the offences mentioned respectively in paragraphs (*m*), (*n*) and (*o*) of this subsection, be liable on conviction on indictment to penal servitude for a term not exceeding five years, or on summary conviction to imprisonment for a term not exceeding twelve months, and in the case of any other offence shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding twelve months:

Provided that it shall be a good defence to a charge under any of paragraphs (*a*), (*b*), (*c*), (*d*), (*f*), (*n*) and (*o*), if the accused proves that he had no intent to defraud, and to a charge under any of

paragraphs (*h*), (*i*) and (*j*), if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to a misdemeanour under paragraph (*o*) of subsection (1) of this section, every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged, or disposed of in such circumstances as aforesaid shall be guilty of a misdemeanour, and on conviction thereof liable—

(*a*) in England to be punished in the same way as if he had received the property knowing it to have been obtained in circumstances amounting to a misdemeanour;

(*b*) in Scotland on conviction on indictment to penal servitude for a period not exceeding seven years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds, or to both such imprisonment and fine.

(3) For the purposes of this section, the expression "director" shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

Penalty for falsification of books.

272. If any director, manager or other officer, or contributory of any company being wound up destroys, mutilates, alters, or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or document belonging to the company with intent to defraud or deceive any person, he shall be guilty of a misdemeanour, and be liable to imprisonment for any term not exceeding two years, with or without hard labour.

Frauds by officers of companies which have gone into liquidation

273. If any person, being at the time of the commission of the alleged offence a director, manager or other officer of a company which is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up—

(*a*) has by false pretences or by means of any other fraud induced any person to give credit to the company;

(*b*) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company;

(*c*) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against the company;

he shall be guilty of a misdemeanour and shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding twelve months.

Liability where proper accounts not kept.

274.—(1) If where a company is wound up it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, every director, manager or other officer of the company who was knowingly a party to or connived at the default of the company shall, unless he shows that he acted honestly or that in the circumstances in which the business of the company

was carried on the default was excusable, be liable on conviction on indictment to imprisonment for a term not exceeding one year or on summary conviction to imprisonment for a term not exceeding six months.

(2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stocktakings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

Responsibility of directors for fraudulent trading.

275.—(1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the court, on the application of the official receiver, or the liquidator or any creditor or contributory of the company, may, if it thinks proper so to do, declare that any of the directors, whether past or present, of the company who were knowingly parties to the carrying on of the business in manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct.

(2) Where the court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any such director under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any company or person on his behalf, or any person claiming as assignee from or through the director, company or person, and may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection.

For the purpose of this subsection, the expression "assignee" includes any person to whom or in whose favour, by the directions of the director, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1) of this section, every director of the company who was knowingly a party to the carrying on of the business in manner aforesaid, shall be liable on conviction on indictment to imprisonment for a term not exceeding one year.

(4) The court may, in the case of any person in respect of whom a declaration has been made under subsection (1) of this section, or who has been convicted of an offence under subsection (3) of this section, order that that person shall not, without the

leave of the court, be a director of or in any way, whether directly or indirectly, be concerned in or take part in the management of a company for such period, not exceeding five years, from the date of the declaration or of the conviction, as the case may be, as may be specified in the order, and if any person acts in contravention of an order made under this subsection he shall, in respect of each offence, be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred pounds, or to both such imprisonment and fine.

In this subsection the expression "the court" in relation to the making of an order, means the court by which the declaration was made or the court before which the person was convicted, as the case may be, and in relation to the granting of leave means any court having jurisdiction to wind up the company.

(5) For the purposes of this section, the expression "director" shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

(6) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made, and where the declaration under subsection (1) of this section is made in the case of a winding up in England, the declaration shall be deemed to be a final judgment within the meaning of paragraph (*g*) of subsection (1) of section one of the *Bankruptcy Act*, 1914. 4 & 5 Geo. 5. c. 59

(7) It shall be the duty of the official receiver or of the liquidator to appear on the hearing of an application for leave under subsection (4) of this section, and on the hearing of an application under that subsection or under subsection (1) of this section the official receiver or the liquidator, as the case may be, may himself give evidence or call witnesses.

Money recovered by a liquidator under S. 275 forms part of the general assets of the company, and is not available exclusively for payment of debts contracted while the business was being carried on with fraudulent intent (*In re Leitch Bros.* (No. 2) [1933], Ch. 261).

Power of court to assess damages against delinquent directors, &c.

276.—(1) If in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the official receiver, or of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator, or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the court thinks just.

(2) The provisions of this section shall have effect notwithstanding that the offence is one for which the offender may be criminally liable.

(3) Where in the case of a winding up in England an order for payment of money is made under this section, the order shall be deemed to be a final judgment within the meaning of paragraph (*g*) of subsection (1) of section one of the *Bankruptcy Act*, 1914.

Prosecution of delinquent officers and members of company.

277.—(1) If it appears to the court in the course of a winding up by, or subject to the supervision of, the court that any past or present director, manager or other officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator—

(*a*) in the case of a winding up in England either himself to prosecute the offender or to refer the matter to the Director of Public Prosecutions;

(*b*) in the case of a winding up in Scotland to refer the matter to the Lord Advocate.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager or other officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter, in the case of a winding up in England, to the Director of Public Prosecutions, and, in the case of a winding up in Scotland, to the Lord Advocate, and shall furnish to the Director or Lord Advocate, as the case may be, such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as they respectively may require.

(3) Where any report is made under the last foregoing subsection to the Director of Public Prosecutions or Lord Advocate, he may, if he thinks fit, refer the matter to the Board of Trade for further enquiry, and the Board shall thereupon investigate the matter and may if they think it expedient, apply to the court for an order conferring on the Board or any person designated by the Board for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the court.

(4) If on any report to the Director of Public Prosecutions under subsection (2) of this section it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly, and thereupon, subject to the previous sanction of the court, the liquidator may himself take proceedings against the offender.

(5) If it appears to the court in the course of a voluntary winding up that any past or present director, manager or other officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Director of Public Prosecutions or the Lord Advocate under subsection (2) of this section, the court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of subsection (2) of this section.

(6) If, where any matter is reported or referred to the Director of Public Prosecutions or Lord Advocate under this section, he

considers that the case is one in which a prosecution ought to be instituted and, further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him, he shall institute proceedings accordingly, and it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which he is reasonably able to give.

For the purposes of this subsection, the expression "agent" in relation to a company shall be deemed to include any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(7) If any person fails or neglects to give assistance in manner required by subsection (6) of this section, the court may, on the application of the Director of Public Prosecutions or Lord Advocate, as the case may be, direct that person to comply with the requirements of the said subsection, and where any such application is made with respect to a liquidator the court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

(8) The Board of Trade, with the consent of the Treasury, may direct that the whole or any part of any costs and expenses properly incurred by the liquidator in proceedings duly brought by him under this section shall be defrayed as expenses incurred by the Board under this Act in relation to the winding up of companies in England and subsection (3) of section thirteen of the *Economy (Miscellaneous Provisions) Act*, 1926, shall apply accordingly.

Subject to any direction under this subsection and to any mortgages or charges on the assets of the company and any debts to which priority is given by section two hundred and sixty-four of this Act, all such costs and expenses as aforesaid shall be payable out of those assets in priority to all other liabilities payable thereout.

Supplementary Provisions as to Winding Up.

Disqualification for appointment as liquidator.

278.—(1) A body corporate shall not be qualified for appointment as liquidator of a company, whether in a winding up by or under the supervision of the court or in a voluntary winding up, and any appointment made in contravention of this provision shall be void.

(2) Nothing in this section shall disqualify a body corporate from acting as liquidator of a company if acting under an appointment made before the third day of August, nineteen hundred and twenty-eight, but subject as aforesaid any body corporate which acts as liquidator of a company shall be liable to a fine not exceeding one hundred pounds.

(3) In the application of this section to Scotland the expression "body corporate" does not include a firm.

Enforcement of duty of liquidator to make returns, &c.

279.—(1) If any liquidator, who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so,

the court may, on an application made to the court by any contributory or creditor of the company or by the registrar of companies, make an order directing the liquidator to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default as aforesaid.

Notification that a company is in liquidation

280.—(1) Where a company is being wound up, whether by or under the supervision of the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

(2) If default is made in complying with this section, the company and every director, manager, secretary or other officer of the company, and every liquidator of the company and every receiver or manager, who knowingly and wilfully authorises or permits the default, shall be liable to a fine of twenty pounds.

Exemption of certain documents from stamp duty on winding up of companies.

281.—(1) In the case of a winding up by the court of a company registered in England, or of a creditors' voluntary winding up of such a company—

(*a*) every assurance relating solely to freehold or leasehold property, or to any mortgage, charge or other encumbrance on, or any estate, right or interest in, any real or personal property, which forms part of the assets of the company and which, after the execution of the assurance, either at law or in equity, is or remains part of the assets of the company; and

(*b*) every power of attorney, proxy paper, writ, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any company which is being so wound up, or to any proceeding under any such winding up,

shall be exempt from duties chargeable under the enactments relating to stamp duties.

(2) In the case of such a winding up as aforesaid of a company registered in Scotland,

(*a*) every conveyance relating solely to property which forms part of the assets of the company and which, after the execution of the conveyance, is or remains the property of the company for the benefit of its creditors; and

(*b*) every power of attorney, commission, factory, oath, affidavit, articles of roup or sale, submission, decree arbitral, and every other instrument and writing whatsoever relating solely to the property of the company; and

(*c*) every deed or writing forming a part of the proceedings in the winding up,

shall be exempt from duties chargeable under the enactments relating to stamp duties.

(3) In subsection (1) of this section the expression "assurance" includes deed, conveyance, assignment and surrender, and in subsection (2) of this section the expression "conveyance" includes assignation, instrument, discharge, writing and deed.

Books of company to be evidence.

282. Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be *primâ facie* evidence of the truth of all matters purporting to be therein recorded.

Disposal of books and papers of company.

283.—(1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows, that is to say :—

(*a*) In the case of a winding up by, or subject to the supervision of, the court in such way as the court directs;

(*b*) In the case of a members' voluntary winding up, in such way as the company by extraordinary resolution directs, and, in the case of a creditors' voluntary winding up, in such way as the committee of inspection or, if there is no such committee, as the creditors of the company, may direct.

(2) After five years from the dissolution of the company no responsibility shall rest on the company, the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(3) Provision may be made by general rules for enabling the Board of Trade to prevent, for such period (not exceeding five years from the dissolution of the company) as the Board think proper, the destruction of the books and papers of a company which has been wound up, and for enabling any creditor or contributory of the company to make representations to the Board, and to appeal to the court from any direction which may be given by the Board in the matter.

(4) If any person acts in contravention of any general rules made for the purposes of this section or of any direction of the Board thereunder, he shall be liable to a fine not exceeding one hundred pounds.

Information as to pending liquidations.

284.—(1) If where a company is being wound up the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the registrar of companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom.

(3) If a liquidator fails to comply with this section, he shall be liable to a fine not exceeding fifty pounds for each day during which the default continues, and any person untruthfully stating himself as aforesaid to be a creditor or contributory shall be guilty of a contempt of court, and shall, on the application of the liquidator or of the official receiver, be punishable accordingly.

Unclaimed assets in England to be paid to Companies Liquidation Account.

285.—(1) If, where a company is being wound up in England, it appears either from any statement sent to the registrar under the last foregoing section or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained

unclaimed or undistributed for six months after the date of their receipt, the liquidator shall forthwith pay the said money to the Companies Liquidation Account at the Bank of England, and shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof.

(2) For the purpose of ascertaining and getting in any money payable into the Bank of England in pursuance of this section, the like powers may be exercised, and by the like authority, as are exerciseable under section one hundred and fifty-three of the *Bankruptcy Act*, 1914, for the purpose of ascertaining and getting in the sums, funds, and dividends referred to in that section.

(3) Any person claiming to be entitled to any money paid into the Bank of England in pursuance of this section may apply to the Board of Trade for payment thereof, and the Board may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due.

(4) Any person dissatisfied with the decision of the Board of Trade in respect of a claim made in pursuance of this section may appeal to the High Court.

Unclaimed dividends, &c. in Scotland to be lodged in bank.

286. When a company registered in Scotland has been wound up, and is about to be dissolved, the liquidator shall lodge in a joint stock bank of issue in Scotland (not being a bank in or of which the liquidator is acting partner, manager, agent or cashier) in the name of the Accountant of Court the whole unclaimed dividends and unapplied or undistributable balances, and the deposit receipts therefor shall be transmitted to the Accountant of Court, and the provisions of section one hundred and fifty-three of the *Bankruptcy (Scotland) Act*, 1913, so far as consistent with this Act, shall, with any necessary modifications, apply to sums lodged in a bank in pursuance of this section in like manner as they apply to sums deposited in pursuance of that enactment.

Resolutions passed at adjourned meetings of creditors and contributories.

287. Where after the commencement of this Act a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall, for all purposes be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Supplementary Powers of Court

Meetings to ascertain wishes of creditors or contributories.

288.—(1) The court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held, and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the articles.

Judicial notice of signature of officers.

289. In all proceedings under this Part of this Act, all courts, judges, and persons judicially acting, and all officers, judicial or ministerial, of any court, or employed in enforcing the process

of any court, shall take judicial notice of the signature of any officer of the High Court or of a county court in England, or of the Court of Session or of a sheriff court in Scotland, or of the High Court in Northern Ireland, and also of the official seal or stamp of the several offices of the High Court in England or Northern Ireland, or of the Court of Session, appended to or impressed on any document made, issued, or signed under the provisions of this Part of this Act, or any official copy thereof.

Special commission for receiving evidence.

290.—(1) The judges of the county courts in England who sit at places more than twenty miles from the General Post Office, and in Northern Ireland the judge exercising the bankruptcy jurisdiction of the High Court and county court judges and recorders, and the sheriffs of counties in Scotland, shall be commissioners for the purpose of taking evidence under this Act, where a company is wound up in England or Scotland, and the court may refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed commissioner, although he is out of the jurisdiction of the court that made the winding up order.

(2) Every commissioner shall, in addition to any powers which he might lawfully exercise as a judge of county courts, judge exercising the said bankruptcy jurisdiction, county court judge, recorder or sheriff, have in the matter so referred to him all the same powers of summoning and examining witnesses, of requiring the production or delivery of documents, of punishing defaults by witnesses, and of allowing costs and expenses to witnesses, as the court which made the winding-up order.

(3) The examination so taken shall be returned or reported to the court which made the order in such manner as that court directs.

Court may order examination of persons in Scotland.

291.—(1) The court may direct the examination in Scotland of any person for the time being in Scotland, whether a contributory of the company or not, in regard to the trade, dealings, affairs, or property of any company in course of being wound up, or of any person being a contributory of the company, so far as the company may be interested therein by reason of his being a contributory.

(2) The order or commission to take the examination aforesaid shall be directed to the sheriff of the county in which the person to be examined is residing or happens to be for the time; and the sheriff shall summon that person to appear before him at a time and place to be specified in the summons for examination on oath as a witness or as a haver, and to produce any books or papers called for which are in his possession or power.

(3) The sheriff may take the examination either orally or on written interrogatories, and shall report the same in writing in the usual form to the court; and shall transmit with the report the books and papers produced, if the originals thereof are required and specified by the order or commission, or otherwise copies thereof or extracts therefrom authenticated by the sheriff.

(4) If any person so summoned fails to appear at the time and place specified, or refuses to be examined or to make the production required, the sheriff shall proceed against him as a witness or haver duly cited and failing to appear or refusing to give evidence or make production may be proceeded against by the law of Scotland.

(5) The sheriff shall be entitled to such fees, and the witness shall be entitled to such allowances, as sheriffs when acting as commissioners under appointment from the Court of Session and as witnesses and havers are entitled to in the like cases according to the law and practice of Scotland.

(6) If any objection is stated to the sheriff by the witness, either on the ground of his incompetency as a witness or as to the production required, or on any other ground, the sheriff may, if he thinks fit, report the objection to the court, and suspend the examination of the witness until it has been disposed of by the court.

Costs of application for leave to proceed against company being wound up in Scotland.

292.—(1) Where any petition or application for leave to proceed with an action or proceeding against a company which is being wound up in Scotland is unopposed and is granted by the court, the costs of such petition or application shall, unless the court otherwise directs, be added to the amount of the claim of the petitioner or applicant against the company.

(2) Nothing in this section shall be taken to affect the practice or powers of the court as existing immediately before the commencement of this Act with respect to the costs of an application for leave to proceed with an action or proceeding against a company which is being wound up in England.

Affidavits, &c. in United Kingdom and dominions.

293.—(1) Any affidavit required to be sworn under the provisions or for the purposes of this Part of this Act may be sworn in the United Kingdom, or elsewhere within the dominions of His Majesty, before any court, judge, or person lawfully authorised to take and receive affidavits or before any of His Majesty's consuls or vice-consuls in any place outside His Majesty's dominions.

(2) All courts, judges, justices, commissioners, and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such court, judge, person, consul, or vice-consul attached, appended, or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part of this Act.

Provisions as to Dissolution.

Power of court to declare dissolution of company void.

294.—(1) Where a company has been dissolved, the court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, or such further time as the court may allow, to deliver to the registrar of companies for registration an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Property of dissolved company to be *bona vacantia*.

296. Where a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (including leasehold property but not including property held by the company on trust for any other person)

shall, subject and without prejudice to any order which may at any time be made by the court under the two last foregoing sections of this Act, be deemed to be *bona vacantia* and shall accordingly belong to the Crown, or to the Duchy of Lancaster or to the Duke of Cornwall for the time being, as the case may be, and shall vest and may be dealt with in the same manner as other *bona vacantia* accruing to the Crown, to the Duchy of Lancaster or to the Duke of Cornwall.

Special Provisions as to Stannaries.

Attachment of debt due to contributory on winding up in stannaries court.

297. When several companies are in course of liquidation by or under the supervision of the court exercising the stannaries jurisdiction and acting under that jurisdiction, if it appears to the judge that a person who is a contributory of one of the companies is also a creditor claiming a debt against one of the other companies, the judge may (if after inquiry he thinks fit) direct that the debt, when allowed, shall be attached, and payment thereof to the creditor suspended for a time certain as a security for payment of any calls that are or may in course of liquidation become due from him to the company of which he is contributory; and the amount thereof shall be applied to such payment in due course:

Provided that such an order of attachment shall not prejudice any claim which the company so indebted to the creditor may have against him by way of set off, counterclaim, or otherwise, or any lawful claim of lien or specific charge on the debt in favour of any third person.

Preferential payments in stannaries cases.

298. In the application to companies within the stannaries of the provisions of this Act with respect to preferential payments, the following modifications shall be made:—

(1) In the case of a clerk or servant of such a company, the priority with respect to wages and salary given by this Act shall be given to the extent of three months only, instead of four months, and shall not extend to the principal agent, manager, purser or secretary;

(2) All wages in relation to the mine of a miner, artizan, or labourer employed in or about the mine, including all earnings by a miner arising from any description of piece or other work, or as a tributer or otherwise, but not exceeding an amount equal to three months wages, shall be included amongst the payments which are, under this Act, to be made in priority to other debts:

(3) The following debts, that is to say:—

(*a*) wages of any miner, artizan, or labourer, unpaid at the commencement of the winding up; and

(*b*) all such amounts due in respect of any compensation or liability for compensation under the *Workmen's Compensation Act*, 1925, payable to a miner or the dependants of a miner as are given priority by paragraph (*d*) of subsection (1) of section two hundred and sixty-four of this Act; and

(*c*) all such amounts due in respect of contributions payable in respect of a miner under the enactments mentioned in paragraph (*e*) of the said subsection (1) as are given priority by that paragraph;

shall be paid by the liquidator forthwith in priority to all costs, except (in the case of a winding up by the court) such costs of and incidental to the making of the winding up order as in the opinion of the court have been properly incurred, and to all claims by mortgagees, execution creditors, or any other persons, except the claims of clerks and servants in respect of their wages or salary.

(4) Subject as aforesaid, the court may, by order, charge the whole or any part of the assets of the company, in priority to all claims and to all existing mortgages or charges thereon, with the payment of a sum sufficient to discharge the debts to be paid in priority under the last foregoing paragraph, together with interest thereon at a rate not exceeding five per cent. per annum, and this charge may be made in favour of any person who is willing to advance the requisite amount or any part thereof, and as soon as the said sum has been so advanced, the said debts shall be paid without delay so far as the amount advanced extends, and in such order of payment as the court directs.

(5) The provision giving a right of priority to a person who has advanced money for the making of payments on account of wages and salaries shall have effect subject to the modifications contained in this section.

Provisions as to mine club funds.

299.—(1) On the winding up of a company within the stannaries, contributions of the miners, artizans, or labourers for the purpose of a mine club, or accident, or sick, or benefit fund shall not be deemed to be, or be applied as part of the assets of the company in liquidation of the debts of the company or otherwise, but shall be accounted for by the purser or any other person in possession of the fund to the liquidator, and shall be recoverable by him, and be applied in accordance with the rules of the club.

(2) Where the winding up is a voluntary winding up, any person claiming to be entitled to any such contributions or fund shall have the same right as the liquidator of applying to the court for directions, or to determine any question arising in the matter.

Central Accounts.

Companies Liquidation Account.

300.—(1) An account, to be called the Companies Liquidation Account, shall be kept by the Board of Trade with the Bank of England, and all moneys received by the Board in respect of proceedings under this Act in connexion with the winding up of companies in England shall be paid to that account.

(2) All payments out of money standing to the credit of the Board of Trade in the Companies Liquidation Account shall be made by the Bank of England in the prescribed manner.

Investment of surplus funds on general account.

301.—(1) Whenever the cash balance standing to the credit of the Companies Liquidation Account is in excess of the amount which in the opinion of the Board of Trade is required for the time being to answer demands in respect of companies' estates, the Board shall notify the excess to the Treasury, and shall pay over the whole or any part of that excess as the Treasury may require, to the Treasury, to such account as the Treasury may direct, and the Treasury may invest the sums paid over, or any

part thereof, in Government securities, to be placed to the credit of the said account.

(2) When any part of the money so invested is, in the opinion of the Board of Trade, required to answer any demands in respect of companies' estates, the Board shall notify to the Treasury the amount so required, and the Treasury shall thereupon repay to the Board such sum as may be required to the credit of the Companies Liquidation Account, and for that purpose may direct the sale of such part of the said securities as may be necessary.

(3) The dividends on investments under this section shall be paid into the Bankruptcy and Companies Winding-up (Fees) Account established under the *Economy (Miscellaneous Provisions) Act*, 1926.

Separate accounts of particular estates.

302.—(1) An account shall be kept by the Board of Trade of the receipts and payments in the winding up of each company in England, and, when the cash balance standing to the credit of the account of any company is in excess of the amount which, in the opinion of the committee of inspection, is required for the time being to answer demands in respect of that company's estate, the Board shall, on the request of the committee, invest the amount not so required in Government securities, to be placed to the credit of the said account for the benefit of the company.

(2) When any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the estate of the company, the Board of Trade shall, on the request of the committee, raise such sum as may be required by the sale of such part of the said securities as may be necessary.

(3) The dividends on investments under this section shall be paid to the credit of the company.

(4) When the balance at the credit of any company's account in the hands of the Board of Trade exceeds two thousand pounds, and the liquidator gives notice to the Board that the excess is not required for the purposes of the liquidation, the company shall be entitled to interest on the excess at the rate of two per cent. per annum

Officers.

Officers and remuneration.

303.—(1) The Board of Trade may, with the approval of the Treasury, appoint such additional officers as may be required by the Board for the execution as respects England of this Part of this Act, and may remove any person so appointed.

(2) The Board of Trade, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any officer of, or person attached to, the Board performing any duties under this Part of this Act in relation to the winding up of companies in England, and may vary, increase, or diminish that remuneration as they think fit.

Returns by officers in English winding up.

304. The officers of the courts acting in the winding up of companies in England shall make to the Board of Trade such returns of the business of their respective courts and offices, at such times, and in such manner and form, as may be prescribed, and from those returns the Board shall cause books to be prepared

which shall, under the regulations of the Board, be open for public information and searches.

Rules and Fees.

General rules and fees for winding up.

305.—(1) The Lord Chancellor may, with the concurrence of the President of the Board of Trade, make general rules for carrying into effect the objects of this Act so far as relates to the winding up of companies in England, and the Court of Session may by Act of Sederunt make general rules for carrying into effect the objects of this Act so far as relates to the winding up of companies in Scotland.

(2) All rules made under this section shall be laid before Parliament within three weeks after they are made, if Parliament is then sitting, and, if Parliament is not sitting, within three weeks after the beginning of the next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act.

(3) There shall be paid in respect of proceedings under this Act in relation to the winding up of companies in England such fees as the Lord Chancellor may, with the sanction of the Treasury, direct, and the Treasury may direct by whom and in what manner the same are to be collected and accounted for:

Provided that in fixing the fees aforesaid regard shall be had to the provisions of section fourteen of the *Economy* (*Miscellaneous Provisions*) *Act*, 1926.

(4) All rules made and directions given by the Lord Chancellor under this section shall be adopted by the authority for the time being empowered to make rules for regulating the practice or procedure in the Chancery Court of the County Palatine of Lancaster, but as so adopted shall have effect with the substitution of the words "vice-chancellor" for the word "judge," and of the word "registrar" for the word "master," and of the words "chambers of the registrar" for the words "chambers of the judge" and "judge's chambers," and any directions as to the remuneration to be allowed to officers of that court in respect of proceedings under this Act shall be subject to the sanction of the Chancellor of the Duchy and County Palatine of Lancaster.

CHAPTER XXIII

STAMP DUTIES

By various enactments, certain documents must bear an impressed stamp for a specified value before they can be admitted as evidence in a court of law. In some cases an adhesive stamp is admissible if it is effectively cancelled when the instrument is signed.

A penalty is imposed upon any party to an instrument, or any person concerned in its preparation, who neglects to set forth fully and truly all the facts, etc., which affect its liability to duty (S. 5, *Stamp Act*, 1891).

Where more than one dutiable transaction is contained in one document, the document must be stamped as if a separate instrument had been drawn up for each; if the document is such that it would attract duty under more than one head of duty, it must be stamped at the highest rate.

Where an instrument is merely a duplicate, or has been issued collaterally to or in substitution for an instrument bearing a higher duty, it may be stamped with a 5*s*. stamp (or the same as the original, if less), but must be produced to the Commissioners of Inland Revenue for "denoting." The Commissioners examine the instrument, and, if satisfied, impress on it a denoting stamp for which no charge is made.

In any case of doubt as to the amount of duty attracted by a document, it should be submitted to the Commissioners for assessment. The Commissioners will impress an "adjudication stamp" which settles the amount of duty payable, and cannot afterwards be disputed.

An up-to-date treatise on Stamp Duties should be in the library of every large corporation.

Time for Stamping.—The following instruments cannot legally be stamped after execution:

(*a*) Bills of Exchange—but bills drawn upon stamps of sufficient amount but of improper denomination may be stamped after execution on payment of a penalty of £10 (S. 38 (2) *Stamp Act*, 1891).
(*b*) Bills of Lading.
(*c*) Marine Insurance Policies executed in the United Kingdom (but *see* S. 95 (2), *Stamp Act*, 1891, *re* admissibility of unstamped policy in evidence on payment of the duty and a penalty of £100).
(*d*) Proxies.
(*e*) Receipts after the expiration of one month (*see* below).
(*f*) Voting Papers.

Stock Certificates to Bearer must be stamped before execution, but may be stamped subsequently under a penalty of £50 on the Company and each of its principal officers concerned in the issue. A certificate that is merely evidence that the person named therein is the holder of so many shares or so much stock does not require a stamp.

The following documents may be stamped after execution within the specified period. After the expiration of that period they may be stamped on payment of a penalty of £10.

(*a*) *Within ten days of arrival in the United Kingdom:* Foreign Sea Policies.
(*b*) *Within fourteen days of first execution:*

(1) Agreements under hand (6*d*. stamp);
(2) Agreements for letting furnished houses for less than a year;
(3) Appraisements; and
(4) Attested copies.

(*c*) *Within one month of first execution:* Life Assurance Policies.
(*d*) *Within thirty days of first execution:* Deeds and instruments which do not fall within any other special category. In the case of a deed which is wholly executed abroad, the period begins to run from the date of the arrival of the instrument in the United Kingdom.

Receipts may be stamped within fourteen days after their issue on payment of the duty and a penalty of £5; after the fourteen days but within one month the penalty is £10.

Charter Parties may be stamped within seven days of first execution on payment of the duty and a penalty of 4*s.* 6*d.*; after seven days, but within one month, the penalty is £10.

The following documents can be stamped after execution, but only on payment of the penalty mentioned:

(*a*) Articles of Clerkship. . .	£10 if stamped within one year, with additional penalties for further delay.
(*b*) Contract Notes . . .	£20.
(*c*) Warrant for Goods . . .	£20.
(*d*) Letter of Allotment . . .	£20.
(*e*) Letter of Renunciation . .	£20.
(*f*) Scrip Certificate . . .	£20.
(*g*) Share Warrant . . .	£50 on company and each responsible officer.

Spoiled Stamps.—An allowance may be claimed for stamps which have inadvertently and undesignedly been spoiled, and postage stamps of the same value will be issued in lieu thereof. *The Finance Act*, 1922, S. 49, provides that the Postmaster-General may make repayment, or give other stamps in return for spoiled, unused or misused stamps, either of a value equal to the face value or, if he thinks fit, of less value. Where the aggregate value of the stamps does not exceed 10*s.*, they may be sent by post to the Controller of Stamps at Somerset House (or, in Scotland, Exchequer Chambers); if over 10*s.*, personal application is necessary at an authorised Revenue Stamp Office, *e.g.* Room 15, Somerset House; 61, Moorgate, E.C. 2, etc.

Evidence is required that the stamps have not, in fact, been used, and the appropriate form must be completed.

THE STAMP DUTIES ON SHARE CAPITAL, MEMORANDUM AND ARTICLES, TRANSFERS, ETC., ARE APPENDED FOR READY REFERENCE :—

TABLE OF FEES to be paid to the Registrar of Joint Stock Companies. (*Companies Act*, 1929, Tenth Schedule.)

NOTE.—*These fees are in addition to the Stamp Duty on Capital and Deed Stamps mentioned on p.* 585.

Ad valorem FEE on the REGISTRATION OF a COMPANY having a SHARE CAPITAL.

Where the Amount of Nominal Share Capital does not exceed	Fee.	Where the Amount of Nominal Share Capital does not exceed	Fee.
£	£ s.	£	£ s.
2,000	2 0	105,000	29 0
	(minimum	110,000	29 5
	fee)	115,000	29 10
3,000	3 0	120,000	29 15
4,000	4 0	125,000	30 0
5,000	5 0	130,000	30 5
(5*s.* for every £1,000		135,000	30 10
after the first £5,000		140,000	30 15
up to £100,000)		145,000	31 0
6,000	5 5	150,000	31 5
7,000	5 10	160,000	31 15
8,000	5 15	170,000	32 5
9,000	6 0	180,000	32 15
10,000	6 5	190,000	33 5
11,000	6 10	200,000	33 15
12,000	6 15	210,000	34 5
13,000	7 0	220,000	34 15
14,000	7 5	230,000	35 5
15,000	7 10	240,000	35 15
20,000	8 15	250,000	36 5
25,000	10 0	260,000	36 15
30,000	11 5	270,000	37 5
35,000	12 10	280,000	37 15
40,000	13 15	290,000	38 5
45,000	15 0	300,000	38 15
50,000	16 5	325,000	40 0
55,000	17 10	350,000	41 5
60,000	18 15	375,000	42 10
65,000	20 0	400,000	43 15
70,000	21 5	425,000	45 0
75,000	22 10	450,000	46 5
80,000	23 15	475,000	47 10
85,000	25 0	500,000	48 15
90,000	26 5	525,000	50 0
95,000	27 10		(maximum
00,000	28 15		fee)
(1*s.* for every £1,000 after the first £100,000 up to £525,000, which takes the maximum fee of £50)			

For registration of any increase of share capital made after the first registration of the company, the same fees per £1,000, or part of a £1,000, as would have been payable if such increased capital had formed part of the original share capital at the time of registration.

