THE BOOK WAS DRENCHED

SOME PAGES ARE TEXT
LIGHT WITHIN THE BOOK

UNIVERSAL
LIBRARY

OU_160205

UNIVERSAL
LIBRARY

OUP—67—11-1-68—5,000

OSMANIA UNIVERSITY LIBRARY

Call No. 650·3/B98B Accession No. 6988

Author Knight

Title Business encyclop aedia and legal advi

This book should be returned on or before the date last marked below.

THE
BUSINESS ENCYCLOPÆDIA
AND
LEGAL ADVISER

THE
BUSINESS ENCYCLOPÆDIA
AND
LEGAL ADVISER

BY

W. S. M. KNIGHT
OF THE INNER TEMPLE, BARRISTER-AT-LAW

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

Post Graduate Library
College of Arts & Commerce. O. U.

NUMEROUS ILLUSTRATIONS, BUSINESS FORMS, CHARTS, &c.

REVISED EDITION
VOL. I

LONDON
CAXTON PUBLISHING COMPANY, LIMITED
CLUN HOUSE, SURREY STREET, W.C.
1913

PREFACE

WHILE there are many Encyclopædias before the public, most of them professing to be *of Universal Knowledge*, it is remarkable that they all exclude practical affairs treated from a practical standpoint. They treat of Literature, Science, Art, Philosophy, Technology, and ignore altogether the multifarious interests of the Business Man. The attempt of this Encyclopædia is to afford this special information. It is an Encyclopædia of Practical Affairs, and as such a unique work of reference, for there is no other book published on similar lines. The "Business Encyclopædia" is therefore no luxury, but a *business tool*, valuable to the Capitalist and Financier, the Merchant and Manufacturer, the Shopkeeper and Clerk, the Commercial Traveller, and the Managers of businesses large or small. But while it is designed primarily for practical men, the object kept steadily in view throughout the work has been the production of a general exposition of business principles and practices: one which will enable any intelligent person, by reference thereto, to appreciate and deal with any matter of business—in the widest sense of the word—which may come before him. It follows that this Encyclopædia is rather a supplement to existing works of reference than in any sense a competitor with them.

The most characteristic feature of the life of the twentieth century is its business activity. Whereas in former days the number of people interested in business was limited to those who were in business on their own account, nowadays, through the medium of Limited Liability Companies, there are few people having money to invest who are not directly or indirectly interested in some commercial enterprise. Many business men, as Directors or Shareholders in Limited Companies, have to master a wide range of complicated facts in addition to managing their own business. No longer is the knowledge necessary for the man of business confined to one trade or department of commerce. He is constantly called upon to exercise his judgment upon matters which demand some familiarity with such subjects as Law, as it relates to every matter in which as a business man he engages; Banking; Financial principles and methods as they concern Monetary, Company, and

Stock Exchange investments and speculations; the principles and practice of Importing and Exporting, Insurance, Taxation, and of Book-keeping, &c. The list might be indefinitely extended.

Whether the object indicated above has been attained, will be shown by the reception of the Encyclopædia by the public. Every effort has been made to render it both comprehensive and accurate; but in these respects some little indulgence must be prayed for. The wide range of possible subjects, and the limits of space, have made necessary a policy of almost arbitrary exclusion, and in the mass of detail there may be even an overlooked inaccuracy lurking here and there notwithstanding the pains taken to discover them.

To literary merit the author lays no claim. Whatever in the work may appear to have such, may be attributed to Masters of the Law and Authors now departed—their contributions to legal and economic science having been freely drawn upon and incorporated in the text. But where it is due to those now with us, special acknowledgment thereof is made in the text.

W. S. M. KNIGHT.

INNER TEMPLE, E.C.

The greatest care is taken to insure the accuracy of the information supplied, but the Caxton Publishing Company, Limited, will not be responsible for any error, and the work is sold on this condition only.

PREFACE

TO THE NEW AND REVISED EDITION

In presenting this New and Revised Edition to the public, the author feels bound first to place on record not only his appreciation of the kindly reception which this work has received, but his thanks to the very many correspondents who have offered much valuable criticism and suggestion.

Since the issue of the first edition there has accrued a substantial amount of new matter. How this should be satisfactorily dealt with so that the size of the work should be kept as much as possible within the original limit of space, has been a matter of some anxiety to determine. In the result it has been decided to introduce Appendices to the first five volumes, in addition to making the necessary alterations in the original text. These appendices follow the alphabetical order of the whole of the five volumes, and should afford an easy means of access to the new subjects which are now introduced for the first time.

PREFACE TO THE THIRD EDITION

In this Edition the main feature is the enlargement of the Supplement by the addition of a further volume. To provide for this and consequent introduction of new matter, more nearly connected with practical business, it has been found necessary, in order to keep the whole work within as few volumes as possible, to take out the Gazetteer. The alterations in law are dealt with in the Appendices as in the previous edition.

PREFACE TO THE FOURTH EDITION

It is very gratifying to the editor to know that the change introduced into the last edition has proved very satisfactory and successful. In this edition there has been need only for such alterations and additions as will bring the text up to date.

LIST OF ILLUSTRATIONS—VOL. I.

FACING PAGE

CONTRIBUTORS TO "BUSINESS ENCYCLOPÆDIA"—S. F. EDGE, WAREHAM SMITH, GEORGE EDGAR, JOHN HASSALL . . 16

OCCUPATIONS OF THE PEOPLE. BY J. HOLT SCHOOLING . . 32

FACSIMILE OF AGENCY AGREEMENT 42

FACSIMILE OF COMMISSION NOTE 48

SUCCESSFUL BUSINESS MEN—ANDREW CARNEGIE, SIR THOMAS LIPTON, BARON WIMBORNE, FRANK REE 64

ARMIES OF EUROPEAN POWERS. BY J. HOLT SCHOOLING . . 92

SUCCESSFUL BUSINESS MEN—SIR E. A. SASSOON, SIR JOHN WHITTAKER ELLIS, JOSEPH FELS, SIR A. SPICER . . . 128

MORTALITY IN DIFFERENT TRADES. BY J. HOLT SCHOOLING . 160

SUCCESSFUL BUSINESS MEN—SIR W. H. LEVER, LORD FURNESS, SIR WILLIAM ARROL, SIR THOMAS SUTHERLAND . . 176

BILL OF LADING 196

FACSIMILE OF ANNUITY BOND 218

FACSIMILE OF CHEQUE WITH RECEIPT ATTACHED . . . 284

GREAT LAWYERS—LORD ALVERSTONE, EARL OF HALSBURY, SIR CHARLES J. DARLING, SIR RUFUS D. ISAACS . . . 288

FACSIMILE OF TRADERS' MUTUAL AGREEMENT . . . 296

OUR COINAGE 296

FACSIMILE CONVEYANCE OF FREEHOLDS 312

FACSIMILE AGREEMENT FOR SALE OF BUSINESS TO A COMPANY . 314

THE
BUSINESS ENCYCLOPÆDIA

A

ABANDONMENT of action.—Up to the delivery of reply, the plaintiff may discontinue his action without leave, and yet bring a second action. The costs of the discontinued action must be paid, or the second action will be stayed. After delivery of the reply, the action can only be discontinued by leave of a master, who can make it a condition that no further action shall be taken in respect of the same matter. In case the abandonment is because of some unfortuitous and temporary inability to obtain necessary evidence, or because of some other sufficient reason, the master may refuse to make such a condition. *See* ACTION.

ABANDONMENT of cargo; ship; is a term used in marine insurance. In the case of constructive loss of the subject of the insurance—*i.e.* when it has been so far damaged by the perils insured against, that the expense of repairing it would exceed its marketable value when repaired—the assured has the right to abandon to the underwriters all interest on such portions of the subject as may be saved, and claim as for a total loss. This right, to treat a loss as total, must be exercised by an election within a reasonable time. The abandonment, moreover, must be entire and absolute, and where several distinct subjects are insured together—*e.g.* ship, freight, and cargo, or different kinds of goods—one cannot be abandoned without the other; though if insured separately, they can be abandoned separately. When the insured elects to abandon he must give notice thereof in writing or verbally; if he fails to do so the loss can be treated only as a partial loss.

The notice should state the grounds for abandonment, in order that the underwriters may determine whether they accept or not. This information should be given without delay, for where the casualty is definite, delays of five and sixteen days have been each held fatal. The notice of abandonment cannot be withdrawn except by consent, though the insured may be deemed to have waived it by subsequent conduct, and so have deprived himself of the right to insist upon it. Wherever there is a valid abandonment, whatever remains of the subject immediately invests in the underwriter, who succeeds to all the rights and remedies of the assured therein, as from the time of the casualty causing the loss. Whatever remains of the subject is called salvage, and losses which give rise to the right of abandonment are called **salvage losses.** The underwriter is entitled to freight in course of being earned, and which is earned subsequently to the casualty causing the loss; but an underwriter on freight only is not entitled to any part thereof. Where the ship

carries the owner's goods, no freight therefor being payable, the underwriter is entitled to reasonable remuneration for their carriage subsequent to the loss. *See* ADJUSTMENT; AVERAGE; MARINE INSURANCE.

ABANDONMENT of domicile.—Every man's domicile of origin is presumed to continue until he has acquired another by actual residence, with the certain intention of abandoning his domicile of origin, *i.e.* until the person whose domicile is in question has made a new home for himself in lieu of the home of his birth. A man's domicile is of utmost importance in questions, amongst others, relating to the succession to his property after his decease. Thus the rules of succession to the estate of a person domiciled in Scotland are different to those regulating the estate of a person domiciled in England. The following case, *Bell* v. *Kennedy*, illustrates the principle that to abandon a domicile a man must have acquired another with an indisputable view to retain it. D., the descendant of a Scotch family, had a domicile of origin in Jamaica. In 1837, after he came of age, he sold his Jamaica property, and left there, to use his own expression, for good. He went to Scotland, residing there in 1838, but not making up his mind to settle there. The question was whether in September 1838, D. had or had not acquired a Scotch domicile. The House of Lords held that D. still remained domiciled in Jamaica. *See* further hereon: DOMICILE; INTERNATIONAL LAW (PRIVATE).

ABANDONMENT of security.—In the case of a bankruptcy, if a secured creditor proves for the whole of his debt, he thereby abandons his security. To prove a debt without disclosing any lien on property for its payment, is to abandon the lien; so, for a mortgagee to prove his debt without disclosing the mortgage is to abandon the mortgage. A mortgagee under such circumstances has not been allowed to withdraw his proof, and to claim the proceeds of the mortgaged property in part payment of his debt and a dividend on the balance out of the estate. *See* BANKRUPTCY.

ABATEMENT of legacies.—In cases of deficiency of a testator's assets, legatees may be called upon to part with the whole or portions of their legacies. **General legacies** must abate proportionately in order to pay the debts, and an executor has no power of preference in regard to his own legacy. If the legacy is given in consideration of a debt owing to the legatee, or of his relinquishing any right or interest, it does not abate with the others. Unless, in the will or codicil, there is an express or apparent intention to give priority thereto, legacies to wives and children also come within the rule. **Specific legacies** only abate upon failure of the testator's personal estate, *i.e.* they must be fully satisfied in priority to, and even to the prejudice of the general legacies. But when such estate, excluding the specific legacies, is insufficient to pay all debts, then the specific legacies suffer abatement. The reason for the rule is that the testator is presumed to give a preference to those to whom he has bequeathed specific parts of his personal estate. **Demonstrative legacies**, partly general and partly specific, are general, in so far that the legatee will not lose his legacy, but receive it out of the general assets, if its fund be called in or fail. They are specific, in that the legatee is not liable, upon deficiency of assets, to abate with the general legacies. *See* ADMINISTRATION; EXECUTORS AND ADMINISTRATORS; LEGACIES.

ABATEMENT of a nuisance is a remedy by act of the party, and consists in the taking away or removing of the nuisance. A public nuisance can only be abated by one who sustains a special injury therefrom. And then only to the extent necessary to enable him to exercise his right as infringed by the nuisance. Thus, in the case of an obstruction to a highway, a private person has, strictly speaking, no right to remove it unless it prevents him exercising his right of passage—then he may.

A person prejudiced by a private nuisance has, on the other hand, a right always to abate it. He may, for example, lop off the boughs of a tree actually overhanging his own property. But he cannot abate, by way of prevention, a likely or intended nuisance; that is to say, he may not lop off boughs which have not yet grown sufficiently to overhang. Nor in the case of foundations being laid to build a wall, which will in time be a nuisance, can those foundations be overthrown. If it is necessary to enter on another's land in order to abate a nuisance thereon, notice must, before entry, be given to the occupier to remove it. The abatement is at the peril of the abator, and must be without risk or danger to the public peace. It is consequently a rather dangerous remedy, and should, unless the nuisance constitutes an imminent danger, be left to be dealt with by the Court. *See* ACQUIESCENCE.

ABDUCTION of women.—By an old statute, three years' imprisonment is the punishment of any man who carries away **a nun** from her house, even though she consent, and he must make convenient satisfaction to the house. But more modern and practical is abduction **on account of the woman's fortune.** Where a woman of any age has any interest (legal or equitable, present or future, absolute, conditional or contingent) in any real or personal estate, or is a presumptive heiress or next of kin to any one with such interest—(*a*) whosoever, from motives of lucre, takes her away against her will, either for himself or some one else to marry, or have carnal knowledge of her—or (*b*) whosoever with like intent fraudulently allures or takes her away, when she is under 21 years of age, out of the possession or against the will of any person having lawful care of her, is guilty of felony. He cannot take any interest in her property. If he has married her, the Court of Chancery may re-settle her property. It is sufficient for the intent alone to be proved, not necessarily the carrying out thereof. **Abduction of a woman by force,** apart from the question of her property, is also **a** felony.

Whoever, with intent that any **unmarried girl under 18** years of age shall be unlawfully and carnally known by any man, takes such girl out of the possession, and against the will, of any person having lawful care or charge of her, is guilty of a misdemeanour. It is a sufficient defence if the person charged proves that he had reasonable cause to believe that the girl was of or above the age of 18 years. It is also a misdemeanour to detain any woman or **girl of any age** against her will, either in a brothel or in any premises, with intent that she may be unlawfully and carnally known by any man. Withholding her wearing apparel or other property, or using threats of legal proceedings against her if she should take away with her any wearing apparel lent or supplied to her, constitute a detention under this Act.

To unlawfully take, or **cause to be taken,** any unmarried **girl under 16** years of age out of the possession and against the will of any person having the lawful **care** or charge of her, is a misdemeanour. It is a

defence that the girl left such person having care of her, and went to the person charged without inducement on his part; also, if the person charged did not know, and had no reason to know, she was under such care. It is no defence that the person charged did not know her to be under 16, or might have supposed from her appearance that she was older, or even that he believed upon reasonable grounds that she was over that age. It is immaterial whether there be any corrupt motive, or whether the girl consent. So also is the sex of the person charged immaterial.