Provided that no company shall be liable to pay in respect of nominal share capital on registration or afterwards, any greater amount of fees than £50, taking into account in the case of fees payable on an increase of share capital after registration, the fees paid on registration.

For registration of any *existing* company, except such companies as are by the *Companies Act*, 1929, exempted from payment of fees in respect of registration under the Act, the same fee as is charged for registering a new company.

For registering any document other than the memorandum of association, or the Abstract required to be filed with the Registrar by a receiver or manager, or the Statement by the liquidator in a winding up in England, a fee of *5s.*

For making a record of any fact, a fee of *5s.*

FEES on the REGISTRATION of a COMPANY *not* having a SHARE CAPITAL.

Where the Number of Members as stated in the Articles of Association does not exceed	Fee.	Where the Number of Members as stated in the Articles of Association does not exceed	Fee.
	£ *s.*		£ *s.*
25	2 0	650	7 15
	(minimum	700	8 0
	fee)	750	8 5
50	3 0	800	8 10
75	4 0	850	8 15
100	5 0	900	9 0
150	5 5	950	9 5
200	5 10	1,000	9 10
250	5 15	1,050	9 15
300	6 0	1,100	10 0
350	6 5	1,150	10 5
400	6 10	1,200	10 10
450	6 15	1,250	10 15
500	7 0	1,300	11 0
550	7 5	1,350	11 5
600	7 10		

And an additional fee of *5s.* for every 50 members, or less number than 50 members, up to 3,100, which takes the maximum fee of £20.

For registration of a company in which the number of members is stated in the articles of association to be unlimited, a fee of £20.

For registration of any increase in the number of members made after the registration of the company, in respect of every 50 members, or less than 50 members, of that increase, *5s.* Provided that no company shall be liable to pay on the whole a greater fee than £20 in respect of its number of members, taking into account the fee paid on the first registration of the company.

For registration of any existing company, except such companies as are by the *Companies Act*, 1929, exempted from payment of fees in

respect of registration under the Act,[1] the same fee as is charged for registering a new company.

For registering any document, except the memorandum of association, or the Abstract required to be delivered to the Registrar by a receiver or manager, or the Statement by the liquidator in a winding-up in England, a fee of 5*s*.

For making a record of any fact, a fee of 5*s*.

For registering any Mortgage or Charge or Debenture created by a company :

Where the amount of the Mortgage or Charge or Debenture does not exceed			£200	10*s*.
Ditto	ditto	exceeds	£200	£1

For registering particulars of a series of Debentures created by a company :

Where the total amount secured by the whole series does not exceed	£200	10*s*.
Where it does exceed	£200	£1

The memorandum and articles of association must each bear a deed stamp of 10*s*. (*Companies Act*, 1929, SS. 3 and 9).

Stamp Duty on the Nominal Capital.

The *ad valorem* stamp duty of 10*s*. per cent. on the nominal share capital of *any* company to be registered with limited liability, or on the amount of *any* increase of registered capital of any company now registered or to be registered with limited liability which was imposed by the *Stamp Act*, 1891 (S. 112), as amended by *Finance Act*, 1899 (S 7), *Finance Act*, 1920 (S. 39), and *Finance Act*, 1933 (S. 41), is *in addition to* the fees and deed stamps mentioned above, and must be impressed on a form of Statement of Capital provided for the purpose. This duty is payable on the whole of the nominal share capital as authorised and without reference to subscribed capital. In the case of increase of nominal share capital the duty must be paid within fifteen days of the resolution authorising the increase, otherwise, under S. 5 of the *Revenue Act*, 1903, interest at the rate of 5 per cent. per annum is payable on the sum due.

Under the provisions of the *Public Offices Fees Act*, 1879, as applied to the Companies Registration Office by notice in the London *Gazette*, the Lords of His Majesty's Treasury require all fees payable in that office, or to the officers thereof, to be collected by means of stamps.

All documents tendered for registration must be according to the approved forms, and bear an impressed Companies Registration Fee stamp of 5*s*., except in the cases of notices of increase of capital or members, and registrations of mortgages where *ad valorem* stamps to the amount of the authorised fees must be impressed.

Stamped forms for the various notices, returns, etc., under the Act may be obtained at the Companies Registration Offices. The charge is 5*s*. 2*d*. for each stamped form when *ad valorem* fees are not payable with the exception of the form for the Annual Return, which is 5*s*. 4*d*.,

[1] S. 327 of the Act provides that " No fees shall be charged in respect of the registration in pursuance of this Part of this Act of a company if it is not registered as a limited company, or if before its registration as a limited company, the liability of the shareholders was limited by some other Act of Parliament or by Letters Patent."

Form 52 (prescribed particulars of a contract for the allotment of shares otherwise than for cash), and the Statement in lieu of prospectus, which are 5*s*. 3*d*. each. Unstamped continuation forms for lists of members are sold at twopence per form.

Office copies are charged for at the rate of 4*d*. per folio of 72 words. Copies of Satisfactions of Registered Mortgages and Charges are 5*s*. each. Certificates of Incorporation and of Registrations of Mortgages and Charges, after the first, are 5*s*. each. The inspection fee is 1*s*. for each company searched. Stamps for office copies, etc., and inspection forms bearing the 1*s*. impressed stamp, are sold in the office.

RELIEF FROM CAPITAL AND TRANSFER STAMP DUTY IN CASE OF RECONSTRUCTION OR AMALGAMATION OF COMPANIES.

(S. 55 *Finance Act*, 1927, as amended by S. 31 *Finance Act*, 1928, and S. 41 *Finance Act*, 1930.)

(1) If in connection with a scheme for the reconstruction of any company or companies, or the amalgamation of any companies it is shown to the satisfaction of the Commissioners of Inland Revenue that there exist the following conditions, that is to say—

(*a*) that a company with limited liability is to be registered, or that since the commencement of this Act a company has been incorporated by letters patent or Act of Parliament, or the nominal share capital of a company has been increased;

(*b*) that the company (in this section referred to as "the transferee company)" is to be registered or has been incorporated or has increased its capital with a view to the acquisition either of the undertaking of, or of not less than ninety per cent. of the issued share capital of, any particular existing company;

(*c*) that the consideration for the acquisition (except such part thereof as consists in the transfer to or discharge by the transferee company of liabilities of the existing company) consists as to not less than ninety per cent. thereof—

(i) where an undertaking is to be acquired, in the issue of shares in the transferee company to the existing company or to holders of shares in the existing company; or

(ii) where shares are to be acquired, in the issue of shares in the transferee company to the holders of shares in the existing company in exchange for the shares held by them in the existing company;

then, subject to the provisions of this section—

(A) The nominal share capital of the transferee company, or the amount by which the capital of the transferee company has been increased, as the case may be, shall, for the purpose of computing the stamp duty chargeable in respect of that capital, be treated as being reduced by either—

(i) an amount equal to the amount of the share capital of the existing company, or, in the case of the acquisition of a part of an undertaking, equal to such proportion of the said share capital as the value of that part of the undertaking bears to the whole value of the undertaking; or

(ii) the amount to be credited as paid up on the shares to be issued as such consideration as aforesaid, and on the shares, if any,

to be issued to creditors of the existing company in consideration of the release of debts (whether secured or unsecured) due or accruing due to them from the existing company or of the assignment of such debts to the transferee company.

whichever amount is the less; and

(B) Stamp duty under the heading "Conveyance or Transfer on Sale" in the First Schedule to the *Stamp Act*, 1891, shall not be chargeable on any instrument made for the purposes of or in connection with the transfer of the undertaking or shares, or on any instrument made for the purposes of or in connection with the assignment to the transferee company of any debts, secured or unsecured, of the existing company. Nor shall any such duty be chargeable under section twelve of the *Finance Act*, 1895, on a copy of any Act of Parliament, or on any instrument vesting, or relating to the vesting of the undertaking or shares in the transferee company:

Provided that—

(*a*) no such instrument shall be deemed to be duly stamped unless either it is stamped with the duty to which it would but for this section be liable or it has in accordance with the provisions of section twelve of the *Stamp Act*, 1891, been stamped with a particular stamp denoting either that it is not chargeable with any duty or that it is duly stamped; and

(*b*) in the case of an instrument made for the purposes of or in connection with a transfer to a company within the meaning of the *Companies (Consolidation) Act*, 1908, the provisions of paragraph (B) of this subsection shall not apply unless the instrument is either—

(i) executed within a period of twelve months from the date of the registration of the transferee company or the date of the resolution for the increase of the nominal share capital of the transferee company, as the case may be; or

(ii) made for the purpose of effecting a conveyance or transfer in pursuance of an agreement which has been filed, or particulars of which have been filed, with the registrar of companies within the said period of twelve months; and

(*c*) the foregoing provision with respect to the release and assignment of debts of the existing company shall not, except in the case of debts due to banks or to trade creditors, apply to debts which were incurred less than two years before the proper time for making a claim for exemption under this section.

(2) For the purposes of a claim for exemption under paragraph (B) of subsection (1) of this section, a company which has, in connection with a scheme of reconstruction or amalgamation, issued any unissued share capital shall be treated as if it had increased its nominal share capital.

(3) A company shall not be deemed to be a particular existing company within the meaning of this section unless it is provided by the memorandum of association of, or the letters patent or Act incorporating, the transferee company that one of the objects for which the company is established is the acquisition of the undertaking of, or shares

in, the existing company, or unless it appears from the resolution, Act or other authority for the increase of the capital of the transferee company that the increase is authorised for the purpose of acquiring the undertaking of, or shares in, the existing company.

(4) In a case where the undertakings of, or shares in, two or more companies are to be acquired, the amount of the reduction to be allowed under this section in respect of the stamp duty chargeable in respect of the nominal share capital or the increase of the capital of a company shall be computed separately in relation to each of those companies.

(5) Where a claim is made for exemption under this section, the Commissioners of Inland Revenue may require the delivery to them of a statutory declaration in such form as they may direct, made in England by a solicitor of the Supreme Court or in Scotland by an enrolled law agent, and of such further evidence, if any, as the Commissioners may reasonably require.

(6) If—

(*a*) where any claim for exemption from duty under this section has been allowed, it is subsequently found that any declaration or other evidence furnished in support of the claim was untrue in any material particular, or that the conditions specified in subsection (1) of this section are not fulfilled in the reconstruction or amalgamation as actually carried out; or

(*b*) where shares in the transferee company have been issued to the existing company in consideration of the acquisition, the existing company within a period of two years from the date, as the case may be, of the registration or incorporation, or of the authority for the increase of the capital, of the transferee company ceases, otherwise than in consequence of reconstruction, amalgamation or liquidation, to be the beneficial owner of the shares so issued to it; or

(*c*) where any such exemption has been allowed in connection with the acquisition by the transferee company of shares in another company, the transferee company within a period of two years from the date of its registration or incorporation or of the authority for the increase of its capital, as the case may be, ceases, otherwise than in consequence of reconstruction, amalgamation or liquidation, to be the beneficial owner of the shares so acquired;

the exemption shall be deemed not to have been allowed, and an amount equal to the duty remitted shall become payable forthwith, and shall be recoverable from the transferee company as a debt due to His Majesty, together with interest thereon at the rate of five per cent. per annum in the case of duty remitted under paragraph (A) of subsection (1) of this section from the date of the registration or incorporation of the transferee company or the increase of its capital, as the case may be, and in the case of duty remitted under paragraph (B) of the said subsection from the date on which it would have become chargeable if this Act had not passed.

(7) If in the case of any scheme of reconstruction or amalgamation the Commissioners of Inland Revenue are satisfied that at the proper time for making a claim for exemption from duty under subsection (1) of this section there were in existence all the necessary conditions for such exemption other than the condition that not less than ninety per cent. of the issued share capital of the existing company would be acquired by the transferee company, the Commissioners may, if it is proved to their satisfaction that not less than ninety per cent. of the

issued capital of the existing company has under the scheme been acquired within a period of six months from the earlier of the two following dates, that is to say—

(*a*) the last day of the period of one month after the first allotment of shares made for the purposes of the acquisition; or

(*b*) the date on which an invitation was issued to the shareholders of the existing company to accept shares in the transferee company;

and on production of the instruments on which the duty paid has been impressed, direct repayment to be made of such an amount of duty as would have been remitted if the said condition had been originally fulfilled.

(8) In this section, unless the context otherwise requires—

References to the undertaking of an existing company include references to a part of the undertaking of an existing company.

The expression "shares" includes stock.

Where on a company reconstruction shares in the new company are to be allotted to the shareholders in the existing company as part consideration for the transfer of the undertaking, but letters of renunciation are exercised so that less than 90 per cent. of the new shares are *actually registered* in the names of the old shareholders, the new company is not entitled to remission of duty under the above provisions (*Tillotson* v. *Commissioners of Inland Revenue* [1933], 1 K.B. 134).

Relief from Transfer Stamp Duty in Case of Transfer of Property as between Associated Companies.

S. 42. *Finance Act*, 1930. (1) Stamp duty under the heading "Conveyance or Transfer on Sale" in the First Schedule to the *Stamp Act*, 1891, shall not be chargeable on an instrument to which this section applies:

Provided that no such instrument shall be deemed to be duly stamped unless either it is stamped with the duty to which it would but for this section be liable, or it has in accordance with the provisions of section twelve of the said Act been stamped with a particular stamp denoting either that it is not chargeable with any duty or that it is duly stamped.

(2) This section applies to any instrument as respects which it is shown to the satisfaction of the Commissioners of Inland Revenue—

(*a*) that the effect thereof is to convey or transfer a beneficial interest in property from one company with limited liability to another such company; and

(*b*) that either—

(i) one of the companies is beneficial owner of not less than ninety per cent. of the issued share capital of the other company; or

(ii) not less than ninety per cent. of the issued share capital of each of the companies is in the beneficial ownership of a third company with limited liability.

S. 50. *Finance Act*, 1938. (1) Section forty-two of the Finance Act, 1930 (which relieves from stamp duty any instrument the effect whereof is to convey or transfer a beneficial interest in property from one asso-

ciated company to another, in this section respectively referred to as the "transferor" and "transferee") shall not apply to any such instrument, unless it is shown to the satisfaction of the Commissioners of Inland Revenue that the instrument was not executed in pursuance of or in connection with an arrangement whereunder—

(*a*) the consideration for the transfer or conveyance was to be provided directly or indirectly by a person other than a company which at the time of the execution of the instrument was associated with either the transferor or the transferee; or

(*b*) the beneficial interest in the property was previously conveyed or transferred directly or indirectly by such a person as aforesaid.

(2) For the purpose of this section, a company shall be deemed to be associated with another company if, but not unless, both are companies with limited liability, and either—

(i) one of them is the beneficial owner of not less than ninety per cent. of the issued share capital of the other; or

(ii) not less than ninety per cent. of the issued share capital of each of them is in the beneficial ownership of a third company with limited liability.

PROVISION AS TO STAMP DUTY ON POWERS OF ATTORNEY.

S. 56. *Finance Act*, 1927. No instrument chargeable with stamp duty under the heading "Letter or Power of Attorney, and Commission, Factory, Mandate, or other instrument in the nature thereof" in the First Schedule to the *Stamp Act*, 1891, shall be charged with duty more than once by reason only that more persons than one are named in the instrument as donors or donees (whether jointly, severally or otherwise), of the powers thereby conferred or that those powers relate to more than one matter.

As to exemption of certain documents from stamp duty on winding up, *see* S. 281, reproduced at p. 571.

STAMP DUTIES

The following is the text of an Inland Revenue Notice to Secretaries, etc.:

The Board of Inland Revenue furnish the following information regarding the stamp duties with which secretaries, registrars and other officers of companies are most usually concerned.

Secretaries of companies and others whose office it is to register or enter any instrument chargeable with stamp duty are required to see that such instrument is properly stamped before registration or entry. In any case of doubt the Commissioners of Inland Revenue may be asked to adjudicate upon and assess the duty under the provisions contained in Section 12 of the *Stamp Act*, 1891, and officers responsible for registering instruments should suggest that applicants have recourse to this step whenever it appears to be in any way desirable.

Any person, being the proper officer to enrol, register, or enter in or upon any rolls, books, or records any instrument chargeable with any duty, who enrols, registers, or enters any such instrument not being duly stamped, is liable to a fine of £10.

Persons executing instruments in which all the facts and circum-

stances affecting their liability to duty, or the amount of such duty, are not fully stated, or who, being employed or concerned in the preparation of any instrument, neglect to set forth such facts and circumstances, are liable to a fine of £10

The duties are required to be denoted by impressed stamps, except in the following cases :—

Foreign Bills	Adhesive "Bill" stamps must be affixed and cancelled before payment, endorsement or negotiation.
Agreements under hand (6*d.*) Bill of Exchange on demand (2*d.*). Charter Party (6*d.*) . . . Fire, Accident, etc., Insurance Policy (6*d.*) . . . . Letters of Renunciation (1*d.* or 6*d.*) Protest of Bill of Exchange . . Proxies (1*d.*) . . . . Receipts (2*d.*)	Adhesive postage stamps may be used. Such stamps must be effectively cancelled by the person first executing the instrument.

Stamps of other countries are not recognised except the stamps of Northern Ireland and the Irish Free State. Instruments executed and stamped in either of these countries are deemed to be duly stamped in this country provided the amount of the stamp is not less than the amount chargeable on the instrument in this country.

	£	*s.*	*d.*
Accident Insurance Policy	0	0	6
Affidavit and Statutory Declaration	0	2	6
Agreement not otherwise charged with duty, under hand only or without clause of registration	0	0	6
Agreement not otherwise charged with duty, under company's seal or with clause of registration	0	10	0
Bill of Exchange (Cheque), payable on demand or at sight or on presentation or within three days after date or sight	0	0	2
Bill of Exchange and **Promissory Note**, drawn or expressed to be payable in Great Britain and Northern Ireland—			
Not exceeding £10	0	0	2
Exceeding £10 but not exceeding £25 . . .	0	0	3
,, £25 ,, ,, £50 . . .	0	0	6
,, £50 ,, ,, £75 . . .	0	0	9
,, £75 ,, ,, £100 . . .	0	1	0
,, £100, for every £100 or part . . .	0	1	0
Bill of Exchange, drawn and expressed to be payable out of Great Britain and Northern Ireland and actually paid, endorsed or negotiated in Great Britain and Northern Ireland—			
Not exceeding £10	0	0	2
Exceeding £10 but not exceeding £25 . . .	0	0	3
,, £25 ,, ,, £100 . . .	0	0	6
,, £100, for every £100 or part . . .	0	0	6
Protest of any Bill of Exchange or Promissory Note—Same duty as on Bill or Note if not exceeding 1*s.*, in other cases	0	1	0
Bill of Lading of, or for, any goods or merchandise, or effects to be exported or carried coastwise	0	0	6

Bonds, Debentures, Mortgages and other Securities.

I. Registered and transferable only by instrument of transfer—

	£	s.	d.
Where the amount secured does not exceed £10 . .	0	0	3
Exceeds £10 and does not exceed £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 such amount	0	2	6
If given in substitution for a duly stamped security, whether registered or to bearer, for every £100, or part	0	0	6
(Maximum duty . . . . . 10*s.*)			

II. Transferable by delivery (Bearer Securities):

(*a*) Repayable within not more than one year, for every £10, or part, of amount secured	0	0	6
(*b*) Repayable within not more than three years, for every £10, or part, of amount secured . .	0	1	0
(*c*) Repayable at a time exceeding three years, for every £10, or part, of amount secured . . .	0	4	0
(*d*) If given in substitution for one duly stamped under (*c*), for every £20, or part	0	2	0

A bearer security given in substitution for a registered security requires the full duty of four shillings for every £10, or part.

The term "amount secured" includes in certain circumstances any bonus or premium covenanted to be paid when the bonds or debentures are redeemed. For instance, a bond for £100 which secures the payment of the £100 with a premium of £5 must be stamped for £105, unless such premium is payable only in consequence of some voluntary act of the Company. This rule applies alike to original and substituted securities.

Where Debentures are re-issued under the provisions of Section 75 of the *Companies Act*, 1929, either by the re-issue of the same Debentures or by the issue of other Debentures in their place, such re-issued Debentures fall to be treated as new Debentures for the purposes of stamp duty, and the full *ad valorem* duty is payable thereon. Similarly, if Debenture Stock is re-issued, further duty is payable either on the trust deed or by way of Loan Capital duty.

In the case of substituted Securities of any description chargeable with a reduced rate of duty, the duty can only be impressed thereon upon presentation at Somerset House, or at the Inland Revenue Office, Edinburgh of both the original and substituted Securities at a date prior to the expiration of the original Securities. When registered Securities have changed hands, the transfers must be produced for inspection.

	£.	s.	d.
Capital (Share), per £100 or part of £100 nominal . .	0	10	0

A stamped statement of the amount which is to form the nominal share capital of any company to be registered with limited liability under the Companies Act, 1929, is to be delivered to the Registrar of Joint Stock Companies before the Company is registered. In the case of any increase of nominal share capital a statement must be delivered, duly stamped, within fifteen days of the resolution of the company authorising the increase.

In the case of other companies formed or established in Great Britain with limited liability, a statement must be delivered, duly stamped, to the Commissioners of Inland Revenue within one month after the date of the Act, Letters Patent, Order, or other authority constituting the company. In the case of an authority to increase the nominal share capital, a statement must be delivered, duly stamped, within the like period.

	£	s.	d.
Charter Party	0	0	6
Fire Insurance Policy	0	0	6
Letter of Allotment)			
Letter of Renunciation)	0	0	6
If the nominal amount allotted or renounced is under £5	0	0	1
Loan Capital, per £100 or part of £100	0	2	6

(Subject to deduction of 2*s.* for each complete £100 which is applied in conversion or consolidation of existing Loan Capital.)

A statement of the amount of any Loan Capital proposed to be issued by a company formed or established in Great Britain is required to be delivered to the Commissioners of Inland Revenue, but duty will not be charged to the extent to which mortgage or marketable security duty has been paid on any trust deed or other instrument securing the loan.

Loan Capital includes any funded debt and any capital having the character of borrowed money in whatever form it is issued, but not a bank overdraft or other loan raised for a merely temporary purpose for a period not exceeding twelve months, nor loan capital which is of such a description as to be incapable of being dealt in on a stock exchange in the United Kingdom (*Finance Act*, 1934, S. 29).

Marine Insurance Policy.

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

Where the premium or consideration is expressed to be a sum not exceeding the rate of half-a-crown per cent., and is subject to an increase (whether defined or not in the policy) in the event of the occurrence of a specified contingency, it shall be treated as one not exceeding the rate of half-a-crown per cent. But if, owing to the occurrence of the contingency, the premium or consideration is increased so as to exceed the rate of half-a-crown per cent., the policy or a new policy to be

thereupon issued shall be stamped with the additional duty payable and may be so stamped without penalty at any time not exceeding thirty days after the date on which the increased premium or consideration becomes ascertained.

II. In any other case :—

	£	s.	d.
(*a*) For or upon any voyage :—			
Where the sum insured does not exceed £250 .	0	0	3
Where the sum exceeds £250 but does not exceed £500	0	0	6
Where the sum exceeds £500 but does not exceed £750	0	0	9
Where the sum exceeds £750 but does not exceed £1,000	0	1	0
Where the sum exceeds £1,000, for every £500 or fractional part of £500	0	0	6

(*b*) For time :—

Where the insurance is made for any time not exceeding six months a duty equivalent to three times the above amounts.

Where the insurance is made for any time exceeding six months but not exceeding twelve months a duty equivalent to six times the above amounts.

	£	s.	d.
Power of Attorney, Proxy, or other instrument in the nature thereof :—			
For the sole purpose of appointing or authorising a proxy to vote at any one meeting (including an adjournment thereof) at which votes may be given by proxy, whether the number of persons named in such instrument be one or more	0	0	1
For the receipt of the Dividends or Interest of any Stock :—			
Where made for the receipt of *one* payment only .	0	1	0
In any other case connected with the receipt of Dividends or Interest	0	5	0
General	0	10	0
An order, request, or direction under hand only from the proprietor of any stocks or shares to any Company or to any officer of any Company or to any banker to pay the dividends or interest arising therefrom to any person therein named is not chargeable with duty.			
Receipt given for or upon payment of £2 or more . .	0	0	2
Scrip Certificate, Scrip, or other similar document . .	0	0	2
Share Warrant and Stock Certificate to Bearer—			
Issued under the provisions of the Companies Acts— three times the *ad valorem* duty chargeable on a transfer for a consideration equal to the nominal value of the shares or stock			
Issued by colonial and foreign companies, per £10 .	0	4	0
Statutory Declaration	0	2	6
Transfer on sale or operating as a voluntary disposition *inter vivos* of stock, shares or marketable securities where the			

	£	s.	d.
amount or value of the consideration for the sale (or, in the case of voluntary disposition *inter vivos*, the value of the property) does not exceed £5	0	1	0
Exceeds £5 and does not exceed £10 . . .	0	2	0
„ £10 „ „ £15 . . .	0	3	0
„ £15 „ „ £20 . . .	0	4	0
„ £20 „ „ £25 . . .	0	5	0
„ £25 „ „ £50 . . .	0	10	0
„ £50 „ „ £75 . . .	0	15	0
„ £75 „ „ £100 . . .	1	0	0
„ £100 „ „ £125 . . .	1	5	0
„ £125 „ „ £150 . . .	1	10	0
„ £150 „ „ £175 . . .	1	15	0
„ £175 „ „ £200 . . .	2	0	0
„ £200 „ „ £225 . . .	2	5	0
„ £225 „ „ £250 . . .	2	10	0
„ £250 „ „ £275 . . .	2	15	0
„ £275 „ „ £300 . . .	3	0	0
„ £300, for every £50, and also for any fractional part of £50 of such amount of value . .	0	10	0

"Marketable Security" includes the registered bonds and debentures, generally, of companies, corporations and public bodies

A transfer of any stock, shares or marketable security operating as a voluntary disposition *inter vivos*, is chargeable with *ad valorem* stamp duty at the above rates on the value of the property transferred. No such transfer is duly stamped unless it bears the adjudication stamp of the Commissioners of Inland Revenue. Registering officers should therefore decline to register any transfers *inter vivos* by way of gift, unless they bear the adjudication stamp. An exception may, however, be made where the transfers are stamped with *ad valorem* duty upon the market value of the stock or securities at the date of the instrument, it being open to the Registering Officer to obtain the adjudication stamp at any time subsequently, should necessity arise.

By Section 42 of the *Finance Act*, 1920, special provision is made for the case of transfers to a dealer on a Stock Exchange, as therein defined, or his nominee, when the transaction to which the transfer relates has been carried out by the dealer in the ordinary course of his business. Such transfers are sufficiently stamped with 10*s*., if, in addition to that duty, they bear the special supplementary stamp under the terms of the Section, and should in no circumstances be registered unless they bear this stamp.

A transfer made in liquidation of a debt or in exchange for other securities attracts *ad valorem* duty.

Transfers executed under seal, by way of mortgage, of any stock, shares or marketable security, are chargeable, if the loan be disclosed in the instrument of transfer, according to the scale set forth under the head "Bonds and Debentures." If the loan be not disclosed in the transfer, and the transaction is disclosed by a further instrument, the further instrument, if under hand only, is chargeable with the duty of 6*d* or if under seal is chargeable according to the said scale, and in either case the transfer is chargeable with a duty of 10*s*.

	£	s.	d.
Transfer of any other kind . . . . fixed duty	0	10	0

Included under this head are :—

(*a*) Transfers vesting the property in trustees on the appointment of a new trustee of a pre-existing trust, or on the retirement of a trustee.

(*b*) Transfers for a nominal consideration to a mere nominee of the transferor where no beneficial interest in the property passes.

(*c*) Transfers by way of security for a loan or re-transfer to the original transferor on repayment of a loan.

(*d*) Transfer to a residuary legatee of stock, etc., forming part of the residue divisible under a will.

(*e*) Transfers to a beneficiary under a will of a specific legacy of stock, etc.

(*f*) Transfers of stock, etc., forming part of an intestate estate, to the person entitled to it

(*g*) Transfers to a beneficiary under a settlement, on distribution of the trust funds, of stock, etc., forming the share or part of the share of those funds to which the beneficiary is entitled in accordance with the terms of the settlement.

Transfers by executors in discharge, or partial discharge, of a pecuniary legacy are chargeable with *ad valorem* duty on the amount of the legacy so discharged.

In every case of a transfer for a nominal consideration, it will be necessary for the Registering Officer to be furnished with information as to the facts of the transaction. In the case of a transfer falling within category (*b*) or (*c*) above, a certificate should be required, setting forth the facts of the transaction, signed by (1) both transferor and transferee, or (2) a member of a Stock Exchange or a solicitor acting for one or other of the parties, or (3) an accredited representative of a bank. In the last case, when the bank or its official nominee is a party to the transfer, the certificate may be to the effect that "the transfer is excepted from Section 74 of the *Finance* (1909–10) *Act*, 1910."

Transfers to or from trustees other than those clearly falling within the above categories (*a*), (*d*), (*e*), (*f*) and (*g*) should be required to be adjudicated, unless either they are stamped with *ad valorem* duty (but with a minimum of 10*s*.) on the market value of the stock, etc., or they have been certified by a Marking Officer under the arrangement described below.

In a large number of cases transfers for a nominal consideration are presented to one of the Board's Deed Marking Officers before being produced to the Registering Officer for registration. In such cases, if a written explanation of the facts is produced to the Marking Officer and accepted as justifying him in passing the transfer for stamping with 10*s*., he will mark the explanation with the words "Transfer passed for 10*s*.," his signature and his office stamp, and return it to the person presenting the transfer in order that it may be available for production to the Registering Officer. The explanation will be required to contain sufficient particulars to identify it with the transfer to which it relates. An official form (No. 19) is provided for use in such cases when desired (*see* p. 597).

Where a transfer for nominal consideration stamped with

10*s.* is produced to a Registering Officer accompanied by a written explanation thus certified by one of their Marking Officers the Board will not hold the Registering Officer liable to any penalty under Section 17 of the *Stamp Act*, 1891, if he accepts the transfer for registration without questioning the sufficiency of the stamp. The explanation should be retained by the Registering Officer.

The explanation and the Marking Officer's certificate may sometimes be endorsed on the transfer itself, or (exceptionally) the certificate may be given on the transfer without a written explanation, the Marking Officer having been satisfied by other evidence produced to him. In either of these cases the Board will not hold the Registering Officer responsible if he registers the transfer stamped with 10*s.*

It should be understood that this certification by a Marking Officer is not equivalent to adjudication, and that it is possible that cases may arise in which the Registering Officer, in consequence of special information in his possession, or for some other good reason, may feel it incumbent upon him to require that the transfer be formally presented for adjudication in accordance with the provisions of Section 12 of the *Stamp Act*, 1891.

The following Inland Revenue circular should be noted :

Inland Revenue,
Somerset House,
London, W.C. 2.
January, 1924.

ADJUDICATION OF STAMP DUTY—STAMP ACT, 1891,—SECTION 12.

1. Executed instruments, the adjudication of which is desired, may be presented personally either at the office of the Controller of Stamps (Room 16, New Wing, Somerset House) or at the Stamp Office, Telegraph Street, E.C. 2, or may be forwarded by post, addressed to :

THE CONTROLLER OF STAMPS,
(Adjudication Branch,)
INLAND REVENUE,
Somerset House,
London, W.C. 2.

If documents are transmitted through the registered post, postage and registration fees are required to be paid by the applicant.

In all cases a plain copy or an accurate and complete abstract in usual conveyancing form must accompany the original instrument. Where a number of transfers of stocks, shares or marketable securities between the same parties are presented for adjudication, it will be sufficient to furnish a copy of one transfer and a list of the others, showing for each the consideration and the number and description of the shares or securities or the amount and description of the stock.

2. Instruments presented for adjudication will be kept with due care, but the Commissioners give notice that they do not assume any responsibility with reference to any loss or damage which may be occasioned, either in transit or during detention. Original instruments will be returned after the adjudication has been completed. Copies and abstracts will not be returned.

3. With a view to the avoidance of the delay which must otherwise ensue, full and sufficient information to enable an assessment to be made should be furnished in the first instance, when the instrument is presented for adjudication.

The nature of the information usually necessary in the case of certain specified classes of instruments is indicated at the end of this Notice. It must, however, be understood that, in requesting this information, no ruling is intended as to how a particular case will be adjudicated.

If any further information or explanation is required, a requisition will be sent, or, if thought necessary, personal attendance at Somerset House will be required.

4. When the duty has been assessed, a notice of assessment will be sent to the applicant, who should pay the duty in the manner directed by the Notice. The instrument will then be stamped with the duty assessed and with the adjudication stamp and will be returned to the applicant, either personally, at Somerset House in the case of deeds presented there, and at the Stamp Office, Telegraph Street, in the case of deeds presented through that Office, or through the post, as may be arranged. It should be added that, if a remittance is by uncertified cheque, the usual period of clearance must elapse before the instrument can be stamped.

FORM NO. 19.

INLAND REVENUE.

STAMP DUTIES.

Transfers of Shares, etc., where the consideration is stated to be a nominal amount.

This form when duly signed and stamped by an Inland Revenue Marking Officer may be accepted by Registering Officers of companies as authority to register the transfer described herein when stamped with the fixed duty of 10*s*.

The appropriate information should be entered in the spaces overleaf, and the form, duly signed in accordance with the directions, should be produced to the Marking Officer together with the transfer. The Marking Officer will intimate the nature of any further information required before he can sign the form.

NOTE.—*Ad valorem* duty is payable whatever be the consideration shown on the transfer where the transfer is made—

on sale,

in full or part satisfaction of a pecuniary bequest,

in liquidation of a debt,

in exchange for other securities,

by way of gift.

PARTICULARS.

Name(s) of Transferor(s).	
Name(s) of Transferee(s)	
Numbers and Descriptions of Shares, etc.	
Name of Company.	
Circumstances in which transfer is made, *e.g.*: On the appointment of a new trustee of a pre-existing trust, or on the retirement of a trustee. To a mere nominee of the transferor where no beneficial interest in the property passes. The circumstance giving rise to the transfer should be stated. As security for a loan; or a re-transfer to the original transferor on repayment of a loan. (N.B.—A transfer from a vendor made by direction of a purchaser to a person who is to hold the shares as security for a loan made to the purchaser, is liable to *ad valorem* duty.) To a residuary legatee; the shares forming part of the residue due to him under a will. To a beneficiary under a will who is entitled to the shares as a specific legacy. To transfer to the party or parties entitled, shares, etc., forming part of the property of a person dying intestate. To a beneficiary under a settlement on distribution of the trust funds, of shares, etc., forming the share, or part of the share, of those funds to which the beneficiary is entitled in accordance with the terms of the settlement. If the transfer does not fall clearly within any of the above categories, an explanation of the facts should be given.	

This form should be signed by—

(*a*) both transferor and transferee, or
(*b*) a member of a Stock Exchange or a solicitor acting for one of the parties, or
(*c*) an accredited representative of a bank. When the bank or its official nominee is a party to the transfer, the certificate to be given may be to the effect that "the transfer is excepted from the provisions of Section 74 of the *Finance* (1909–10) *Act*, 1910."

Signed .....
.....
Date .....
Address .....
.....
Signed .....
.....
Date .....
Address .....
.....

For use of Marking Officer. { *Signature* ..... / *Office Stamp* ..... }

5. If the applicant dissents from the assessment he should submit a statement of his reasons for dissenting, and his view of the basis upon which the instrument should be stamped. He may, if he so desires, have an interview with the Adjudicating Officer by appointment. The assessment will then be reconsidered.

If dissatisfied with the final assessment, the applicant may, within twenty-one days after the date of the assessment and on payment of duty in conformity therewith appeal against the assessment to the High Court and may for that purpose require the Commissioners to state and sign a case.

By Order of the Board,
F. A. Barrett,
Secretary.

f. Agreement for Sale.

Where it is claimed that any part of the subject matter of the Agreement is exempt from *ad valorem* duty as falling within one or other of the exceptions contained in Section 59 of the *Stamp Act*, 1891 (*i.e.* as being a legal estate or interest in lands, tenements, hereditaments or heritages, or as being property locally situate out of the United Kingdom, or goods, wares or merchandise, or stock, or marketable securities, or any ship or vessel, or part interest, share, or property of or in any ship or vessel).

Where the purchaser takes over or indemnifies the vendor against mortgage or other debts and liabilities.

Furnish separate values of the property coming within each of the heads in respect of which exemption is claimed, and state the ground on which the exemption is claimed. Where a balance sheet or valuation is in existence, which shows the value of the several items or any of them to be as stated, this is ordinarily sufficient evidence of value, and it should, therefore, accompany the abstract. Where no such balance sheet or valuation is in existence, some reasonable evidence of value must be supplied.

A list of these must be supplied accompanied by similar documentary evidence, showing that the amounts are correct.

Note.—The value of all fixed plant and tenant's or trade fixtures should be separately stated from those articles which were, at the date of sale, in an actual state of severance.

II. Conveyance on Sale.

Where the property is sold subject to a mortgage.	State the amount owing for principal (and interest, if any, if the purchaser undertakes payment thereof) at the date of the conveyance.
Generally, if property is sold subject to, or in consideration of, the taking over or release of any debt or pecuniary liability.	State the amount thereof.

III. Conveyance or Transfer (including Settlement, Declaration of Trust, etc.) operating as a Voluntary Disposition *inter vivos*.

Where the subject matter is land.	Furnish a full description of the property. The question of value will be referred to the Valuation Office.
Where the subject matter is stocks, shares or marketable securities.	Furnish a valuation as indicated below under the heading "Settlement."
Where the subject matter is property of any other description, *e.g* reversions, life policies, furniture.	Furnish details and reasonable evidence of value.

IV. Conveyance or Transfer on any Occasion except Sale, Mortgage or Voluntary Disposition.

If the conveyance or transfer is made on the occasion of the appointment of a new trustee.	Produce the Deed of Appointment.
If the conveyance or transfer is made for effectuating a settlement.	Produce the settlement.

V. Instrument of Dissolution of Partnership, whether Agreement or Conveyance.

In all cases.	Produce a copy of the balance sheet or statement of account between the partners, showing— (*a*) The amount of the liabilities (separating mortgages from current trade liabilities); (*b*) The liquid assets (stock-in-trade, cash and book debts); and (*c*) (If the fact is not disclosed by the instrument) the share of the out-going partner in the partnership assets.

VI. Mortgage, etc.

NOTE.—A security for advances without limit cannot be adjudicated

Where a trust deed secures payment of debentures.	Produce the debentures executed and duly stamped.
Where it is claimed that collateral, auxiliary, additional or substituted security duty only is payable.	Produce the principal or primary security.

VII. Transfer of Mortgage.

In all cases.	State the amount of interest in arrear (if any) at the date of transfer.

VIII. Settlement (if not within Heading III).

Where stocks and/or securities are settled, whether in possession or reversion, and whether the interest settled is contingent or vested.	Furnish particulars of the stocks and securities if not specified in the settlement, and in any case produce a statement of the value of each of the several items as at date of settlement— (*a*) From prices quoted in any authorised Stock and Share List: or (*b*) Where there is no quotation, based on the average of the latest private transactions, which can generally be obtained from the secretary of the company.
Where a share only in a reversionary interest in a trust fund is settled.	In addition to the above particulars of the investments of the fund at the date of settlement, state the settlor's interest therein.
Where a settlor covenants to settle other property which he may then have, but which is not specifically mentioned.	State whether the settlor was at the date of the settlement entitled in possession or reversion, or in default of the exercise of a power of appointment, to any money, stocks or shares not specified in the deed, and give as above particulars and value of such property.
Where the settled fund comprises a policy of life insurance—	
(*a*) If the settlement (or any other instrument) contains provision for keeping the policy on foot.	(*a*) State the amount of any bonuses added.
(*b*) If there is no such provision.	(*b*) Produce a certificate of the surrender value from the insurance company.

NOTE.—Particulars of the value of unsold landed property brought into settlement, whether subject to a trust for sale or not, need not be furnished.

SPECIAL EXEMPTIONS.

Where it is claimed that an instrument is not chargeable with duty by reason of an exemption not arising under any Revenue Act.	State the section of the Act conferring the exemption, and give an explanation of the grounds for claiming that the instrument falls within it.

CHAPTER XXIV

INCOME TAX, ETC.

It would be impossible to deal in a single chapter of a general treatise such as this with the large and complicated subject of income tax. As with the subject of company accounting, so with taxation, a specialised treatise should be procured and studied. The present chapter merely indicates the matters for which the secretary is primarily responsible, and the most important provisions, claims, etc. to which he must pay attention.

The actual ascertainment of the company's liability to tax requires an extensive acquaintance with the law relating to income tax, and also with the practice; and, where the computation is at all involved, it is usually desirable to refer to the company's auditors. It is to-day difficult, if not impossible, for a busy secretary to keep in touch with the continuous alterations in the law and decisions of the Courts, and he may easily, in an attempt to settle a complicated income tax return, overlook important reliefs and concessions.

In all cases, however, the secretary should have a sufficient knowledge of income tax assessment to enable him to appreciate the results of a computation, and so to sign the necessary returns in the confidence born of the knowledge that he is not merely attaching his signature to documents because the accountants have assured him that they are in order, no matter how justified he may be in accepting that assurance.

The following brief résumé of the methods of assessment of the various schedules or classes of " property, profits and gains " liable to be taxed should be of assistance to the secretary, but it does not pretend to be exhaustive, and reference to a standard treatise on income tax, and to the Acts themselves, is most strongly advised. A " Schedule," it may be remarked, is simply a list of a certain kind of income.

The fiscal (or tax) year begins on the 6th of April and ends on the following 5th of April.

Schedule.	*Source of Income.*	*Basis of Assessment.*	*Due Date for Payment of Tax by a Company.*
A.	The Property in Land and Buildings situated in Great Britain or Northern Ireland.	The annual value, as arrived at each fifth year, and as reduced by statutory allowance for repairs and maintenance.	*January 1st in the year of assessment
B.	The Occupation of Land (except land on which stand Buildings other than farm-houses) in Great Britain or Northern Ireland.	The annual value, except where the land is not used mainly or solely for the purposes of husbandry. Claims may be made for the reduction of the assessment on lands used for husbandry to actual profits (Rule 6, Schedule B), or for assessment under Schedule D, Case 1 (Rule 5, Schedule B).	Do.
C.	Public Funds of Great Britain or Northern Ireland, and those Public Funds of Dominions, Colonies or Foreign States on which the interest is paid through an agent resident in Great Britain or Northern Ireland.	The actual income receivable in the year of assessment The agent deducts tax at the standard rate in force at the time of payment, and accounts therefor to the Commissioners of Inland Revenue (except Inscribed or Registered 3½ per cent. War Loan, stocks on Post Office Register, and where interest receivable is not more than £2 10*s.* 0*d* in the half year)	The Company is not assessed, since tax has already been deducted.
D.	*Case* I—Trade or Business in Great Britain or Northern Ireland *Case* II—Profession or Vocation in Great Britain or Northern Ireland.	In the year in which the business was commenced, the actual profit from date of commencement to 5th April following, under the Rules of Case VI. In the following year, the profits of the twelve months from the commencement with the right to have the assessment of this *and* the following (*i.e.* the third) year of assessment based upon the actual profits of each such year of assessment respectively. Thereafter, the profits of the accounting year ending prior to the 6th April of the year of assessment. There are special rules for the ascertainment of the "year" where a change takes place in the accounting date. In the year in which the business is discontinued, the assessment is on the actual income for that year from 6th April to date of discontinuance, and the Revenue may increase the previous year's assessment to the actual income of that fiscal year.	January 1st in the year of assessment.
	Case III—Profits of an uncertain annual value, untaxed interest (*e.g.* Bank Interest, Inscribed or Registered 3½ per cent. War Loan Interest, interest from co-operative societies, etc.), profits from land occupied by dealers in cattle and milk in excess of the Schedule B assessment, Tithes, Manorial and Ecclesiastical dues, etc.	In the year in which the income first arises, the actual income for that fiscal year. In the next year, (*a*) if the first year was a full year the previous fiscal year's income, but with the right to have the assessment reduced to actual; (*b*) if the first year was less than a full year, the actual income of the second fiscal year. In the following year, the previous fiscal year's income, but if the first year was less than a full year, this fiscal year's assessment may be reduced to	Do

* Where the company is the occupier, the tax paid (not exceeding the standard rate of tax on the year's rent) is deductible from the next instalment of rent. Where the tax so deductible exceeds the next instalment of rent, the excess may be deferred, on giving notice to the Collector, until April 1st, to permit its deduction from the following payment on account of rent.

Schedule.	*Source of Income.*	*Basis of Assessment.*	*Due Date for Payment of Tax.*
		actual. Thereafter the assessment is on the actual income of the preceding fiscal year. Each source or part of a source is treated separately. Where a source or part thereof is discontinued, assessment for the year in which it is discontinued is on the actual income from the 6th April to the date of discontinuance, and the Revenue may increase the previous year's assessment to the actual income of that fiscal year.	
D.	*Case* IV.—Foreign, Dominion and Colonial Securities, except such income therefrom as is charged under Schedule C or otherwise in the hands of agents paying over the income.	As for Schedule D, Case III. The income is assessable whether it is remitted to Great Britain or Northern Ireland or not. If it is in a foreign currency, it must be converted into sterling at the average rate of exchange for the period during which the profits were earned	January 1st in the year of assessment.
	Case V.—Foreign and Colonial Possessions.		
	Rule 1. Stocks, Shares and Rents.	Do.	Do
	Rule 2. Any other source.	On the amount remitted to Great Britain or Northern Ireland during the preceding fiscal year.	Do.
	Case VI.—Any annual profits or gains not assessable under any other Schedule or Case.	The full amount of the profits or gains arising in the year of assessment, or the average of a period not exceeding one year, decided upon by the Commissioners	Do.
E.	Any public office or employment of profit, and any annuity, pension or stipend payable by the Crown, or out of the public revenue of Great Britain or Northern Ireland, other than annuities charged under Schedule C. This includes all salaries, fees, wages and perquisites	The full amount of the income from this source during the preceding fiscal year. Reliefs are provided for the commencing and ending years of any source, similar to Case III. In the case of Government officials, and employees of railway companies, other than weekly wage-earners, the tax is collected at the source, *i.e.* deducted by the employer from the salary, and accounted for to the Inland Revenue.	Do., where payable by the Company. But employees pay in two equal instalments, the first on January 1st in the year of assessment, the second on July 1st immediately following the end of the year of assessment
	Weekly wages of those earners who are employed by way of manual labour, *i.e.* persons who receive wages which are calculated by reference to the hour, day, week or any period less than a month, at whatever intervals the wages may be paid, or who receive wages, however calculated, which are paid daily, weekly or at any less periods than a month. Manual labour includes all occupations requiring physical exertion.	The full amount of the wages of each half-year ending on 5th October and 5th April, respectively, in the year of assessment	The first half-year's tax on January 1st in the year of assessment, the second on July 1st immediately following the end of the year of assessment, or within twenty-one days of receipt of the assessment (if later). The tax may be paid by the worker by means of special stamps affixed to a card.

Income arising from sources in Eire is not included in the above. Such income, if it falls within Case IV or Case V, Rule 1, is assessed on the basis of the actual amount arising in the year of assessment; any other income is assessed under

Case V, Rule 2, but on the same basis as that on which it would be assessed if it arose in Great Britain or Northern Ireland. If the company is managed and controlled in Eire it is exempt from British income tax except in respect of annual charges.

Income tax assessed under Schedule D may be prepaid at a discount of $2\frac{1}{2}$ per cent. per annum, which must be claimed before payment or within one month thereafter.

Certain claims which may be made are dealt with briefly below. Unless otherwise stated, claims for repayment must be made within the six years following the end of the fiscal year to which they relate.

Schedule.	*Claim.*	*Time Limit.*
B.	Reduction of assessment to the actual profits (Rule 6)	Within one year after the end of the year of assessment
	Assessment under Schedule D (Rule 5).	Within two months of the commencement of the year of assessment.
A.	Over-assessments. Empty property (voids).	Within the year following the end of the year of assessment (in practice)
A. and B.	Loss by flood or tempest (Schedule A, No. V, Rule 9; Schedule B, Rule 3).	Within three years after the end of the year of assessment
A.	Lost Rent (concession).	Within three years after the end of the year of assessment (in practice)
A.	Additional relief for repairs, maintenance, etc., where the average expenditure for the previous five years exceeds the statutory deduction (Schedule A, No. V, Rule 8).	Six years
B. and D.	Loss in trade, business, profession or vocation (S. 34, *Income Tax Act*, 1918). The claim here is for repayment of tax on the amount of the loss, but not exceeding the amount of tax actually paid by the company in respect of the year of assessment The claim is made on the adjusted loss shown by the accounting period ending within the year of assessment.	Within one year after the end of the year of assessment.
D. and E.	Wear and tear of plant and machinery.	When making the Return of Total Income (Rule 6 (4), Schedule D, Cases I and II), or within 6 years (S. 24, *Finance Act*, 1923).
	Do, repayment to lessor.	Within one year after the end of the year of assessment (Rule 6 (5), Schedule D, Cases I and II).
	Allowance for obsolescence of plant and machinery (Rule 7, Cases I and II)	When making the Return or adjusting the accounts, or within 6 years (S 24, *Finance Act*, 1923).
	Management expenses by Life Assurance and Investment companies (S. 33, *Income Tax Act*, 1918).	Within one year after the end of the year of assessment.
	Management expenses by owner of mineral rights (S. 6, *Finance Act*, 1922)	Do.
D.	Maintenance expenses of patent royalties (concession).	Within one year after the end of the year of assessment (in practice)
	Adjustment of interest, etc, under Case III, during the second (or third) year (S. 17 (2) (*b*), *Finance Act*, 1922).	Within one year after the end of the year of assessment.
D and E.	Reduction of assessment on proof of an over-assessment by reason of some error or mistake in the return or statement made for purposes of assessment (S 24, *Finance Act*, 1923, and S. 45, *Finance Act*, 1927)	Six years.
D.	Set-off of a loss on one trade carried on by the company against a profit on another distinct trade carried on by the same company (Rule 13, Cases I and II).	Before either assessment becomes final and conclusive, or within 6 years (S. 24, *Finance Act*, 1923).

Schedule.	*Claim.*	*Time Limit.*
D.	Carry forward of loss in one year (so far as relief thereon has not been given under S. 34, *Income Tax Act*, 1918, or Rule 13 above) against subsequent assessments until absorbed, or for six years (whichever is earlier) (S. 33, *Finance Act*, 1926). *See* also S 19, *Finance Act*, 1928, and S. 19, *Finance Act*, 1932. Relief in respect of a loss (similar to the above) where a business carried on by any individual(s) is transferred to a company solely or mainly for shares (S. 29, *Finance Act*, 1927).	Within 6 years after the end of the year of assessment.

Returns.—Soon after the 6th April in each year a form is served on the company, on which there must be entered income from every source, ascertained according to the statutory bases already enumerated. Care must be taken to enter the income from each source on the appropriate section of the form. Penalties may be imposed for failure to render a Return, whether or not a form has been received for the purpose, and also for making any incorrect statement. If a mistake has been made, however, it can be remedied by submitting a new return, or particulars of the error, before the assessment becomes final or within six years (S. 24, *Finance Act*, 1923).

If it is impossible to complete the Return at once, the Commissioners may allow further time, but where no Return or an unsatisfactory Return is made the Commissioners may make an arbitrary assessment.

Instructions always accompany the Return form, indicating the items which are and are not allowed in adjusting the accounts. There is therefore little object in repeating them here. Any doubtful item must be treated on its own merits.

Where the secretary conducts the settlement of the company's liability himself, he will find that frank disclosure of all doubtful matters is the best course to pursue, and that an agreement is more quickly reached by interviewing the Inspector of Taxes than by correspondence.

The Return must be signed by a responsible official of the company; usually this is done by the secretary, who, by the Act, is made liable for this duty.

The secretary will also receive from the Inspector a form on which must be given particulars of the salaries, fees, commissions, bonuses and other emoluments paid to all employees in receipt of an income in excess of £125 per annum. On this form must be entered not only the salaries, etc., of the employees, but also directors' fees, auditors' remuneration, etc., and particulars as to expense allowances, etc. (S. 19, *Finance Act*,

1939). Each half-year there must be completed a Return of all those engaged by way of manual labour whose incomes are in excess of £125 per annum. These forms are for the purpose of enabling the Inspector to check the employees' own returns.

Care should be taken to preserve exact copies of the particulars entered upon all forms and returns sent to the Income Tax authorities, not overlooking the dates to which they are made up, and the date on which, and the person to whom, the Return is made. If a similar return has already been made to another district, this fact should be stated, and no duplicate rendered unless so marked. Duplicate forms can be obtained on request to facilitate keeping copies.

Assessment.—Between September and November, as a general rule, the company will receive a Notice of Assessment, showing the amount on which the company has been assessed under Schedule D and the amount of tax payable. It is imperative that this be immediately checked, and if it is not accurate in every respect, an appeal must be made immediately by letter to the Inspector of Taxes named on the form, stating the exact grounds of the appeal. If not appealed against within twenty-one days of the *date appearing on the notice*, the assessment becomes final and conclusive, and can only be reopened by proof of the company's error or mistake under S. 24, *Finance Act*, 1923, or by concession on the part of the Revenue authorities. Even where correspondence has passed between the company (or their agent) and the Inspector, and the assessment has been agreed with him, if the assessment received does not correspond with that agreed upon, an appeal is necessary. A safe rule to adopt is never to take anything for granted, and if appeal seems necessary, to make it at once.

The Commissioners may require the company to be represented at the appeal, but in many cases this is not necessary as agreement is previously reached with the Inspector as to the amount payable. In default of such agreement, it is necessary for the appeal to be heard. Accounts are in practice sent to the Inspector of Taxes, although, legally, only the Commissioners can demand accounts to support the Return. The practice is more convenient, however, as it enables the bulk of assessments to be agreed without appearance before the Commissioners. The accounts submitted should be those laid before the general meeting, supported by schedules giving

details of any items which have to be included or excluded for income tax purposes. The submission of these schedules will save a great deal of correspondence, although the Inspector may require some further details, which should be supplied without delay.

The Commissioners, if not satisfied with the Return and/or accounts, may call for the production of the books and vouchers of the company; if these are not produced, they may dismiss the appeal. They rarely demand such production where a proper audit has taken place.

Appeals may be made against Schedules A and B annually if there can be shown proper grounds for a reduction of the assessment under Schedule A.

Where an appeal is pending, the General Commissioners may require tax to be paid on so much of the assessment as is not in dispute.

Deduction of Tax at the Source.—So far as is practicable, income tax is collected at the source, *i.e.* the Inland Revenue collect the tax from the person who makes the annual payment, and that person deducts the tax when making the payment. Tax must be deducted from all dividends and annual charges paid out of taxed income, at the rate in force at the date on which the payment falls due, except in the case of rents payable by a tenant occupier, and annual charges in Scotland falling due on May 15th. In the latter case, the rate is that in force at the *commencement* of the period for which the payment is made; in the former, the Schedule A tax is paid by the occupier on January 1st, and must be recouped from the next payment of rent made thereafter, but so that the tax recouped must not exceed the tax actually paid, or tax at the standard rate (for the year of assessment in respect of which the Schedule A tax was paid) on the amount of the rent, if lower (see also footnote on p. 604).

Where an annual charge is not paid out of profits brought into charge to tax, tax must be deducted at the rate in force at the date of payment, and an assessment is raised on the company for the amount of the tax. Provision is made by S. 19, *Finance Act*, 1928, for allowing the amount on which tax is so paid to be carried forward as a loss subject to S. 33, *Finance Act*, 1926, provided that the amount is wholly and exclusively spent in earning the profits, and is not chargeable to capital. In any other case the tax is automatically collected by reason of

the charges not being allowed as a deduction in arriving at the assessable profits.

Residence.—Incorporation under the Companies Acts does not of itself make a company a "person resident in the United Kingdom" so as to be liable to income tax. A company "resides" where its business is managed and controlled, and this is the true test alike for English and foreign companies (*Egyptian Delta Land and Investment Co.* v. *Todd* [1929], A.C. 1).

If the company is controlled from England, it is liable under Case I on the whole of its profits, wherever they are made (*De Beers Consolidated Mines* v. *Howe* [1906], App. Cas. 455, which was applied in the *Egyptian Delta Co.'s Case* (supra)). If the real control and directing powers are situated abroad, the company will only be liable under Case V in respect of profits made abroad (*Egyptian Hotels* v. *Mitchell* [1915], App. Cas. 1022). All profits arising in this country, however, are assessable here under Case I. The situation of the control is a question of fact, and a secretary who wishes to advise his directors on this topic should read the reports of the numerous cases on residence, an index to which will be found by referring to Dowell's *Income Tax Laws* (Butterworth), or Harrison's *Index to Tax Cases* (H.M. Stationery Office). In particular, Lord Sumner's judgment in the case last cited should be carefully studied. It is always advisable in case of doubt to consult counsel.

Members and Income Tax.—The secretary has frequently to reply to members who make inquiries regarding the income tax deducted from dividends, as those unfamiliar with the principle of deduction at source frequently complain that too much tax has been deducted. A "form letter" similar to the following may be used:

THE PRACTICE COMPANY, LIMITED
MOORGATE,
LONDON, E.C.2.

To..... .....19...

DEAR SIR (or MADAM),

Income Tax deducted from dividends

In reply to your inquiry regarding the income tax deducted by the company from the dividend payable to you,

I have to state that the deduction is made in accordance with Rule 20, All Schedules General Rules, *Income Tax Act*, 1918 (as amended) [and Section 27 (5), *Finance Act*, 1920 [1]]. Full particulars of the amount so deducted appears on the dividend notice accompanying the dividend warrant, in accordance with S. 33, *Finance Act*, 1924.

You should communicate with your local Inspector of Taxes, who will provide you with the necessary form on which to claim any adjustment or repayment of tax so deducted.

Yours faithfully,

JAMES SMITH,
Secretary.

Members who are resident abroad may approach the secretary for advice on their prospects of reclaiming tax. The following " form letter " is suggested :—

THE PRACTICE COMPANY, LIMITED
MOORGATE,
LONDON, E.C.2.

To..... ..... 19...

DEAR SIR (or MADAM),

In reply to your inquiry regarding the income tax deducted by this company from the dividend payable to you, I have to state that the deduction is made in accordance with Rule 20, All Schedules General Rules, *Income Tax Act*, 1918 (as amended) [and S. 27 (5), *Finance Act*, 1920 [1]]. Full particulars of the amount so deducted appears on the dividend notice accompanying the dividend warrant, in accordance with S. 33, *Finance Act*, 1924.

The question of residence is highly involved, and I can only advise you to get in communication with the Inspector of Foreign and Colonial Dividends, Hanway House, 27–31, Red Lion Square, High Holborn, London, W.C., stating the circumstances of your case, and stating also whether you are a British subject, or are or have been employed by the Crown, or a Crown protectorate, or British Missionary Society.

Yours faithfully,

JAMES SMITH,
Secretary.

[1] If Dominion Income Tax relief has been received.

Dominion Income Tax Relief.—If income liable to British income tax has been or is liable to be charged also to tax in some other part of the British Empire, a relief may be obtained from British tax. The calculation of the relief is highly technical and complicated, and in any involved cases expert advice should be taken. The Inspector of Taxes will give assistance, but it is advisable to have some person to represent the company in arriving at the relief. Claims by a person or company not resident in Great Britain or Northern Ireland should be addressed to the Chief Inspector of Taxes (Claims), Somerset House, Strand, London, W.C.2 (*see* p. 605 *re* Eire).

Directors' Fees and other Remuneration paid free of Tax.—Where, under power given by the articles, or by the company in general meeting, in the case of directors' fees, or in accordance with the service agreement in the case of employees, the company pays the income tax in respect of the fees or salary, the tax so paid is part of the fees or salary, and must be debited to the proper account.

The arrangement may take any one of the following forms:

(1) The company may pay tax on the whole at the full standard rate; or

(2) May pay tax on the whole, less earned income relief at the full standard rate; or

(3) May pay tax on the whole at the full standard rate, *less* the tax on all allowances to which the director or employee is entitled against the assessment on the fees or salary; or

(4) May pay tax on the whole *less* the allowances appropriate to a single person; or

(5) May pay the proportion of the employee's total liability to tax that his income from the company bears to his total income from all sources.

Care must be taken in drawing up the agreements to indicate clearly which method is to be adopted.

It should be remembered that, unless clearly indicated in the agreement, the amount of an employee's remuneration based on a percentage of the profits of a business must be calculated on the profits before debiting income tax in the accounts (*Johnston* v. *Chestergate Hat Manufacturing Co.* [1915], 2 Ch. 338). Care should be taken always to define exactly what is meant by "profits" in such an agreement.

As an inducement to investors, dividends are sometimes paid " free of tax." This merely means that the company pays the tax, but does not pass it on to the members, so that in effect a lower rate of dividend is paid than would be paid if it were expressed to be " less tax," although the actual cash received by each member is the same. Assuming the same available fund for dividend purposes, then 8 per cent. free of tax is equal to £11 0*s.* 8¼*d.* per cent., subject to deduction of tax at 5*s.* 6*d.* in the £. Reference should also be made to the decision in *Neumann* v. *Commissioners of Inland Revenue* [1934], A.C. 215; and *C.I.R.* v. *Cull* [1939], 3 A.E.R. 761 (*see* p. 345). Preference dividends must not be paid free of tax unless the terms of issue so provide, otherwise the preference shareholders receive more than their contract entitles them to, with a corresponding loss to the ordinary and/or deferred shareholders.

Copies of Registers.—The special commissioners may require a company to deliver within a specified time (not less than 21 days) a copy, certified by a duly authorised officer of such body, of the whole of or any specified class of entries in any register containing the names of the holders of any securities issued by the company. On delivery of the copy payment must be made therefor at the rate of 5*s.* for each 100 entries. The term " securities " includes shares, stock, debentures and debenture stock, and the term " entry " means, in relation to any register, so much thereof as relates to the securities held by any one person. Penalties are imposed for failure to comply with such a notice (S. 23, *Finance Act*, 1930).

Corporation Duty.—Property vested in bodies corporate or unincorporate enjoying perpetual succession escapes estate, legacy or succession duties once it has been acquired. But such property is liable to a duty known as Corporation Duty, which is levied at the rate of 5 per cent. upon the annual value of the income or profits derived from the property after deducting all outgoings, including costs, charges and expenses properly incurred in the management of the property. Corporation Duty must not be confused with the Corporation Profits Tax, which was abolished in Great Britain and Northern Ireland, in respect of all profits accrued after 30th June, 1924.

Property is exempt where it is owned by any corporation,

etc. established for trade, or where the capital is so held as to be liable to death duties. It is also exempt where owned by the Government; or legally appropriated for the benefit of the public or a public authority, etc., or for the purposes of religion, charity, education, literature or the fine arts; or owned by a Friendly Society or Savings Bank; or acquired within the previous thirty years (*a*) by means of voluntary contributions, or (*b*) where legacy or succession duty was paid upon its acquisition.

Returns must be made annually on October 1st. The corporation, etc. and its accountable officer are both made liable for payment of the duty. Assessments are made by the Commissioners of Inland Revenue, and appeals are made in the same way as those against succession duty. The tax is payable immediately on assessment, even if appealed against, and penalties of 10 per cent. per month are incurred by the corporation, etc. and the accountable officer for neglect to pay the tax or to deliver returns.

Land Tax.—This tax, although it has nothing to do with income tax, is assessed and collected with Schedule A income tax on January 1st, but for the year ended March 24th. A quota is fixed for each parish, and the rates vary from year to year and between parishes, though the rate must not be less than 1*d.* nor more than 1*s.* 0*d.* in the £, unless the lesser rate will extinguish the liability of the parish. The charge is made either on the rateable value or gross Schedule A value. The tax is normally collected from the occupier, but is a landlord's burden, and therefore deductible from rent unless the lease or tenancy agreement provides otherwise. Individual owners (not companies) are exempt if their incomes do not exceed £160, and are liable at half rate if their incomes are over £160 but not over £400. (The income is calculated for the income tax year ending in the land tax year.)