ABDUCTION of voters.—Any person who, by abduction or duress, interferes with the free exercise by a voter of his franchise is guilty of undue influence, punishable on indictment by imprisonment for not more than one year, or a fine not exceeding £200. It is also a "corrupt practice," and entails disqualification to vote or sit in Parliament, or hold municipal office for seven years. *See* CORRUPT PRACTICES.

ABETTORS; accessories; accomplices.—The person who actually commits a crime is a principal in the first degree, while he who is present aiding and abetting the crime is a principal in the second degree. The latter need not actually be within sight and hearing when the deed is done; it is sufficient if, with that intention, he is near enough to give aid if required. An **accessory before the fact** is one who, though not present, has counselled, procured, or abbetted another to commit the crime. Principals of the first and second degree, and accessories before the fact are all guilty of the crime itself, and may be separately indicted and punished therefor. Accessories before the fact may also be indicted for feloniously being accessory before the fact to the felony. An **accessory after the fact** is one who, knowing that a felony has been committed, assists, conceals, or relieves the felon. A wife, however, who helps her husband is not an accessory after the fact. There are no accessories after the fact in misdemeanours and lesser offences. They are punishable as principals of the felony. **Accomplices.**—If two or more persons are jointly indicted and are being tried together, no one of them can give evidence against the other. Sometimes, however, the Court consents to an acquittal of one of such defendants, and he may then give evidence against his accomplices. This is called turning king's evidence. Such evidence is, however, naturally open to grave suspicion, and no prisoner should be convicted on such testimony without material corroboration.

ABORTION is the crime of unlawfully bringing about a miscarriage. Every woman who shall be convicted of the offence that, being with child, she with intent to procure her own miscarriage, shall have unlawfully administered to herself any poison, or other noxious thing, or shall have unlawfully used any instrument or other means whatsoever with the like intent, shall be kept in penal servitude for life. The same punishment is inflicted upon any one whosoever who, with intent to procure the miscarriage of any woman, whether she be or be not with child, shall unlawfully administer to her, or cause to be taken by her, any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent.

Penal servitude is also the punishment of any one who shall unlawfully supply or procure any poison or other noxious thing, or any instrument or thing

whatsoever, knowing the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she be or be not with child. If the woman die in consequence of the attempt, the person who committed it is indictable for murder. Procuring the abortion of a quick child is said to be a common law misdemeanour; and it is murder if the child, being born alive, dies in consequence of its premature birth, or of the means employed. If the abortion is done by the proper parties, in good faith, for the purpose of saving the life of the mother, it is no crime.

ABROAD, offences on land.—The jurisdiction of the common law courts is territorial; and no person can be tried by an English court for an offence committed on land abroad, except under the authority of a Statute.

Treason, murder, and manslaughter abroad of a British subject or a foreigner, by a British subject, are amongst the exceptions created by Statute. So also are poison and hurt within the jurisdiction, with consequent death outside, or *vice versâ;* crimes and offences committed abroad by colonial governors and commanders-in-chief; and offences committed by persons in any public service abroad. Also offences against the Foreign Enlistment Act, such as the Jameson Raid, the Official Secrets Act, the Commissioners of Oaths Act, and the Foreign Marriage Act.

ABUSE OF PROCESS.—The Court having inherent as well as statutory jurisdiction to protect itself from the abuse of its own procedure, may stay or dismiss frivolous and vexatious actions. It can do this at any stage, whether it be the plaintiff's case that is stayed, as showing no reasonable cause of action, or the defendant's defence that is struck out, as showing no reasonable ground of answer. The Court must, however, use a judicial discretion herein, and must not stay proceedings on any vague or indefinite principle. Consequently it is a jurisdiction very sparingly exercised, and only in exceptional cases. If a person maliciously, and without reasonable and probable cause, erroneously sets in motion the legal machinery to the hurt of another, the latter has a right of action against him for damages.

Some persons used habitually and persistently to institute vexatious legal proceedings, without any reasonable grounds, in the High Court, and in inferior courts, against the same or different persons, generally of high official position. Under the Vexatious Actions Act, 1896, the Attorney-General may apply for an order under the Act against any such person. The Court will then hear such person, or give him an opportunity to be heard, after assigning counsel to him, in case he is unable by reason of poverty to retain counsel. If the Court is then satisfied that the facts are as above, it will order that no legal proceeding be instituted by such person in the High Court, or other court, unless he first obtains leave of the High Court, or a judge thereof, and satisfies such Court or judge that such legal proceeding is not an abuse of the process of the Court, and that there is *primâ facie* ground for such proceeding.

ACCESSION is the addition by nature or industry of something new to a thing already owned. Thus does the farmer acquire a property in the eggs of his poultry, the crops of his field, and the young of his cattle. The young of animals belongs to the owner of the female, except in the case of cygnets, which are supposed to belong to the owners of both parents equally. If the accession is by industry and material upon the property of another, the

resultant property belongs to the latter, subject to his paying compensation for the work and material so expended. Thus, a house built upon another's land belongs to the owner of the land. There are a few instances to the contrary. Wine, oil and bread manufactured from another's grapes, olives and flour, or a picture painted upon canvas, go to the one who supplied the work, but subject to compensation for the materials. The practical test in such cases is: Which substance is of principal importance? When this is determined, the amount of compensation must be decided. There is also accession in other forms. When an island rises in a non-tidal river, it belongs to the riparian owners in equal shares, or proportionately, as it is or is not in the centre. This follows from the rule that the bed of a non-tidal river belongs in equal parts to the riparian owners.

ACCIDENT is, in law, a most elusive term. And yet actions for damages for personal injuries, and injuries to property through accident, are for ever before the courts. The claim in most of such cases is based upon an alleged negligence of the defendant; and one of the most usual defences which the plaintiff has to meet is absence of negligence—accident, in fact.

Accident is like many other technical terms which are also in everyday use—difficult to define with exactness; easy to comprehend without actual definition. So far, we may take it that accident in law implies absence of negligence. But accident may have a more extended significance than that. It may also include what is known as inevitable accident and also the act of God. The act of God occurs in an accident caused by irresistible natural agency; in such a case, the question of negligence or its absence is of very minor importance. Inevitable accident occurs where the cause is a combination of human and natural agency, and wherein the human part of the agency may or may not be a determining factor. In such a case the question of negligence is of great importance. No one is liable for non-performance of duty or contract when such non-performance is caused by the act of God. An insurer—a common carrier, for example—may, however, be liable even though his defence be inevitable accident.

But to return to the immediate topic—Accident. For the plaintiff to succeed in such an action, he must show:—(*a*), facts that directly and irresistibly prove negligence on the part of the defendant; or if he cannot go so far as that:—(*b*), facts from which, in the judge's opinion, a jury may reasonably infer negligence. If the plaintiff has evidence that will support (*a*), he will win his case; but if his evidence is so weak that he is driven to (*b*), the issue will be in the balance until first the judge has passed his opinion on the facts, and then the jury have delivered their verdict.

To prove negligence affirmatively, unless the facts are plain, is a difficult task. We will therefore, by way of illustration, direct the reader's attention to the case of *Redhead* v. *Mather*. This was an action for damages for injuries caused by the defendant negligently driving a carriage and horses in a highway. Whilst being driven on the public highway, the defendant's horses, startled by a dog, ran away, and became so unmanageable that the driver could not stop them, but could to some extent guide them. While unsuccessfully trying to turn a corner safely, the driver guided the horses so that, without his intending it, they knocked down and injured the plaintiff who was in the highway. The jury found there was no negligence in any

one. It was held that since the driver had done his best under the circumstances, the directing of the horses towards the plaintiff was not a wrongful act. Lord Bramwell said that the driver was absolutely free from all blame in the matter; not only did he not do anything wrong, but he endeavoured to do what was the best to be done under the circumstances. The misfortune happened through the horses being so startled by the dog that they ran away. Now if the plaintiff under such circumstances can bring an action, there is really no reason why he could not bring an action because a splash of mud, in the ordinary course of driving, was thrown upon his clothes or got into his eye and so injured it. For the convenience of mankind in carrying on the affairs of life, people as they go along roads must expect, or put up with, such mischief as reasonable care on the part of others cannot avoid.

From this case, being as it is typical of others of a like nature, we may deduce the principle that no one is liable for an accident if he be free from fault. And it is in accordance therewith that a person who, walking along the street, through an accident slips and falls against, and breaks a window, is not liable for any damage he may thereby cause. But it would be different if he were, at the time, committing an unlawful act, *e.g.* an assault, or walking recklessly or without care. He would then be liable. *See* NEGLIGENCE.

ACCIDENT INSURANCE.—The numerous casualties to which the life of man is liable are subjects of daily occurrence and observance—there is scarcely an individual who cannot refer within the sphere of his own family or acquaintance to instances of sudden or accidental death; and few who cannot look back to their own escape from danger. To indemnify against the consequences of such a calamity, whether happening in the pursuit of business or pleasure, is the object of accident insurance. Injuries incurred in actual warfare do not properly come within its ordinary scope, but they have now, for some time, been the subject of special insurance. The system of accident insurance may be said to owe its origin, in a great measure, to the development of railway travelling. At any rate the year 1845, memorable in the history of railway enterprise, is equally memorable in the history of insurance. Between that year and 1850, thirteen accident insurance offices were projected, two of which were completely registered—one of the two being with us still. In consequence of so many of the offices being unable to make their business pay upon the rates of premiums then common, and in consequence of the many fraudulent attempts made by the insured, culminating in the disastrous year of 1857, when over £14,000 was in dispute in cases where fraud was undoubted, that year became the starting-point of modern methods in accident insurance. Then was the attempt begun to be made to classify the risks; to adapt the premiums so that they should be remunerative for each class of risk; to settle policies that would strictly define the risks covered; and to arrange proposals so that the possibility of fraud and misrepresentation might be minimised.

And from that time henceforth did accident insurance business develop and strengthen. The increase of machinery in manufactures, the greater concentration of population in towns with its increasing traffic, the Employers' Liability Act of 1880, the value of insurance as an advertisement, the development of motor traction, and finally the Workmen's Compensation Acts, have all tended to make accident insurance a persistent factor in modern life. And so to-day, as a final result of those efforts to make accident insurance a profitable commercial undertaking (including, it must be admitted, an undoubted combination of certain companies to maintain the uniformity of premium rates), British Accident Insurance stands, as a whole, in a very strong position. In 1901, the total funds and paid-up capital together provided £10,701,567 available for the protection of the insured. In

addition to these reserves there are many millions of uncalled capital at command should necessity for them arise. The premium income of 1900 showed an increase of about £200,000 over that of the previous year, but the claims showed an increase of somewhat more. And within certain limits such seems the inevitable condition of things; for it is a curious fact that claims increase proportionately to the duration of the risk. During 1908, owing to the great competition on the part of the non-tariff offices, the rates for this class of insurance were considerably decreased, but in 1911, owing to failures and amalgamations, the rates were raised. Nor are the rates likely to be decreased, for both accidents and malingering are certainly on the increase.

Disputes between the insured and the companies, now comparatively speaking, very rarely before the Courts. This is the result of the arbitration clause usually inserted in the policy, whereby a settlement of disputed claims is arrived at without the publicity of legal procedure. Whether this is an advantage to the insured is an open question.

As in other forms of insurance, the contract of accident insurance is called a policy; the law in respect thereof being based upon the same principles as that of the other classes of insurance. The usual form of policy entitles the insured or his representatives to certain fixed payments in case he sustains any bodily injury, "caused by violent, accidental, external, and visible means," and resulting in death or disablement within three months of the accident. "Disablement" means that the assured is prevented, wholly or partially, from attending to his ordinary business. It is either permanent or temporary, total or partial; the policy, as a rule, clearly defining these terms. The contract is not, strictly speaking, one of indemnity; for the agreed compensation does not necessarily bear any relation to the income or earnings of the assured. Such compensation, however, is always limited in length of time to the period of the disablement; provided, as a rule, that twenty-six weeks shal be the longest period for compensation in respect of any one accident. The policy of insurance may be taken out for any stated period agreed upon; or it may be limited to a certain journey or class of risk. The usual case, however, is for the policy to run for a year; it then being renewable, but at the company's option, year by year.

What Accidents are within the Policy.—Generally, these are clearly defined in the policy. Now, as to some particular points hereon. (*a*) *The injury must be caused by some external violence operating directly upon the person of the assured.* Thus suicide is not an accident; though it will not be presumed and must be affirmatively proved by the company. This rule will be construed by the courts in the way a person of ordinary intelligence would read it, attention being paid to the whole of the policy. The question will be (1) By what means was the assured injured? If the means were violent; and also accidental, as by getting, without intention, into the particular position in which the injury could happen; the answer is that the means were "violent." The next important question is (2) Were they external? And the answer to this will be in the affirmative, if they were, without nice distinction, the opposite of internal—for example, a stooping on the part of the assured to reach an article on the pavement. (*b*) There is generally a proviso *excluding death or disablement resulting from any natural disease or weakness.* Under this proviso the company would not be liable in the case of death by sunstroke. Generally, disease, though produced by the action of a known cause, can hardly be considered an accident. (*c*) The

case of *the assured exposing himself to risk or injury.* The rule is, that if such risk was obvious to him at the time; or would have been obvious to him if he had paid reasonable attention to what he was doing, he would not be in a position to claim compensation under the policy. (*d*) *The death or disablement must be the direct result of the accident.* Here, in every case the determining question will be—What really caused the death? As this point is both important and intricate, we will give an illustration. An assured under a policy against "death from the effects of injury caused by accident," fell and dislocated his shoulder. He was at once put to bed, and died in less than a month from the date of the accident, having been all the time confined to his bed. It was discovered that the death resulted from pneumonia caused by cold, but that the assured would not have died as and when he did had it not been for the accident. The fatal effects of the cold, and his susceptibility thereto, were both due to the condition of health to which he had been reduced by the accident. It was held that his death was due to the "effects of injury caused by accident" within the meaning of the policy. "Cause" and "effects" are correlative terms; and it is sufficient to construe the word "effects" from that point of view. If, as in the above case, the assured lives for some time after the injury, he must during this time live as an invalid, subject to the ordinary conditions of such a mode of life. These conditions of life are something distinct from the injury, but when a question arises as to whether the death of the assured while subject to them was caused by the injury, it becomes essential to take into consideration these conditions of life as well as the injury. And not only these conditions, but such things as are either inseparable from them or are their natural consequences. There can be no pretence, in such case as the above, for treating the case as less due to the injury because one step in the train of circumstances which followed was that the assured caught a cold.

Defences to an action on the policy.—It is a defence to a claim upon such a policy, as in other cases of insurance, that the assured did not make a full disclosure of all material facts. The contract of insurance is one based upon utmost faith between the parties. Consequently false statements, misrepresentation, or suppression of truth, whether fraudulent or not, in any proposal for the policy, or any claim under it, avoids the contract, and affords a complete defence to any action in respect thereof. Particular care must therefore be taken in this respect when filling up the form of proposal. Where notice of the accident is expressly made a condition precedent to liability, the absence of such a notice, even though it was impossible to give it, is a defence to any action on the policy. So also is the non-compliance with any other conditions of the policy; as, for example, where the company may send its medical man to see the patient, or require a *post-mortem*, or require other proof satisfactory to its directors as to cause, nature and extent of the accident. But the last-mentioned proof need only be such as *ought* to be satisfactory to the directors. *See* also hereon: EMPLOYERS' LIABILITY; WORKMEN'S COMPENSATION.

ACCIDENTS, NOTICE OF.—The proprietors of any railway, tramway, gasworks, canal, harbour, bridge, pier, or other public undertaking, are bound, by the Notice of Accidents Act, 1894, to give to the Board of Trade

notice of any accident which causes death or injury to a workman in their employ. An injured workman must give notice of his accident to his employer in order to obtain compensation under the Workmen's Compensation Acts. Provision is made for organization for the purpose of rescue and aid in the case of accidents in mines by the Mines Accidents (Rescue and Aid) Act, 1910. *See hereon* RESCUE, in Appendix.

ACCOMMODATION BILL.—In suing upon a contract, the plaintiff has, except in the case of contracts under seal, to prove a consideration therefor. Bills of exchange, in proper form, are exceptions to this rule, and once the plaintiff has proved the bill itself, he is entitled to judgment for the amount thereof; the fact of a consideration having passed being presumed in his favour. Bills drawn, accepted, or endorsed, by persons not receiving consideration therefor respectively, but for the purpose of lending their names to some other person, are called accommodation bills. For example, when A draws upon B, who accepts the bill merely to oblige A, and to enable him to obtain money, there is created an accommodation acceptance. If the bill is dishonoured, and A were to sue B, the latter would have a complete defence. But if, before the bill had matured, A had discounted the bill with C; then upon C suing B, the latter would have no defence. For a bill, whether one of accommodation or not, endorsed to a third party, who takes it *bonâ fide* and for value, is good as against the parties to it. As between A and B, it makes no difference that B, who is called the accommodation party, has been paid a commission or reward for the use of his name. Since B is in fact a surety for A, who is called the accommodated party, B, when he has paid the bill, has a right of action against A for indemnity. B can always avail himself of any defence which is available to A; as in a case where the party suing owes money to A. If there be an agreement, express or implied, not to negotiate an accommodation bill after maturity, the agreement constitutes an equity attaching to it; subject to which, any third party would take the bill after maturity, even if taken for value. B here incurs no liability. *See* BILLS OF EXCHANGE.

ACCORD AND SATISFACTION.—Accord is a satisfaction agreed upon between the party having a claim, and the party from whom the claim is due. When the agreement is performed, the satisfaction is complete; and that, together with the accord, is a valid defence to all actions in respect of the claim. Unless the accord and satisfaction is by agreement under seal, it must rest upon a valuable consideration. Thus, where one Wane owed Cumber £15. Cumber, being anxious to settle the matter, told Wane he would accept £5. The latter thereupon gave his creditor a non-negotiable promissory note for the £5. Afterwards Cumber sued Wane for the residue of £10, and got it. This result was based upon the fact that the agreement to accept the smaller sum in satisfaction of the larger, was of no effect, being without consideration. But whenever there is a benefit, or legal possibility of one, to the creditor, the case is different. Thus, where the payment is of something of a different nature though of less value, *e.g.* an old picture (which may or may not have a fancy value) may be satisfaction of a debt of £100. So also, a negotiable instrument, as a negotiable bill or cheque, instead of payment in cash—even though the amount of the bill or cheque is less than that of the debt. So also, payment though less in amount than the debt, but at a different place or at an earlier date. By

payment under bankruptcy, too; and so when it can be proved that the difference in amount is a gift, or the amount of a counter-claim, or set-off.

If, however, the claim of Cumber against Wane had been in respect of a sum the amount of which was unliquidated, such as damages for injuries, the result would have been different. In such cases, any sum of money may be given and taken in full satisfaction—the receipt not even being under seal. And such an accord and satisfaction would be a complete answer to the action. But in the light of a recent case, it would now be unwise to rely alone upon the rule as above. In such cases, where the person liable wishes to settle with the claimant, he should see that the latter has at the time: independent legal advice; a knowledge of the present state of his case, as well as future possible developments; and generally a full appreciation of the whole effect of a complete settlement such as the one proposed.

ACCOUNTANTS may be described as persons engaged in the preparation, investigation, and auditing of accounts. They may be divided into three classes: official, public, and private. **Official.**—Under this general title may be mentioned the Accountants of the Crown. These are public officers who receive or collect public moneys, and are bound to account therefor into the Exchequer in manner prescribed by statute, or Treasury regulations. The Exchequer and Audit Departments Act, 1866, defines as "principal accountants" those who receive issues, directly, at the Banks of England and Ireland; and as "sub-accountants" those who receive advances from the principal accountants, or who receive fees, or other public moneys, through other channels. The most important of the principal accountants are the Paymaster-General, and the officials of the various departments to whose accounts the necessary sums for public services are credited. The sub-accountants are the collectors of the various branches of revenue, and receivers of public moneys, who may be required by the Treasury to render accounts to the comptroller and auditor-general.

Public.—Any person may call himself a public accountant; and as such, assume to be a specialist in accountancy and to assist and advise the public. Accountants, as a profession, have at present no legal status as such. But the profession is making an endeavour to obtain legislation that will define the position of an accountant, and at the same time regulate accountancy on the lines of the learned professions. As a result of that endeavour it is possible to divide public accountants into three classes: Chartered Accountants, Incorporate Accountants, and public accountants simply. As to the last named, many of them are doubtless men of the highest efficiency; but in view of the fact that any person without restriction can, as we have seen, set up in practice without submitting himself to any professional test, the possibilities are that the majority of this class is recruited from the ranks of failures in other vocations in life. It is to the Chartered and Incorporate Accountants that the patronage of the public would most safely extend. A number of small associations of accountants have lately come into existence purporting to create and maintain professional efficiency in their members. Membership of such an association should not, however, be taken as any guarantee of efficiency.

The Chartered are so called because they are members of, and certificated by the Institute of Chartered Accountants. The members of the Institute are Fellows and Associates, and are entitled to the use of the initials F.C.A.

or A.C.A. They may not follow any business or occupation other than that of a public accountant, or some business which, in the opinion of the council, is incident thereto or consistent therewith. With certain exceptions, those who desire to be members of the Institute must generally be articled for a period varying from 3 to 5 years to a member in practice, and must also pass certain examinations. Incorporate Accountants are members of the Society of Accountants and Auditors; and use the initials F.S.A.A. or A.S.A.A. The rules and regulations of the Society are somewhat similar to those of the Institute, though more liberal—hostile critics might say more lax. There is, however, very little practical difference between the professional aims of, and the standard attained by the two societies. In addition to investigating and auditing accounts, accountants act as bankruptcy trustees, liquidators and receivers. But they have no monopoly in this, for by the Bankruptcy Act, 1883, any "fit person whether a creditor or not" may be trustee. And under the Companies Act, 1890, any person appointed by the Court; or in cases of voluntary liquidation under the Companies Act, 1867, any person selected by the company, may be liquidator. Accountants must do their work with such skill and care as would reasonably be expected of persons who hold themselves out as able to do the class of work they undertake. If they fail in this duty, they are liable in damages.

Private.—It is usually, and not by any means improper, for any person who is employed in a fixed employment as a clerk, book-keeper, or cashier, to call himself an accountant. *See* AUDITOR.

ACCOUNTANT'S CHARGES.—An accountant is, apart from special agreement, entitled to fair and adequate remuneration for any services he may render; having regard to any difficulty and importance of the work. In matters where accountants act as general business agents and advisers, the remuneration is by way of commission where the services rendered are in respect of work usually done by agents for commission. Where the work is not so usually paid, or not by its nature capable of affording a basis for payment by commission, it is the practice of accountants to charge therefor in detail—their Bill being made up of separate items consisting of attendances, writing letters, drawing documents and so forth. The charges for these items should vary according to the position of the accountant, the position of his employer, and the difficulty and importance of the work. But as a rule the practice is to follow the usual charges of solicitors for the same services; the charges of an accountant, however, being generally less.

For ordinary investigations of accounts and for opening Books of Account, apart from special agreement, when near the accountant's place of business, and exclusive of disbursements and stationery, the following are the charges per day of seven hours:—for the principal, 3 to 10 guineas; his managing clerk (when C.A. or I.A.), 2 guineas; his managing clerk (when not so qualified), 1½ guineas; other clerks, 1 guinea. When the work is done at such distance from the accountant's place of business as to render residence in the neighbourhood necessary, the charges per day would be:—for the principal, 5 to 20 guineas; his managing clerk (when C.A. or I.A.), 2 to 5 guineas; his managing clerk (when not so qualified), 1½ to 3 guineas; other clerks, 1 guinea. For an investigation on behalf of a committee of shareholders:—principals, 7 guineas per day; managing clerk, 2 guineas; 1st class clerk, 1½ guineas; other clerks, 1 guinea. For auditing the accounts of a private business or public company, the fees would be upon the same scale as those set forth above for ordinary investigations.

When an accountant acts as trustee in Bankruptcy, his remuneration would be by way of a commission upon the assets as realised and another commission upon

the dividend paid. Thus in an estate, the assets of which realised £500, and the dividend paid amounted to the same sum, the accountant would as a rule take 15 per cent. upon the assets and 10 per cent. upon the dividends—in all a remuneration of £125, in addition to charges in respect of out-of-pockets. But the percentage of the commission decreases as the amount of the assets and dividend increases; so that if the assets were £25,000 and the dividend the same amount, the percentage would, as a rule, be 2½ per cent. on the former and 2 per cent. on the latter—in all £1125. So, when an accountant acts as, or on behalf of, an assignee or trustee of an insolvent debtor under a Deed of Assignment or of Composition, he takes, apart from agreement, his remuneration in the form of a commission.

Without suggesting that the above charges are excessive, it is permissible to criticise them and venture the observation that in some cases, perhaps, the remuneration might be none too large; whilst in others where the debtor's affairs were simple, small in extent and without complication, such a payment would be more than ample for proper and reasonable remuneration. It therefore would be wise for all creditors in bankruptcy and of insolvent debtors, to insist upon, as far as possible, an agreed remuneration specially appropriate to the matter in hand.

ACCOUNTS.—Proceedings may now be taken in either division of the High Court for an account. The plaintiff should endorse his writ therefor, when if the defendant cannot satisfy the Court that there is some preliminary question to be tried, the plaintiff may obtain an order for proper accounts, with all the necessary inquiries and directions. It is usual to proceed with these in the Chancery Division. But a district registrar or a special or official referee may be appointed for the purpose. Even where the plaintiff does not so endorse his writ for an account, yet the Court, at any stage of the proceedings, may direct any necessary accounts to be taken, notwithstanding that there may be some further relief sought for, or some special issue still to be tried. For further information on this subject generally and in special cases see the index, and titles such as BOOK-KEEPING.

ACCOUNT STATED (An) is an admission by one in an account with another, that a balance is due from him to the other. Such an admission is equivalent to a promise to pay upon demand, and creates a liability which may be the subject-matter of an action. In every case in which the action is upon an account stated, the same must be claimed with full particularity. The plaintiff must prove an absolute acknowledgment by the defendant of the claim; a qualified or conditional acknowledgment being insufficient. The following are some illustrations. A verbal admission of a debt due for goods sold may prove an account stated, even though the agreement for the sale was in writing. An I.O.U. is evidence of an account stated with the person who produces it: and if another person was meant, the defendant must prove this. But there must be an admission of a debt due, in order to support an account stated: therefore when the defendant verbally agreed to purchase a lease from the plaintiff, and gave as deposit an I.O.U., and afterwards refused to complete the purchase, it was held that the I.O.U., together with the circumstances under which it was given, was no evidence of an account stated.

As a general rule, an account is not stated unless there is some specific sum agreed upon. Thus, a letter asking the plaintiff "to hold the defendant's

cheque till Monday, when I will send the amount," the amount of the cheque being unknown, did not support a claim brought upon an account stated. Where parties have had many and intricate dealings and accounts between them, it is advisable for the creditor to obtain such an admission as will admit of an action upon an account stated. The great advantage is that the several items constituting the account need not be proved, proof of the admission of a single item as representing a balance would be sufficient. An account may be stated by the debtor, with the creditor's wife, but not by the debtor's wife with the creditor, unless she is also proved to have been the debtor's agent in the matter. Admission in casual conversation with a stranger, not the creditor's agent, is insufficient.

At one time an account stated was considered conclusive, but now errors in it may be corrected. An improperly stamped promissory note cannot be given in evidence of an account stated. Further, the account must be stated before the commencement of the action. Where an incoming tenant agrees to take fixtures at a valuation to be made by brokers, and after it has been made the tenant takes possession, the value as ascertained by the brokers may be sued on as an account stated. By the Infants Relief Act, 1874, all accounts stated with infants are absolutely void, and they are incapable of ratification. Nor can a lunatic state an account—by himself, or through an agent.

ACCOUNTS, FALSIFICATION OF.—This is a misdemeanour under the Falsification of Accounts Act, 1875. It may be committed by any clerk, officer, or servant, or any person employed or acting in the capacity of a clerk, officer, or servant. The offence lies in any such person (*a*) wilfully, and with intent to defraud, destroying, altering, mutilating, or falsifying any book, paper, writing, valuable security or account, which belongs to, or is in the possession of, his employer, or has been received by him for or on behalf of his employer; or (*b*) wilfully, and with intent to defraud, making, or concurring in the making of, any false entry in or omission or alteration, or concurring in omitting or altering, any material particular from or in any such book or in any document or account. Falsification of accounts is not in all cases forgery, but it may take such a form as to amount thereto. The jury would probably imply the intent to defraud if they were satisfied of the wilful destruction, alteration, mutilation, or falsification. To prove the last named, it must be shown that accused knew the falsity of his act. A person may be guilty of making a false entry under this Act, although it was not made with his own hands, but by a third party acting innocently and without knowledge of the falsity, whom the accused had fraudulently and wilfully procured to do the act.