Land tax can be redeemed at any time on payment of an amount equal to twenty-five times the tax payable on the last assessment. Where land is about to be built on, it is therefore important to redeem the land tax before the land appreciates in value.

Sur-Tax on Certain Companies.—The avoidance of surtax by the use of companies gradually became so prevalent that legislation to prevent it was inevitable. The pro-

visions on this aspect of taxation are very voluminous, though of restricted interest, and will be found in Section 21, *Finance Act*, 1922, as amended by the *Finance Acts* of 1927, 1928, 1936, 1937 and 1939. Briefly, the position to-day is that where a company is under the control of not more than five persons, and does not distribute a reasonable proportion of its profits (in such a manner that the amounts distributed must be included in the incomes of the members for sur-tax purposes) within a reasonable time after the end of its accounting period, the Special Commissioners have power to apportion the whole of the profits over the members who would have received them if they had been distributed. The company can then be made to pay the additional sur-tax which such additions to their incomes would have made the members liable to pay, had the profits been distributed.

A company which is subsidiary (by share-control) to a company controlled by more than five persons, is (except in the case of certain investment companies) outside the provisions. So is a company of which over 25 per cent. of the vote-carrying shares other than preference shares are held by the public, provided that the shares are quoted on the Stock Exchange and there have been dealings thereon in the period under review.

In deciding whether or not there has been a reasonable distribution, the proper requirements of the company are taken into consideration; the provisions are designed to prevent the avoidance of tax, not to embarrass trading.

In the case of investment companies (*i.e.* companies the main part of whose income, if received by an individual, would be regarded as unearned) the provisions are more stringent, and following the *Finance Act*, 1939, if such a company is under the control of five or fewer persons, apportionment of its income is automatic, irrespective of reasonableness of distributions. Moreover, the year of assessment and not the accounting period forms the basis of apportionment.

It is felt that any attempt to expand the explanation of this aspect of taxation would be out of place in this work, and readers who are interested should refer to the Acts and to specialised works.

National Defence Contribution.—This tax was imposed by the *Finance Act*, 1937, to exact a contribution from all

trades and businesses on their profits for the five years from April 1st, 1937, to March 31st, 1942. The charge on companies is 5 per cent., but if the profits do not exceed £2000 for a year, no contribution is payable, and if the profits are between £2000 and £12,000, an abatement is allowed of one-fifth of the amount by which the profits fall short of £12,000. If the period is less than a year, the amounts of £2000 and £12,000 are proportionately reduced. The charge is calculated on the actual profits of the period (not those of any other period as for Income Tax) according to the Rules of Case I, Schedule D, with the following modifications:

(1) Annual payments are allowable deductions, provided they are laid out wholly for the purposes of the trade and are not paid to directors of a company in which the directors have a controlling interest.

(2) Rent disallowed for Case I purposes will be allowed unless paid to directors of director-controlled companies. No deduction is allowed for annual value.

(3) Dominion Income Tax is allowed as a deduction.

(4) Investment income and income from property must be brought into credit in the case of banks, building societies, insurance companies, finance and investment companies, and property-owning and dealing companies.

(5) The estimated profit or loss in respect of work in progress must be brought in.

(6) The wear and tear allowance for the accounting period is charged as an expense in the accounts.

In general, statutory undertakings are exempt. Reference should be made to the Act as to the exact circumstances.

Provision is made for carrying forward losses from one period to another, and also for giving relief for pre-N.D.C. losses and wear and tear, for which relief has not been given in income tax computations before the National Defence Contribution came into force.

In those cases where the directors have a controlling interest in the company, the directors' remuneration is not to exceed £1500 or 15 per cent. of the profits (before charging such remuneration), whichever is the higher, with a maximum of £15,000. For this purpose, certain managers with substantial

holdings in the company are regarded as directors, but the remuneration of whole-time service directors with insignificant holdings is allowed in full.

Provision is made whereby, in certain circumstances, a holding company may claim to amalgamate the profits or losses of subsidiary and sub-subsidiary companies with its own.

The tax is due one month after the notice of assessment, and an appeal may be made against an assessment within thirty days.

Further details of the contribution are outside the scope of this book and should be sought in the Acts.

Armament Profits Duty.—This tax was introduced by the *Finance Act*, 1939, largely as a supplementary method of controlling profit on armaments. The tax operates for three years from April 1st, 1939, and the criterion of liability is armament receipts amounting to not less than £200,000 in any accounting year ending after March 31st, 1939. The charge is on the profit made by the business as far as it exceeds the defined standard. Sub-contractors and sub-sub-contractors are liable. The Minister of Supply certifies to the Board of Inland Revenue when a business comes into the scope of the tax.

The duty is charged at 60 per cent. on the profits of every chargeable accounting period which exceed the standard. Where a business makes profits from both armament and non-armament activities, the profits are deemed to be made proportionately to the turnover, unless the Board of Referees think fit to adopt some other apportionment. The standard is at the taxpayer's option either (*a*) the profits of the calendar year 1935, or (*b*) 1936, or (*c*) an average of two years, either 1935 and 1937 or 1936 and 1937. Provision is made for new businesses. The Board of Referees may fix an exceptional standard higher than the profits of the years mentioned if the trader can show that he had either a low volume of business or an exceptionally low rate of profit in those years. Such exceptional standard must not normally exceed the amount necessary to pay a company's fixed preference dividend and 6 per cent. on other share capital. Appeals lie to the Board of Referees.

Profits are calculated according to the Income Tax Rules of Case I, Schedule D, except that they are based on the actual profits, and not those of a preceding year. Wear and tear allowances (augmented in certain cases) are deductible as

expenses; interest and other annual payments, etc., are allowed as deductions, but the annual value of premises cannot be deducted. Dominion Income Tax is allowed, but not United Kingdom Income Tax or National Defence Contribution. Investment income is excluded, but interest on borrowed money is to be diminished as if the principal of the borrowed money were diminished by the value of the investments. Directors' remuneration is limited to that of the standard period in all cases where the directors have a controlling interest in the company.

Provision is made for successions and amalgamation. Accounting period has the same meaning as for National Defence Contribution, and chargeable accounting periods are any accounting periods falling wholly or partly within the three years ending March 31st, 1942.

The tax is, in many ways, far from simple, and readers should refer to a specialised work.

The provisions of S. 18, *Finance Act*, 1936 (as amended by the Act of 1938), do not fall within the scope of this chapter, but should be considered by secretaries before forming companies abroad, where relevant.

Estate Duty.—By SS. 34 and 35, *Finance Act*, 1930, and S. 49, *Finance Act*, 1938, a company may be charged to estate duty where certain property of a deceased person has been transferred to the company. To come within the provision, the company must be so constituted as not to be controlled by its shareholders or by any class thereof, or must not have issued to the public shares carrying more than half the controlling power. The provisions generally are outside the scope of this work, but, briefly, if the deceased had transferred land, investments or money to the company for a consideration not taken wholly by the deceased for his own use or benefit, but the deceased had been in receipt of more than 50 per cent. of the company's income (other than as dividends or interest), part of the company's assets will be charged to estate duty. Where on the death of any person a claim for duty arises under these sections, the company must notify the Commissioners of Inland Revenue of the death of that person, under a penalty not exceeding £500 (*ibid.*, S. 36 (3)). The secretary of such a company should study the provisions in the Act.

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RETURNS, ETC., AND PENALTIES IMPOSED

Section.	Provision (P.) or Return or Document to be delivered to the Registrar of Companies for Registration (R.).	Time within which to be performed.
5	R. Office copy of order of court confirming alteration of objects, together with printed copy of altered memorandum.	Fifteen days from date of order, but court may extend time as it may think proper.
6	R. Articles of Association (except in the case of a company limited by Shares adopting Table A).	With Memorandum of Association.
7	R. Notice of increase in number of members in the case of a company not having a share capital.	Fifteen days from date of increase or resolution to increase.
12	R. Memorandum and Articles (if any).	—
15	R. Statutory declaration of compliance with all requirements of the Act in respect of registration of company.	With Memorandum of Association
19	P. On revocation of licence to use the words "Chamber of Commerce," company to change its name to a name not including those words.	Six weeks from date of revocation, or such longer period as Board of Trade may allow.
23	P. Not sending to members on request and payment of one shilling (or less sum provided by articles) a copy of memorandum and articles (if any), and not sending on payment of such sum not exceeding the published price as the company may require, a copy of any Act of Parliament which alters the memorandum.	—

DIX I

BY THE COMPANIES ACT, 1929.

Maximum Penalty for Default.[1]	Persons Liable.[1]
£10 per day.	The company.
Company cannot be registered.	—
Default fine.	The company and every officer in default.
Company cannot be registered.	—
Ditto.	—
Fine not exceeding £50 per day of default.	The company.
Fine not exceeding £1 for each offence.	The company and every officer in default.

[1] See pp. 650–651.

Section.	Provision (P.) or Return or Document to be delivered to the Registrar of Companies for Registration (R.).	Time within which to be performed.
24	P. Issuing any copies of the memorandum which have not been altered in accordance with any alterations made.	—
27	R. Prospectus or statement in lieu of prospectus where a private company alters its articles so that they no longer contain the provisions making it a private company.	Fourteen days after the alteration.
28	P. Carrying on business with less than legal minimum number of members.	On the expiration of six months from the date when membership was reduced below minimum.
34	P. Issuing prospectus before delivering for registration a copy thereof duly dated and signed by every person named therein as director or proposed director.	Before issue.
35	P. Issuing form of application for shares or debentures without valid prospectus, except in connection with underwriting or in relation to shares or debentures not offered to public.	
37	P. Untrue statements appearing in prospectus, or in any report or memorandum on the face thereof, or by reference incorporated therein or issued therewith.	—
	P. Publication of name of person not a qualified director.	—
38	P. Any document containing offer of shares or debentures for sale to the public shall be deemed a prospectus for all purposes.	
39	P. Minimum subscription not reached.	—
40	R. Statement in lieu of prospectus.	At least three days before allotment (where no prospectus is issued)—does not apply to private company.

Maximum Penalty for Default.	Persons Liable.
Fine not exceeding £1 for every copy issued.	The company and every officer in default.
Fine of £50.	Ditto.
Several liability for the payment of the whole debts of the company contracted thereafter.	Members cognisant of the fact.
£5 per day until a copy is delivered.	The company and every person knowingly a party to the issue.
Fine not exceeding £500.	Any person contravening the P.
See pp. 104–109.	—
See p. 108. Indemnify such person.	Directors and any other person responsible for publication.
See p. 110.	Ditto.
See p. 119.	Directors.
Fine not exceeding £100.	The company and every director who knowingly authorises or permits the contravention.

Section.	Provision (P.) or Return or Document to be delivered to the Registrar of Companies for Registration (R.).	Time within which to be performed.
41	P. Irregular allotment.	—
42	R. Return of allotments and contracts for allotments for consideration other than cash.	One month after allotment.
43	R. Statement of commissions for underwriting, etc.	*See* pp. 56 and 115.
44	P. Statement in balance sheet as to commission on issue of shares or debentures, or discount on debentures.	Must appear on balance sheet until written off.
45	P. Prohibition of provision of financial assistance by company for purchase of its own shares (*see* p. 121).	—
	P. Valid loans to be shown on balance sheet.	—
46	P. Statement in balance sheet of statement of redeemable preference shares and date for redemption.	—
47	P. Statement in balance sheet of discount on shares or so much as has not been written off.	—
51	R. Notice of alteration of share capital by consolidation, division, conversion, subdivision, redemption, or cancellation.	One month.
52	R. Notice of increase of share capital and printed copy of resolution.	Fifteen days.
54	P. Failure to show in the accounts share capital on which, and rate at which, interest has been paid out of capital.	—
58	R. Order of court confirming reduction of capital and approved minute.	—
	P. Embodying above minute in every copy of memorandum.	—
60	P. Concealment of name of creditor or misrepresentation of his interests in connection with reduction of capital.	—

Maximum Penalty for Default.	Persons Liable.
See p. 119.	—
Fine not exceeding £50 per day.	Every director, manager, secretary, or other officer knowingly a party to the default.
Fine not exceeding £25.	The company and every officer in default.
Default fine.	Ditto.
Fine not exceeding £100.	Ditto.
Ditto.	Ditto.
Fine not exceeding £100.	The company and every officer in default.
Default fine.	Ditto.
Ditto.	Ditto.
Ditto.	Ditto.
Fine not exceeding £50.	Ditto.
Resolution does not take effect until order registered.	—
See S. 24.	—
Guilty of misdemeanor.	Any director, manager, secretary or other officer.

Section.	Provision (P.) or Return or Document to be delivered to the Registrar of Companies for Registration (R.).	Time within which to be performed.
61	R. Copy of order of court confirming or disallowing variation of shareholders' rights.	Fifteen days after order made.
66	P. Notice of refusal to register transfer.	Two months after transfer lodged.
67	P. Having ready for delivery certificates of shares, debentures, etc.	Two months after allotment, lodgment of transfer, etc.
71	P. Personation of shareholder.	—
72	P. Forgery, etc. *on* share warrants or coupons, in Scotland.	—
	P. Forging, etc., share warrants or coupons in Scotland.	—
73	P. Refusing inspection of register of debenture holders (if one is kept) and refusing copy of trust deed.	—
79	R. Registration of charges.	Twenty-one days after creation.
80	R. Ditto.	Ditto.
81	R. Registration of charges existing on property acquired.	Twenty-one days after acquisition.
83	P. Endorsement of registration certificate on every debenture or certificate of debenture stock, payment of which is secured by the charge so registered.	—
86	R. Registration of enforcement of security.	Seven days from date of order for appointment of receiver or manager, or the appointment thereof under powers in any instrument.

Maximum Penalty for Default.	Persons Liable.
Default fine.	The company and every officer in default.
Fine not exceeding £5 per day.	The company and every director, manager, secretary and other officer knowingly a party to the default.
Ditto.	Ditto.
The court may order the defaulter to pay the costs of any application for an order to remedy the default.	—
Guilty of felony and liable to penal servitude for life or any term not less than three years.	The impersonator.
Ditto.	The offender.
Guilty of felony, and liable to penal servitude for not more than fourteen, nor less than three years.	Ditto.
Fine not exceeding £5 and default fine of £2.	The company and every officer in default.
The court may compel inspection, etc.	
Charge void against liquidator and any creditor.	—
Fine not exceeding £50 a day.	The company and every director, manager, secretary or other person knowingly a party to the default.
Default fine of £50.	The company and every officer in default.
Fine not exceeding £100.	Any person knowingly and wilfully authorising or permitting the delivery without such endorsement.
Fine not exceeding £5 per day.	The person obtaining the order or making the appointment.

Section.	Provision (P.) or Return or Document to be delivered to the Registrar of Companies for Registration (R.).	Time within which to be performed.
	R. Notice of ceasing to act as receiver or manager.	On ceasing to act.
88	P. Omission of any entry from register of charges.	—
89	P. Refusal to allow inspection of copies of registered charges or of register of charges.	—
91	P. Sending to registrar particulars of charges created, and charges on property acquired by company before commencement of Act.	Within six months of commencement of Act.
92	R. Notice of situation of registered office and charges therein.	Twenty-eight days after incorporation or of the charge.
93	P. Publication of name by company.	—
	P. Use of seal without name of company properly engraven, or issuing notices, advertisements, bills of exchange, orders, etc. whereon name is not properly mentioned.	—
94	R. Statutory declaration, etc. required to obtain certificate entitling company to commence business.	
	P. Commencing business or exercising borrowing powers without having observed conditions, etc. precedent thereto.	—
95	P. Failure to keep register of members.	—
96	P. Failure to keep index to register of members where the latter is not alphabetical and there are more than 50 members.	Alterations within fourteen days after register altered.

Maximum Penalty for Default.	Persons Liable.
Ditto.	The person in default.
Fine not exceeding £50.	Any director, manager or other officer knowingly and wilfully authorising or permitting the omission.
Fine not exceeding £5 and a further fine not exceeding £2 per day. The court may compel inspection.	Any officer refusing inspection and every director and manager authorising or knowingly and wilfully permitting the refusal.
£50 per day while default continues.	The company and every director, manager, secretary, or other person knowingly a party to the default.
Default fine.	The company and every officer in default.
Fine not exceeding £5 for not painting or affixing name, and default fine for not keeping it painted or affixed.	Ditto.
Fine not exceeding £50.	The company.
Ditto, and shall be personally liable to the holder of instruments improperly so issued.	Director, manager or officer or any person on behalf of the company, using or authorising such a seal, or issuing or authorising the issue of any notice, etc. not complying with S. 93.
Cannot get certificate.	—
Fine not exceeding £50 per day.	Every person responsible.
Default fine.	The company and every officer in default.
Ditto.	Ditto.

Section.	Provision (P.) or Return or Document to be delivered to the Registrar of Companies for Registration (R.).	Time within which to be performed.
98	P. Refusal to allow inspection of register of members and index, and not delivering copies on payment within ten days.	—
100	R. Notice of rectification of register as ordered by court.	—
103	R. Notice of situation of office where dominion register kept, and of changes in, and of discontinuance of, such office.	Fourteen days of opening, change or discontinuance of office.
104	P. Copies of entries in dominion register to be sent to the registered office, and a duplicate of the dominion register be kept there.	—
108 109 110	R. Annual Return.	Once at least in every calendar year, within twenty-eight days after the first or only general meeting in the year.
110	Including (except in private companies, etc., *see* p. 156) the latest balance sheet, annexed documents, and auditors' report.	—
112	P. Holding annual general meeting.	Once at least in every calendar year, not more than fifteen months after preceding meeting.
113	P. Holding statutory meeting.	Not less than one, nor more than three months from date at which company is entitled to commence business.
	Circulating Statutory Report.	At least seven days before meeting.
	R. Registering Statutory Report. (Neither applies to private company.)	Forthwith after circulation.
114	P. Failure of directors to convene requisitioned meeting.	Twenty-one days from date of deposit of requisition.

Maximum Penalty for Default.	Persons Liable.
Fine not exceeding £2, and a default fine of £2. The court may compel inspection, etc.	The company and every officer in default.
Court may impose penalty for contempt of court.	Ditto.
Default fine.	Ditto.
Ditto.	Ditto.
Ditto.	Ditto.
Ditto.	Ditto.
Fine not exceeding £50. The court may direct a meeting to be called.	Every director or manager knowingly a party to the default.
Fine not exceeding £50. (*See* also S. 170, s.-s. (1 *b*) at p. 510, and S. 171, s.-s. (2), at p. 531.)	Every director who is guilty of or who knowingly and wilfully authorises or permits the default.
Requisitionists may call meeting and company must retain costs out of directors' fees.	The directors.

Section.	Provision (P.) or Return or Document to be delivered to the Registrar of Companies for Registration (R.).	Time within which to be performed.
118	R. Printed copy of extraordinary and special resolutions, and agreements of all members or class of members, and resolutions for voluntary winding up.	Fifteen days after the passing or making thereof.
	P. Embodying in, or annexing to, every copy of the articles subsequently issued a copy of every such resolution or agreement; or, if no articles have been registered, supplying a copy to members on request and payment.	—
120	P. Keeping proper minutes of meetings and directors' meetings.	—
121	P. Refusal of inspection of minute books of general meetings and to supply copies on payment.	Copies within seven days of request.
122	P. Failure to keep proper books of account.	—
123	P. Failure to lay before a general meeting profit and loss account, balance sheet and directors' report.	Eighteen months after incorporation, and thereafter accounts to a date not earlier than the date of the meeting by more than nine months.
129	P. Publishing unsigned copy of balance sheet, or publishing balance sheet without a copy of the auditors' report attached.	—
130	P. Failure to circulate to members, etc., entitled to notices of general meetings, a copy of every balance sheet, including every document required by law to be annexed thereto, which is to be laid before the company in general meeting. (Does not apply to private companies.)	Not less than seven days before the meeting.

Maximum Penalty for Default.	Persons Liable.
Default fine of £2.	The company and every officer in default (including the liquidator).
Fine not exceeding £1 for each copy in default.	Ditto.
—	—
Fine not exceeding £2, and default fine of £2. The court may compel inspection and copies.	The company and every officer in default.
On summary conviction, to imprisonment not exceeding six months, or a fine not exceeding £200. A person shall not be imprisoned unless offence was committed wilfully.	Any director who fails to take all reasonable steps to secure compliance or is wilfully in default.
On summary conviction, imprisonment not exceeding six months (if offence committed wilfully) or a fine not exceeding £200.	Any director who fails to take all reasonable steps to comply with P.
Fine not exceeding £50.	The company and every director, manager, secretary or other officer knowingly a party to the default.
Fine not exceeding £20.	The company and every officer in default.

Section.	Provision (P.) or Return or Document to be delivered to the Registrar of Companies for Registration (R.).	Time within which to be performed.
130 (*contd*)	P. Failure to supply to any member or debenture holder on demand, a copy of the last balance sheet and annexed documents and auditors' report. (Does not apply to private companies.)	—
	P. Failure to furnish members of a private company with copy of balance sheet and auditors' report on demand and payment.	Seven days after request.
131	P. Failure to supply, on demand and payment by member, a copy of the prescribed statement in the case of banking, insurance and certain other companies (*see* p. 299).	—
132	P. Appointment and remuneration of auditor(s).	At each annual general meeting.
133	P. Disqualification of corporations and certain other persons as auditors.	—
134	P. Auditors' right of access to books and to information and explanations (*see* p. 309).	—
	P. Auditors' right to attend general meetings and make any statement or explanation they desire with respect to the accounts.	—
135, 137	P. Refusal to produce to inspectors appointed by Board of Trade or the company to investigate the company's affairs, any books or documents, or to answer questions.	—
136	P. If, from any report under S. 135, it appears to the Board of Trade that any person has been guilty of any offence in relation to the company for which he is criminally liable.	—

Maximum Penalty for Default.	Persons Liable.
Fine not exceeding £5 per day.	The company and every director, manager, secretary or other officer knowingly a party to the default.
Default fine.	The company and every officer in default.
Fine not exceeding £5 per day.	The company and every director and manager knowingly and wilfully authorising or permitting the default.
None. But Board of Trade may appoint on application of any member.	—
None on company, but corporation acting as auditor liable to fine not exceeding £100.	—
None. But auditors are to report whether they have obtained all the information, etc., they have required.	—
—	—
Offender may be punished as for contempt of court.	Any officer or agent of the company.
Prosecution by Director of Public Prosecution (Scotland, by Lord Advocate).	Offender.

Section.	Provision (P.) or Return or Document to be delivered to the Registrar of Companies for Registration (R.).	Time within which to be performed.
140	R. Consent to act as director. (This Section does not apply to private company.)	Before registration of articles, or publication of prospectus, or registration of statement in lieu.
	R. Contract by director or proposed director to take and pay for qualification shares, unless he has signed memorandum for, or has taken up, shares, or made and registered a statutory declaration that the shares are registered in his name.	To accompany memorandum and articles on registration of public company.
	R. List of persons who have consented to be directors.	
	P. If list contains name of person who has not so consented.	—
141	P. Director must take up qualification shares.	Two months from appointment or shorter time fixed by articles.
	P. Director acting as such while unqualified.	—
142	P. Undischarged bankrupt acting as director without leave of the court.	—
144	P. Keeping register of directors.	—
	R. Particulars as to directors and any changes in directorate.	Fourteen days from appointment of first directors or of any change of directors.
	P. Refusal to allow inspection of register.	—
145	P. Failure to state particulars as to directors in trade catalogues, circulars, etc.	—

Maximum Penalty for Default.	Persons Liable.
Person cannot be appointed or named as director.	—
Company cannot be registered without these returns, unless no directors are named or proposed.	—
Fine not exceeding £50.	Applicant for registration.
Must vacate office if he fails to obtain, or to keep, his qualification shares in his own right.	—
Fine not exceeding £5 per day after expiration of period of grace so long as he acts as director.	Offender.
Conviction on indictment—imprisonment not exceeding two years; or, on summary conviction, imprisonment not exceeding six months, or a fine not exceeding £500, or both.	Offender.
Default fine.	The company and every officer in default.
The court may order inspection.	
A fine not exceeding £5.	Every director. Where a director is a corporation, every director, secretary and officer of the corporation knowingly a party to the default.

Section.	Provision (P.) or Return or Document to be delivered to the Registrar of Companies for Registration (R.).	Time within which to be performed.
146	P. Adding a statement to the proposal of, and giving notice to, a person proposed for election as director or manager, or managing director that the liability of the director, etc. is unlimited, where such is the case.	At the time.
148	P. Furnishing to members on proper demand a statement as to remuneration of directors.	One month after the demand.
149	P. Failure to disclose interest in contracts.	Prior to contract being made or at first meeting after interest acquired.
150	P. Receipt of payment as compensation for loss of office or on retirement.	—
151	P. Assignment of office by directors.	—
152	P. Provisions in articles or contracts relieving officers from liability.	—
153	R. Office copy of order of court sanctioning compromise with creditors and/or members to be registered, and	—
	P. annexed to every copy of the memorandum subsequently issued.	—
154	R. Office copy of order of court under this section (*see* p. 396).	Seven days after order.
155	P. Power to acquire shares of dissenting shareholders (*see* p. 397).	—
		WINDING UP
176	R. Copy of winding-up order.	Forthwith.
181	R. On winding-up order, statement of affairs submitted to official receiver.	Within fourteen days of order, or such extended time as official receiver or the court appoints.

Maximum Penalty for Default.	Persons Liable.
Fine not exceeding £100 and any damage suffered by the person so elected.	Any promoter, director, manager, or secretary making default.
Fine not exceeding £50.	Any director failing to comply.
Fine not exceeding £100.	Ditto.
See p. 232.	—
Of no effect unless and until approved by special resolution.	—
Of no effect, but *see* S. 372.	—
Order of no effect until registered.	—
Fine not exceeding £1 for each copy in default.	The company and every officer in default.
Default fine.	Ditto.
—	—
BY THE COURT	
—	The company or otherwise as prescribed.
Fine not exceeding £10 per day.	Any person in default, *i.e.* directors and secretary or other chief officer.

Section.	Provision (P.) or Return or Document to be delivered to the Registrar of Companies for Registration (R.).	Time within which to be performed.
	P. Any person untruthfully stating himself to be a creditor or contributory of the company.	—
193	P. In compulsory winding up, liquidator to keep proper books.	—
194	P. In compulsory winding up, retention by liquidator in England of sum exceeding £50 for more than ten days.	Ten days.
195	R. In compulsory liquidation, liquidator to send account of his receipts and payments to Board of Trade.	Not less than twice in each year.
214	P. Court may, at any time after the appointment of a provisional liquidator, or the making of a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession property of the company, or to be indebted to the company, or to be able to give information.	—
215	P. To force directors in Scotland to attend any meeting in compulsory winding up.	—
216	P. Power in England to order public examination of promoters, directors, etc.	
217	P. Person acting as director in contravention of order of court.	—
218	P. Contributory believed to be about to abscond.	At any time before or after winding-up order.
221	R. Reporting to registrar of order for dissolution.	Fourteen days.

Maximum Penalty for Default.	Persons Liable.
Contempt of court.	—
See S. 196 at p. 539.	Liquidator.
Interest at the rate of 20% per annum on sum so retained, disallowance of all or part of his remuneration, removal from office, and payment of expenses due to his default.	Liquidator.
See S. 196.	Ditto.
If he refuses, the court may cause him to be apprehended.	
Contempt of court.	—
May be apprehended.	—
Conviction on indictment to imprisonment not exceeding two years; on summary conviction, to imprisonment not exceeding six months, or a fine not exceeding £500, or both. May also be criminally liable.	Any director or other person so acting.
May be arrested and property seized.	—
£5 per day.	Liquidator.

Section.	Provision (P.) or Return or Document to be delivered to the Registrar of Companies for Registration (R.).	Time within which to be performed.
226	R. Notice of resolution to wind up voluntarily to be advertised in *Gazette*.	Seven days.
230	R. Declaration of solvency to be made by the directors, or, where there are more than two directors, by a majority of the directors of the company.	Before the date on which notices of the meeting at which the resolution for voluntary winding up is to be proposed are sent out.
234	P. Dissentient members' notice to liquidator (*see* p. 392). *See* also S. 243.	Seven days after passing of special resolution.
235	P. Liquidator to call general meeting at end of each year and account.	—
236	P. Liquidator to call final meeting and account.	When ready.
	R. Return of final meeting.	One week after meeting.
	R. Order of court deferring dissolution of company.	Seven days.
		CREDITORS' VOLUNTARY
238	P. Calling meeting of creditors. Notice in *Gazette* and two local papers. Statement of affairs, and list of creditors. Director as chairman (*see* p. 551.	Notices to be sent simultaneously with those for company meeting at which resolution for winding up is to be proposed. The creditor's meeting may be held on same day as the company meeting, or on the day following.
244	P. Liquidator to call meetings of company and of creditors at end of each year, and to account.	—
245	P. Final meetings	Seven days after meetings.
	R. and account.	
	R. Order of court as in S. 236 above.	
		EVERY VOLUNTARY
250	R. Notice of appointment of liquidator.	Twenty-one days.
267	P. Disclaimer by liquidator of onerous property.	*See* p. 560.

WINDING UP

Maximum Penalty for Default.	Persons Liable.
Default fine.	The company and every officer in default, including the liquidator.
Declaration of no effect, and winding up is creditors', not members'.	—
—	Liquidator must abstain from carrying out resolution, or purchase dissentients' holdings.
Fine not exceeding £10.	Liquidator.
—	Ditto.
£5 per day.	Ditto.
Fine not exceeding £5 per day.	Person on whose application order was given.
WINDING UP	
Fine not exceeding £100.	The company and officers in default.
Fine not exceeding £10.	Liquidator.
As in S. 236.	Ditto.
WINDING UP	
£5 per day.	Ditto.
—	—

Section.	Provision (P.) or Return or Document to be delivered to the Registrar of Companies for Registration (R.).	Time within which to be performed.
271	P. Offences by officers of companies in liquidation.	*See* p. 564.
272	P. Falsification of books, etc.	—
273	P. Frauds by officers of companies which have gone into liquidation.	—
274	P. Proper accounts not kept.	During two years prior to winding up.
275	P. Fraudulent trading.	*See* p. 567.
276, 277	P. Delinquent directors.	*See* pp. 568–9.
278	P. Body corporate acting as liquidator unless appointed before 3rd August, 1928.	—
279	P. Default of liquidator in making returns.	Fourteen days after notice requiring him to make return.
280	P. Notification on invoices, etc. that company is in liquidation or a receiver or manager appointed.	—
283	P. Acting in contravention of rules made for disposal of books, etc.	—
284	P. Failure to make prescribed returns to registrar and creditors.	—
	P. Untruthfully claiming to be a creditor or contributory.	—
294	R. Order of court declaring dissolution of company void.	Seven days.
		RECEIVERS
308	R. Notification that receiver or manager has been appointed to appear on every invoice, etc. (*cf.* S. 280).	—
310	R. Delivery to registrar of accounts of receiver or manager.	One month after each six months from date so appointment.

GENERALLY

Maximum Penalty for Default.	Persons Liable.
—	—
Two years' imprisonment with or without hard labour.	Any director, manager, officer or contributory.
On indictment, two years; on summary conviction, twelve months.	Any guilty person who at the time of the offence was a director, manager or other officer of the company.
On indictment, two years; on summary conviction, six months.	Every director, manager or officer knowingly a party to or conniving in the default (but *see* p. 288).
—	—
—	—
£100 fine.	Corporation so acting.
Court may order him to make return and pay costs of application.	Liquidator.
£20 fine.	The company and every director, manager, secretary, or other officer, liquidator, receiver, or manager.
£100 fine.	Any person.
£50 per day.	The liquidator.
Contempt of court.	Any person.
£5 per day.	The applicant for the order.
AND MANAGERS	
£20 fine.	The company, etc. as in S. 280.
£5 per day.	The receiver or manager.

Section.	Provision (P.) or Return or Document to be delivered to the Registrar of Companies for Registration (R.).	Time within which to be performed.
311	P. Enforcement of duty of receiver to make returns, etc. on application to court.	—
		GENERAL
315	P. Enforcement of duty of company to make returns to registrar.	—
343 to 350 and 353	R. Requirements as to companies established outside Great Britain.	One month (*see* pp. 60–64).
354	P. Prospectuses of foreign companies.	*See* S. 37 and S. 355 (pp. 65 and 107).
356	P. Share hawking.	—
362	P. Any person in any return, report, certificate, balance sheet or other document required by or for the purposes of any provision specified below, wilfully making a statement false in any material particular, knowing it to be false :— Provisions relating to— Conclusiveness of certificate of incorporation (S. 15). Specific requirements as to particulars in prospectus (S. 35). Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to registrar (S. 40). Return as to allotments (S. 42). Registration of charges created by company registered in England (S. 79).	

Maximum Penalty for Default.	Persons Liable.
Costs of application must be borne by receiver.	Ditto.
PROVISIONS	
Costs of application to be borne by the company or any officers responsible for the default.	—
Fine not exceeding £50, or £5 per day.	The company and every officer or agent.
—	—
Imprisonment for six months, and fine not exceeding £200. For second or subsequent offence, twelve months and/or £500 fine.	Any person contravening the section. If a company is convicted, every director and officer concerned in the management is similarly liable, unless he proves that the offence took place without his knowledge or consent.
Avoidance of contract, etc.	
Guilty of a misdemeanour. Liable on conviction in Scotland, on indictment, to imprisonment not exceeding two years, with or without hard labour. On summary conviction in England or Scotland to imprisonment not exceeding four months, with or without hard labour. And, in either case, to a fine in lieu of, or in addition to, such imprisonment. The fine on summary conviction must not exceed £100. (The section does not affect the *Perjury Act*, 1911.)	Any person offending the P.

Section.	Provision (P.) or Return or Document to be delivered to the Registrar of Companies for Registration (R.).	Time within which to be performed.
362 (*contd.*)	Duty of company to register charges created by company (S. 80, s-s. 1). Duty of company to register charges existing on property acquired (S. 81). Application of Part III to companies incorporated outside England (S. 90). Restrictions on commencement of business (S. 94). The particulars as to directors and indebtedness of the company (S. 108, s-s. 3 *n o*). Statutory meeting and statutory report (S. 113). Auditors' report and right to information and explanations (S. 134, s-ss. 1 and 2). Restrictions on appointment or advertisement of director (S. 140). Notice by liquidator of his appointment (S. 250). Delivery to registrar of accounts of receivers and managers (S. 310). Documents, &c., to be delivered to registrar by companies carrying on business in Great Britain (S. 344). Return to be delivered to registrar where documents, etc. altered (S. 346). Balance sheet of company carrying on business in Great Britain (S. 347). Obligation to state name of company, etc. (S. 348). Annual report by Board of Trade (S. 376).	
364	P. Improper use of word limited.	—

Maximum Penalty for Default.	Persons Liable.
£5 per day.	Any offender.

General Provisions as to Offences.

365.—(1) Where by any enactment in this Act it is provided that a company and every officer of the company who is in default shall be liable to a default fine, the company and every such officer shall, for every day during which the default, refusal or contravention continues, be liable to a fine not exceeding such amount as is specified in the said enactment, or, if the amount of the fine is not so specified, to a fine not exceeding five pounds.

(2) For the purpose of any enactment in this Act which provides that an officer of a company who is in default shall be liable to a fine or penalty, the expression "officer who is in default" means any director, manager, secretary or other officer of the company, who knowingly and wilfully authorises or permits the default, refusal or contravention mentioned in the enactment.

366. All offences under this Act made punishable by any fine may be prosecuted under the Summary Jurisdiction Acts.

367. The court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person on whose information or at whose suit the fine is recovered, and subject to any such direction all fines under this Act shall, notwithstanding anything in any other Act, be paid into the Exchequer.

368. Nothing in this Act relating to the institution of criminal proceedings by the Director of Public Prosecutions shall be taken to preclude any person from instituting or carrying on any such proceedings.

369. Where proceedings are instituted under this Act against any person by the Director of Public Prosecutions or by or on behalf of the Lord Advocate, nothing in this Act shall be taken to require any person who has acted as solicitor for the defendant to disclose any privileged communication made to him in that capacity.

372.—(1) If in any proceeding for negligence, default, breach of duty, or breach of trust against a person to whom this section applies it appears to the court hearing the case that that person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as the court may think fit.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief, and the court on any such application shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(3) Where any case to which subsection (1) of this section applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith

direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge may think proper.

(4) The persons to whom this section applies are the following :—

(*a*) directors of a company :
(*b*) managers of a company :
(*c*) officers of a company :
(*d*) persons employed by a company as auditors, whether they are or are not officers of the company.

APPENDIX II

First Schedule to the Companies (Consolidation) Act, 1908.

(Applicable to Companies registered under that Act.)

TABLE A.

Regulations for Management of a Company Limited by Shares.

Preliminary.

1. In these regulations, unless the context otherwise requires, expressions defined in the Companies (Consolidation) Act, 1908, or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined; and words importing the singular shall include the plural, and vice versa, and words importing the masculine gender shall include females, and words importing persons shall include bodies corporate.

Business.

2. The directors shall have regard to the restrictions on the commencement of business imposed by section eighty-seven of the Companies (Consolidation) Act, 1908, if, and so far as, those restrictions are binding upon the company.

Shares.

3. Subject to the provisions, if any, in that behalf of the memorandum of association of the company, and without prejudice to any special rights previously conferred on the holders of existing shares in the company, any share in the company may be issued with such preferred, deferred, or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine.

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class.

5. No share shall be offered to the public for subscription except upon the terms that the amount payable on application shall be at least five per cent. of the nominal amount of the share; and the directors shall, as regards any allotment of shares, duly comply with such of the provisions of sections eighty-five and eighty-eight of the Companies (Consolidation) Act, 1908, as may be applicable thereto.

6. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

7. If a share certificate is defaced, lost, or destroyed, it may be renewed on payment of such fee, if any, not exceeding one shilling, and on such terms, if any, as to evidence and indemnity as the directors think fit.

8. No part of the funds of the company shall be employed in the purchase of, or in loans upon the security of the company's shares.

Lien.

9. The company shall have a lien on every share (not being a fully-paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully-paid shares) standing registered in the name of a single person, for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause. The company's lien, if any, on a share shall extend to all dividends payable thereon.

10. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists, is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled by reason of his death or bankruptcy to the share.

11. The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale. The purchaser shall be registered as the holder of the shares, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

Calls on Shares.

12. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares, provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the company at the time or times so specified the amount called on his shares.

13. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

14. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of five pounds per cent. per annum from the day appointed for the payment thereof to the time of the actual

payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

15. The provisions of these regulations as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

16. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

17. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, six per cent.) as may be agreed upon between the member paying the sum in advance and the directors.

Transfer and Transmission of Shares.

18. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

19. Shares in the company shall be transferred in the following form, or in any usual or common form which the directors shall approve :

> I, A.B. of in consideration of the sum of £ paid to me by C.D. of (hereinafter called "the said transferee") do hereby transfer to the said transferee the share [*or* shares] numbered in the undertaking called the Company Limited, to hold unto the said transferee, his executors, administrators, and assigns, subject to the several conditions on which I held the same at the time of the execution thereof : and I, the said transferee, do hereby agree to take the said share [*or* shares] subject to the conditions aforesaid. As witness our hands the day of
>
> Witness to the signatures of, etc.

20. The directors may decline to register any transfer of shares, not being fully-paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless—

(*a*) a fee not exceeding two shillings and sixpence is paid to the company in respect thereof; and

(*b*) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

21. The executors or administrators of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to

the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the executors or administrators of the deceased survivor, shall be the only persons recognised by the company as having any title to the share.

22. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be required by the directors, have the right, either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

23. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Forfeiture of Shares.

24. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

25. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

26. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

27. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

28. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company receive payment in full of the nominal amount of the shares.

29. A statutory declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and that declaration, and the receipt of the company for the consideration, if any, given for the share on the sale or disposition thereof shall constitute a good title to the share, and the person to whom the share is sold or disposed of shall be registered as the holder of the share and shall not be bound to see

to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

30. The provisions of these regulations as to the forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

Conversion of Shares into Stock.

31. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock, and may with the like sanction reconvert any stock into paid-up shares of any denomination.

32. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

33. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges, and advantages as regards dividends, voting at meetings of the company, and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

34. Such of the regulations of the company (other than those relating to share warrants) as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stock-holder."

Share Warrants.

35. The company may issue share warrants, and accordingly the directors may in their discretion, with respect to any share which is fully paid up, on application in writing signed by the person registered as holder of the share, and authenticated by such evidence, if any, as the directors may from time to time require as to the identity of the person signing the request, and on receiving the certificate, if any, of the share, and the amount of the stamp duty on the warrant and such fee as the directors may from time to time require, issue under the company's seal a warrant, duly stamped, stating that the bearer of the warrant is entitled to the shares therein specified, and may provide by coupons, or otherwise for the payment of dividends, or other moneys, on the shares included in the warrant.

36. A share warrant shall entitle the bearer to the shares included in it, and the shares shall be transferred by the delivery of the share warrant, and the provisions of the regulations of the company with respect to transfer and transmission of shares shall not apply thereto.

37. The bearer of a share warrant shall, on surrender of the warrant to the company for cancellation, and on payment of such sum as the directors may from time to time prescribe, be entitled to have his name entered as a member in the register of members in respect of the shares included in the warrant.

38. The bearer of a share warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognised as depositor of the share warrant. The company shall, on two days' written notice, return the deposited share warrant to the depositor.

39. Subject as herein otherwise expressly provided no person shall, as bearer of a share warrant, sign a requisition for calling a meeting of the company, or attend, or vote, or exercise any other privilege of a member at a meeting of the company, or be entitled to receive any notices from the company; but the bearer of a share warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

40. The directors may from time to time make rules as to the terms on which (if they shall think fit) a new share warrant or coupon may be issued by way of renewal in case of defacement, loss, or destruction.

Alteration of Capital.

41. The directors may, with the sanction of an extraordinary resolution of the company, increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

42. Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of share capital, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and, after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

43. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture, and otherwise as the shares in the original share capital.

44. The company may, by special resolution—

(*a*) Consolidate and divide its share capital into shares of larger amount than its existing shares:

(*b*) By subdivision of its existing shares, or any of them, divide the whole, or any part, of its share capital into shares of smaller amount than is fixed by the memorandum of association, subject, nevertheless, to the provisions of paragraph (*d*) of subsection (1) of section forty-one of the Companies (Consolidation) Act, 1908:

(c) Cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person :

(d) Reduce its share capital in any manner and with, and subject to, any incident authorised, and consent required, by law.

General Meetings.

45. The statutory general meeting of the company shall be held within the period required by section sixty-five of the Companies (Consolidation) Act, 1908.

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

47. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

48. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or in default, may be convened by such requisitionists, as provided by section sixty-six of the Companies (Consolidation) Act, 1908 If at any time there are not within the United Kingdom sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Proceedings at General Meeting.

49. Seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but the non-receipt of the notice by any member shall not invalidate the proceedings at any general meeting.

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

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

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

the same day in the next week, at the same time and place, and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.

53. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

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

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

56. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members, and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

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

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

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

Votes of Members.

60. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

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

62. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote whether on a show of hands or on a poll, by his committee, curator bonis, or other person in the nature of a committee or curator bonis appointed by that court, and any such committee, curator bonis, or other person may, on a poll, vote by proxy.

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

64. On a poll votes may be given either personally or by proxy.

65. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under the common seal, or under the hand of an officer or attorney so authorised. No person shall act as a proxy unless either he is entitled on his own behalf to be present and vote at the meeting at which he acts as proxy, or he has been appointed to act at that meeting as proxy for a corporation.

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

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

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."

Signed this day of

Directors.

68. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

69. The remuneration of the directors shall from time to time be determined by the company in general meeting.

70. The qualification of a director shall be the holding of at least one share in the company, and it shall be his duty to comply with the provisions of section seventy-three of the Companies (Consolidation) Act, 1908.

Powers and Duties of Directors.

71. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the provisions of the said Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

72. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term, and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way and partly in another) as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation or taken into account in determining the rotation of retire-

ment of directors; but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

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

74. The directors shall duly comply with the provisions of the Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force, and in particular with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the company, or created by it, and to keeping a register of the directors, and to sending to the Registrar of Companies an annual list of members, and a summary of particulars relating thereto, and notice of any consolidation or increase of share capital, or conversion of shares into stock, and copies of special resolutions, and a copy of the register of directors and notifications of any changes therein.

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

(*a*) of all appointments of officers made by the directors;
(*b*) of the names of the directors present at each meeting of the directors and of any committee of the directors;
(*c*) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors,

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

The Seal.

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

Disqualifications of Directors.

77. The office of director shall be vacated, if the director—

(*a*) ceases to be a director by virtue of section seventy-three of the Companies (Consolidation) Act, 1908; or
(*b*) holds any other office of profit under the company except that of managing director or manager; or
(*c*) becomes bankrupt; or
(*d*) is found lunatic or becomes of unsound mind; or
(*e*) is concerned or participates in the profits of any contract with the company:

Provided, however, that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is director: but a director shall not vote in respect of any such contract or work, and if he does so vote his vote shall not be counted.

Rotation of Directors.

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

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

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

81. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto.

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

83. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

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

85. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

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

Proceedings of Directors.

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

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

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

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

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

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

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

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

Dividends and Reserve.

95. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

96. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

97. No dividend shall be paid otherwise than out of profits.

98. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid up on any of the shares in the company dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

99. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalising dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

100. If several persons are registered as joint holders of any share any one of them may give effectual receipts for any dividend payable on the share.

101. Notice of any dividend that may have been declared shall be given in manner hereinafter mentioned to the persons entitled to share therein.

102. No dividend shall bear interest against the company.

Accounts.

103. The directors shall cause true accounts to be kept—

Of the sums of money received and expended by the company and the matter in respect of which such receipt and expenditure takes place, and

Of the assets and liabilities of the company.

104. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

105. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

106. Once at least in every year the directors shall lay before the company in general meeting a profit and loss account for the period since the preceding account or (in the case of the first account) since the incorporation of the company, made up to a date not more than six months before such meeting.

107. A balance sheet shall be made out in every year and laid before the company in general meeting made up to a date not more than six months before such meeting. The balance sheet shall be accompanied by a report of the directors as to the state of the company's affairs, and the amount which they recommend to be paid by way of dividend, and the amount, if any, which they propose to carry to a reserve fund.

108. A copy of the balance sheet and report shall, seven days previously to the meeting, be sent to the persons entitled to receive notices of general meetings in the manner in which notices are to be given hereunder.

Audit.

109. Auditors shall be appointed and their duties regulated in accordance with sections one hundred and twelve and one hundred and thirteen of the Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force.

Notices.

110. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address in the United Kingdom) to the address, if any, within the United Kingdom supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

111. If a member has no registered address in the United Kingdom and has not supplied to the company an address within the United Kingdom for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the

company, shall be deemed to be duly given to him on the day on which the advertisement appears.

112. A notice may be given by the company to the joint holders of a share by giving notice to the joint holder named first in the register in respect of the share.

113. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, in the United Kingdom supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

114. Notice of every general meeting shall be given in some manner hereinbefore authorised to (*a*) every member of the company (including bearers of share warrants) except those members who (having no registered address within the United Kingdom) have not supplied to the company an address within the United Kingdom for the giving of notices to them; and also to (*b*) every person entitled to a share in consequence of the death or bankruptcy of a member, who, but for his death or bankruptcy, would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notices of general meetings.

APPENDIX III

First Schedule to the Companies Act, 1929.

(Applicable to companies registered after 31st October, 1929.)

TABLE A.

Regulations for Management of a Company Limited by Shares.

Preliminary.

1. In these regulations, "the Act" means the *Companies Act*, 1929. When any provision of the Act is referred to, the reference is to that provision as modified by any statute for the time being in force. Unless the context otherwise requires, expressions defined in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined.

Shares.

2. Subject to the provisions, if any, in that behalf of the memorandum of association, and without prejudice to any special rights previously conferred on the holders of existing shares, any share may be issued with such preferred, deferred, or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine, and any preference share may, with the sanction of a special resolution, be issued on the terms that it is, or at the option of the company is liable, to be redeemed.

3. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting, of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

4. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the seal of the company specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

5. If a share certificate is defaced, lost, or destroyed, it may be renewed

on payment of such fee, if any, not exceeding one shilling, and on such terms, if any, as to evidence and indemnity, as the directors think fit.

6. No part of the funds of the company shall directly or indirectly be employed in the purchase of, or in loans upon the security of, the company's shares, but nothing in this regulation shall prohibit transactions mentioned in the proviso to section 45 (1) of the Act.

Lien.

7. The company shall have a lien on every share (not being a fully-paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully paid shares) standing registered in the name of a single person for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this regulation. The company's lien, if any, on a share shall extend to all dividends payable thereon.

8. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy.

9. For giving effect to any such sale the directors may authorise some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

10. The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale.

Calls on Shares.

11. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the company at the time or times so specified the amount called on his shares.

12. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

13. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of five pounds per centum per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

14. The provisions of these regulations as to the liability of joint holders and as to payment of interest shall apply in the case of non-payment of any

sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

15. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

16. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, six per cent.) as may be agreed upon between the member paying the sum in advance and the directors.

Transfer and Transmission of Shares.

17. The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

18. Shares shall be transferred in the following form, or in any usual or common form which the directors shall approve:

I, A.B., of , in consideration of the sum of £ paid to me by C.D. of (hereinafter called "the said transferee") do hereby transfer to the said transferee the share [*or* shares] numbered in the undertaking called the Company, Limited, to hold unto the said transferee, subject to the several conditions on which I hold the same: and I, the said transferee, do hereby agree to take the said share [*or* shares] subject to the conditions aforesaid. As witness our hands the day of

Witness to the signatures of, etc.

19. The directors may decline to register any transfer of shares, not being fully-paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless—

(*a*) a fee not exceeding two shillings and sixpence is paid to the company in respect thereof, and

(*b*) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

If the directors refuse to register a transfer of any shares, they shall within two months after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.

20. The legal personal representatives of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the legal personal representatives of the deceased only survivor, shall be the persons recognised by the company as having any title to the share.

21. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be properly required by the directors, have the right, either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

22. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Forfeiture of Shares.

23. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

24. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

25. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

26. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

27. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company receive payment in full of the nominal amount of the shares.

28. A statutory declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The company may receive the consideration, if any, given for the share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

29. The provisions of these regulations as to forfeiture shall apply in the

case of non-payment of any sum which, by the terms of issue of a shares becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

Conversion of Shares into Stock.

30 The company may by ordinary resolution convert any paid-up share into stock, and reconvert any stock into paid-up shares of any denomination.

31. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

32. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges, and advantages as regards dividends, voting at meetings of the company, and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

33. Such of the regulations of the company as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stock-holder."

Alteration of Capital.

34. The company may from time to time by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

35. Subject to any direction to the contrary that may be given by the company in general meeting, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of those shares in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

36. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture, and otherwise as the shares in the original share capital.

37. The company may by ordinary resolution—

(*a*) Consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(*b*) Subdivide its existing shares, or any of them, into shares of smaller

amount than is fixed by the memorandum of association subject, nevertheless, to the provisions of section 50 (1) (*d*) of the Act;

(*c*) Cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

38. The company may by special resolution reduce its share capital and any capital redemption reserve fund in any manner and with, and subject to, any incident authorised, and consent required, by law.

General Meetings.

39. A general meeting shall be held once in every calendar year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the third month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

40. The above-mentioned general meetings shall be called ordinary general meetings; all other general meetings shall be called extraordinary general meetings.

41. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by Section 114 of the Act. If at any time there are not within the United Kingdom sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Notice of General Meetings.

42. Subject to the provisions of Section 117 (2) of the Act relating to special resolutions, seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but with the consent of all the members entitled to receive notice of some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit.

43. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate the proceedings at any meeting.

Proceedings at General Meetings.

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

45. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

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

47. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

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

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

50. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members present in person or by proxy entitled to vote, or by one member or two members so present and entitled, if that member or those two members together hold not less than 15 per cent. of the paid-up capital of the company, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour, of, or against, that resolution.

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

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

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

Votes of Members.

54. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

55. In the case of joint holders the vote of the senior who tenders a vote,

whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

56. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, curator bonis, or other person in the nature of a committee or curator bonis appointed by that court, and any such committee, curator bonis, or other person may, on a poll, vote by proxy.

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

58. On a poll votes may be given either personally or by proxy.

59. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under seal, or under the hand of an officer or attorney duly authorised. A proxy need not be a member of the company.

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

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

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."

Signed this day of .

62. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

Corporations acting by Representatives at Meetings.

63. Any corporation which is a member of the company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or of any class of members of the company, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

Directors.

64. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

65. The remuneration of the directors shall from time to time be determined by the company in general meeting.

66. The qualification of a director shall be the holding of at least one share in the company.

Powers and Duties of Directors.

67. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company, as are not, by the Act, or by these articles, required to be exercised by the company in general meeting, subject, nevertheless, to any regulation of these articles, to the provisions of the Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

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

69. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

70. The directors shall cause minutes to be made in books provided for the purpose—

(*a*) of all appointments of officers made by the directors;
(*b*) of the names of the directors present at each meeting of the directors and of any committee of the directors;
(*c*) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors;

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

The Seal.

71. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of a director and of the secretary or such other person as the directors may appoint for the purpose; and that director and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualification of Directors.

72. The office of director shall be vacated, if the director—

(*a*) ceases to be a director by virtue of Section 141 of the Act; or
(*b*) without the consent of the company in general meeting holds any other office of profit under the company except that of managing director or manager; or
(*c*) becomes bankrupt; or

(*d*) becomes prohibited from being a director by reason of any order made under Sections 217 or 275 of the Act; or
(*e*) is found lunatic or becomes of unsound mind; or
(*f*) resigns his office by notice in writing to the company; or
(*g*) is directly or indirectly interested in any contract with the company or participates in the profits of any contract with the company.

Provided, however, that a director shall not vacate his office by reason of his being a member of any corporation which has entered into contracts with or done any work for the company if he shall have declared the nature of his interest in manner required by Section 149 of the Act, but the director shall not vote in respect of any such contract or work or any matter arising thereout, and if he does so vote his vote shall not be counted.

Rotation of Directors.

73. At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

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

75. A retiring director shall be eligible for re-election.

76. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto and in default the retiring director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill up such vacated office.

77. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

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

79. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

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

Proceedings of Directors.

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

82. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall when the number of directors exceeds three be three, and when the number of directors does not exceed three, be two.

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

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

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

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

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

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

Dividends and Reserve.

89. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

90. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

91. No dividend shall be paid otherwise than out of profits.

92. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid up on any of the shares in the company dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

93. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalising dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such applica-

tion may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company, as the directors may from time to time think fit.

94. If several persons are registered as joint holders of any share, any one of them may give effectual receipts for any dividend or other moneys payable on or in respect of the share.

95. Any dividend may be paid by cheque or warrant sent through the post to the registered address of the member or person entitled thereto or in the case of joint holders to any one of such joint holders at his registered address or to such person and such address as the member or person entitled or such joint holders as the case may be may direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent or to the order of such other person as the member or person entitled or such joint holders as the case may be may direct.

96. No dividend shall bear interest against the company.

Accounts.

97. The directors shall cause proper books of account to be kept with respect to—

All sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
All sales and purchases of goods by the company; and
The assets and liabilities of the company.

98. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

99. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

100. The directors shall from time to time in accordance with Section 123 of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets and reports as are referred to in that section.

101. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting together with a copy of the Auditors' report shall not less than seven days before the date of the meeting be sent to all persons entitled to receive notices of general meetings of the company.

Audit.

102. Auditors shall be appointed and their duties regulated in accordance with Sections 132, 133 and 134 of the Act.

Notices.

103. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address within the United Kingdom) to the address, if any,

within the United Kingdom supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of twenty-four hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

104. If a member has no registered address within the United Kingdom and has not supplied to the company an address within the United Kingdom for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating the neighbourhood of the registered office of the company, shall be deemed to be duly given to him at noon on the day on which the advertisement appears.

105. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register of members in respect of the share.

106. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, within the United Kingdom supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

107. Notice of every general meeting shall be given in some manner hereinbefore authorised to (*a*) every member except those members who (having no registered address within the United Kingdom) have not supplied to the company an address within the United Kingdom for the giving of notices to them, and also to (*b*) every person entitled to a share in consequence of the death or bankruptcy of a member, who, but for his death or bankruptcy, would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notices of general meetings.

APPENDIX IV

Stock Exchange Regulations as to New Issues and Official Quotations

(Reproduced by permission of the Committee of the Stock Exchange, London)

Dealings will not be permitted in any new issue until allowed by the Committee unless excepted from this Rule under Appendix 34*d* or 34*e*. *See below* (Rule 159).

The Committee may withdraw or suspend permission to deal in any security for any cause and in particular in the case of a company which fails to publish a Statutory or Annual Report within the prescribed period or in the case of serious default by underwriters or sub-underwriters in meeting their commitments (*ibid.*).

The Committee may order the quotation in the Official List of any security of sufficient magnitude and importance,[1] and in which there is sufficient public interest.

Applications for quotation must be made to the Secretary of the Share and Loan Department, and must comply with such conditions and requirements as may be ordered from time to time by the Committee and as laid down in Appendix 35, except in cases where the Committee may determine to waive one or more of such conditions or requirements.[2]

Three days' public notice must be given of every application.

A broker, a member of the Stock Exchange, must be authorised to give the Committee full information as to the security and to furnish them with all particulars they may require. (Rule 162.)

The following statement issued by the Committee of the Stock Exchange, London, should be noted.

" For some time past the Committee in granting permission to deal have endeavoured, without laying down any fixed rule, (1) to secure for preference shareholders adequate voting rights, and (2) to obtain undertakings from holding companies and companies which operate largely through subsidiaries that they will issue to their shareholders consolidated balance sheets and profit and loss accounts.

" The Committee are of opinion that it would be to the interests of the public that all those whose business it is to advise and assist in the flotation of new issues should be made aware of the views and intentions of the Committee on these two important subjects.

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[1] The Committee consider each case on its merits.

[2] The Committee have absolute discretion as to granting or refusing a quotation. They keep a perfectly open mind about the matter, and consider each case on its own merits. Where any point arises which is not covered by the matter in this Appendix, the Committee should be approached through a broker for their ruling on the facts of the case.

(1) *Voting Rights of Preference Shareholders.*—The Committee do not consider it possible (or even desirable) to lay down any hard-and-fast rule as to what are adequate voting rights and each case will be dealt with on its merits. As to the *amount* of votes, however, the Committee are of opinion that it should have some relation to the amount of the company's capital which preference shareholders have subscribed.

(2) *Consolidated Balance Sheets.*—Where permission to deal is sought in the shares of a company which is either a holding company or conducts a substantial portion of its business through subsidiary companies, the Committee consider it desirable that a consolidated balance sheet and profit and loss account be made up and circulated to the shareholders. Except in cases where for special reasons such a course is shown to be undesirable, the Committee will, in future, request an undertaking to this effect before granting permission to deal.

"The Committee do not doubt that they will continue to have that support and co-operation which they have always found so valuable in the past."

REGULATIONS FOR OBTAINING PERMISSION TO DEAL IN NEW ISSUES.
(Rule 159.)

APPENDIX 34.

(A) The following documents and particulars should be sent to the Secretary of the Share and Loan Department, when application is made for permission to deal:

1. (*a*) Certificate of Incorporation (in the case of a company registered abroad notarially certified copy or translation of Certificate of Incorporation and of Bye-Laws); (*b*) the certificate entitling the company to commence business (if required), and (*c*) Memorandum and Articles of Association, and copy or draft of Trust Deed (if applicable).

2. Copy of Resolutions authorising issue.

3. Certified copy of agreement relating to issue of shares credited as fully-paid and of any other contracts mentioned in Prospectus.

4. In the case of an issue for cash, copy of Prospectus, Offer for Sale or Circular of Issue, stating all material conditions relating to the flotation of the issue, and (in the case of a new company) to the formation of the company,[1] and, if publicly advertised, copy of principal London newspaper

[1] *Material Conditions.*—These include the following:
The capital, dividend, voting, and other rights conferred by the different classes of shares, and whether or not the shares are fully paid up, and if not, to what extent they are paid up.
The amount of shares and debentures or debenture stock that have been issued (in the case of debentures or debenture stock, giving the rate of interest payable thereon), the dates and prices at which they have been issued, and the amounts of any underwriting or other commissions that have been paid in connection therewith.
The names and addresses of the vendors of any property purchased or acquired by the company or proposed so to be purchased or acquired and the amount payable in cash, shares or debentures to the vendor, or any other consideration for the sale, and where there is more than one separate vendor,

in which the full Prospectus was advertised. In the case of an issue by prospectus, offer for sale, or circular it must be stated whether any shares are under option and if so at what prices, when such options expire and the consideration (if any) given for such options.

The London Broker's name must appear on any Prospectus or Offer for Sale, but this regulation shall not apply to issues by Foreign Governments or Foreign Municipal Authorities

5. Specimen (or advance proof) of Allotment Letter, and, if possible, of Scrip and Definitive Certificates. Allotment Letters must be serially numbered and be printed on good quality paper. Any Renunciation Letter attached to an Allotment Letter for fully-paid Shares must not be current for a period exceeding six weeks and for partly-paid Shares for a period exceeding one month from the date of the final call. When, at the same time as an allotment is made for Shares issued for cash, Shares of the same class are also allotted, credited as fully-paid, to Vendors or others for a consideration other than cash, the period for renunciation may be the same as, but not longer than, that allowed in the case of Shares issued for cash. The form of renunciation on Allotment Letters (and Letters of Rights) must be printed on the back of, or attached to the document in question. Split Allotment Letters and Split Letters of Rights must be certified by an Official of the Company.

NOTE.—In cases where an Issuing House or other body or person has purchased an issue of Stock which is subsequently offered to the Public, a certified copy of the Resolution or other document, evidencing that the Purchaser has received due authority to issue Scrip on account of the Seller, must be supplied. If no such authority has been given, the Scrip must be enfaced "Contractor's Scrip." "Contractor's Scrip" may not be issued in cases of issues made by County Councils, Municipal Corporations, or other Local Authorities of Great Britain and Northern Ireland.

In order to facilitate the certification of transfers it is suggested that the Allotment Letters should contain the distinctive numbers of the shares to which they relate.

6. Letter (*a*) giving distinctive numbers

(1) of shares for which permission to deal is being applied for, distinguishing those to be allotted

(c) for cash;

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or the company is a sub-purchaser, the amount or consideration so payable or granted to each vendor.

The amount or estimated amount of the preliminary expenses.

Full particulars of the value and extent of the interest of every director in the promotion of or the property proposed to be acquired by the company or in any profit made by any vendor or promoter, with a statement of the amount paid or agreed to be made to any director or to his firm or any company in which he is interested either to qualify him or to induce him to become a director or otherwise for services rendered by him.

The names and parties to every material contract and the place where they can be inspected.

The Memorandum and Articles of Association (and Trust Deed if the issue relates to debentures or debenture stock) must be open for inspection at the same time and place.

Whether any shares are under option, and if so, at what prices, when such options expire and the consideration (if any) given for such options.

Particulars as to qualification and remuneration of directors.

(v) to vendors or others for a consideration other than cash or in exchange for cash;

(o) in pursuance of an option;

(2) giving number of shares unissued or for which permission to deal is not applied for, distinguishing those:

(v) allotted to vendor or others for a consideration other than cash or in exchange for cash;

(o) under option;

(r) reserved for future issue;

(3) In the case of a further issue stating whether or not the shares are identical [1] in all respects with existing shares.

7. Approximate date when Definitive Certificates will be ready for issue.

8. List of allottees or present holders—name, address and holding (when required).

9. In all cases other than Government and Municipal Loans, and issues by Statutory Boards, Companies incorporated by Special Act of Parliament and other similar authorities, whether the issue is made by Prospectus or otherwise, particulars of any underwriting or commission must be disclosed and a copy of the underwriting agreement and of sub-underwriting letter, if any, together with (if required) a list containing the names, addresses and descriptions of sub-underwriters and the amount sub-underwritten must be lodged with the Department.