ACCUMULATION.—In 1797, one Peter Thellusson died in London, leaving landed estate worth about £4000 a year, and personal property to the amount of £600,000. By his will he created a trust that the income of this large property should be saved, invested, and accumulated during the lives of his sons, grandsons, and their issue until the death of the last survivor; and after this event the property with the accumulations was to go to the lineal descendants of his sons in tail male. After long litigation the legality of the trusts for accumulation was upheld. There were nine lives in being when Thellusson died, the enjoyment of the property being

consequently postponed until after their deaths. But shortly after this decision an Act was passed known as "Thellusson's Act," which put an end to such trusts in the future.

By this Act no person, except to make provision for debts, or in certain cases, for children's portions, can create a valid trust of property whereby the income thereof, either wholly or partially, may be accumulated for any longer term than (*a*) the life of the settlor, or (*b*) the term of twenty-one years from the settlor's death, or (*c*) during the minority of any person living or in *ventre sa mère* at the time of the settlor's death, or (*d*) during the minority only of any person who would for the time being, if of full age, be entitled under the trusts of the settlement to the income directed to be accumulated. But an accumulation is good if it can be put an end to at any moment. It must be noted that accumulation will be permitted for only one of the periods allowed by the Act. Again, though accumulation be directed, or payment deferred, a legatee, if absolutely entitled, may require payment as soon as he can give a discharge; and this is also so in cases where the legatee is a charity. Since the Thellusson Act, it has been forbidden to settle or dispose of any property, so as to accumulate the income "for the purchase of land only," for any longer period than during the minority of a person, who, if of full age, would be entitled to receive the income. This is by the Accumulations Act, 1892. In 1848, the Thellusson Act was extended to heritable property in Scotland.

ACQUIESCENCE is a form of estoppel. The term must have attached to it a very different signification, according to whether the acquiescence alleged occurs while the act acquiesced in is in progress, or only after it has been completed. A person, having a right, and seeing another person about to commit, or committing an act infringing upon that right, and standing by so as really to induce the other person, who might otherwise have abstained from the act, to believe that he assents to it being committed, cannot afterwards be heard to complain of the act. The terms "laches," "standing by," and "delay," mean much the same thing. But there can be no acquiescence without full knowledge both of the right infringed and of the acts which constitute the infringement. Constructive notice, not amounting to actual knowledge, is not sufficient. The reason of the rule is that justice will not allow a man knowingly, though but passively, to encourage another to lay out money under an erroneous opinion of title. The party who would benefit by the acquiescence, must have made in his wrongful act, a *bonâ fide* mistake as to his legal rights; and must have acted solely in that *bonâ fide* state of mind. Then again, the party acquiescing must have known at the time, in his "full knowledge" as above, of the other party's mistaken belief. Settlements long acquiesced in will not be disturbed unless there is a right, as under a statute. *See* ESTOPPEL.

ACQUITTAL.—In the case of a verdict of not guilty; or of a successful plea of pardon; or of a successful plea of *autrefois convict* or *acquit*; the person charged is entitled to his discharge. Such discharge is an acquittal, and if the charge is one of felony, frees him for ever from the same accusation. It is applied also, but not so correctly, to cases of discharge upon failure of prosecution on questions of law. On acquittal, the accused

seems to be entitled to a copy of the indictment. If he is acquitted merely upon some formal defect in the proceedings, so that the acquittal could not be pleaded in bar of another indictment for the same offence, he may be detained in custody and put on his trial again. Acquittal on the ground of insanity at the time of the commission of the offence entails being kept in custody until the king's pleasure is known; and the king may order confinement during his pleasure. Before a court of summary jurisdiction, as in a police court, acquittal is by means of an order for the accused's discharge. Where the charge is one of common assault instituted by or on behalf of the person assaulted, the person charged, on a dismissal of the charge on its merits, is entitled to a certificate thereof. This certificate, when put in evidence, would be a complete defence to any proceedings against him in a civil court for damages for the assault; the person assaulted having had the right to elect whether he would proceed in a police court for the accused's punishment, or proceed against him civilly for damages. It is also a bar to further criminal proceedings. The plea of previous acquittal is technically known as *autrefois acquit*.

ACT OF BANKRUPTCY.—A person becomes a bankrupt only after petition to the Court. The petition may be presented by the debtor himself or by the creditor. But unless the debtor himself presents the petition; or unless the Court, on the hearing of a judgment summons, instead of exercising its jurisdiction to commit the debtor to prison, makes, with the consent of the creditor, a receiving order against the debtor, the petition can only be presented when the debtor has already committed an act of bankruptcy. The following are acts of bankruptcy, the commission by the debtor of either or any of which, entitles a creditor to present a petition:—(*a*) If in England or elsewhere he makes a conveyance or assignment of his property to a trustee or trustees, for the benefit of his creditors generally. (*b*) If in England or elsewhere he makes a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part thereof. (*c*) If in England or elsewhere he makes any conveyance or transfer of his property, or any part thereof, or creates any charge thereon which would, under the Bankruptcy or any other Acts, be void, as a fraudulent preference, if he were adjudged bankrupt.

Upon these three acts of bankruptcy it may be observed that it is enough if the property disposed of is substantially, and not absolutely, the whole of the debtor's estate. Whether a disposition is fraudulent will depend in each case upon the circumstances; though, as a general test, it is enough to consider the consideration for the disposition. Thus, a sale of the whole of the debtor's property for a fair price is not fraudulent and cannot be impeached. And so in the case of a mortgage of the whole of a debtor's property, where the mortgage is a security partly for a past debt, and partly for a substantial further advance. But here the test should not be confined to the consideration. It must also appear that the mortgage was made *bonâ fide* for the purpose of enabling the debtor to continue his business, and was not merely a scheme for the payment of the existing debt.

To proceed with the enumeration of the acts of bankruptcy. (*d*) If, with intent to defeat or delay his creditors, the debtor does any of the following things, viz., departs out of England, or being out of England,

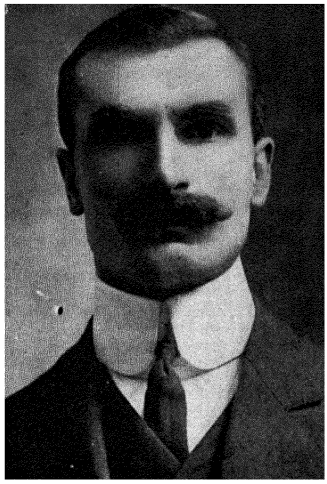
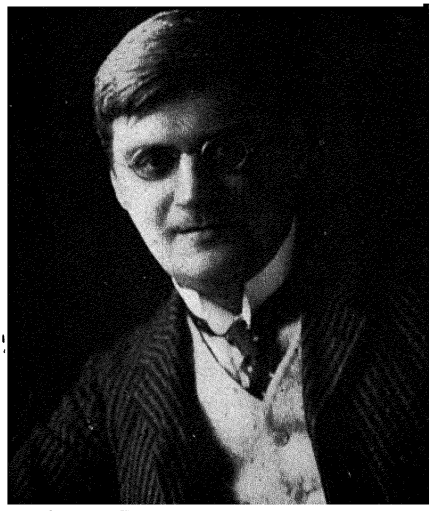


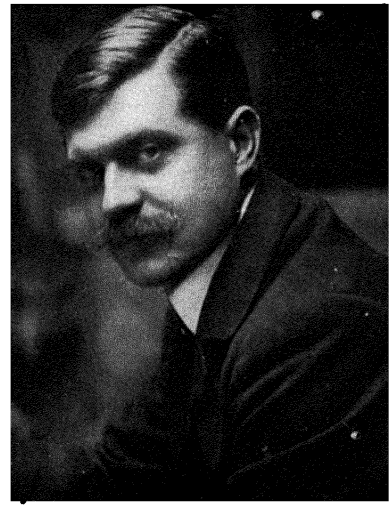
Photo Bassano

S. F. EDGE has had a remarkable career. Became a famous long-distance cyclist, took to the cycle business, went through the boom in the trade, and then turned his attention to motoring. Was a pioneer in motoring, motor racing, and in the development of the vehicle. Is the principal of the firm handling the Napier cars.

WAREHAM SMITH, born in London 1874. Started life at the age of 13 in a newsagent's shop. Joined newly established *Daily Mail* in 1896. Became its Advertising Manager in 1901, and was made a Director in 1907. Is now associated with other Carmelite House publications in addition to directing the advertising side of the *Daily Mail*.



GEORGE EDGAR is a journalist, born 1877. Received his earlier training on Lancashire and Yorkshire journals. He was editor of "Modern Business," 1909; writes on business subjects for "System and Modern Business," and contributes freely to daily, weekly, and other publications.



JOHN HASSALL, R.I., tried farming, but was tempted to black and white work by the success of sketches sent to England while out in Canada. Is a humorist whose work is ever popular, and has made a special place for himself as a poster artist. He writes on the subject he has made his own in the "Business Encyclopædia."

CONTRIBUTORS TO "BUSINESS ENCYCLOPÆDIA"

remains out of England, or departs from his dwelling-house, or otherwise absents himself, or begins to keep house. As to this, a debtor who says time after time, "I will meet you at a certain public-house, or such and such a place, at such and such a time, and pay you the money," and he is not there, commits an act of bankruptcy. So did a lady debtor, who disguised herself under an *alias;* and another debtor who told his boy to say to an agent of his creditors, that he was not at home, though the agent could see him through a glass partition. (*e*) If execution against the debtor has been levied by seizure of his goods, under process, in an action in any Court, or in any civil proceeding in the High Court, and the goods have been either sold or held by the sheriff for twenty-one days: provided that, where an interpleader summons has been taken out in regard to the goods seized, the time elapsing between the date at which such summons is taken out, and the date at which the Sheriff is ordered to withdraw, or any interpleader issue ordered thereon is finally disposed of, shall not be taken into account in calculating such period of twenty-one days. (*f*) If the debtor files in Court a declaration of his inability to pay his debts, or presents a bankruptcy petition against himself. (*g*) If a creditor has obtained a final judgment (or who is for the time being entitled to enforce a final judgment) against the debtor for any amount, and execution thereon not having been stayed, has served on him in England, or by leave of the Court, elsewhere, a bankruptcy notice requiring him to pay the judgment debt in accordance with the terms of the judgment, or to secure or compound for it to the satisfaction of the creditor or the Court, and he does not, within seven days after service of the notice, in case the service is effected in England, and in case the service is effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice or satisfy the Court that he has a counter-claim, set-off, or cross-demand which equals or exceeds the amount of the judgment debt, and which he could not set up in the action in which the judgment was obtained.

This process, by way of Bankruptcy Notice, is the most common foundation of bankruptcy proceedings. The following are some points for observation thereon. The judgment must be one on which execution has not been stayed, and it is available to the assignee of a judgment creditor. The judgment must be a final one. If a creditor has this, in order to issue a Bankruptcy Notice, he should apply to the Court—any Court in which a petition may be presented against the debtor—for the issue thereof, and with the request produce to the registrar an office copy of the judgment, filing both request and notice. A printed form can be obtained at the office of the Court with instructions as to its filling up. Service thereof upon the debtor is on the same principle as that of a writ (*see* ACTION), except that it should be served within one month from issue. A married woman, though subject as a trader to bankruptcy, cannot be served with a bankruptcy notice, because its form does not fit in with the peculiar form of judgment against a married woman; and it makes no difference that since the date of judgment she has become a widow. The judgment debt upon which the bankruptcy notice is based may be for any amount. The only ways in which a debtor may avoid committing an act of bankruptcy

when served with a bankruptcy notice are (1) paying; (2) giving satisfactory security; (3) showing a cross-claim equal to or exceeding the judgment debt, which there was no previous opportunity of setting up.

(*h*) If the debtor gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts. This act of bankruptcy depends upon the construction of notices and circulars of all sorts by involved debtors. A debtor, therefore, who wishes to effect a private arrangement with his creditors must be careful in the wording of any notice or circular he may send out. He must consider what effect such a circular would produce on the mind of a creditor reading it. If the inference to be naturally drawn therefrom is that if the debtor's offer is not accepted, suspension must follow, it is an act of bankruptcy. But the notice must be a formal one, though not in writing. *See* BANKRUPTCY; FRAUDULENT PREFERENCE; and BANKRUPTCY (*Scotch*).

ACT OF PARLIAMENT is the term applied to an act, wherein the three constituent parts of the sovereign power in this realm, king, lords, and commons, unite to formulate a Law. Public Statute is another term for an Act of Parliament. Strictly speaking the former term would be the proper one in most cases where the term Act of Parliament is used. The latter in its true meaning denotes simply the record of an Act of Parliament or the written record of a law. The usual procedure in passing any Act of Parliament was as follows, until the passing of the Parliament Act, 1911. The Act was first of all printed under the name of a Bill. After this Bill had been introduced to the House of Commons, and read three times and passed, it was sent up to the House of Lords. When it had been read and passed in the latter House it had to receive the assent of the king. The king had a right of veto. Having received the assent of the king the Bill became law, and was called an Act of Parliament. The new procedure is described in the Appendix under the title STATUTE.

There are two classes of Act of Parliament: Public and Personal. The latter is a small class limited to private personal matters; for example, an Act dissolving an Irish marriage. Public Acts may be subdivided into general, local, and private. General Acts touch matters of public importance throughout the realm or the greater part thereof; these being the Acts of Parliament making the laws now claiming our attention. A local Act is one that has reference only to a limited area, the subject of the legislation having only a local importance. A private Act of Parliament is one dealing with private affairs requiring legislative sanction; thus do such undertakings as docks and telephone companies acquire their powers. Unless the contrary is stated, an Act of Parliament takes effect as from the date of the Royal assent. But generally the date for the commencement of operation is announced in the Act itself. So too, unless the contrary is stated, an Act of Parliament extends to Scotland.

ACTIO PERSONALIS MORITUR CUM PERSONA is an English legal maxim, once of general application, expressing the rule of law that a personal action dies with the person. For, in a civil court, the death of a human being cannot be complained of as an injury. The operation of the rule is now limited to actions of tort, or wrongs independent of contract, such as an action for damages for libel. There are, however, exceptional cases in

which, even in cases of tort, the rule does not apply, or its operation has been modified. In the case of trespass on land, the owner of which dies, his personal representatives can proceed with an action, provided the injury was done within six months before, and the action brought within one year after the owner's death. So also in the converse case of the trespasser's death, there the right of action survives on the conditions that the injury was done within six months before the death and the action is brought within six months after the personal representatives of the deceased have taken upon themselves the administration of his estate. And exception is made in the case of an injury which has been done to the goods and chattels of a person who then dies; as, for example, where a person sued on the infringement of his trade-mark dies pending action.