10. An undertaking under the seal of the Company in the following form and to the following effect (printed copies of such undertaking are available in the Share and Loan Department):—

(1) To split Letters of Allotment and if a "Rights" issue to split Letters of Rights, and to have any such "Splits" certified by an official of the Company.

(2) To issue the Definitive Certificates within one month of the date of the lodgment of the transfer and to issue balance Certificates, if required, within the same period.

(3) To notify the Share or Stockholder as soon as a transfer out of his name has been certified by the Company's Officials or notification of Certification has been received from the Share and Loan Department or any Associated Stock Exchange.

(4) To issue all Allotment Letters simultaneously numbered serially and in the event of its being impossible to issue Letters of Regret at the same time to insert in the Press a Notice to that effect, so that the Notice shall appear on the morning after the Letters of Allotment have been posted.

(5) To certify transfers against Allotment Letters.

(6) Where power has been taken in the Articles to issue Share Warrants to Bearer, in the event of the Company deciding to make such an

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[1] A statement that shares are in all respects identical is understood to mean that—

(1) They are of the same nominal value, and that the same amount per share has been called up.

(2) They carry the same rights as to unrestricted transfer, attendance and voting at meetings, and in all other respects.

(3) They are entitled to dividend at the same rate and for the same period, so that at the next ensuing distribution the dividend payable on each share will amount to exactly the same sum.

issue: (i) to issue such Warrants in exchange for Registered Shares within three weeks of the deposit of the Share Certificates; and (ii) to certify transfers against the deposit of Share Warrants to Bearer.

(7) To notify the Share and Loan Department without delay:—

(i) Of any changes in the Directorate by death, resignation or removal;

(ii) Of any extension of time granted for the currency of temporary documents.

(8) To forward to the Share and Loan Department:—

(*a*) Three copies of the Statutory and Annual Report and Accounts as soon as issued (unless such provision is contained in the Articles of Association).

(*b*) Three copies of all Resolutions increasing the Capital and all notices relating to further issues of Capital, call letters or any other circular at the same time as sent to the Shareholders

(*c*) Three copies of all Resolutions passed by the Company in General Meeting other than Resolutions passed at an Ordinary General Meeting for the purpose of adopting the Report and Accounts, declaring dividends, and re-electing Directors and Auditors; and

(*d*) To advise the Share and Loan Department by letter of all dividends recommended or declared immediately the Board Meeting has been held to fix the same.

11. In issues made by County Councils, Municipal Corporations or other Local Authorities (hereinafter all referred to as the "Local Authority") the following regulations must also be complied with.

(1) If Scrip Certificates are to be issued:—

(*a*) The denominations must be stated in the Prospectus or the advertisement published under Appendix 34B.

(*b*) They must be ready for issue within 21 days of allotment.

(*c*) They must bear an autographic signature and there must be supplied to the Committee and (in cases where the official signing is not the Registrar or his officer) to the Registrar of the Stock, specimen signatures of the official or officials of the Borrower, Bank or Issuing House authorised to sign together with the distinctive numbers of the Scrip signed by each official.

(2) The following letter, signed by a duly authorised official of the Borrower, must accompany the application.

To the Committee for General Purposes,
The Stock Exchange.

In connection with the issue of £.....Stock of the .....(Local Authority) I hereby certify that arrangements to the following effect have been duly made:—

If the issue is made by Prospectus. All moneys received by the ..... $\frac{\text{Bank}}{\text{Issuing House}}$ under the Prospectus dated

.....on behalf of the..... (Local Authority) and to which they are entitled will be paid within the following periods to the.....Bank at .....being the ordinary Bankers of the..... (Local Authority) for credit to a special account which has been opened in the name of the Stock :—

Moneys paid prior to allotment—3 days after allotment. All other moneys—24 hours after collection.

If the Stock has been sold outright to a Purchaser. Allotment letters and Scrip Certificates are not being issued by..... (Purchaser) on his (or their) own behalf but by or on behalf of the.....(Local Authority). No such document will be issued until the.....(Purchaser) has paid to the.....(Bank) at..... ..being the ordinary Bankers of the.....(Local Authority) for credit to a Special Banking Account which has been opened in the name of the Stock all sums due from the..... ..(Purchaser) in respect of the amount certified in the document to have been paid by the holder thereof.

The..... $\frac{\text{Bank}}{\text{Issuing House}}$ will supply the Registrar :—

(1) As early as practicable with a complete record of the Scrip Certificates issued by them showing in each case the number and other identification mark of the Certificate, the amount of Stock to which it relates and a description of the manner in which it has been authenticated and

(2) will notify the Registrar immediately payment has been made in full on any Scrip Certificate.

(NOTE.—Where Scrip Certificates are not to be issued the above Clause to be amended so that it applies to allotment letters.)

OR

(In cases where the Bank or Issuing House are also Registrars of the Stock.)

The..... $\frac{\text{Bank}}{\text{Issuing House}}$ are the duly appointed Registrars of the Stock.

The Registrar will not register or inscribe any person as a holder of the Stock except on surrender for cancellation of fully-paid Scrip Certificates for that amount. Provided that if a Scrip Certificate is lost or destroyed the Registrar may not earlier than the first day on which Scrip Certificates can be lodged for registration or inscription register or inscribe a person claiming to be the holder of the lost or destroyed Scrip upon such indemnity being given as may be required.

NOTE.—

(1) If Scrip Certificates are not to be issued amend by substituting "fully-paid allotment letters" for "Scrip Certificates."

(2) This Clause will not be required in cases where the Local Authority themselves carry out the issue of the allotment letters and Scrip Certificates and the Registrar of the Stock is their officer. In such a case it will be sufficient to state the fact.

(B) In the absence of any Prospectus publicly advertised in this Country, or Circular to Shareholders, the Committee will also require an advertisement in two leading London Morning papers giving all material conditions [1] relating to the formation of the Company and to the flotation of the Issue, and headed as under :—

"This notice is not an invitation to the Public to subscribe, but is issued in compliance with the Regulations of the Committee of The Stock Exchange, London, for the purpose of giving information to the Public with regard to the Company. The Directors collectively and individually accept full responsibility for the accuracy of the information given."

The advertisement must be in the appropriate form I, II, III, or IV herein.

A copy of the advertisement must be signed by or (with the consent of the Committee) on behalf of all the Directors and a signed copy together with a properly certified copy of the Resolution of the Board of the Company approving and authorising the advertisement must be lodged with the Share and Loan Department, except that in the case of Foreign Companies the Committee may dispense with a copy of the advertisement so signed on receiving satisfactory evidence that it has been approved and authorised by a Resolution of the Board of the Company.

A copy of each of the Newspapers in which the advertisement appears must be supplied.

I.

In the case of a Company (other than a Company incorporated by Special Act of Parliament) : (*a*) no part of whose Share or Loan Capital is already dealt in or quoted on The Stock Exchange, and (*b*) whose Annual Accounts for at least two years have not been made up and audited, the statement required to be advertised by Appendix 34B must contain the following information :—

(1) How, when and where the Company was incorporated
(2) The principal objects of the Company.
(3) In the case of a Company not incorporated in the United Kingdom, whether it has or has not a place of business in the United Kingdom, and the address of the principal place of business in the United Kingdom (if any).
(4) The names, addresses and descriptions of the Directors.
(5) The name, address and professional qualification of the Auditors.

NOTE.—Qualification means Chartered Accountant, Incorporated Accountant, etc.

(6) The names and addresses of the Bankers, London Brokers and Secretary and situation of Registered Office.
(7) The nominal capital of the Company, the amount issued or agreed to be issued, the amount paid up and, where there is more than one class of share, the rights of each class of share as regards dividend, capital and voting.
(8) Particulars of any loan capital created and the amount issued and outstanding or agreed to be issued, and of the rights conferred

[1] See p. 680.

upon the holders thereof and the obligations undertaken by the Company in respect thereof, and short particulars of any mortgages and charges subsisting on any part of the Company's assets.

(9) In the case of Share or Loan Capital issued or agreed to be issued for cash, the price and terms upon which the same has been or is to be issued and (if not already fully-paid) the dates when instalments are payable with the amount of all calls or instalments in arrear.

(10) The provisions of the Articles of Association, Bye-Laws or other corresponding document with regard to :—

(*a*) Qualification of Directors.
(*b*) Remuneration of Directors or other similar body.
(*c*) Any provisions enabling the Directors to vote remuneration to themselves or any members of their body.
(*d*) Any provisions with regard to the borrowing powers of the Directors and how such borrowing powers can be varied.

(11) Particulars of any preliminary expenses incurred or proposed to be incurred.

(12) A statement setting out clearly the working capital with which the Company started or is to start business, additions (if any) since made and whence derived, and the amount available at the date of the statement for working capital, after providing for all purchase considerations, promotion profits, preliminary expenses, losses, and interest or dividend payments to date, with a statement by the Directors that in their opinion the working capital available is sufficient or, if not, how it is proposed to provide the additional working capital thought by the Directors to be necessary.

(13) Particulars of the Share or Loan Capital that has been issued or is proposed to be issued fully or partly paid up otherwise than in cash and the consideration for which the same has been issued or is proposed to be issued.

(14) The names and addresses of the vendors of any property purchased or acquired by the Company or proposed to be purchased or acquired on capital account and the amount paid or payable in cash, shares or securities to the vendor and, where there is more than one separate vendor or the Company is a sub-purchaser, the amount so paid or payable to each vendor and the amount (if any) payable for goodwill.

(15) The amount of any cash, shares or securities paid or proposed to be paid to any Promoter and the consideration for such payment.

(16) Particulars of any commissions, discounts, brokerages or other special terms granted to any persons in connection with the issue or sale of any of the Share or Loan Capital of the Company.

(17) A statement of the issued Share Capital of any Company acting as Promoter or principal underwriter; the amount paid up thereon; the date of its incorporation; the names of its Directors, Bankers and Auditors; and such other particulars as the Committee think necessary in connection therewith, unless particulars of such Company are contained in the issue of the *Stock Exchange Official Year-Book* current at the date of the publication of this advertisement.

(18) The dates of and parties to all material contracts with a description of the nature of the Contracts not being contracts entered into in the ordinary course of the business carried on or intended to be carried on by the Company.

(19) Particulars of any of the Share or Loan Capital of the Company which is under option, or agreed to be put under option, with the price and term of the option and consideration for which the option was granted.

(20) Full particulars of the nature and extent of the interest (if any) of every Director in the promotion of, or the property proposed to be acquired by, the Company, and, where the interest of such a Director consists of being a partner in a firm, the nature or extent of the interest of the firm.

(21) A statement of all sums paid or agreed to be paid to any Director or to any firm of which he is a member in cash or shares or otherwise by any person either to induce him to become or to qualify him as a Director or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the Company.

(22) A statement certified by the Company's Auditors as to the periods (if any) for which the Company's accounts have been made up and audited and particulars of the Share or Loan Capital subscribed and the cash actually received by the Company in connection therewith, also particulars of all dividends paid and amounts carried forward and carried or proposed to be carried to reserve out of the profits of any such periods as shown in the accounts submitted to the Shareholders or in the Directors' Reports attached to the Balance Sheet under Section 123 (2) of the Companies Act, 1929.

(23) A copy of the last audited Balance Sheet and Profit and Loss Account with a copy of the Auditors' Certificate and any notes or observations in or on the Balance Sheet required to be published by any Act of Parliament relating to the Company.

(24) If the Company has acquired or is proposing to acquire any business, a report by the Accountants named in the advertisement upon the profits of the business proposed to be acquired for each of the three financial years for which accounts have been made up immediately preceding the date of the advertisement.

(25) A reasonable time (not being less than seven days) during which and a place in the City of London at which a copy of the Memorandum and Articles of Association of the Company, any Statute or Orders having statutory effect affecting the Company, copies of all material contracts, Trust Deed (if any) referred to in the advertisement, and copies of all the audited accounts of the Company since its formation with the Auditors' certificates, copies of all other reports and Accounts referred to in the advertisement and all notes or information required to be given by the Companies Act affecting such accounts can be inspected by any member of the Public during usual business hours.

NOTE 1.—In the case of foreign Companies, the documents to be offered for inspection will be the documents corresponding to those above mentioned in the case of British Companies, and where such documents are not in the

English language notarially certified translations thereof must be available for inspection.

NOTE 2.—In cases where it is contended that contracts cannot be offered for inspection without disclosing to trade competitors important information which might be detrimental to the Company's interests, application can be made to the Committee to dispense with the offering of such documents for inspection.

NOTE 3.—In any case where information is not given under any of the above heads Nos. 11, 13, 14, 15, 16, 19, 20 and 21, the advertised particulars must state that no such payments have been made or explain why the information is not given.

II.

In the case of a Company (other than a Company incorporated by Special Act of Parliament): (*a*) no part of whose Share or Loan Capital is already dealt in or quoted on The Stock Exchange; and (*b*) whose annual accounts for at least two years have been made up and audited, the statement required to be advertised by Appendix 34B must contain the following information :—

(1) How, when and where the Company was incorporated.
(2) The principal objects of the Company.
(3) In the case of a Company not incorporated in the United Kingdom, whether it has or has not a place of business in the United Kingdom and the address of the principal place of business in the United Kingdom (if any).
(4) The names, addresses and descriptions of the Directors.
(5) The name, address and professional qualification of the Auditors.

NOTE.—Qualification means Chartered Accountant, Incorporated Accountant, etc.

(6) The names and addresses of the Bankers, London Brokers and Secretary and the situation of the registered office.
(7) The nominal capital of the Company, the amount issued or agreed to be issued, the amount paid up and, where there is more than one class of share, the rights of each class of share as regards dividend, capital and voting.
(8) Particulars of any Loan Capital created and the amount issued and outstanding or agreed to be issued and of the rights conferred upon the holders thereof and the obligations undertaken by the Company in respect thereof and short particulars of any mortgages and charges subsisting upon any part of the Company's assets.
(9) In the case of Share or Loan Capital issued or agreed to be issued for cash within twelve months of the date of the advertisement, the price and terms upon which the same has been or is to be issued, and if not already fully paid the dates when instalments are payable with the amount of all calls or instalments in arrear.
(10) The provisions of the Articles of Association, Bye-Laws or other corresponding document with regard to the borrowing powers of the Directors and how such borrowing powers can be varied.
(11) A statement that in the opinion of the Directors the Company has sufficient working capital for the purposes of its business or, if not, showing how the necessary working capital is to be provided.
(12) Particulars of the Share or Loan Capital that has, within two years preceding the date of the advertisement, been issued or is pro-

posed to be issued fully or partly paid up otherwise than in cash and the consideration for which the same has been issued or is proposed to be issued.

(13) The names and addresses of the vendors of any property purchased or acquired by the Company or proposed to be purchased or acquired on capital account within two years preceding the date of the advertisement and the amount paid or payable in cash, shares or securities to the vendor and, where there is more than one separate vendor or the Company is a sub-purchaser, the amount so paid or payable to each vendor and the amount (if any) payable for goodwill.

(14) Particulars of any commissions, discounts, brokerages or other special terms granted within two years preceding the date of the advertisement to any persons in connection with the issue or sale of any stocks, shares or securities of the Company.

(15) The dates of and parties to all material contracts with a description of the nature of the contract entered into within the two years preceding the date of the advertisement not being contracts entered into in the ordinary course of the business carried on or intended to be carried on by the Company.

(16) Particulars of any of the Share or Loan Capital of the Company which is under option, or agreed to be put under option, with the price and term of the option and consideration for which the option was granted.

(17) Either a copy or with the approval of the Committee a summary of the last audited Balance Sheet and Profit and Loss Account with a copy of the Auditors' certificate and any notes or observations in or on the Balance Sheet required to be published by any Act of Parliament relating to the Company.

(18) A statement certified by the Company's Auditors giving particulars of the Share or Loan Capital subscribed and the cash actually received by the Company in connection therewith within twelve months preceding the date of the advertisement also particulars of all dividends paid and amounts carried forward or carried, or proposed to be carried, to reserve out of the profits as shown in the accounts submitted to the shareholders or in the Directors' Reports attached to the Balance Sheet under Section 123 (2) of the Companies Act, 1929, in respect of each of the two financial years preceding the advertisement for which accounts have been made up and audited.

(19) A reasonable time (not being less than seven days) during which, and a place in the City of London at which a copy of the Memorandum and Articles of Association of the Company, any Statute or Order having statutory effect affecting the Company, copies of all material contracts, Trust Deed (if any) referred to in the advertisement, and copies of the audited accounts of the Company for each of the two financial years preceding the date of the advertisement for which accounts have been made up and audited with the Auditors' certificates, copies of all other Reports and Accounts referred to in the advertisement, and all notes or information required to be given by the Companies Act affecting such accounts can be inspected by any member of the public during usual business hours.

NOTE 1.—In the case of foreign Companies the documents to be offered for inspection will be the documents corresponding to those above mentioned in the case of British Companies, and where such documents are not in the English language notarially certified translations thereof must be available for inspection.

NOTE 2.—In cases where it is contended that contracts cannot be offered for inspection without disclosing to trade competitors important information which might be detrimental to the Company's interests, application can be made to the Committee to dispense with the offering of such documents for inspection.

NOTE 3.—In any case where information is not given under any of the above heads Nos. 12, 13, 14 and 16, the advertised particulars must state that no such payments have been made or explain why the information is not given.

III.

In the case of a Company (other than a Company incorporated by Special Act of Parliament) where Leave to Deal in or a quotation for any of its Share or Loan Capital has already been granted, the statement required to be advertised by Appendix 34B must contain the following information .—

(1) Full particulars of the further Share or Loan Capital in which Leave to Deal is to be applied for, and in particular :—

(*a*) In the case of Stocks or Shares the rights conferred as regards income, capital and voting. In the case of Debentures, Debenture Stock, or Securities, the rights conferred as regards income and capital, and full information as to the amount and application of any sinking fund, any right of the Company to redeem before maturity, any rights of conversion, or other similar rights, and in either case the limits of the authorised issue.

(*b*) The price at which and terms upon which such Share or Loan Capital has been issued or agreed to be issued and whether the same has or has not been paid up in full. If not paid in full, particulars of all payments still to be made with due dates of payment. Where any such Share or Loan Capital has been or is to be issued in whole or in part for a consideration other than cash, full particulars of the consideration received or receivable by the Company for the issue thereof must be given.

(*c*) Particulars of any commissions, discounts, brokerages, or other special terms granted to any parties in connection with the issue or sale of any such Stocks, Shares or Securities.

(*d*) The dates of and parties to all material contracts affecting the issue of such Share or Loan Capital with a description of the nature of the contract.

(*e*) A reasonable time (not being less than seven days) during which and a place in the City of London at which a copy of the Memorandum and Articles of Association of the Company, any Statute or Order having statutory effect affecting the Company, copies of all the contracts and Trust Deed (if any) referred to in the advertisement can be inspected by any member of the public during usual business hours.

(2) Particulars of any of the Share or Loan Capital of the Company which is under option or agreed to be put under option with the price and term of option and consideration for which the same was granted.
(3) Names of the Directors of the Company.
(4) Name, address and professional qualification of the Auditors of the Company.

NOTE.—Qualification means Chartered Accountant, Incorporated Accountant, etc.

(5) Names of London Brokers.
(6) A statement that further particulars of the Company are contained in the *Stock Exchange Official Year-Book* current at the date of the publication of this advertisement.
(7) Such other information as in the circumstances of any particular case the Committee think it advisable to require.

IV.

In the case of Government and Municipal loans and issues by Statutory Boards, Companies incorporated by Special Act of Parliament and other similar Authorities, the statement required to be advertised by Appendix 34B must contain the following information :—

(1) Full particulars of the Share or Loan Capital in which Leave to Deal is to be applied for and in particular :—
  (*a*) The rights conferred as regards income and capital, with full information as to the amount and application of any sinking fund, any right of the Authority to redeem before maturity, any rights of conversion, or other similar rights and the security upon which any loan is charged.
  (*b*) The price at which and the terms upon which any such Share or Loan Capital has been issued or agreed to be issued, and whether the same has or has not been paid up in full. If not paid in full, particulars of all payments still to be made with due dates of payment must be given.
  (*c*) The dates of and parties to all material contracts affecting the issue of such Share or Loan Capital with a description of the nature of the contract.
  (*d*) A reasonable time (not being less than seven days) during which and a place in the City of London at which a copy of the Statutes, Orders, or other authorities under which the Share or Loan Capital has been created and issued, with copies of all the material contracts, Trust Deed (if any) above referred to and, where any of the above-mentioned documents are not in the English language, notarially certified translations thereof, can be inspected by any member of the public during usual business hours.
(2) Particulars of any of the Share or Loan Capital which is under option or agreed to be put under option with the price and terms of option and consideration for which the same was granted.
(3) Names of Directors (if any) and Auditors (if any), stating qualification.

NOTE.—Qualification means Chartered Accountant, Incorporated Accountant, etc.

(4) Name and address of Secretary (if any) and situation of Chief Office (if any).

(5) Name of Bankers and London Brokers.

(C) Where a broker is instructed to sell on behalf of a company a further issue of stock or shares forming a part of an amount previously created (permission to deal, if necessary, having been given for the original issue) he may obtain permission to deal on presentation of a letter from the company authorising him to make the sale, or he may sell the stock or shares previous to permission being given, provided he makes the sale subject to the permission being granted.

(D) In the case of securities of a purely local nature within Great Britain or Northern Ireland or of a Dominion, Colonial or Foreign issue of which no former security has been quoted previously on a Dominion, Colonial or Foreign Exchange, a broker may make a specific bargain with the authority of the Sub-Committee on New Issues and Official Quotations, but bargains shall not be recorded in the Supplementary List until permission to deal in the issue has been granted by the Committee.

(E) In the case of securities quoted on a Dominion, Colonial or Foreign Exchange or in the case of new issues where a previous issue or issues of the same country, corporation or company have been quoted on a Dominion, Colonial or Foreign Exchange, a member may make a bargain, provided that a jobber may not make such bargain out of a market in which he acts as a jobber.

Such bargains shall not be recorded in the Supplementary List until permission to deal in the issue has been granted by the Committee.

Official Quotations.

(A) *Conditions Precedent to an Application for Official Quotation.* (Rule 162.)

Appendix 35.

1. That the Memorandum, Articles of Association, Bye-Laws or Charter of Incorporation, and Trust Deed (in the case of an Application for Debentures or Debenture Stock so secured), or other authority under which the Share or Loan Capital has been created and issued shall be in a form approved by the Committee.

2. That the Stock Certificate, Share Certificate, Debenture, Bond or other document representing the Security shall be in a form approved by the Committee.

Note.—The relevant documents referred to in 1 and 2 above must be submitted (in duplicate) to the Secretary of the Share and Loan Department for approval before application for Official Quotation is formally made.

3. That Permission to Deal in the Security shall have been given or that (prior to August, 1914) a Special Settling Day in the Security had been fixed. In the case of Securities dealt in prior to August, 1914, and for which no

Special Settling Day had been fixed, or Permission to Deal granted, enquiry should first be made of the Secretary of the Share and Loan Department to ascertain the requirements under this heading.

4. That the Definitive Stock or Share Certificate, Debenture Bond or other Security shall have been or shall be ready to be delivered.

5. That at least the first Annual Report and Accounts shall have been issued. (This condition does not apply to Government and Municipal Loans and the like.)

6. That there is sufficient public interest in the Security, and that it is of sufficient magnitude and importance.

(B) *Articles of Association.*

Articles of Association must contain provisions to the following effect :—

1. That Directors must hold a share qualification which must not be merely nominal.

2. That the borrowing powers of the Board are limited to a reasonable amount;

3. That the non-forfeiture of dividends is secured;

4. That the common form of transfer shall be used, and that there shall not be any restriction on the transfer of fully-paid shares.

5. That all forms of Certificate for Shares, Stock, Debenture Stock, or representing any other form of Security (other than Letters of Allotment or Scrip Certificates) shall be issued under the Common Seal of the Company, and shall bear the autographic signatures of one or more Directors and the Secretary.

NOTE.—This requirement may be relaxed in cases where the Directors being so authorised by the Articles have resolved to adopt some method of mechanical signature which is controlled by the Auditors or Bankers of the Company.

6. That fully-paid shares shall be free from all lien;

7. That a director shall not vote on any contract in which he is interested, and if he do so vote, his vote shall not be counted;

8. That the directors shall have power at any time and from time to time to appoint any other person as a director either to fill a casual vacancy or as an addition to the Board, but so that the total number of directors shall not at any time exceed the maximum number authorised by the Articles of Association; but that any director so appointed shall hold office only until the next following Ordinary General Meeting of the company, and shall then be eligible for re-election;

9. That the company in general meeting shall have power by extraordinary resolution to remove any director before the expiration of his period of office;

10. That a printed copy of the Report, accompanied by the Balance Sheet (including every document required by law to be annexed thereto) and Profit and Loss Account or Income and Expenditure Account, shall, at least seven days previous to the general meeting, be delivered or sent by post to the registered address of every member, and that three copies of each of these

documents shall at the same time be forwarded to the Secretary of the Share and Loan Department, the Stock Exchange, London;

11. That any amount paid up in advance of calls on any share shall carry interest only and shall entitle the holder of the share to participate in respect thereof in a dividend subsequently declared.

12. That where a company takes power to refuse to register more than three persons as joint holders of a share, such power shall not apply to the Executors or Trustees of a deceased holder;

13. That the charge for a new share certificate issued to replace one that has been worn out, lost, or destroyed shall not exceed one shilling.

NOTE.—The above requirements are not exhaustive. The Committee will take exception to any provisions contained in the Articles of Association which may, in any way, restrict free dealings in the Shares or which may, in the Committee's opinion, be unreasonable in the case of a Public Company.

(C) *Trust Deeds and Debentures not Secured by Trust Deed.*

Trust Deeds and Debentures not secured by a Trust Deed must contain provisions to the following effect :—

1. Where provision is made that the Security shall be repayable at a premium either at a fixed date or at any time upon notice having been given, it must be provided that, should the Company go into voluntary liquidation, the Security shall not be repayable at less than the premium then current.

2. That any new Trustee appointed under any statutory or other power must prior to appointment be approved by a Resolution of the Debenture (or Debenture Stock) Holders by Extraordinary Resolution. A Corporation or Company may be appointed a Trustee. Except where the Trustee or one of the Trustees is a Body Corporate, the Trust Deed shall provide that there shall always be at least two Trustees.

3. That a meeting of Debenture (or Debenture Stock) Holders must be called on a requisition in writing signed by holders of at least one-tenth of the nominal amount of the Debenture (or Debenture Stock) for the time being outstanding.

4. The clause defining an Extraordinary Resolution must provide :—

(i) That the quorum for passing such resolution shall be the holders of a clear majority in value of the whole of the outstanding Debentures (or Debenture Stock) present in person or by proxy. If such a quorum be not obtained, provision may be made for the adjournment of the meeting for not less than 14 days, and in that event that notice of the adjourned meeting shall be sent to every Debenture (or Debenture Stock) Holder, and that such notice shall state that if a quorum as above defined shall not be present at the adjourned meeting, the Debenture (or Debenture Stock) Holders then present will form a quorum.

(ii) That the necessary majority for passing an Extraordinary Resolution shall be not less than three-fourths of the persons voting thereat on a show of hands and if a poll is demanded then not less than three-fourths of the votes given on such a poll.

(iii) That on a poll, each holder of Debentures or Debenture Stock shall be entitled to at least one vote in respect of every £10 of Debentures or Debenture Stock held by him, except that where the lowest denomination in which such Securities can be transferred is more than £10, such denomination may be substituted for the £10 abqve referred to.

5. That on any payment off of part of the amount due on the Security, unless a new document is issued, a note of such payment shall be enfaced (not endorsed) on the document.

6. That in the case of a Registered Security the common form transfer shall be used and the fee for a new registered Debenture, or Debenture Stock Certificate to replace one that has been worn out, lost or destroyed shall not exceed one shilling.

7. In the case of Securities which are entitled "Mortgage" it is essential that the same should be secured to a substantial extent by a direct specific mortgage on freehold or long leasehold estate or other immovable property or on ships. In the case of Debentures or Debenture Stocks or other issues which will constitute an unsecured liability, it is essential that the same should be entitled "unsecured."

NOTE.—The above requirements are not exhaustive. The Committee will take exception to any provision contained in the Trust Deed or Debentures which may, in any way, restrict free dealings or which may, in the Committee's opinion, be unreasonable in the case of a security to be included in the Official List.

(D) *Definitive Documents.*

I.—Share and Stock Certificates and Debentures.

1. All Certificates or Debentures must state on their face the authority under which the Company is constituted and in the case of Share Certificates the amount of Authorised Capital of the Company and the nominal amount and denomination of each class if more than one class of shares.

2. All Registered Certificates or Debentures must bear a footnote that no transfer of any portion of the holding can be registered without the production of the Certificate.

3. All Certificates and Debentures must be under seal and bear the requisite autographic signatures.

4. All Preference Share (or Stock) Certificates must, in addition, bear (preferably on their face) a statement of the conditions both as to Capital and dividends and redemption (if any) under which the Security is issued.

5. Debentures and Debenture Stock Certificates must state, in addition, on their face, the dates when the interest is payable and on their back all conditions of the issue, as to redemption, conversion and transfer.

II. Bonds

1. Bonds must specify the amount and conditions of the loan and the powers under which it has been contracted.

2. Bonds of English Companies must be under the Common Seal and bear the requisite autographic signatures.

3. When an issue of Dominion, Colonial or Foreign Bonds is made wholly or partly in London, those issued in London must bear the autographic counter-signature of the London Agents or Contractors.

4. Bonds quoted abroad must bear the autographic signature of some properly authorised person and evidence of his authority must also be furnished.

(E)

On receipt of intimation that the relevant documents submitted to the Secretary of the Share and Loan Department and referred to in A. 1 and 2 are in order, and on written request to the Secretary of the Share and Loan Department giving particulars of the Security for which Official Quotation is desired, an application form will be provided which must be signed, and a note of the further requirements of the Committee will then be supplied by the Share and Loan Department. These further requirements will include :—

1. Production of the Certificate of Incorporation and Certificate that the Company is entitled to commence business (unless previously exhibited).

2. A Certified Copy of the Memorandum and Articles of Association, or Act of Parliament or any other relative documents affecting the constitution of the Company, and, in the case of Debenture Stock or Debentures, a Certified Copy of the Trust Deed (if any) securing the same must be supplied and the Official Certificate showing that the requirements of the Companies Act with regard to the registration of charges have been complied with must be produced, unless the same is reprinted on the Trust Deed.

NOTE.—In the case of Foreign Companies, notarially certified copies of the corresponding documents to those above referred to will be required, and in the case of issues of Debentures or Debenture Stock of Foreign Companies, evidence must be furnished as to the requirements of the foreign law with regard to the registration of mortgages and charges and compliance therewith.

3. Certified Copies of all Prospectuses, Offers for Sale, Advertisements under Appendix 34B, Circulars issued, or Resolutions passed.

4. Certified Copies of the definitive document and temporary documents.

5. Certified Copies of all material contracts, agreements, concessions and other similar documents.

6. Certified Copy of the last published Report and Accounts.

7. A short written history of the Company setting forth its origin, progress, dividends, particulars as to the various issues of Shares, etc.; the number of transfers registered during the preceding twelve months, and the number of Shares (or amount of Stock) represented by such transfers.

8. A Statutory Declaration by the Chairman and Secretary to the effect that :—

(*a*) All the legal requirements have been complied with, and all documents required to be filed have been duly filed with the Registrar of Companies. In the case of an English Company charging property abroad, that the necessary mortgage has been properly legalised and registered in the country where the property is situated.

(*b*) The number (or amount of Stock) of Shares, Debentures or Bonds applied for by the Public, the number (or amount of Stock) of Shares, Debentures or Bonds unconditionally allotted to the Public and the amount per Share (or £—%) paid thereon in cash, and the number (or amount of Stock) of Shares, Debentures or Bonds allotted for a consideration other than cash. Where any calls or instalments are in arrear particulars must be given.

(*c*) That the definitive documents have been or are ready to be delivered, that the purchase of the property has been completed and the purchase money paid; that the whole of the Shares, Debentures (or Stock) are (or is) in all respects identical.* (If applicable) That a Trust Deed has been executed and completed and the effect thereof and the nature of the charge created thereby.