But the most general and important exception, gratefully appreciated by the families of those who have been so unfortunate as to have been killed in railway disasters, is created by Lord Campbell's Act (now known, together with its amending Acts, as the Fatal Accidents Acts, 1846 to 1908), which enacts that whensoever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would, if death had not ensued, have entitled the person injured to maintain an action and recover damages in respect thereof, there and in every such case the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as shall in law amount to a felony. An action under the Act must be brought by the executor or administrator of the person deceased within twelve calendar months after the death of such deceased; and shall be for the benefit of the wife, husband, parent (which term includes father, mother, grandfather, grandmother, stepfather and stepmother), and child (which term includes son, daughter, grandson, granddaughter, stepson and stepdaughter) of the deceased. Only one action can be brought in respect of the same subject-matter, and the plaintiff must deliver to the defendant full particulars of the person or persons for the benefit of whom the action is brought, and of the nature of the claim in respect of which damages are sought to be recovered.

All damages awarded, after deducting any costs not recovered from the defendant, are to be divided amongst the above-mentioned relatives in such shares as the jury shall direct. If, however, there shall be no executor or administrator of the deceased, or if the action is not brought by such executor or administrator within the first six of the twelve months allowed, then it may be brought in the name or names of all or any of the persons for whose benefit the executor or administrator would have sued. But if before his death the deceased has brought an action and recovered damages for his injuries, or has made an arrangement with those liable to him therefor, and received satisfaction, no action can be maintained under the Fatal Accidents Acts, as these statutes only substitute the right of the personal representatives to sue in the stead of the deceased.

An important amendment of the law with respect to the assessment of damages under the Acts has been introduced by the Act of 1908. In such assessment any sum paid or payable on the death of the deceased under a contract of insurance or assurance cannot now be taken into account.

In Scots Law this maxim does not apply in its ordinary sense, for the right of action transmits against the representatives of a wrong-doer, in so far as they benefit by the succession. Also a claim for damages transmits to the representatives of the sufferer. This claim must be distinguished from the right of a widow or children or other dependants to sue for damages for the loss of a parent or relative, and it is doubtful whether it would include solatium or be confined to patrimonial loss.

ACTION—King's Bench Division.—The best way to obtain a view of the practice in this court will be to follow a supposed action, in which each party takes advantage, in order to develop his case, of the opportunities offered by the rules of court. The action most interesting to, and profitable for a man of business to consider, will undoubtedly be one for a liquidated claim, such as debt. An action of this class we will now proceed to outline. The creditor will be plaintiff and the debtor defendant. The plaintiff having probably written to the defendant demanding payment, and not having received any reply, commences the action by the issue of a writ. As he believes that the defendant has no answer to his claim, he proceeds in such a way as will enable him to obtain judgment as quickly as possible. To do this he places his claim on the writ in the form of a special endorsement, and not a general endorsement.

The advantage of the special endorsement is that, though the defendant should enter an appearance with a view to fighting the case, the plaintiff may apply under Order XIV. of the rules of the Supreme Court for final judgment for the amount he claims. This will be granted, unless the defendant satisfies the court, usually by affidavit, that he has a good defence to the action on the merits; or discloses such facts as the court may deem sufficient to entitle him to defend. Another advantage of the special endorsement is that the plaintiff will not be required to deliver any further statement of claim, thereby saving considerable time and expense. Had the cause of action been damages, or other unliquidated demand, the proceedings would not have come within the operation of Order XIV., a knowledge of the effect of which is to the business man most important. The practice in an action for damages is the same as in an action for debt, except that there is no special endorsement for the purposes of Order XIV., but a statement of claim after appearance instead.

Having issued his writ for debt, the plaintiff must proceed to its service. If the defendant is abroad, the plaintiff should obtain an order of the court, and only serve notice of the writ. When defendant is within the jurisdiction, he should be served with the writ personally; but should the defendant's solicitor be willing, it may be left with him, upon his giving an undertaking to appear. If, however, the defendant is evading service, the plaintiff should obtain an order for substituted service. The defendant being thus duly served, will, within eight days from service, enter an appearance; failing which, the plaintiff, upon filing an affidavit of service of the writ, can sign judgment for the amount of the debt and costs. But the defendant having appeared, the plaintiff will make an affidavit proving his claim, take out a summons for judgment under Order XIV., and serve same by leaving copies of the affidavit and summons with the defendant's solicitor, or if the defendant has appeared in person, i.e. without a solicitor, by leaving the copies at the defendant's address. After the expiration of four clear days

therefrom, the summons will be heard in Chambers before a Master. Then if the defendant, by affidavit, can satisfy the Master that he has a good defence to the action, he will obtain leave to defend, which may be conditional or unconditional.

To that affidavit of the defendant the plaintiff may file another in reply combating, so far as he can, the defendant's case. Assuming that the Master gives leave to defend, he will at the same time make an order of directions. This order may be that the case is to go to trial without pleadings; or is to be set down for trial as a short cause; or be remitted for trial to a County Court. If the order is for either of these courses, the action will be tried within a very short time, and probably without any complicated intermediate procedure. But should the case suggest much detail or importance, it will go to trial in the usual way; that is, the directions will be that defendant may deliver a defence, and counter-claim if he wishes, and the plaintiff may reply. And also that either party may have discovery. The place of trial will be appointed, and the question of a jury decided. The jury may be either special or common, but if special it will cost the party who claims it twelve guineas.

If the plaintiff does not proceed under Order XIV. his first step after appearance, unless he desires a receiver or an injunction, must be a summons for directions, upon which the Master makes an order as to the further procedure in the action.

The defendant will now, within the time specified, deliver his defence and counter-claim, when, if it is not sufficient in detail, the plaintiff may obtain an order for further and better particulars thereof. These latter having been delivered, or meanwhile, either party may proceed to discovery; first, however, depositing in court five pounds in respect of each kind of discovery required. Discovery is of two kinds—of documents, and by way of interrogatories. The party who has to give discovery of documents must file an affidavit setting out all the documents in his possession or power, relating to the matter in dispute; and except those for which he can establish privilege, must produce them to the other party for his inspection, and so that copies thereof may be taken. Apart from this discovery by order, any party has a right to inspection and copies of documents mentioned or referred to in the other party's pleadings. Upon interrogatories, the party interrogating serves upon the other side a series of questions, which the court has approved, relating to the matter in dispute, and which questions the other party is bound to answer in an affidavit.

All these proceedings have so far been in Chambers before a Master, but either party against whom an order has been made has the right of appeal to a judge in Chambers, and thence to the Court of Appeal. The defendant having thus delivered his defence and counter-claim, and the plaintiff having replied, notice of trial should be given, and the action entered for trial. On entering the case for trial with the associate of the court, two copies of the pleadings must be filed and a fee of two pounds paid. Notice of trial must be given ten days before trial; or by short notice, by leave or consent, four days. Entry of trial should be by the plaintiff within six weeks from the reply or other close of pleadings, after which time the defendant may enter the action. Then ensues trial and judgment.

Had the above action been of an important mercantile nature, such *e.g.* as an action on a disputed policy of marine insurance, the parties would have

probably agreed soon after service of the writ, or on the application of either of them, an order would have been made for it to proceed and be tried as a commercial action. *See* further hereon: AFFIDAVIT; COMMERCIAL COURT; EXECUTION; PLEADINGS; and as to other actions: ADMIRALTY COURT; CHANCERY DIVISION; and APPEALS; COUNTY COURT.

ACTUARY is the title given to a person who, after proper training, makes a profession of applying the doctrine of mathematical probabilities to those affairs of life from which life insurance, annuity, reversionary interest, and other analogous institutions derive their principles of operation. The actuary's field of operation also embraces as its peculiar province of inquiry all monetary questions involving a consideration of the separate or combined effects of interest and probabilities. At the present day practically every member of this profession in Great Britain would be either a member of the Institute of Actuaries of Great Britain and Ireland, or of the Faculty of Actuaries of Scotland. It is generally in connection with insurance business that the actuary will be met; either as an officer holding a fixed appointment with a company or as a consulting actuary. There are no questions the solution of which require a stricter attention, or greater skill in investigation, than some in the practice of insurance. When difficult questions are brought before a company, the directors not being mathematicians, are under a necessity to refer them to their actuary, upon whose opinion and advice their subsequent action is based. As a statist, the actuary collects and arranges material for a mortality table; as a mathematician he constructs, accommodates and corrects it, according to scientific principles. From this he calculates his tables of annuities and premiums. His knowledge of the nature of diseases, and of their effect upon certain constitutions and under different conditions, enables him to co-operate with the physician; and thus the medical knowledge of that officer is combined with the statistical element in the hands of the actuary, and the knowledge of both is made practically useful. His legal knowledge, if sound, may save his company much expense—his sphere of usefulness is enlarged, and he becomes a valuable coadjutor of the legal adviser of his company. As a man of business, his services are invaluable.

The charter of incorporation of the Faculty of Actuaries of Scotland, granted in 1868, thus sets forth the duties of an actuary:—Firstly, to take care that the institution under his charge, or which may at any time desire his opinion and advice, is founded on a safe basis, both as regards the rate of mortality assumed for any particular country, class, or sex, and the rate of interest at which it may be calculated the money entrusted to the care of such institution can be safely improved. Secondly, to ascertain from time to time, as the institution makes progress, by appropriate calculations, whether the rate of mortality actually experienced, and the rate of interest realised, are in accordance with the data assumed. For the performance of these duties it is evident that not only a sound knowledge of mathematical principles is required, but also the practical application of financial judgment and experience. In addition to the requirements of Life Insurance Companies, the profession of actuary is largely called into requisition, in the same manner as that of a barrister, in advising and directing the public in

regard to a great variety of pecuniary interests, frequently involving interests of large amount.

In English Law, the first mention of the word occurs in the Friendly Societies Act, 1819, where we find "professional actuaries, or persons skilled in calculation." At present they are met with in law only in the various Friendly Societies Acts, 1833–1896. The Institute publishes a quarterly *Journal*. Its contents may with confidence be recommended to students, embracing as it does papers of the highest importance in connection with the doctrine, history, and practice of life insurance, and vital and other statistics bearing thereon.

ADJOINING OWNERS.—Under the Land Clauses Act, 1845, provision is made whereby promoters of railway or other similar undertakings of a public nature, under that or some special Act, may deal with land not required for the purposes of the undertaking. Such land is termed "superfluous lands," and must be sold or disposed of within the time limited by the special Act. If there is no such limitation, it must be within ten years after the expiration of the time limited by the special Act for the completion of the construction of the undertaking. Unless such lands are situate within a town, or are built upon, or used for building purposes, certain persons have a first right of pre-emption or purchase.

Such persons are termed "adjoining owners." They include (*a*) the person then entitled to the lands (if any) from which the superfluous lands were originally severed; or if he refuse to purchase or cannot be found, (*b*) the persons whose lands immediately adjoin the lands proposed to be sold. Where more than one person are entitled to pre-emption, an offer of sale must be made to them in succession, in such order as the promoters may think fit. The offer for sale must be refused or accepted within six weeks. Superfluous lands not so disposed of at the expiration of such period, thereupon vest in and become the property of the owners of the land adjoining thereto in proportion to the extent of their lands respectively adjoining the same. It should be noted that a person may be entitled to undisposed of superfluous lands, even though he is not an adjoining owner within the definition thereof as above. Lessees for years may be adjoining owners; so may persons who have purchased the adjoining lands from the promoters (or the subsequent company) themselves.

Under the London Building Act, 1894, an adjoining owner is the owner, or one of the owners of land, buildings, storeys, or rooms adjoining those of the building owner. **Under the Public Health Act, 1875,** owners of premises fronting, adjoining, or abutting on streets are chargeable with the expense of sewering, paving, &c., such streets. In considering whether houses adjoin, which are placed in close proximity to the part of the street which is to be paved, it is a most important fact, and in many cases a dominant fact, to see whether there is a substantial access and advantage which the houses enjoy from that portion of the street which is to be paved. A substantial access and advantage of that kind, coupled with close proximity, may bring a case within the word adjoin, though there is no actual touch.

ADJOINING TENEMENTS.—A tenement is not, in law, limited in meaning, as it usually is in common speech, to a dwelling-house—generally one let out into unfurnished apartments. The term is, on the contrary, a

very wide one, and includes all land and buildings thereon; and everything affixed and appurtenant thereto, as well as everything under the soil. Every owner of land is entitled, so far as regards such of the land as is unweighted by buildings, to the natural support afforded by the land of his adjoining owner. But not to support for any buildings thereon, unless a right thereto has been acquired by grant or prescription. If the support needed is more than the adjoining owner's land can afford, the right extends beyond that land to the more distant land of other persons. And when there is a right to support of buildings, the same rule would apply. Such a case would arise where, through a house, one of a row, being demolished, another house also falls, though separated from the demolished house by one intermediate. The occupier of one tenement of land is not bound to periodically cut thistles growing on his land, so as to prevent them from seeding; nor is he liable for any damage done to the adjoining land by reason of such seeds being blown thereon. Nor, if his neighbour's animals are injured through eating branches of trees growing on his own land and not projecting over his boundary.

But a man must, whether an adjoining owner or not, says an old case in 1705, "keep his own filth on his own ground." Thus a railway company was held responsible for having on its own land built an artificial mound so close to the plaintiff's house as to render it damp and unhealthy by reason of the rain oozing through. Again, where a piece of decayed wire fell from the defendant's fence and was swallowed by the adjoining owner's cow, which was thereby poisoned, the owner of the cow recovered damages. So, too, did the owner of a horse which had been poisoned by eating from a yew-tree which the defendants had planted so near their boundary that it projected into the adjoining meadow where the horse was grazing. But a man having a yew-tree upon his land is under no obligation to fence against his neighbour's cattle which might, if trespassing, eat from it.

Where the boundary between two adjoining tenements is a hedge and ditch, the ditch would belong to the owner of the hedge, unless there is proof to the contrary. If a party-wall divides adjoining tenements, the rights of the respective adjoining owners with regard to the wall depends upon their ownership of, or interest in it. The possible forms of such ownership or interest are numerous, and should be known to the parties concerned. If, however, the ownership is in doubt, a jury is entitled to find that it belongs to the adjoining owners as tenants in common. In cases where such is the nature of the ownership of the party-wall, and one owner places an obstruction upon it, the only remedy of the other owners is to remove the obstruction. When the wall is not common property, but half of it belongs to one owner and the other half to the adjoining owner, then either owner may pull down his half of the wall. But if the other owner has acquired a right of support, the remaining half of the wall must be supported by him who pulled down his half, and at his expense. With regard to adjoining owners in London, and their mutual rights, reference should be made to the London Building Act, 1894. *See* also ADJOINING OWNERS; EASEMENT.

ADJUSTMENT OF AVERAGE is the ascertaining of the amount of indemnity due to the party insured under a policy of marine insurance after

all proper allowances and deductions have been made. It includes the fixing of each underwriter's proportion of that indemnity. For the proportion of the risk which is uninsured, the assured is taken to be his own underwriter. When a ship is lost, or any of those contingencies have arisen against which the insurance is effected, the owner of the ship or of the goods insured, as the case may be, reports the fact to the underwriters. As a matter of practice, all the business connected with such an insurance is conducted through a broker, who would hold the policy. Before proceeding to the adjustment, in ordinary cases, the underwriters require to be satisfied that the loss has occurred through circumstances against which the insurance was effected. They then examine the correctness of the demand made by the assured. But in complicated cases of partial or average losses, the matter is usually referred to a professional average adjuster to calculate and adjust the percentage rate of losses. In a case of total loss there is little difficulty, but in cases of partial losses, where there has been no abandonment, very careful investigation is necessary. The amount of damage being thus ascertained, the liability of each underwriter is settled, and the policy is said to be adjusted. According to the practice at Lloyds, the policy is endorsed, "Adjusted the loss on this policy at £— per cent.," or to a similar effect. It is then taken to the underwriters who have subscribed it, who initial the endorsement and strike out their subscriptions. The loss is payable four to six weeks afterwards, after which the amount is debited by the broker to the underwriter, the initialling of the endorsement being struck through, and the loss "struck off" or settled in account. This closes the account as between the broker and the underwriter. But as between the assured and the underwriter this "striking off" does not discharge the latter's liability under the policy, unless (*a*) he pays the amount of the loss to the broker in money, or (*b*) the assured assents to the above method of adjustment, or can reasonably be said to have acquiesced therein. By adjustment, however, the underwriter who has not paid, is not prevented from defending a claim on the policy on the ground of any misconception of law or fact—even though he was ignorant of such facts when he signed the adjustment. But actual payment of the loss, though made in ignorance of the law, prevents him recovering the money from the assured, unless fraud or legal mistake be proved.

Measure of Indemnity.—If the policy is a valued one, each underwriter is liable in case of a loss, for such proportion of the loss as the amount of his subscription bears to the value fixed by the policy. If the value is not so fixed, the criterion for proportion is the insurable value of the subject. On the same principle is determined the liability of each underwriter for expenses properly incurred under the sue and labour clause in the policy. As illustration: if the loss be £500, and the insurable value of the subject be £1000, and one underwriter has insured it for £100, he is liable to the assured on the following principle: $\frac{\text{insurable value}}{\text{loss}} = \frac{\text{subscription}}{\text{liability}}$; that is, the amount of liability would be £50. If the expenses under the sue and labour clause are £50, and the value of the subject is £100, an underwriter for £60 should pay £30. (*a*) Where there is **a total loss** of the subject, if the policy be valued, such value is the measure of the indemnity. If there is no value

fixed, the indemnity is the insurable value—subject, however, to the limit of the sum insured, or any express agreement in the policy. (*b*) In cases of **partial loss.** Where a wooden ship is damaged only, and has been repaired, the indemnity (subject to express agreement, if any) is the reasonable cost of repairs, less customary deductions; but not exceeding the sum insured in respect of any casualty. These customary deductions are roughly: one-third for new work substituted for old in respect of all repairs of damage sustained by the ship after her first voyage; one-sixth for repairing chain cables; the insured being entitled to charge in full certain expenses, such as for removal, appliances, temporary repairing, stores, and for reparation during her first voyage. The insured may charge the full expense of painting. In the case of an iron ship, the deduction is roughly one-third from the gross repairs, including labour and materials used therein, the value of the old materials being then deducted. Where the repair of a ship is only partial, the assured may obtain the reasonable cost of such repairs computed as above, and also indemnity for reasonable depreciation from unrepaired damage; provided the whole amount does not exceed the cost of reparation of the whole damage as above computed. Where there is a partial loss of **freight,** the measure of indemnity, in the absence of a limit or express agreement, is such proportion of the sum fixed by the policy, or if no sum fixed, of the insurable value of the subject, as the proportion of freight lost by the assured bears to the whole freight at risk.

Where of **goods,** the measure of indemnity (there being no limit or express agreement) is as follows: (1) where part of the goods insured by a valued policy is totally lost, the indemnity is such proportion of the sum fixed by the policy as the value of the part lost bears to the insurable value of the whole, ascertained as in the case of an unvalued policy; (2) where part of the goods insured by an open policy is totally lost, the indemnity is the insurable value of the part lost, ascertained as in case of total loss. Thus, in the case of goods valued at £500 and insured for £200, the insurable value of which is £400, and of the part lost is £50, the underwriter pays one-eighth of his subscription, for the loss is one-eighth of the whole; and if goods are worth for insurance £100, and £25 of them are lost, the underwriter pays one-fourth of his subscription.

(*c*) There is as a rule a **memorandum** contained in a Lloyd's policy which qualifies the measure of indemnity. Such memorandum usually runs as follows:—

> Corn, fish, salt, fruit, flour and seed are warranted free from average, unless general or the ship be stranded. Sugar, tobacco, hemp, flax, hides and skins are warranted free from average under five pounds per cent., and all other goods, also the ship and freight, are warranted free from average under three pounds per cent., unless general or the ship be stranded.

Here, "average unless general" means a partial loss other than a general average loss, and does not include particular charges. A general average loss, however small, may be recovered from the underwriters; but a particular average loss cannot, unless it exceeds the specified percentage. In that case the whole loss may be recovered from the underwriter. (*d*) Unless the policy otherwise provides, the underwriter is liable for **successive**

losses, even though the total amount of such losses exceeds the sum insured. *See* AVERAGE; MARINE INSURANCE.

ADMINISTRATION of the estate of a deceased is of two kinds: (*a*) with the will annexed; (*b*) under intestacy. First, **with the will annexed**; in which case administration is a grant under a will which does not appoint an executor, or where the executor appointed declines to act. The grant is to a legatee, creditor, or other person appointed by the court. A legatee has always the first claim to the grant, the next-of-kin having a *primâ facie* right only, but generally the person having the most interest under the will has priority. There are various forms of grants of administration, which apply equally in cases with wills and without. The more usual are: by a guardian during minority; by an agent during absence of principal; *de bonis non*, where part of the estate is already administered; to collect a perishable estate; and *pendente lite*, limited to the conclusion of legal proceedings. **Under an intestacy** is the most usual instance, and occurs where a person dies without leaving a will. Until some person obtains from the court a grant of administration, or as it is called, takes out letters of administration of the deceased's estate, it is impossible to collect the assets, pay the creditors, and distribute the property amongst the next-of-kin. The person who obtains letters of administration is known as the administrator, and standing in the stead of the deceased as his legal personal representative, he alone has the right to and can deal with the property. In him all the property, both real and personal, is by law vested. He is the one who executes all deeds, sues and is sued and does all acts necessary in the winding-up of the deceased's affairs. If any person should meddle with those affairs before and without being duly appointed administrator, he becomes an executor *de son tort*, incurring thereby certain liabilities. If none of the next-of-kin take out letters of administration, a creditor of the deceased is allowed to do so, and it is his duty to administer the estate duly according to law.

In order to obtain administration, application should be made to the Registrar, or District Registrar as the case may be, of the Probate Court, and affidavits filed similar to those on an application for probate of a will. The persons entitled to administer and those entitled to share in the deceased's estate, with the proportions of their shares, are set out in columns 2 and 3 respectively of the Table of Next-of-Kin. The duties payable are set out in the same Table. Where the net value of the real and personal estate of a man who has died intestate since 1st September 1890, leaving a widow, but no issue, shall not exceed £500, the same will belong to his widow absolutely and exclusively. But where such net value exceeds that sum, the widow will be entitled to £500 absolutely and exclusively, and has a charge upon the whole estates for that amount, with interest from the death at 4 per cent. per annum until payment, and without prejudice to her interest and share in the residue of her husband's estate remaining after payment of the £500. The charge is to be borne and paid proportionately to the values of the real and personal estates respectively. On the death of any person being, or having been, an officer, seaman, or marine, the money to his credit in the books of, and payable by, the Admiralty, and arising out of effects, arrears of pay, wages,

prizes, bounties, and similar allowances, is distributed amongst the relatives entitled thereto, without production of letters of administration; and so it may be, by direction of H.M. Treasury, in respect of pay or allowances under £100 due to any deceased person in military and civil service.

In the case of intestates leaving small estates, the officials of the Probate Registry at Somerset House will assist applicants in filling up the papers necessary for a grant of administration. If the intestate leaves less than £100, and his widow or children reside more than three miles from Somerset House, the Registrar of the County Court in their district will, on their behalf, fill up all necessary papers and obtain the letters of administration. In addition to any stamp duty the fees payable to the Registrar are 5s. for property under £20, and 1s. for every £10 over that amount.

ADMINISTRATION OF ASSETS of deceased persons was an old and exclusive jurisdiction of the Court of Chancery. It is now within the function of the Chancery Division (*q.v.*) of the High Court of Justice; and up to certain limits is within the jurisdiction of the County Courts. A County Court has jurisdiction in all administration actions, in which the personal or real, or personal and real, estate against or for an account or administration of which the demand may be made, shall not exceed in amount or value the sum of £500. In all cases, therefore, within this rule, proceedings should be instituted in a County Court. By this means time and expense will be saved. An administration action arises out of the right of any person having a claim against a particular property, or against its owner, to have a discovery and account of the property liable to meet his claim. When such property is discovered, he has the further right to have the property secured until his claim has been ascertained and established, when such claim must be justly satisfied thereout. Three classes of persons may commence proceedings for administration. (1) Creditors; (2) persons beneficially interested in the estate, such as heirs, next-of-kin, and legatees; or (3) an executor, administrator, or legatee. If the estate is insolvent, the administration thereof follows the principles of the bankruptcy laws.

The following are some of the principal rules in the general administration of a solvent estate. First, there is not now as formerly any distinction between a creditor in respect of a claim founded upon simple contract, such as an ordinary trade creditor and a creditor on a "specialty" such as a covenant in a deed. Until 1870, there was such a distinction—and to the prejudice of the former. But mortgage charges, and liens for unpaid purchase money on land and houses and other real property, have a priority, in that they are payable first, to the exclusion of the other creditors of the deceased, out of his real estate of whatever tenure. With that exception the assets of the deceased are applied for the payment of his debts in the following order:—(1) his general personal estate, unless expressly or impliedly exempted. The first charge hereon is for funeral expenses; next the expenses of proving the will or taking out letters of administration; (2) lands expressly devised for the purpose of paying debts; (3) estates which descend to the heir; (4) real or personal property devised or bequeathed charged with debts; (5) general pecuniary legacies *pro rata;* (6) specific legacies and real estate devised; (7) property appointed under a power; (8) widows paraphernalia.

An executor or administrator may give preference to creditors, and he may pay a statute-barred debt. He can also retain part of the estate in satisfaction of a debt due to himself. But he can do this only as against creditors of equal degree with himself; as, for example, where his and the creditors' claims are all specialty. *See* further hereon: ABATEMENT OF LEGACIES; CHANCERY DIVISION; EQUITY; EXECUTORS AND ADMINISTRATORS.

ADMIRALTY is a subdivision of the Probate, Divorce, and Admiralty Division of the High Court of Justice. The Court consists of two judges (who are also judges in probate and divorce cases), and exercises not only the jurisdiction given to it by the Judicature Acts, 1873, but also all the jurisdiction previously possessed by the High Court of Admiralty. Actions which are maintainable in the Admiralty Division may all be called Admiralty actions. The practice relating to them differs from that of the other divisions of the High Court, particularly in the process *in rem*, which is peculiar to Admiralty actions. By the process *in rem*, the property which has given rise to the cause of action can be arrested and made liable to satisfy the plaintiff. This is the process by which a ship may be arrested, and held in port until security is given or the claim settled. The arrest is effected under the authority of a warrant issued out of the Admiralty registry. To obtain it an affidavit as to the facts of the case must be filed. It is executed by nailing or fixing for a short time on the main mast or single mast of the vessel, and then leaving a copy in its place. In case of a wrongful arrest, an action will lie for damages.

The following are the causes of action maintainable in the Admiralty Division:—**Salvage**, both on the high seas and within the territorial limits of the country; **life salvage** of persons on board British ships in any waters, and foreign ships in British waters, or anywhere, with the consent of their governments; **bottomry**; **necessaries** supplied to foreign ships; **possession of ships.** The following actions are also properly brought in the Admiralty Division:—**Collision or damage** both to property and persons by ships; **damage to cargo** carried in any foreign ship; **towage** on the high seas and within a county; **wages and pilotage** earned by masters, seamen, and any persons employed on board a ship; **disbursements** by master on account of the ship; **mortgage**, in actions by mortgagees of a ship, if she is under process of the Court, or if the mortgage was registered under the Merchants Shipping Acts; questions as to **title, ownership,** and **management** of ships.

All County Courts having an Admiralty jurisdiction, have such jurisdiction limited to the amount of the different claims as follows:—Salvage, where the value of the salved property does not exceed £1000, or the claim for reward £300; towage, necessaries, and wages, where the claim does not exceed £150. Claims for damages up to £300. If the parties so agree these limits may be exceeded. The County Courts also have a special jurisdiction over claims arising out of breaches or charter parties, and other contracts for carriage of goods in foreign ships, or torts (wrongs) in respect thereof.

ADMIRALTY, THE LORDS OF THE, or more properly the Lords Commissioners of the Admiralty, are appointed by the Crown in succession to, and to fill, the ancient office of Lord High Admiral. Their function is the administration and control of the Royal Navy and the Royal Marines.

The Commissioners consist of, first, the First Lord, who is invariably a Cabinet minister, and whose position equals that of a principal Secretary of State. The First Lord is responsible to the Crown and Parliament for the department. In addition, there are four Naval Lords who are naval officers. Of these, the three senior are responsible for the *personnel* of the Navy; and the third, the Comptroller, is responsible for its material. There is also a Civil Lord, who is generally a Member of Parliament, and whose position is similar to that of an Under Secretary of State.