(*d*) In the case of an issue of Stock, Registered Debentures, or Bonds, the total number of allottees and the largest amount applied for by and allotted to any one applicant

* A statement that Shares are in all respects identical is understood to mean that :—

They are of the same nominal value, and that the same amount per Share has been called up.

They carry the same rights as to unrestricted transfer, attendance and voting at meetings, and in all other respects.

They are entitled to dividend at the same rate and for the same period, so that at the next ensuing distribution the dividend payable on each Share will amount to exactly the same sum.

A statement that Stock is in all respects identical is understood to mean that :—

All the Stock is entitled to the same rights as to unrestricted transfer, and in all other respects.

All the Stock is entitled to dividend at the same rate and for the same period, so that at the next ensuing distribution the dividend payable on each £100 Stock will amount to exactly the same sum.

9. A Certified Copy of the Register of Share, Stock, or Debenture Holders (names, addresses and holdings) with a statement of the total number of Share, Stock, or Debenture Holders and the ten largest holdings of each class. In cases where there are a very large number of Share, Stock, or Debenture Holders, the Committee may not require a Certified Copy of the Register.

10. An undertaking under the seal of the Company forthwith upon any alteration being made in the Memorandum or Articles of Association, Act of Parliament or any other document affecting the constitution of the Company, or in the form of any Trust Deed securing Debentures or Debenture Stock or in any Debentures, to send to the Secretary of the Share and Loan Department full information of the effect of such alteration and certified copies of all material documents relating thereto and contemporaneously with the issue of any further Shares or Loan Capital of the Company, whether the same is for public subscription or not, to advise the Secretary of the Share and Loan Department thereof and to furnish him with all such particulars relating thereto as the Committee may require.

11. A letter nominating a Broker, a Member of the Stock Exchange, to represent the interests of the Company before the Committee.

12. In the case of an issue of a Government, Municipal, Dominion, Colonial and Foreign Loan :—

(*a*) Authority of the Issuing House to receive subscriptions, and

(*b*) In addition, in the case of Dominion, Colonial and Foreign Loans evidence that the Bonds of the Loan bear the autographic signature of some properly authorised person, whose specimen signature and authorisation must be supplied for retention by the Department.

13. In the case of a reconstructed Company, a short history of the old and new Company, and Certified Copy of the Scheme of Reconstruction, and evidence that any necessary Orders of Court have been obtained.

14. In the case of Dominion, Colonial and Foreign Securities quoted abroad, official evidence of quotation in the Country of their origin or where the issue has been made.

15. Documents not in the English language must be accompanied by notarially certified translations.

APPENDIX V

FORMS

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Share Certificates, Share Warrants, Debentures and similar Documents are frequently elaborately engraved in order to minimise the risk of forgery, alteration, etc. In the examples which follow, "straight" printing is followed; the actual style is a matter for individual taste. Small companies do not usually go to the expense of specially printed certificates, but buy forms which can be filled in by hand. The soundest and strongest company may have the simplest share certificate, whereas the concern which exists only for the object of raising capital from those unversed in such matters usually indulges in fascinating works of art!

It has not been thought necessary to reproduce *all* forms likely to be used, since the majority can be evolved by adapting the wording on the representative forms shown.

1. Share Register—Loose Leaf.
2. Share Register suitable for small Company.
3. Share Warrant Register.
4. Share Certificate.
5. Debenture Stock Certificate.
6. Mortgage Debenture Stock Certificate.

**Forms approved by the Institute of Bankers:*

*7. Application for Bonds or Stock.
*8. Application for Shares where no receipt for the Application Money is issued.
*9. Application for Shares with receipt form attached.
*10. Allotment Letter with one receipt.

*11. Allotment Letter with receipts for amount due on allotment and for payment in full.
*12. Call Letter.
*13. Offer of New Shares to accompany circular of the Company. Also back of Form No. 13.
14. Application Form for New Issue of Shares.
15. Letter of Regret.
16. Declaration of Loss of Certificate.
17. Indemnity to Company in case of loss of Certificate.
18. Indemnity to Company in case of loss of Dividend Warrant.
19. Fractional Certificate. Also back of Form No. 19.
20. Share Warrant.
21. Application for Share Warrants. Also back of Form No. 21.
22. Share Warrant Application Receipt Form.
23. Receipt for Share Warrants.
24. Receipt for Share Warrants surrendered to be cancelled in exchange for Share Certificates.
25 Share Warrants surrendered to be cancelled. Also back of Form No. 25.
26. Receipt for Share Warrants deposited in exchange for other Share Warrants.
27. Receipt for Share Warrants deposited prior to Meetings.
28. Request to split Share Warrants to Bearer. Also back of Form No. 28.
29. Notice of Deposit of Deeds of Transfer for Registration or Certification.
30. Notice of Application for Share Warrants to Bearer.
31. Register of Share Warrants issued in exchange for Shares.
32. Register of Share Warrants exchanged for other Warrants.
33. Register of Share Warrants surrendered for Registration.
34. Notice avoiding Allotment of Shares in contravention of s. 86 of the Companies (Consolidation) Act, 1908.
35. Dividend Advice to Bankers.
36. Request for payment of Dividends direct to Bankers.
37. Form of Application for direct payment of Dividends to Bankers.
38. Proxy Forms.
39. Request by the Executors or Administrators that Shares standing in the name of a deceased Shareholder may be transferred to them.
40. Certificate of Identity.
41. Register of Sealed Documents.
42. Register of Probates, Letters of Administration, etc.
43. Stamp for use on Documents exhibited.

FORM No. 1.

SHARE REGISTER—LOOSE LEAF.

ORDINARY SHARES.

Name ..... (Dividend Instructions).....

Address ....

Amount paid or credited as paid on each share.....

Date of entry as a member .....

Occupation ..... Date of ceasing to be a member..

Shares Acquired.					Shares Transferred.					Balance of Shares Held.
Date.	Trans. No.	No. of Shares.	Distinctive Numbers.		Date.	Trans. No.	No of Shares.	Distinctive Numbers.		
			From	To				From	To	

NOTE.—The ruling of "Shares Acquired," "Shares Transferred" and "Balance of Shares Held" is continued on the reverse side of the Sheet. Where shares have been converted into stock, the amount of stock held must be shown instead of the share particulars (S. 95, s-s. (1)).

SHARE REGISTER [SUITABLE FOR SMALL COMPANY]

Name ..... Date of Entry on the Register .. ..
Address ..... Date of Ceasing to be a Member ....
Occupation ....

Shares Acquired.							Cash.							Shares Transferred.							Balance.
Date of Entry.	No. of Allotment or Transfer.	Folio.	Transferor.	No. of Shares.	Distinctive Numbers.		Date Due.	No. of Call Letter.	Amount per Share.	Amount.			Date Paid.	C.B. Folio	Amount Paid.				Date of Registration.	No. of Transfer.	Folio.	Transferee.	No. of Shares.	Distinctive Numbers.		
					From	To				£	s.	d.			£	s.	d.						From	To	

Note.—For Form of Index where number of members exceeds fifty, see p. 126. See also note to Form 1 *re* stock.

FORM NO. 3.

SHARE WARRANT REGISTER

Date of Application.	No. of Warrant.	To Whom Issued.	Particulars of Shares, etc. Exchanged.								Warrants Surrendered.				
			Shares Exchanged.					Stock Exchanged.			Nos. of Warrants.		By Whom Surrendered.	Folio of Ledger	Date Surrendered
			Folio of Share Register.	No. of Shares.	Distinctive Numbers.		Folio of Stock Ledger.	Amount.			From	To			
					From	To		£	s.	d					

FORM No. 4.

A A 2

THE PRACTICE COMPANY, LIMITED.
MOORGATE, LONDON, E.C. 2.

SHARE CERTIFICATE.

No. .... . .

Name . ...

Address ... .

....

....

No. of Shares..... . .. .

Nos. From ... .

To ....

Fol.	Initials.

Posted

Date .....

Signed by..... ....

(*Perforation*)

THE PRACTICE COMPANY, LIMITED.
MOORGATE, LONDON, E.C. 2.

No. .....
.... . 19 . . .

Received from
THE PRACTICE
COMPANY, LIMITED,

Certificate No. .. ...
for ..... Shares,
numbered ..... .
to .....

Signature..... ...
†

(*Perforation*)

SHARE CERTIFICATE.

No. . ... No. of Shares ....
Class of Shares ....

THE PRACTICE COMPANY, LIMITED.

(*Incorporated under the Companies Act*, 1929.)
Registered Office : MOORGATE, LONDON, E.C. 2.

CAPITAL - - - £ .

Divided into Shares of £ each, and Shares of £ each

This is to Certify that..... .... of .... is registered as the holder of ..... Shares of ..... each, numbered as per the margin,* in the PRACTICE COMPANY, LIMITED, pursuant to the provisions of the Memorandum and Articles of Association of the said Company, and upon each of the said shares the sum of ..... has been paid up

Distinctive Nos.			
From	To	From	To
No.	No	No	No.

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

. . . . *Director.*

.. .. *Secretary.*

NOTE.—No Transfer of either the whole or any part of the Shares comprised on this Certificate will be Registered by the Company until this Certificate has been delivered at the Company's Offices.

* The distinctive numbers may be placed on the back of the certificate, in which case for "margin" read "endorsement."
† The use of this receipt is optional. Alternatively, a separate form of receipt is enclosed.

FORM NO. 6.

THE PRACTICE COMPANY, LIMITED.

MOORGATE, LONDON, E.C. 2.

DEBENTURE STOCK.

No. .....

Name ... .

Address ....
....
....

Amount of Stock ....

Fol.	Initial.

Posted

Date .....

Signed by ....

(Perforation)

THE PRACTICE COMPANY, LIMITED.

MOORGATE, LONDON, E.C. 2.

No. .. ..
...19.....

Received from THE PRACTICE COMPANY, LIMITED,

Certificate No. .....
for ..... Pounds
of £..... Debenture
Stock entered in the
name of ....

Signature.....

(Perforation)

No..... £ ....

Debenture Stock Certificate.

THE PRACTICE COMPANY, LIMITED.

(Incorporated under the Companies Act, 1929.)

Registered Office: MOORGATE, LONDON, E.C. 2.

NOMINAL CAPITAL - - - £ .

Divided into Shares of £ each

ISSUED CAPITAL: Shares of £ each.

ISSUE OF £ DEBENTURE STOCK.

Made pursuant to the Company's Articles of Association and to Resolutions of the Company dated the .... day of ....., 19....., and bearing Interest at the rate of ..... per centum per annum, payable .... and . . ..

This is to Certify that..... .... of .... is the Registered Holder of ... . Pounds of the above Stock issued subject to and with the benefit of the conditions stated on the back of this Certificate.

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

L.S.

.....*Director.*

.....*Secretary.*

NOTE.—No Transfer of this Stock, whether of the whole or a part, will be Registered by the Company until this Certificate has been delivered at the Company's Offices.

FORM No. 6.

THE PRACTICE COMPANY, LIMITED.
MOORGATE, LONDON, E.C. 2.

MORTGAGE DEBENTURE STOCK.

No. .....

Name ....

Address ... .

Amount of Stock .. . .

	Fol.	Initials.
Posted		

Date ....

Signed by ... .

(*Perforation*)

THE PRACTICE COMPANY, LIMITED.
MOORGATE, LONDON, E.C. 2.

No. .....

.....19. ....

Received from THE PRACTICE COMPANY LIMITED,

Certificate No. ..... for ..... Pounds of First Mortgage Debenture Stock entered in the name of ....

Signature..... . ..

(*Perforation*)

No. ..... £.....

Mortgage Debenture Stock Certificate.

THE PRACTICE COMPANY, LIMITED.

(*Incorporated under the Companies Act*, 1929.)
Registered Office: MOORGATE, LONDON, E.C. 2.

NOMINAL CAPITAL - - - - £ .
Divided into Shares of £ each.

ISSUED CAPITAL: Shares of £ each paid.

ISSUE OF £..... FIRST MORTGAGE DEBENTURE STOCK.

Made pursuant to the Company's Articles of Association and to Resolution of the Company, dated the .... day of ..... 19....., and bearing Interest at the rate of .... per centum per annum payable .... and ..... .

This is to Certify that .. .. of .... is the Registered Holder of ..... Pounds of the above Stock, which Stock is constituted and secured by a Trust Deed dated the ..... day of ..... 19... ., and made between the Company of the first part, and ... . as Trustees of the other part, and issued subject to and with the benefit of the conditions stated in that Deed.

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

L.S.

.... *Director.*

.. .. *Secretary.*

NOTE.—No Transfer of this Stock, whether of the whole or a part, will be Registered by the Company until this Certificate has been delivered at the Company's Offices.

NOTE.—On the back of the Certificate there should be a copy of the Registrar of Companies' Receipt to the effect that the Trust Deed has been duly registered in accordance with S. 80 of the Companies' Act, 1929 (S. 83).

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INSTITUTE OF BANKERS.

11, BIRCHIN LANE, LONDON, E.C. 3.

REPORT

Of the Committee appointed to draw up standard APPLICATION, ALLOTMENT and CALL FORMS in connection with Capital and Loan Issues by Joint Stock Companies and other bodies.

Adopted by the Council of the Institute, January 24th, 1912.

The Committee, after careful consideration, beg to submit the following forms for standard use in the circumstances indicated :

(A) Application for Bonds or Stock without receipt for application money.
(B) Application for Shares where no receipt for the application money is issued.
(C) Application for Shares with receipt form attached.
(D) Allotment Letter with receipt form for amount due on allotment only.
(E) Allotment Letter with receipt forms for amount due on allotment or payment in full.
(F) Call Letter.
(G) Offer of New Shares, to accompany the circular issued by the Company.

In submitting these forms the Committee wish to disclaim any intention to stereotype such portions of the forms as are governed by the requirements of the Companies Acts or other legal obligations of Companies and other bodies appealing for capital.

The Committee have given most careful attention to the terms of the forms herewith submitted; they believe them to be such as are sanctioned by use and experience, but they realise that in matters involving legal liability, Directors and Agents may prefer to be guided by their own legal advisers. They further recognise that no form can be drawn up so as to cover every eventuality, and they have therefore in several particulars confined themselves to outlines.

In many points of detail, however, the Committee think that complete uniformity is feasible and would result in saving of time and expense both to bankers and the issuers, and, from the point of view of the public, would greatly simplify forms which have often been ill-arranged and overcrowded with instructions.

They therefore draw attention particularly to the following points, which they consider to be of material importance.

1. SIZE, TYPE AND DISPLAY.

The size of 13 inches by 8½ inches is regarded as the most convenient, to be exactly adhered to, except in the case of the Application Forms without Receipt, which are 8½ inches by 8½ inches (*see also* Recommendation No. 3).

The Committee have devoted much attention to the type and "display" of the forms, which are designed to give special prominence to those points in regard to which error is in their opinion most frequent. They have grouped together and so far as possible condensed the instructions as to remittances and have avoided as objectionable instructions printed vertically along the margin.

They wish to emphasise the fact that it will facilitate the work of Bankers if the size, type and "display" are *exactly*, and not approximately, such as in these specimens.

2. The Use of "Window" Envelopes.

The Committee have made careful and widespread inquiries of the users of "window" envelopes and in other directions, and have arrived at the conclusion that, notwithstanding the rather undecided attitude of the Post Office, their use is not likely to entail delay in the post, provided they are made of a reasonably good material.

They are of opinion that for the purposes of the forms under discussion "window" envelopes would be productive of much saving of time and error; they have therefore adapted the standard forms to their use and submit specimen envelopes. At the same time they wish specially to point out that the adoption of the standard forms does not necessitate the use of these envelopes.

3. Receipts.

The Committee are of opinion that in the method and form of giving receipts there is room for improvement affording a considerable saving of time and expense.

In particular they think there is no necessity for sending a receipt in return for applications for shares (especially where the use of application forms cut from newspaper advertisements is allowed), provided the Company goes to allotment within a reasonable period after the issue of the Prospectus. In the case of Government and other public loans, such receipts are very seldom sent, and the experience of the Committee is that complaints are seldom or never received. It is hardly necessary to point out that the saving in time to Bankers and in receipt stamps and postage to Companies, if this suggestion were adopted, would be considerable.

The receipts have in all cases been designed so as to involve the smallest amount of labour in completion, and where the receipt is not detachable, the Committee have obviated the necessity of repeating the amount by a reference to the body of the form (*see* D, E and F). Where the receipt is detachable it has been considered sufficient to mention the amount in figures only. As the receipt in every case can easily be identified with the document to which it refers, fraudulent alteration is impossible.

The Committee have further arranged the receipt forms so that the spaces to be filled in, *i.e.* date, signature and, in some cases, the amount, shall be close together thereby facilitating the work of bank officials to a considerable degree.

The Committee wish to draw special attention to the necessity for having all dockets of a size which can be conveniently handled (*see* Forms D, E and F). They recommend that in every case the docket should be filled up by the Company before issue.

4. Remittances.

The Committee strongly recommend that instructions as to the form of remittance should be in the exact words they have formulated and be given equal prominence to that afforded by the standard forms. They would point out that the best protection to the remitter is afforded by the use of a "bearer" cheque crossed "not negotiable," and that the labour of endorsing thousands of cheques is thereby saved.

They further recommend that with each request for a remittance a printed envelope addressed to the Bankers should be sent to the Shareholder by the Company. Where several allotments or calls are due about the same time, a distinguishing mark or the name of the Company on the envelopes would enable the Bankers to separate these remittances from the rest of the correspondence and also to sort the different Companies' letters before they are opened.

5. Issue of New Shares.

In Form G the Committee have adopted the plan of an offer of new shares in preference to that of an allotment. Companies preferring the latter method may, however, adopt Form G without sacrificing its essential characteristics.

Finally, the Committee would take this opportunity of reminding Directors and Secretaries of Companies that, owing to the very heavy work already thrown upon Bankers, it would be a great convenience if as few calls as possible were made payable on the first and last days of each month, on Saturdays and Stock Exchange settlement days, or during the first or last week of each half-year. Bankers will be glad to be consulted before details such as these are settled.

FORM No. 7.

A Application for Bonds or Stock. Size 8¼ in. by 8¼ in.

THE IMPERIAL RAILWAY.

ISSUE OF £ 5 % STERLING BONDS.

No. . ...

FORM OF APPLICATION.

To the BANK OF LONDON, LIMITED,
83, LOMBARD STREET, LONDON, E.C.
(*As Agents for the Imperial Railway.*)

GENTLEMEN,

Having paid to you the sum of £.... .. .. being the deposit (at the rate of .... per cent.) payable on application for £ . ..... of the above-mentioned 5% Sterling Bonds, I/we hereby request that you will allot to me/us that amount of Bonds, and I/we hereby agree to accept the same or any less amount that you may allot to me/us, and to make the remaining payments thereon in cash according to the terms and conditions of the Prospectus dated .

To be written distinctly

Name (in full) ....

Address (in full)... ....

....

Profession or Business ... .

(A lady should state whether she is a Spinster, Wife or Widow.

(*Date*)..... . ...19..... (*Signature*) ....

This Form, when duly filled up as directed above, should be sent, with the necessary remittance, to the **Bank of London Limited, 83, Lombard Street London, E.C.**

Cheques should be made payable to BEARER and crossed NOT NEGOTIABLE.

If altered from "Order" to "Bearer" the alteration should be signed by the Drawer.

An acknowledgment will be forwarded in due course, either by Allotment Letter or by return of the Deposit.

FORM No. 8.

B **Application for Shares where no receipt for the application money is issued Size 8¼ in. by 8¼ in.**

IMPERIAL TRUST, LIMITED.

SHARE CAPITAL - - - £

Divided into Shares of £ each.

ISSUE OF SHARES OF .

No. ....

FORM OF APPLICATION.

To the Directors of the
IMPERIAL TRUST, LIMITED.

GENTLEMEN,

Having paid to your Bankers the sum of £... .... being a deposit of per Share on Application for .... Shares of £ each in the above-named Company, I/we hereby request that you will allot to me/us that number of Shares, and I/we hereby agree to accept the same or any less number that you may allot to me/us upon the terms and conditions of the Prospectus (dated ....) and Memorandum and Articles of Association of the Company, and I/we authorise you to place my/our name(s) on the Register of Members in respect of the Shares allotted to me/us.

To be written distinctly

Name (in full) .. ..

Address (in full) .. ..

.. ..

Profession or Business ....

(A lady should state whether she is a Spinster, Wife or Widow.

(*Date*).....19. .... (*Signature*) .....

This Form, when duly filled up as directed above, should be sent, with the necessary remittance, to the Company's Bankers, the **Bank of London Limited, 83, Lombard Street, London, E.C.**

Cheques should be made payable to BEARER and crossed NOT NEGOTIABLE.

If altered from "Order" to "Bearer" the alteration should be signed by the Drawer.

The Company will forward an acknowledgment in due course, either by Allotment Letter or by return of the Deposit.

FORM No. 9.

C Application for shares with receipt form attached. Size 13 in. by 8¼ in., the receipt being exactly a quarter of the whole form.

IMPERIAL TRUST, LIMITED.

SHARE CAPITAL - - - £
Divided into Shares of £ each.

ISSUE OF SHARES OF .

No.... .....

FORM OF APPLICATION.

To the Directors of the
IMPERIAL TRUST, LIMITED.

GENTLEMEN,

Having paid to your Bankers the sum of £ .. . . being a deposit of per Share on Application for ..... . Shares of £ each in the above-named Company, I/we hereby request that you will allot to me/us that number of Shares, and I/we hereby agree to accept the same or any less number that you may allot to me/us upon the terms and conditions of the Prospectus (dated) and Memorandum and Articles of Association of the Company, and I/we authorise you to place my/our name(s) on the Register of Members in respect of the Shares allotted to me/us.

To be written distinctly
Name (in full) . ...
Address (in full) . .. .
....
Profession or Business . . . .
(A lady should state whether she is a Spinster, Wife or Widow)

(*Date*) .. .. 19. . . (*Signature*) ....

This Form, when duly filled up as directed above, should be sent **entire**, with the necessary remittance, to the Company's Bankers, the **Bank of London Limited, 83, Lombard Street, London, E.C.**

Cheques should be made payable to BEARER and crossed NOT NEGOTIABLE.

If altered from "Order" to "Bearer" the alteration should be signed by the Drawer.
The Applicant is particularly requested to write clearly, within the bordered space below, his or her name and the full address to which the receipt should be sent. For Joint Accounts the first name should be written within, and the other or others below the bordered space.

---------- Perforation ----------

IMPERIAL TRUST, LIMITED.

APPLICATION RECEIPT.

Name of First or of Sole Applicant. ... .

Address ....
.. ..

Joint Applicants (if any) Names only. ....
.....

Received for account of the Imperial Trust, Limited, from the person(s) whose name(s) is/are written in the margin, the undermentioned amount, being a deposit of per share on Application for Shares in the above-named Company.

For **BANK OF LONDON LIMITED.**

....
Cashier

£_____ 19

This Receipt, when returned by the Bankers, must be preserved by the Applicant to be exchanged in due course for the relative Share Certificate.

FORM No. 10.

D Allotment Letter with one receipt. Size 13 in. by 8¼ in., the docket at the foot being exactly a quarter of the whole form.

ALLOTMENT LETTER.

6d Stamp

Space for Name and Address of Allottee, to be filled in by the Company.

No. .....

IMPERIAL TRUST, LIMITED.
983, CORNHILL,
LONDON, E.C.

... .19

ISSUE OF SHARES OF .

SIR OR MADAM,

In response to your application, you have been allotted £ Shares of £ each Stock *or Bonds* of the IMPERIAL TRUST, LIMITED.

The amount payable on Application and Allotment (viz., per Share) per cent.) is £

You have already paid ... ...

Making amount **due from** you on Allotment ... . £

or

Making amount **due to** you, for which a cheque is enclosed ... ... £

Payment of the amount due from you should be made on or before as directed below.

[Further particulars with regard to this Issue can be inserted here as required.]

By Order of the Board,

Secretary.

This Form, with remittance, must be forwarded **entire** to the Company's Bankers, the **Bank of London Limited, 83, Lombard Street, London, E.C.**, who will return it duly receipted. It should then be carefully preserved to be exchanged for the relative Certificate (*or Scrip*) in due course. Notice of such exchange will be given by the Company (by advertisement).

Cheques should be made payable to BEARER and crossed NOT NEGOTIABLE.

If altered from "Order" to "Bearer" the alteration should be signed by the Drawer.

Received for account of the IMPERIAL TRUST, LIMITED, the amount due on Allotment.

For BANK OF LONDON, LIMITED.

.... *Cashier.*

Date.... ....19 .

----------(*Perforation*)----------

ALLOTMENT. *No*..... . ...

IMPERIAL TRUST, LIMITED.

£ ..... - - .

....

Date.....*19* .

FORM No. 11.

E Allotment Letter with receipts for amount due on allotment and for payment in full. Size 13 in. by 8¼ in., the dockets being exactly a fourth of the total length.

ALLOTMENT LETTER.

6d Stamp

Space for Name and Address of Allottee, to be filled in by the Company.

No.....

IMPERIAL TRUST, LIMITED.

983, CORNHILL,
LONDON, E.C.

.....19

ISSUE OF SHARES OF .

SIR OR MADAM,

In response to your application, you have been allotted $\frac{\text{Shares of £ each}}{£ \text{ Stock } \textit{or Bonds}}$ of the IMPERIAL TRUST, LIMITED.

The amount payable on Application and Allotment (viz., $\frac{\text{per Share)}}{\text{per cent.)}}$ is £ .

You have already paid ... ...

Making amount **due from** you on Allotment ... ... £

or

Making amount **due to** you, for which a cheque is enclosed ... ... £

Payment of the amount due from you should be made on or before the as directed below.

[Further particulars as to Payment in Full, Instalments and other matters can be inserted here as required.]

By Order of the Board,

Secretary.

This Form, with remittance, must be forwarded **entire** to the Company's Bankers, the **Bank of London Limited, 83, Lombard Street, London, E.C.**, who will return it duly receipted. It should then be carefully preserved to be exchanged for the relative Certificate (*or Scrip*) in due course. Notice of such exchange will be given by the Company (by advertisement).

Cheques should be made payable to BEARER and crossed NOT NEGOTIABLE.

If altered from "Order" to "Bearer" the alteration should be signed by the Drawer.

Received *for account of the* IMPERIAL TRUST, LIMITED, *payment in full on the above-mentioned Shares.*
Stock.

For BANK OF LONDON LIMITED,

....
Cashier.

Date..... .....19 .

Received *for account of the* IMPERIAL TRUST LIMITED, *the amount due on allotment.*

For BANK OF LONDON LIMITED,

....
Cashier.

Date..... ..... 19 .

(*Perforation*)

PAYMENT IN FULL. *No*.....

IMPERIAL TRUST, LIMITED.

....

£.... .....

Date.....19 .

(*Perforation*)

ALLOTMENT. *No*.....

IMPERIAL TRUST, LIMITED.

....

£ . .. .

Date.....19 .

FORM No. 12.

F **Call Letter.—Size 13 in. by 8¼ in. The docket one-quarter of the total length of the form.**

CALL LETTER.

Space for name and address of Shareholder, to be filled in by the Company.

No.....

IMPERIAL TRUST, LIMITED.
983, CORNHILL,
LONDON, E.C.
....19 .

CALL OF PER SHARE ON ISSUE OF SHARES.
MAKING THE SHARES PAID.

SIR OR MADAM,

I have to inform you that the Directors, by a Resolution of the Board dated , have made a Call as set forth above.

The amount due from you in respect of the .... Shares registered in your name is £ .... which must be sent on or before , together with this **entire** Notice, to the Company's Bankers, the **Bank of London Limited, 83, Lombard Street, London, E.C.**, who will return the Notice duly receipted.

[Particulars should be given here if the Certificate requires endorsement.]

By Order of the Board,

Secretary.

Cheques should be made payable to BEARER and crossed NOT NEGOTIABLE.

If altered from "Order" to "Bearer" the alteration should be signed by the Drawer.

Received for account of the IMPERIAL TRUST, LIMITED, the amount of the above-mentioned Call as stated.

For **BANK OF LONDON, LIMITED,**

Impressed 2d Stamp

.....
Cashier.

Date..... .....19 .

---(*Perforation*)---

No..... ....

IMPERIAL TRUST, LIMITED.

CALL OF PER SHARE ON ISSUE OF SHARES.

.....

£ - - .

Date.....19 .

FORM No. 13.

G Offer of new shares, to accompany circular of the Company. Size 13 in. by 8¼ in., the receipt being exactly a quarter of the whole form.

IMPERIAL TRUST, LIMITED.

Authorised Capital £ , divided into Shares of £ each, of which Shares have been issued and are fully paid up.

FURTHER ISSUE OF SHARES OF £ EACH

At Par.
At a Premium of per Share.

983, CORNHILL,
LONDON, E.C.
.... 19 ...

To the SHAREHOLDER whose name and address are written in the bordered space on the Reverse of this Letter.

SIR (OR MADAM),

With reference to our Circular of this date, your present holding and the extent of your right to participate in the above-mentioned issue are specified on the Reverse of this letter, opposite your name and address.

If you intend to take up the Shares to which you are entitled you will please fill up and sign the Form of Acceptance and forward the **entire** sheet, with the necessary remittance, to the Company's Bankers, the **Bank of London Limited, 83, Lombard Street, London, E.C.**, to be received by them **not later than** .

If you desire to transfer your rights you must sign the "Form of Renunciation and Nomination," as set out on the reverse of this letter, and your Nominee(s), who must be of full age, must (instead of you) then fill up and sign the Acceptance Form and forward the **entire** sheet with the necessary remittance **as directed in the preceding paragraph.**

Should you elect to divide your rights, the **entire** Form must be deposited at the Company's Office to be cancelled and exchanged for Split Forms.

If the Conditions as to Acceptance and Payment are not duly observed, your right to participate in the above-mentioned Issue will be absolutely forfeited (and the Directors will deal with the Shares for the benefit of the Company at their discretion).

Yours faithfully,

Secretary.

----------*(Perforation)*----------

A Share Certificate in the name of the Acceptor will be ready on ; it will be exchanged on or after that date at the Company's Office, 983, Cornhill, in exchange for this Receipt.

BACK OF FORM No. 13.

SEE OVER

IMPERIAL TRUST, LIMITED.

Space for Name and Address of Shareholder, to be filled in by the Company.

No. .....

Present holding.....Shares

Entitled to a *pro rata* allotment of... .....Shares.

Joint Shareholders (if any) Names only. . . . .

FORM OF RENUNCIATION AND NOMINATION, to be signed by the Shareholder ONLY if the Rights are renounced.

To the Directors of the IMPERIAL TRUST, LIMITED.

Name (in full), Address and Occupation of Nominee. (If lady, state whether spinster, wife or widow.)

I/we hereby renounce my/our right to the above-mentioned new Shares and nominate . ... to have all the benefits of the offer contained in your Circular dated

(*Signature of Shareholder*)*. ....

Affix Stamp. Under £5 Nominal, 1d., £5 and over, 6d.

Date .... *19*....

* Instructions as to Signatures of Joint Holders.

FORM OF ACCEPTANCE to be signed by the Shareholder or Nominee.

To the Directors of the IMPERIAL TRUST, LIMITED.

Having paid to your Bankers the sum of £ ..... being the First Instalment at the rate of per Share in respect of .. . . Shares referred to in the within letter, I/we the above-mentioned Shareholder(s)/Nominee(s) hereby accept your offer of the said Shares pursuant to the Memorandum and Articles of Association of the Company and subject to the terms and conditions of your Circular of and I/we authorise you to place my/our name(s) on the Register of Members in respect of the said Shares.

(*Signature of Acceptor*)† .. ..

† Instructions as to Signatures of Joint Acceptors.

Date. .. ..*19*....

Cheques should be made payable to BEARER and crossed NOT NEGOTIABLE.

If altered from "Order" to "Bearer" the alteration should be signed by the Drawer.

The Acceptor is particularly requested to write clearly, within the bordered space below, his or her name, and the full address to which the receipt should be sent. For Joint Accounts the first name should be written within, and the other or others below the bordered space.

(*Perforation*)

IMPERIAL TRUST, LIMITED.

Further Issue of Shares of £ each at No.....

Name of First or of Sole Acceptor. . . . .