ADMISSIONS may be considered in two classes:—(i.) those occurring during the course of, and before the trial of an action; (ii.) those arising at a trial. As to the first class. For the purposes of the general reader it will be sufficient to very briefly advert to them. An admission may arise (*a*) upon the face of a pleading, when the other party is entitled to obtain the advantage thereof by way of judgment or otherwise; (*b*) in the Commercial Court by the judge directing the parties to mutually admit all facts in the action except those the subject of the action; (*c*) by a party specifically admitting the other party's claim and paying money into Court in respect thereof; (*d*) as a result of compliance with a notice to admit, whether of facts or documents in dispute. It will, however, be more profitable to consider the question of admissions as it may arise in the course of a trial. **In civil actions,** the result of admissions between the parties is generally to do away with the necessity for strict evidence as to the facts admitted. Thus a letter from one party to another making an admission, and not expressed to be written "without prejudice," saves proof of the facts in the subject thereof. But if the first letter of a series is expressed to be written "without prejudice," the remaining letters need not be so ear-marked. Again, admissions may be made in the course of conversation, and acts; also by conduct, manner, demeanour, and acquiescence. And at the trial counsel may bind their clients by admissions; so strongly that a client can only be relieved therefrom by satisfying the Court that the admissions were made by "legal" mistake. An infant cannot make admissions; nor, as a rule, can his guardian or next friend do so on his behalf.

A confession is, **in criminal cases,** an admission made at any time by a person charged with a crime, stating or suggesting that he committed that crime. But such an admission must be voluntary, and not caused by inducement, threat, or promise. It is not involuntary if simply caused by religious exhortation or by the inducements of a person not in authority. Authority, here, means official authority; a master, for example, not having for this purpose an authority over his servant, or a policeman over his prisoner. Where an accomplice to a murder confessed as a consequence of a reward and pardon promised by a Secretary of State, it was held that such confession was not voluntary. On the other hand, a man was accused of murder. A magistrate tried to obtain a confession by a promise to try and obtain a pardon for him, though at the same time the magistrate, having been instructed that no pardon would be granted, communicated this fact to the man. But the latter, notwithstanding this, made a confession, and it was held to be voluntary. So also was the confession of an accused servant girl, which was made in consequence of the inducements of her mistress. Only voluntary confessions can in criminal cases be proved at the trial in the

place of the facts of the offence themselves. In prosecutions for crime, the strictest proof is required, the rules in respect to admissions in civil actions not generally applying thereto.

ADULTERATION of Food and Drugs has been made the subject of legislation in the Food and Drugs Acts of 1875 and 1899. These Acts are the authority in cases of adulteration generally, and will be explained in this article. But with regard to questions arising in respect of special commodities, reference should also be made to other appropriate headings in this work, such as BEER; BREAD; FERTILISERS AND FEEDING STUFFS; HOPS; MARGARINE; BUTTER; MILK; SEEDS; and TEA. We will now proceed to the above-mentioned Acts, which, it may be here stated, extend as well to Scotland and Ireland as to England.

The term "food" includes every article used for food or drink by man, other than drugs or water, and any article which ordinarily enters into or is used in the composition or preparation of human food; and also includes flavouring matters and condiments; the term "drug" includes medicine for internal or external use. To decide whether an article is a drug or not, would appear to be whether it were sold for medicinal use. Thus in the case of a grocer who sold adulterated beeswax, though it was proved to be used in the preparation of medicine, and appeared in the "British Pharmacopœia," it was decided that the article was not a drug; and upon appeal, one of the judges seemed to imply that if the sale had been by a chemist the case might have been different. So arsenical soap not containing arsenic is not a drug.

Offences.—No person shall mix, colour, stain, or powder, or order or permit any other person to mix, colour, stain, or powder, any article of food, or any drug with any ingredient or material so as to render the article injurious to health, with intent that the same may be sold in that state; and no person shall sell any such article or drug so mixed, coloured, stained, or powdered, under a penalty in each case not exceeding fifty pounds for the first offence; every offence, after a conviction for a first offence, shall be a misdemeanour, for which the person, on conviction, shall be imprisoned for a period not exceeding six months with hard labour.

It should be noticed that hereunder the offence is the mixing with *injurious* ingredients. Selling a 1 lb. bottle of peas containing 3 grains of sulphate of copper has been held to constitute an offence. A descriptive label is no defence; but if, in respect to the sale, the person charged can prove absence of knowledge of the adulteration, and that he could not with reasonable diligence have obtained that knowledge, he is not liable to conviction for any of the above offences.

No person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser, under a penalty not exceeding twenty pounds: Provided that an offence shall not be deemed to be committed hereunder in the following cases; that is to say, (1) Where any matter or ingredient not injurious to health has been added to the food or drug because the same is required for the production or preparation thereof as an article of commerce, in a fit state for carriage or consumption, and not fraudulently to increase the bulk, weight, or measure of the food or drug, or conceal the

inferior quality thereof; (2) Where the drug or food is a proprietary medicine, or is the subject of a patent in force, and is supplied in the state required by the specification of the patent; (3) Where the food or drug is compounded as in the Acts mentioned; (4) Where the food or drug is unavoidably mixed with some extraneous matter in the process of collection or preparation.

This section is most important, as by far the greater number of prosecutions are instituted thereunder. According to the general law a master is criminally responsible for the acts of his servants or agents only when there is reasonable evidence of an expressed or implied, actual or constructive, authority on his part for the commission of such acts. If this were otherwise tradesmen or other persons could always evade the law. But in cases within the above section a master is liable for those acts of his servants or agents, or even of strangers, although in fact such acts are *unauthorised* by him, and even expressly forbidden. The servant is also liable to conviction as the actual seller. If the seller brings to the purchaser's knowledge clearly and unequivocally that the article comes within the offence of the above section, he cannot be convicted. The prosecution need not specially prove that the purchaser was prejudiced or damaged. Whether the article sold is the article demanded by the purchaser is a question of fact for the justices to consider; and they are entitled to use any special knowledge they may possess as to what is known commercially under a particular name, even in the absence of evidence on that point.

No person shall sell any compound article of food or compounded drug which is not composed of ingredients in accordance with the demand of the purchaser: penalty not exceeding twenty pounds. But no person shall be guilty of any such offence as aforesaid in respect of the sale of an article of food or a drug mixed with any matter or ingredient not injurious to health, and not intended fraudulently to increase its bulk, weight, or measure, or conceal its inferior quality, if at the time of delivering such article or drug he shall supply to the person receiving the same a notice, by a label distinctly and legibly written or printed on or with the article or drug, to the effect that the same is mixed. And this label shall not be deemed to be distinctly and legibly written or printed within the meaning of the section unless it is so written or printed that the notice of mixture given by the label is not obscured by other matter on the label; but nothing in these Acts shall hinder or affect the use of any registered trade-mark, or of any label which has been continuously in use for at least seven years before the 1st January 1900. No trade-mark can now be registered purporting to describe a mixture unless it complies with the requirements of these Acts. No person shall, with the intent that the same may be sold in its altered state without notice, abstract from an article of food any part of it so as to affect injuriously its quality, substance, or nature, and no person shall sell any article so altered without making disclosure of the alteration, under a penalty in each case not exceeding twenty pounds.

If at the time of sale a vendor of milk gives notice to the purchaser of the abstraction of cream, he is not liable; but if no such notice has been given, absence of knowledge is no defence—unless he can produce a written warranty as hereinafter mentioned. A special contract between the vendor and purchaser as to the quality of the article to be delivered by the vendor is *no* bar to a conviction.

OCCUPATIONS OF THE PEOPLE

OCCUPATIONS OF THE PEOPLE

THE population of England and Wales is divided into two main groups, occupied persons and unoccupied persons. The facts recorded at the census of 1901, as regards occupation, relate only to persons aged 10 years and upwards:—

	Per 1000 of the Population Aged 10 Years and upwards.		
	Males.	Females.	Males and Females.
Occupied . . .	837	316	566
Unoccupied . .	163	684	434
Total . . .	1000	1000	1000

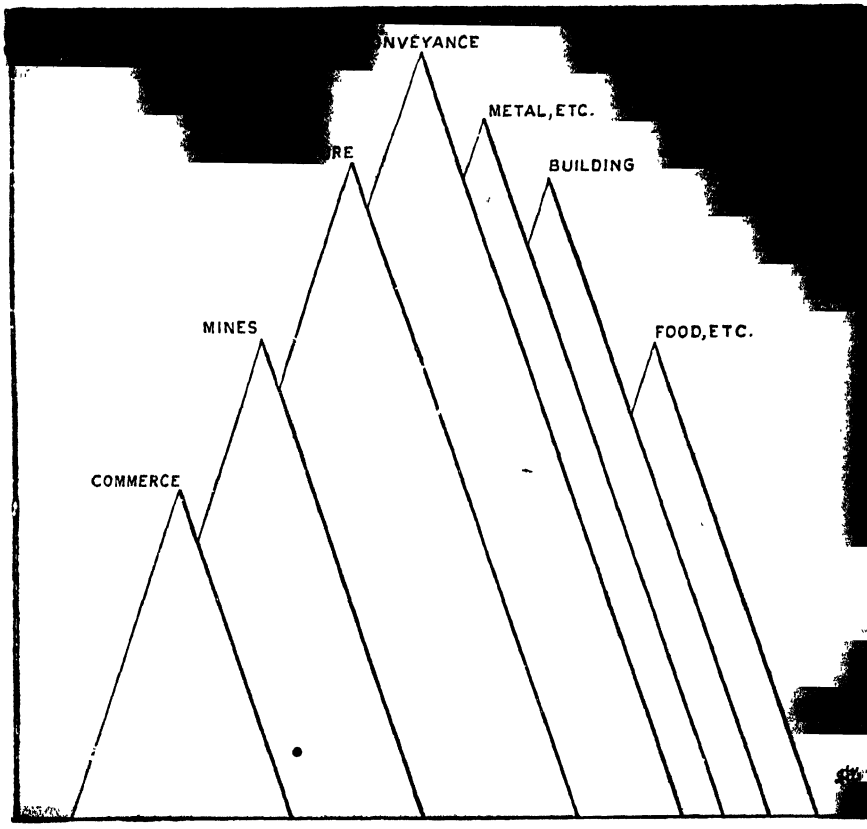
This means that of all males aged 10 years and upwards, 837 per 1000 were occupied, and 163 were unoccupied. Similarly, of all females aged 10 years and upwards, 316 per 1000 were occupied, and 684 were unoccupied. And of all persons aged 10 years and upwards, 566 per 1000 were occupied, and 434 were unoccupied.

The unoccupied group (434 per 1000) is, of course, partly made up of children over 10 years of age, and of women who though not engaged in a trade, a business, or a profession, are yet most usefully engaged in their home duties.

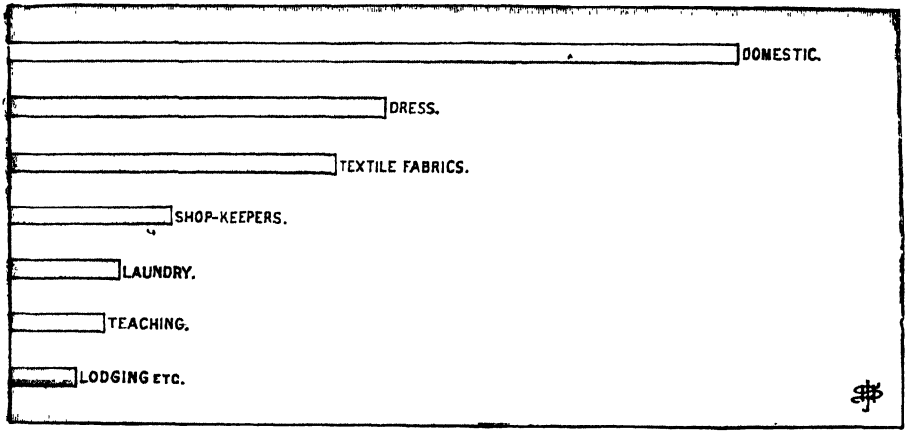
We are now concerned only with the occupied group, representing 56.6 per cent. of the whole population over 10 years of age, and with the nature of their occupations.

The occupations of males and of females differ so largely that it is necessary to state the leading occupations for males and for females separately.

Occupied males represent 837 per 1000 males aged 10 years and upwards; and their leading occupations are as follow:—



Males.—The Seven Leading Groups of Occupation.



Females.—The Seven Leading Groups of Occupation.

THE NUMBER OF MALES IN EACH OCCUPATION, PER 1000 MALES OVER 10 YEARS OF AGE.

	Per 1000.
Conveyance of persons, goods, and messages	103
Workers in metal, machines, implements, and conveyances	94
Agriculture, on farms, woods, gardens	88
Building and works of construction	86
In and about mines and quarries	64
Food, tobacco, drink, and lodging	64
Commercial	44
Workers and dealers in dress (including drapers, linen drapers, mercers)	40
General labourers, factory labourers (undefined)	35
Workers in textile fabrics	33
Professional occupations and their subordinate services	26
Workers in wood, furniture, fittings, and decorations	17
Domestic outdoor service	15
General or Local Government	14
Defence of the country	14
Workers in paper, prints, books, and stationery	12
Domestic indoor and other services	10
Engine-drivers, stokers, firemen (*not* railway, marine, or agricultural)	9
Other workers	45
Other dealers	24
Total occupied	837
Unoccupied	163
Total	1000

We see that the leading occupation of males is the conveyance of persons, goods, and messages. Of every 1000 males, at ages over 10 years, no fewer than 103 are occupied in conveyance—more than 1 in 10.

Agriculture ranks third, with 88 per 1000. But as the Table above relates to *groups* of occupations, which are not identical with *separate* industries, agriculture as a separate industry still comes at the head of the list of separate industries.

Commerce uses 44 per 1000 of all males aged 10 and upwards. This is 4.4 per cent. Professional occupations account for 26 per 1000. The government and the defence of the country each use 14 per 1000 of all males at ages over 10 years.

Coming to females. Occupied females represent 316 per 1000 of all females above the age of 10 years. Their leading occupations are:—

THE NUMBER OF FEMALES IN EACH OCCUPATION, PER 1000 FEMALES OVER 10 YEARS OF AGE.

	Per 1000.
Domestic indoor service	101
Workers in dress	52
Workers in textile fabrics	45
Shopkeepers, dealers, and others engaged in commercial pursuits (including assistants). (Dress, food, &c.)	22
Laundry and washing service	15
Teaching	13
Board, lodging, and dealing in spirituous drinks	9
Charwomen	9
Professional occupations (other than teaching), including General or Local Government	6
Workers in paper, prints, books, and stationery	6
Sick-nurses, midwives, and invalid attendants	5
Workers in metal, machines, implements, and conveyances	4
Agriculture, on woods, farms, gardens	4
Commercial, bank insurance, and law clerks	4
Others engaged in service (not under other heads)	4
Workers in food	3
Other workers	14
Total occupied	316
Unoccupied	684
Total	1000

OCCUPATIONS OF THE PEOPLE

The leading female occupation is domestic indoor service, which claims slightly over 10 per 100 of all females aged 10 years and upwards. Domestic service is for women what the conveyance service is for men. See the Table relating to males.