Address . . ..

Joint Acceptors (if any) Names only. .....

.....

Received for Account of the Imperial Trust, Limited, from the person(s) whose name(s) is/are written in the margin the undermentioned amount being the First Instalment at the rate of per Share, payable on Acceptance of Shares of above-mentioned Issue.

For BANK OF LONDON, LIMITED.

. .. . *Cashier.*

£ _____ *19*

For instructions as to exchange of this Receipt for Certificate see reverse.

FORM No. 14.

Application Form for Issue of New Shares.

No. .....

THE PRACTICE COMPANY, LIMITED.

(Incorporated under the Companies Act, 1929.)

ISSUE AT PAR OF

150,000 8 per Cent. Cumulative Participating Preference Shares of 10s. each and 500,000 Ordinary Shares of 1s. each.

FORM OF APPLICATION.

To the Directors of
THE PRACTICE COMPANY, LIMITED.

GENTLEMEN,

Having paid to your Bankers the sum of £..... being a deposit of 2s. per Share on application for *..... **8 per cent. Cumulative Participating Preference Shares** of 10s. each and 1s. per Share on application for *..... ..... **Ordinary Shares** of 1s. each, I/we, being of full age,† hereby apply for and request you to allot to me/us that number of Shares of your Company, and I/we hereby undertake and agree to accept such Shares, or any less number that may be allotted to me/us,‡ upon the terms of the Company's Prospectus dated the , 19 , and subject to the Memorandum and Articles of the Company, and I/we agree to pay the balance due on the Preference Shares on allotment, and I/we hereby authorise you to place my/our name(s) on the register of the Company as holder(s) of the said Shares.

* Applicants are entitled to apply for one Ordinary Share for every Preference Share applied for. No application for Ordinary Shares alone will be entertained.

Please write distinctly

Usual Signature ....

Name in full ....
(BLOCK LETTERS)

Address .. ..
....

Profession or Occupation ....
(A Lady should state whether she is a Spinster, Married Woman or Widow.)

Date ....., 19 .

This form to be sent entire with the deposit on the number of Shares applied for to **EXCEL BANK LIMITED, 772, Lombard Street, London, E.C.3, or Branches.**

Cheques should be made payable to EXCEL BANK LIMITED, or Bearer,§ and crossed NOT NEGOTIABLE. If altered from "Order" to "Bearer" the alteration should be signed by the Drawer.

An acknowledgment will be forwarded in due course either by Allotment Letter or return of the deposit.

† This is a reasonable precaution in view of the rights of an infant to repudiate.
‡ This is important so that the issue can be conveniently arranged where heavy applications are received and issue oversubscribed.
§ It is usual to require cheques to be made out to Bearer, to save the immense labour of endorsing a large number of cheques.

FORM No. 15.

LETTER OF REGRET.

No. .....

THE PRACTICE COMPANY, LIMITED.

MOORGATE, LONDON, E.C. 2.

DEAR SIR OR MADAM,

I am instructed by the Directors of the above Company to express regret that they are unable to allot any Shares to you in response to your application dated the ..... day of ..... 19 .

* I, therefore, enclose a cheque for £..... ..... being the amount paid by you on application. Please sign the receipt attached to the cheque, and present it, together with the cheque, to your Bankers in due course.

Yours faithfully,

Secretary.

To ....

---(*Perforation*)---

Moorgate,

No. London, E.C. 2..... .. ..19 .

To THE EXCEL BANK, LTD.
772, Lombard Street,
London, E.C. 3.

Pay to .... or Order, the receipt below being duly signed, the sum of £..... ..

Stamp

For and on behalf of
THE PRACTICE COMPANY, LIMITED.

.....*Director.*

£ : :

....*Secretary.*

---(*Perforation*)---

RECEIPT.

Received from THE PRACTICE COMPANY, LIMITED, the sum of £..... being the amount deposited by me on application for ..... Shares, not allotted.

Signature... .. ..

Date ....

Receipt Stamp.

* An alternative form of wording would be: "I, therefore, return your cheque for £..... Kindly acknowledge receipt."

FORM No. 16.

Declaration of Loss of Certificate.

I, ... of .... do solemnly and sincerely declare that I am the holder of ... Shares, numbered ..... to ..... to ..... to

FORM No. 17.

Indemnity to Company in case of loss of Certificate.

*6d. Stamp.

To the ... .
. . . . .. *Limited*

and to the Directors of the said Company.

DEAR SIRS,

The original certificate of title dated the .... day of .... relating to the .... shares of .. . . each numbered .... to ... . inclusive in the above-named Company of which (1) I am *or* we are. (1) . .. .the Proprietor having been (2) ....., (3) ....request (2) Lost *or* mislaid. you and the said Company to issue to (4).....a fresh certificate of title for such shares and in consideration thereof (3).....hereby undertake and agree with (3) I *or* we. you and the said Company and the Directors for the time being of the said Com- (4) Me *or* us. pany to deliver up the said original certificate of title to the said Company if the same shall at any time hereafter be recovered, and to indemnify and save harmless the said Company and the Directors and Proprietors thereof from and against all actions, proceedings, loss, charges, damages, expenses, claims and demands which may be brought or made against the said Company or the Directors or Proprietors thereof or which the said Company or the Directors or Proprietors thereof shall or may sustain or be put to by reason of your consenting or of the said Company consenting to issue such fresh certificate of title or in consequence of your permitting or of the said Company permitting at any time hereafter a transfer of the above shares or any of them without the production of the original certificate above referred to.

Date ... .

Name .. ..

Address . .. .

Occupation ....

(3) ....
of ....
in the County of ..... concur in the above request and guarantee the performance by the said ....
of the above undertaking.

Signature.....

NOTE.—This can be signed over a 6*d.* stamp if under hand, but if under seal a 10*s.* stamp is necessary.

FORM No. 18.

Indemnity to Company in case of loss of Dividend Warrant.

To the Directors of

....

.. .. *Limited.*

DEAR SIRS,

1) Me *or* us. The Warrant issued to (1) for the Dividend amounting to £.. . . ..
payable on the ... . of ...., 19....., for the year ending the
.... of . . . . . , 19. . , in respect of ... .
Shares, numbered .. .. to .... inclusive in the above-named
2) I am *or* we are. Company, of which (2) .. ..the proprietor , having been (3).. .....,
3) Lost *or* mislaid. (4)..... .....request you to issue to (1) .....a fresh Warrant for the same Dividend
) I *or* we. and in consideration thereof (4) ....hereby undertake and agree with you and the said Company and the Directors for the time being of the said Company to deliver up the original Warrant to the said Company if it shall at any time hereafter be recovered, and to indemnify and save harmless the said Company, and the Directors and Shareholders thereof, from and against all actions, proceedings, loss, charges, damages, expenses, claims and demands which may be brought or made against the said Company, or the Directors or Shareholders hereof, under or in respect of the said warrant so lost or mislaid or which the said Company, or the Directors or Shareholders thereof, shall or may sustain or be put to by reason of your issuing the said new Warrant or otherwise howsoever.

Date ....

Name ....

Address ....

Occupation ....

Witness to the Signature hereof ... ...

NOTE.—This can be signed over a 6*d.* stamp if under hand, but if under seal a 10*s.* stamp is necessary.

FORM No. 19.

FRACTIONAL CERTIFICATE.

2d. Stamp.

THE PRACTICE COMPANY, LIMITED.

(Incorporated under the Companies Act, 1929.)

MOORGATE, LONDON, E.C. 2.

NOMINAL CAPITAL £ .

DIVIDED INTO SHARES OF £ EACH.

ISSUE OF SHARES OF £ EACH.

This is to certify that the Bearer of this Fractional Certificate, representing one. ..... th/rd of one Fully paid .... Share of £ ...., upon presenting it with such other Fractional Certificates as shall make up one Fully paid ..... Share of £ .... shall be entitled to an Allotment of one Fully paid .... Share of £ ... . in the Capital of this Company, with this proviso: That on or before the .. .. day of . ... next this Fractional Certificate, together with the other Fractional Certificates making up one Fully paid Share shall be lodged at the Offices of the Company.

Dated this ..... day of . ...19 ...

By order of the Board.

....

Entd..... *Secretary.*

NOTE.—This Fractional Certificate cannot be Registered, nor can it participate in any Dividend declared, until it has been exchanged with other Fractional Certificates for one Fully paid Share.

Please sign the Form on the back of this Certificate, and return it, with the necessary other Certificates, to the Company's Offices.

[OVER

[Back of Form No. 19.]

FORM OF APPLICATION.

I/we being the Bearer(s) of this Fractional Certificate, and other Fractional Certificates numbered as follows: . . ..request that there be allotted to me/us one ... . Share of £ ....., fully paid, and authorise the Company to enter my/our name(s) on the Register of Members in respect thereof.

Signature * .. . .

Name in full .... (BLOCK LETTERS)

Address ....

Description .. ..

Date..... ..... 19.. ...

[NOTE: This part of the form should be repeated at least twice.]

FORM No. 20.

SHARE WARRANT.

No. of Shares..... No..... ..

THE PRACTICE COMPANY, LIMITED.

(Incorporated under the Companies Act, 1929.)

MOORGATE, LONDON, E.C. 2.

NOMINAL CAPITAL £ .

Divided into Shares of each

This Warrant is to certify that the Bearer is the Proprietor of . . . . . Fully paid up Shares of .. .. each numbered as per margin, THE PRACTICE COMPANY, LIMITED. This Warrant is issued subject to the rules and regulations of the Company's Articles of Association, and* to the conditions endorsed on the back of this Warrant.

Nos	
From	To

Given under the Common Seal of the Company, this .... day of .. .. one thousand nine hundred and ... .

L.S.

. . ..*Director,*

. . .. *Secretary.*

---(*Perforation*)---

THE PRACTICE COMPANY, LIMITED.

Talon for a Fresh Supply of Coupons for *No.....*

Warrant to Bearer representing . . . . Shares.

The Bearer of the above Warrant will receive in exchange for this Talon a fresh supply of Coupons when all the attached Coupons have fallen due for payment.

---(*Perforation*)---

4 No..... ..

THE PRACTICE COMPANY, LIMITED.

Dividend Coupon No. 4.

On .... . Shares included in the Share Warrant numbered as above, payable according to Advertisement to be issued by the Company.

£. . . . .

. .. . *Secretary.*

(*Perforation*)

3 No..... .....

THE PRACTICE COMPANY, LIMITED.

Dividend Coupon No. 3.

On .... Shares included in the Share Warrant numbered as above, payable according to Advertisement to be issued by the Company.

£..... . .

. ... *Secretary.*

---(*Perforation*)---

2 No.....

THE PRACTICE COMPANY, LIMITED.

Dividend Coupon No. 2.

On ..... Shares included in the Share Warrant numbered as above, payable according to Advertisement to be issued by the Company.

£.....

....*Secretary.*

(*Perforation*)

1 No.....

THE PRACTICE COMPANY, LIMITED.

Dividend Coupon No. 1.

On .... Shares included in the Share Warrant numbered as above, payable according to Advertisement to be issued by the Company.

£... .. . .

. ...*Secretary.*

An alternative form of wording is: " and to the conditions regulating the issue of Share Warrants by the Company, which conditions can be obtained free of charge from the Company's Offices."

FORM NO. 21.

APPLICATION FOR SHARE WARRANTS.

THE PRACTICE CO., LIMITED.

MOORGATE, LONDON, E.C. 2.

To the Directors of
THE PRACTICE Co., Ltd.,
MOORGATE, LONDON, E.C. 2.

No.

I/We the undersigned, being the Registered Holder(s) of the 6% Cumulative Participating Preference Shares of your Company, Nos..... .....
....the Certificate (No..... ..) whereof I/we enclose, hereby request you to issue to me/us the following Share Warrants to Bearer, in respect thereof, and I/we remit herewith £....., being the amount of Stamp Duty and Company's Fee, *viz.* :—

Warrants Required.		Stamp Duty. Per Warrant.	Stamp Duty. Amount.	Fee. Per Warrant.	Fee. Amount.	Total Charge.
...for 1 Share each =	Shares	3/-		2/6		
.. for 5 Shares each =	Shares	15/-		2/6		
.. for 10 Shares each =	Shares	£1 10 0		2/6		
.. for 20 Shares each =	Shares	£3 0 0		2/6		
...for 50 Shares each =	Shares	£7 10 0		2/6		
Total Warrants	Shares		£		£	£

Dated this.... .... day of .....19.. ....

WITNESS : *Name in full**..... ... .
.... *Usual Signature* ....
.... *Address* ....
Occupation ... .

* The signature must be attested by a Witness, who must add his Postal Address. When signed out of Great Britain, the witness must be H.M. Consul, or Vice Consul, Notary Public, or some other person holding a public position.

DIRECTIONS AS TO DELIVERY OF SHARE WARRANTS.

Please deliver the Share Warrants above referred to, when ready,
to ....
of ....
whose receipt on my behalf shall be a sufficient discharge to the Company.
.... *Shareholder's Signature.*

DIRECTIONS TO TRANSMIT THE SHARE WARRANTS BY POST.

Please forward to me, at my risk, the Share Warrants referred to above, when ready, by registered post.
....*Shareholder's Signature.*

[1] If the Shareholder does not intend to take delivery of the Share Warrants personally, he should fill up one of the above forms of Directions.

LEFT BY (*Name*) .....
(*Address*).....

[1] This Note should be printed in red ink, or in heavy type.

[OVER

[Back of Form No. 21.]

Received Share Warrants for the within-mentioned... . . . ... *Shares.*

For ....

. . ..

Date . . . .

FORM No. 22.

SHARE WARRANT APPLICATION RECEIPT FORM.

No ....

THE PRACTICE COMPANY, LIMITED.

MOORGATE, LONDON, E.C. 2.

....19. ....

Received from . ... of . ... the undermentioned Share Certificate(s) to be exchanged for Share Warrants to Bearer Stamps and Fees paid £ :

Certificate No.	No. of Shares.	Name of Shareholder.	Distinctive Numbers.		Share Warrants Required.
			From	To	

The Share Warrants to Bearer applied for will be ready for delivery on .... 19....., and will be surrendered only to the Bearer of this Receipt between the hours of and (Saturdays a.m. to), or sent against delivery up of this Receipt to the Registered Proprietor of the Shares, or to his nominee, in accordance with his instructions, and at his risk.

.....

Secretary.

NOTE.—This Receipt has no other value than as an acknowledgment of the receipt of the Share Certificates, and of the fees paid.

NOTE.—It is advisable to send a Notice of Lodgment of the Certificates in the same way as Notice of Lodgment for Certification of a Transfer (*see* p. 727).

FORM No. 23.

RECEIPT FOR SHARE WARRANTS.

No.....

THE PRACTICE COMPANY, LIMITED.

MOORGATE, LONDON, E.C. 2.

.... .19 . ...

DEAR SIR OR MADAM,

In accordance with your instructions dated . . . . I have pleasure in sending you herewith by Registered Post, at your risk, the Share Warrants specified on the appended form of Receipt, with the relative Coupons Nos ..... to . ..... inclusive attached.

Please sign the Receipt, and return it to me.

Yours faithfully,

... .

Secretary.

---(*Perforation*)---

RECEIPT.

No . . ..

(*Address*) ....

....

(*Date*) .....19.....

Received from THE PRACTICE COMPANY, LIMITED, the following Share Warrants with relative Coupons Nos..... ... to ..... attached representing .... Shares in the Company, viz.—

				Nos. From	To
. .. . Share Warrants, each for .. . . Shares of £.....				.....	.....
. . ....	do.	do.	do.	.....	.....
.. ...	do.	do.	..... do.	. ...	... .
Total					

(*Signature*) ... .

BB

FORM No. 24.

RECEIPT FOR SHARE WARRANTS SURRENDERED TO BE CANCELLED IN EXCHANGE FOR SHARE CERTIFICATES.*

THE PRACTICE COMPANY, LIMITED.

MOORGATE, LONDON, E.C. 2.

No..... .....

Received from . ... the undermentioned Share Warrant to Bearer to be exchanged for Share Certificates representing .... Shares :

Date of Warrants.	No. of Warrants.					Distinctive Nos of Warrants	No. of Shares Represented.	Distinctive Nos of Shares.
	50 Shares	20 Shares	10 Shares.	5 Shares.	1 Share.			

Total Number of Shares

If the Registration is passed by the Directors, the Certificates made out to .... of .... as the Registered Holder will be ready for delivery at the Company's Office on the .... day of .... 19....., and can be collected on or after that day between the hours of and (Saturdays a.m. to). If the Certificates are to be sent by post, a written request and a stamped registered envelope must be orwarded to the Company's Office, together with this Receipt. Certificates sent by post are forwarded at the Shareholder's risk.

Fees paid £ .....

NOTE.—In no circumstances can the Certificates be handed over except against the delivery up of this Receipt at the Company's Office.

---

* These Forms may have suitably ruled Counterfoils for retention in a book of Forms.

FORM No. 25.

THE PRACTICE COMPANY, LIMITED.

MOORGATE, LONDON, E.C. 2.

SHARE WARRANTS SURRENDERED TO BE CANCELLED.

No.

To the Directors of

THE PRACTICE COMPANY, LIMITED,

MOORGATE, LONDON, E.C. 2.

I / We, the undersigned, being the Holder(s) of the 6% Cumulative Participating Preference Share Warrants to Bearer of your Company mentioned below, hereby surrender the same to be cancelled. And I / we request that you will register me / us as the Holder(s) of the Shares represented by such Warrants.

Dated this ... ... day of ....19... .

WITNESS : *Name in full* * . . ..

. . . *Usual Signature* . .. .

.. . *Address* ....

.... *Occupation* ....

* The signature must be attested by a Witness, who must add his Postal Address and his Occupation. When signed out of Great Britain, the Witness must be H.M. Consul, or Vice-Consul, Notary Public or some other person holding a public position. [NOTE FOR THE READER : This part of the Form should be repeated at least twice.]

PARTICULARS OF SHARE WARRANTS SURRENDERED.

† **NOTE.—Warrants of each denomination to be entered separately and in numerical order.**

Date of Warrants.	No. of Warrants.					Distinctive Nos. of Warrants.	No. of Shares Represented.	Distinctive Nos. of Shares.
	50 Shares.	20 Shares.	10 Shares.	5 Shares.	1 Share.			

[OVER

LEFT BY (*Name*)..... .....

(*Address*) .....

† This Note should be printed in red ink.

[Back of Form No. 25.]

Date of Warrants.	No. of Warrants.					Distinctive Nos. of Warrants.	No. of Shares Represented.	Distinctive Nos. of Shares.
	50 Shares.	20 Shares.	10 Shares.	5 Shares.	1 Share.			

LEFT BY (*Name*) .. ..

(*Address*).....

FORM No. 26.

RECEIPT FOR SHARE WARRANTS DEPOSITED IN EXCHANGE FOR OTHER SHARE WARRANTS.

No..... ... . ..

Folio . . ..

THE PRACTICE COMPANY, LIMITED.

MOORGATE, LONDON, E.C. 2.

.....19....

Received .... of ... . the undermentioned Share Warrants to Bearer, which are to be exchanged for ..... other Share Warrants, in accordance with the Application Form, dated the ... . day of ..... . 19 . ..

Stamps and Fees Paid £ ....

Date of Warrants.	No. of Warrants.					Distinctive Nos. of Warrants.	No. of Shares Represented.	Distinctive Nos. of Shares.
	50 Shares.	20 Shares.	10 Shares.	5 Shares.	1 Share.			

Total Number of Shares

The New Share Warrants will be ready for delivery to the Bearer of this Receipt on or after the ..... day of .....19..... between the hours of .... and ..... (Saturdays ..... to .....), or will be sent by Registered Post at the applicant's risk on receipt of his written request and a stamped Registered Envelope.

.....*Secretary.*

FORM No. 27.

RECEIPT FOR SHARE WARRANTS DEPOSITED PRIOR TO MEETINGS.

No..... .....

THE PRACTICE COMPANY, LIMITED.

MOORGATE, LONDON, E.C. 2.

Received from . . . Share Warrants to Bearer as follows :—

Denomination.	No. of Warrants.	Distinctive Nos.		No. of Shares Represented.
		From	To	

Total

This Receipt is issued under Article No. of the Company's Articles of Association, and, if presented at the [Ordinary *or* Extraordinary] General Meeting of the Company to be held on the .... day of .....19.. ..., will entitle the Holder of the above Warrants to vote in accordance with the total number of Shares represented by the Warrants.

* **NOTE.—The above Warrants will only be surrendered against the delivery up of this Receipt.**

.....*Secretary.*

.....19.....

* This Note should, preferably, be printed in red ink, or in heavy type.

FORM NO. 28.

THE PRACTICE COMPANY, LIMITED.

MOORGATE, LONDON, E.C. 2.

REQUEST TO SPLIT SHARE WARRANTS TO BEARER.

No.

6% Cumulative Participating Preference Shares of £5 each.

To the Directors of

THE PRACTICE COMPANY, LIMITED.
MOORGATE, LONDON, E.C. 2.

I/We hereby request you to split Share Warrants to Bearer, as under :—

.....	Warrants for 50 Shares each			=	Shares.
.....	do.	25	do.	=	do.
.....	do.	10	do.	=	do.
.....	do.	5	do.	=	do.
			Total	...	Shares.

For Share Warrants to Bearer, as follows :—

.....	Warrants for 25 Shares each			=	Shares.
.....	do.	10	do.	=	do.
.....	do.	5	do.	=	do.
.....	do.	1	do.	=	do.
			Total	...	Shares.

Signature.....

Dated .....19.....

Left by .....

Address .....

.....

[OVER

Back of Form No. 28.]

FOR OFFICE USE ONLY.

SHARE WARRANTS CANCELLED.									SHARE WARRANTS ISSUED.								
50		25		10		5		No. of Shares.	25		10		5		1		No. of Shares.
Serial.	Distinctive.	Serial.	Distinctive.	Serial.	Distinctive.	Serial.	Distinctive.		Serial.	Distinctive.	Serial.	Distinctive.	Serial.	Distinctive.	Serial.	Distinctive.	

FORM No. 29.

Notice of deposit of Deeds of Transfer for Registration or Certification.

No.....

Memorandum.

THE PRACTICE COMPANY, LIMITED.
(TRANSFER DEPARTMENT)
MOORGATE, LONDON, E.C. 2.

Telegraphic Address:
"PRACTICE, LONDON."

. .. .19.....

To ....
.. ..
....

The undermentioned Deeds of Transfer purporting to be signed by you, and transferring .... in this Company, have been presented for **Registration / Certification**, and in the event of **no notification to the contrary** being received **by return of post**, it will be assumed that they are correct.

No. of Ordinary Shares.	No. of Preference Shares.	6% Debenture Stock.	Transferred to.

FORM No. 30.

Notice of Application for Share Warrants to Bearer.

No.....

Memorandum.

From the Registrar of

THE PRACTICE COMPANY, LIMITED.
MOORGATE, LONDON, E.C. 2.

Telegraphic Address:
"PRACTICE, LONDON."

... ...19.....

To . .. .
. ...
.. ..

ORDINARY SHARES.

SHARE WARRANTS TO BEARER.

The following application for Share Warrants to Bearer, purporting to be signed by you, has been lodged at this office. In the event of **no notification to the contrary** being received **by return of post**, it will be assumed that it is correct, and the application will be dealt with by the Directors in the usual manner.

PARTICULARS.	
Application No.	Number of Shares.
.....	....
.....	.....
.....	.....

NOTE.—A reply to this communication is ONLY required in the event of there being any objection to the Application.

REGISTER OF SHARE WARRANTS ISSUED IN EXCHANGE FOR SHARES.

Application No.	Name of Holder.	Cert. No.	No. of Shares.	Date of Warrant.	Bearer Warrants Issued.				Share Register Folio.	Initials.	Remarks.
					No. of Warrant.	No. of Shares.	Distinctive Nos.				
							From	To			

FORM NO. 32.

REGISTER OF SHARE WARRANTS EXCHANGED FOR OTHER WARRANTS.

Request.		Name.	Surrendered Warrant No.	No. of Shares.	Warrants Issued.				Warrant No.	Initials.	Remarks.
No.	Date.				Date.	No. of Shares.	Distinctive Nos.				
							From	To			

FORM NO. 33.

REGISTER OF SHARE WARRANTS SURRENDERED FOR REGISTRATION.

Application	Date.	Warrants Surrendered.				Name.	New Certificate.		Share Register Folio.	Initials.	Remarks.
		No. of Warrant.	No. of Shares.	Distinctive Nos.			No.	Date.			
				From	To						

FORM No. 34.

Notice avoiding Allotment of Shares in contravention of S. 41 of the Companies' Act, 1929.

To the

....

COMPANY, LIMITED, and the Directors thereof.

GENTLEMEN,

Take Notice that pursuant to Section 41 of the Companies' Act, 1929, I, the undersigned, hereby avoid the allotment to me of ..... Shares of £..... each in the capital of your Company, made in or about the month of ..... 19....., and hereby request you to remove my name from the register of members in respect of such Shares, and I demand the repayment of the sum of £..... paid by me in respect of such Shares, together with interest thereon at the rate of £..... per cent. per annum from the date of payment until repayment.

Dated this ... . day of .....19.....

Name ....

Address ....

....

Description ....

NOTE.—This Notice must be given within one month of the date of the Statutory Meeting or, if no Statutory Meeting is required or the allotment is made after the Statutory Meeting, within one month of allotment.

FORM No. 35.

DIVIDEND ADVICE TO BANKERS.

THE PRACTICE COMPANY, LIMITED.

Registered. MOORGATE,

THE MANAGER, LONDON, E.C. 2.

..... Bank, Ltd. ....19.. ...
(Head Office.)

....

.. ..

DEAR SIR,

Dividend No .. .. of ... . per share, less Income Tax at ..... *s.* in £.

In accordance with instructions received from those of our Shareholders who desire that their Dividends should be sent direct to their accounts with your Bank, I enclose this Company's cheque for £....., made up as stated hereunder, together with the relevant Income Tax Vouchers.

Yours faithfully,

....

Secretary.

Dividend Top No.	Amount. £	*s.*	*d.*	Dividend Top No.	Amount. £	*s.*	*d.*
				Brought forward ...			
Carried forward ..				Total ...			

FORM NO. 36.

Request for payment of Dividends direct to Bankers.

THE PRACTICE COMPANY, LIMITED.

MOORGATE,
LONDON, E.C. 2.
19 .

DEAR SIR OR MADAM,

PAYMENT OF DIVIDENDS TO BANKERS.

The payment of dividends direct to Bankers is strongly recommended by the Company as it not only ensures their being promptly collected, but also lessens the risk of warrants, after receipt, being mislaid or lost.

The Dividend Statement, containing the Certificate of deduction of Income Tax, would be placed in the Proprietors' Pass Book by their Bankers in the usual manner.

Proprietors who desire their Dividends to be so remitted are asked to complete and return to the Company the attached form of authority.

Yours faithfully,

.....

Secretary.

----------(*Perforation*)----------

FORM NO. 37.

Form of Application for direct payment of Dividends to Bankers.

THE PRACTICE COMPANY, LIMITED.

MOORGATE, LONDON, E.C. 2.

I/We, the undersigned, hereby request that you will pay, *until otherwise instructed,* all dividends and interest now due, or that may from time to time become due on any Shares or Debentures now held by me/us or that may at any future time stand in my/our name(s) on the books of THE PRACTICE COMPANY, LIMITED, to .... of .... whose receipt shall
* (See footnote.)
be your full and sufficient discharge.

Dated this ..... day of .....19.....

NOTE.—In the case of Joint Accounts, all Holders must sign this form.

SIGNATURE.	ADDRESS.

*** The Company cannot undertake to make Warrants payable to any particular account with a Bank; such instructions should be given direct to the Bank. †**

† This Note should be printed in red.

FORM No. 38.

Proxy Forms.

No. ..... PROXY

THE PRACTICE COMPANY, LIMITED.

ANNUAL GENERAL MEETING, , 19 .

I, ...
of .. ..
. . ..

1*d.* Stamp.

a Member of the above Company, hereby appoint of
; or him failing,
of ; or him failing,
of ; to be my proxy at the ORDINARY GENERAL MEETING of the Company, to be held at he
on the *day of* , 19 *at* , and at any adjournment thereof, and to vote for me and in my name upon all questions before such Meeting.

As witness my hand this ..... day of , 19

Signed) ....

This Proxy is sent for convenience of Shareholders who are unable to attend the meeting, and to be effective must be received at the Office of the Company, NOT LATER THAN the day of 19 .

PROXY

THE PRACTICE COMPANY, LIMITED.

I, ...
... .
. . . .

Ord._____ _____
F.P._____ _____
S.P._____ _____

in the County of .... being a Member of the above-named Company, hereby appoint or failing him,
or failing him,
or failing him, , all of Moorgate, London, E.C. 2 as my Proxy to vote for me and on my behalf at the Ordinary General Meeting of the Company, to be held on the day of 19 , and at any adjournment thereof.

As witness my hand this ..... day of 19 .

1*d.* Stamp.

Signed in the presence of

....
Signature of Witness. Signature of Shareholder.

* WHICH MUST BE WITNESSED.

* **NOTE.—This form, duly signed and witnessed, should be deposited at the Registered Office of the Company, Moorgate, London, E.C. 2, not later than 12 o'clock noon, on , 19 .**

* This should, preferably, be printed in red.

[NOTE.—These Proxies are usually printed on post-cards, with an embossed stamp of 1*d.* On the address side of the post-card there should be an underlined heading, viz. *Printed Matter Rate.* The postage required is ½*d.*, usually embossed.]

FORM No. 39. No stamp required. No.....

REQUEST BY THE EXECUTORS OR ADMINISTRATORS THAT SHARES STANDING IN THE NAME OF A DECEASED SHAREHOLDER MAY BE REGISTERED IN THEIR NAMES.

To

THE PRACTICE COMPANY, LIMITED.

MOORGATE, LONDON, E.C. 2

No. of Shares.	Distinctive Nos.		Kind of Shares.
	From	To	
			£1 Ordinary Shares.
			£1 Cumulative Preference Shares.
			1s. Deferred Ordinary Shares.

Name and Address of deceased Shareholder as in the Company's Books.

standing in the name of . . . . . .

Delete the words not applicable.

I / We being the Executor(s) / Administrator(s) of the said ... hereby request and authorise you to cause the above-stated Shares to be registered in the Company's Books in my / our name(s) as follows subject to the same conditions as appertained to the holding in the Company of the said deceased :.....

Name(s) (in full), Address(es) and description(s) of Shareholder(s) as they are to be entered in the Company's Books.

Executor(s) of the Will / Administrator(s) of the estate of .... deceased

Date .....19.....

Witness to the Signature of	Signature.
Signature of Witness	
Address	.....
Occupation	
Witness to the Signature of	Signature.
Signature of Witness	
Address	.....
Occupation	

NOTE.—This form must be signed by all the Executors or Administrators, and must be lodged at the Company's Offices, accompanied by the Share Certificates and 2s. 6d. Registration Fee.

FORM No. 40.

CERTIFICATE OF IDENTITY.

THE PRACTICE COMPANY, LIMITED.

MOORGATE, LONDON, E.C. 2.

I, ... of ..... hereby declare that I have been personally acquainted for ..... years with ..... of ..... who is registered in the books of The Practice Company, Limited, as the Holder of ..... Shares of ..... each, and that I hereby vouch that ..... of ..... named in the ...* ..... herewith exhibited is the same person as the said .....

Signature .....

Address .....

Description .....

Date .....19.....

* Insert a description of the document that requires identification.

REGISTER OF SEALED DOCUMENTS.

Date.	Document Sealed.	Authority Resolution on p. of Minute Book.	In presence of	Location of Document.

FORM No. 42.

REGISTER OF PROBATES, LETTERS OF ADMINISTRATION, ETC.

No.	Date of Registration.	Name and Address of Shareholder.	Share Ledger Folio.	Date of Document.	Nature of Document.	Personal Representatives.	Remarks.

FORM No. 43.

STAMP FOR USE ON DOCUMENTS EXHIBITED.

THE PRACTICE COMPANY, LIMITED.
MOORGATE, LONDON, E C. 2.

EXHIBITED.

. . . . . 19 .

....
Secretary.

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