Female workers in dress take the second place. One in 20 women follows this occupation. The laundry service gives employment to 15 per 1000 women aged 10 and older. And there are 9 charwomen per 1000.

Professional women, including teachers, are 19 per 1000 women. Sick-nurses, &c., are 5 per 1000 women. Female clerks are 4 per 1000.

The census returns contain some interesting information as regards the occupations of unmarried women, and of married or widowed women respectively.

There are three groups of occupations, thus :—

Group A.—Domestic indoor service.
Clerks.
Paper, prints, books, and stationery.
Teaching.

Group B.—Textile fabrics.
Dress.
Other workers.

Group C.—Laundry.
Charwomen.
Others engaged in service.
Shopkeepers, &c.
Sick attendance.
Board, lodging, drink.
Other occupations.

Now, classifying occupied women under Groups A, B, C, and also under the heads Unmarried, and Married or Widowed, the results are as follow :—

Occupation per 1000 occupied unmarried females aged 10 and upwards.

Occupation per 1000 occupied married or widowed females aged 10 and upwards.

Occupation.	Unmarried Women.	Married or Widowed Women.
Group A	466	132
Group B	367	370
Group C	167	498
Total . . .	1000	1000

The above statement shows that the occupations of unmarried women differ very largely from the occupations of married or widowed women.

In Group A, domestic indoor service, &c., there is a large proportion of unmarried women and a small proportion of married women.

In Group B, textile, dress, &c., the proportions are nearly equal, as regards unmarried and married women.

In Group C, laundry, charwomen, &c., there is a small proportion of unmarried women and a large proportion of married women.

Some of the occupations that employ more women than men are :—

Sick nurses, midwives, invalid assistants.
Teaching.
Domestic services (excluding outdoor).
Bookbinding, &c.
Textile fabrics.
Dress (excluding wig-makers).

For the total of the above six groups of occupations there were more than three women employed to each man employed. But in all other occupations, taken as one group, there were eleven men employed to one woman employed.

J. HOLT SCHOOLING.

Analysts and Analysis.—Public analysts for the purposes of these Acts are appointed by the local authorities with the approval of the Local Government Board, and must furnish certain proofs of competency; one authority may engage the analyst of another. Any purchaser, whether official or private, of an article of food or of a drug in any place being a district, county, city or borough, where there is any analyst appointed under these Acts, shall be entitled, on payment to such analyst of a sum not exceeding ten shillings and sixpence, or if there be no such analyst then acting for such place, to the analyst of another place, of such sum as may be agreed upon between such person and the analyst, to have such article analysed by such analyst, and to receive from him a certificate of the result of his analysis. In case of proceedings being taken a copy of this certificate must be served with the summons. Under section 13 of the Act of 1875, a public officer directed to procure a sample must submit it to the analyst. The purchaser, purchasing any article with the intention of submitting the same to analysis, shall, after the purchase shall have been completed, forthwith notify to the seller or his agent selling the article, his intention to have the same analysed by the public analyst, and shall divide the article into three parts to be then and there separated, and each part to be marked and sealed or fastened up in such manner as its nature will permit; and shall, if required to do so, deliver one of the parts to the seller or his agent. He shall afterwards retain one of the said parts for future comparison, and submit the third part, if he deems it right to have the article analysed, to the analyst.

It is now well settled that these last-mentioned provisions as to purchasing do not apply to private purchasers, who buy with a view to consumption. But where a sample is taken by an officer of the Local Government Board, or the Board of Agriculture, the sample has to be divided into **four** parts.

If the analyst do not reside within two miles of the residence of the person taking the sample, the same may be forwarded to him by post. If any officer, inspector, or constable shall apply to purchase any article of food or any drug exposed for sale, or on sale by retail, on any premises or in any shop or stores, and shall tender the price for the quantity which he shall require for the purpose of analysis, not being more than shall be reasonably requisite, and the person exposing the same for sale shall refuse to sell the same to such officer, inspector, or constable, such person shall be liable to a penalty not exceeding ten pounds.

The last section has been held to apply to wholesale dealers, and it also includes any open place of public resort such as a street. The purchase-money must be actually produced and offered; a mere proposal to purchase not amounting to a legal tender. Where the article is exposed for sale in an unopened tin or packet duly labelled, the vendor need not sell it except in such unopened tin or packet.

Proceedings against offenders are before the local justices in a summary manner, and penalties may be mitigated. At the hearing of the information, the certificate of the analyst is *primâ facie* evidence of the facts stated therein, and in the absence of evidence by the defendant, it is conclusive. The defendant and his wife may give evidence, and also tender a counter certificate

of analysis. The justices may also at the request of either party, at their discretion, have a further analysis made at Somerset House. Any person convicted may appeal to Quarter Sessions. If the defendant in any prosecution under these Acts proves to the satisfaction of the Justices or Court (*a*) that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the prosecutor; (*b*) with a written warranty, at the same time, to that effect; (*c*) that he had no reason to believe at the time when he sold it that the article was otherwise; and (*d*) that he had sold it in the same state as when he purchased it, he shall be discharged.

Such a warranty—which may be an invoice—will not be available as a defence unless the defendant has within seven days after service of the summons sent a copy thereof to the purchaser with a written notice that he intends to rely thereon, and specifying the name and address of the person from whom he received it, and has also sent a like notice of his intention to such person. To forge a certificate or warranty, wilfully misapply a warranty to the wrong articles, give a false warranty or label, obstruct an officer, or to commit any of the offences under these Acts by personal act, default, or culpable negligence, are each of them offences punishable with imprisonment or fines as the case may be. A limited company is liable, like an individual, to punishment (*Chuter* v. *Freeth and Pocock*). Summary proceedings under these Acts do not bar a purchaser from his remedies for damages; and in an action for breach of contract a purchaser who has become an offender thereunder may add any penalties and costs he may have suffered. **Generally**: In cases of adulteration of spirits, it is a good defence to prove that the admixture has not reduced the spirit more than 25 degrees under proof for brandy, whisky, or rum, or 35 degrees under proof for gin.

Some special cases: YEAST mixed with a certain proportion of starch as a preservative, is not considered to be adulterated. LARD should properly be made from hog fat only, and not contain more than a few tenths per cent. of water. The mixing of beef stearine with lard for stiffening purposes is appreciated by the public, while no question has been raised as to the wholesomeness of the compound. Such addition has, however, been regarded as adulteration, within the meaning of the Acts, and owing to the prosecutions which have taken place, makers have been led to discard the addition of beef stearine. JAM.—At Sittingbourne a grocer was summoned for selling as plum jam a compound which consisted of a mixture of plum and apple. The inspector asked for *Steer's plum jam*, and the defendant contended that he got what was asked for, and that being sold under the above name it need not necessarily be composed of plum only. The magistrates, however, thought otherwise, and the grocer was fined. CHOCOLATE is an admittedly manufactured article, including it may be, besides flavouring ingredients, sugar, and farina as an absorbent for oil. At Teignmouth a grocer was summoned for selling adulterated chocolate, which was proved to consist of a mixture of cocoa, sugar and arrowroot. The magistrates refused to convict, as they were not satisfied of what chocolate ought really to consist, and thought there was no definite and recognised formula for its manufacture. COCOA is made in three principal forms—pure, with the addition of sugar and a farinaceous substance; "extract" or "essence" being the residue after the expression of the natural oil; and "Dutch" made by the alkaline process. The Select Committee, 1894–1896, were of opinion that the sale of cocoa prepared as above without any notice of admixture would be an infringement of the Acts. The High Court, however, took a different view in *Regina* v. *Fields*, where a Gosport grocer having sold a packet of cocoa containing 80 per cent. of starch and sugar was

fortunate enough to appear before a bench of justices, all retired naval officers, who had a large experience of cocoa, which forms a regular ration in the navy. He was still more fortunate, in that, on appeal, the justices were upheld MUSTARD.—Many persons having a preference for diluted mustard, such mustard is generally described as *mustard condiment;* which designation alone can save a prosecution. WINE.—There has been no prosecution in respect of foreign wine. A summons taken out against a chemist at Salford, who sold unfermented wine containing only 10 per cent. of grape-juice, was dismissed on the ground that there was no standard as to the amount of grape-juice wine should contain, and further, that the presence of the 10 per cent. proved that this particular wine was made from water. DRUGS depend for a standard, in practice, upon the "British Pharmacopœia." PEPPER is rarely adulterated, sand being the usual foreign element, as the result of accident. Black pepper, however, is sometimes mixed with ground pepper husks. 3·27 per cent. is a reasonable margin for the presence of unavoidable sandy matter.

ADVANCEMENTS to Children.—No children of an intestate (except his heir-at-law), upon whom he may have settled in his lifetime any estate in lands or pecuniary portion, equal to the distributive shares of the other children, shall have any part of the surplusage with their brothers and sisters. But if the estates so given them, by way of advancement, shall not be quite equivalent to the other shares, the children so advanced shall, in such case, have so much as will make them equal.

ADVENTURERS, Merchant.—There have been two kinds of English companies engaged in foreign commerce—(i.) Regulated and (ii.) Joint-stock. The latter were those which traded upon a joint stock, each member sharing in the common profit and loss in proportion to his share in the stock. Regulated companies did not trade upon a joint stock, but were obliged to admit any person, properly qualified, upon his paying a certain fine and agreeing to submit to the regulations of the company, each member trading upon his own stock and at his own risk. It is to the class of regulated companies that the company of merchant adventurers belonged. This company came into existence in the thirteenth and fourteenth centuries, and it consisted of a great number of wealthy and experienced merchants dwelling in various large cities, seaports, and other parts of the realm, such as London, York, and Bristol. These men bound themselves together in company to trade abroad in cloth and other English commodities. At various times they obtained charters and exclusive powers from the English Crown, as well as liberty to trade abroad, especially in various cities in the Netherlands. The result of this was that in the sixteenth century Antwerp became the great market for English cloth; which, purchased there by merchants from all parts, was eventually sold both in the far east and in the west even to Brazil. In the meanwhile, they found strong trade opponents in the merchants of the Staple, and the German merchants of the Hanseatic League; until at the close of the sixteenth century the fight with the latter resulted in the expulsion of the English from the German Empire, and retaliation in the shape of expulsion of the Germans from England. After this period the merchant adventurers fixed their foreign depots in Holland, and towards the end of the seventeenth century in the free city of Hamburg, where they became known as the Hamburg Company.

The merchant adventurers greatly furthered the trade of England in its early stages, and were useful for the first introduction of many branches of commerce, by making at their own expense experiments which the state might not have thought it prudent to make. Regulated companies, on the model of the merchant adventurers, were an important factor in the development of English trade from about the middle of the sixteenth century. Thus the Muscovy Company, chartered by Queen Mary, opened up trade with Russia. And so, too, within their respective territorial limits, was our foreign trade extended by the Baltic Company in 1579, the Turkey Company in 1581, the Mauritiana Company in 1585, and the Guinea Company in 1588. The main defect in the constitution of Regulated companies was, from the modern point of view, the absence of any settled common fund for the purposes of outlay which had consequently to be casually provided for out of admission fines and corporation dues. Again, the directors were unlikely to be keenly careful of the general good of the company, inasmuch as they had no interest in the prosperity of the general trade of their company, and might even have been gainers by its limitation.

ADVERSE POSSESSION of real estate, as against the person rightly entitled, and without molestation, will give the adverse possessor, after twelve years of such peaceable possession, an unimpeachable title as against all the world. Such a title, when acquired, is called a possessory title. It arises from the fact that under the Real Property Limitation Act, 1874, no person can make an entry or distress, or bring an action to recover any land or rent, except within twelve years next after the time when the right first accrued.—*See* ACQUIESCENCE.

ADVERTISEMENTS. Of an Apology.—Where it is intended to plead apology to an action for libel, the apology should be made as publicly as the libel. Thus if the libel appeared in a newspaper, the apology should be publicly made in the same paper. It should be printed in type of ordinary size, and in a part of the paper where it will be seen; not hidden away among other advertisements or notices to correspondents. If the apology is to a slander, it should be published proportionately to the possible publication of the slander.

Betting.—Under the Betting Act, 1874, it is illegal to publish certain advertisements as to betting. Thus, it is an offence punishable on summary conviction (1) To exhibit or cause to be exhibited any advertisement that any house, office, room, or place is open, kept, or used—(*a*) for the purpose of betting; (*b*) for the purpose of exhibiting betting lists; (*c*) to induce any person to resort thereto for the purpose of betting. (2) On behalf of the owner of a betting house to invite any person to resort thereto for the purpose of betting. (3) To send, exhibit, or publish any letter, circular, telegram, placard, handbill, card or advertisement (*a*) by which it is made to appear that any person within or without the United Kingdom will, on application, give information or advice in respect to any bet or with making any bet within the meaning of the Betting House Act, 1853; (*b*) with intent to induce any person to apply to a betting house or to any person with a view to obtaining information or advice for the purpose of any such bet; (*c*) inviting any person to make or take any share in or in connection with such bet. It is only illegal to advertise betting tips when they are advertised

with respect to a betting house. Distributing to people in the street handbills containing an offer to bet is punishable as "loitering" under the Street Betting Act, 1906. A newspaper proprietor is criminally liable for illegal betting advertisements appearing in his paper.

By an Executor.—All debts must be paid or provided for before a deceased's estate is distributed. In order to protect himself against claims on the estate, an executor or administrator should advertise in the manner following :—

THOMAS SMITH, Deceased.—Notice is hereby given, pursuant to the Act of Parliament 22 and 23 Vic. c. 35, that all persons having any CLAIMS or DEMANDS against the estate of THOMAS SMITH, late of Benstead, in the County of Hants, gentleman, deceased, who died on the 12th day of June 1902, and whose will was proved by me the undersigned executor and trustee therein named, on the 22nd day of July 1902, in the Principal Registry of the Probate Division of the High Court of Justice, are hereby required to send in particulars of their debts or claims to me on or before the 30th day of October 1902, as after that day I shall proceed to distribute the assets of the said testator amongst the parties entitled thereto, having regard only to the claims of which I shall then have had notice; and I shall not be liable for the assets or any part thereof, so distributed to any person of whose debt or claim I shall not then have had notice. DATED this 9th day of August 1910.

JOHN GRAHAM, 12 Eden Road, Rotherhithe, London, S.E.

He may then distribute the assets, regarding only the claims received.

Indecent.—No picture, or printed or written matter of an obscene nature, and no indecent advertisement, may be exhibited to public view or placed so as to be visible to persons passing along a public highway, or using a urinal, or given away or offered to such a person, or delivered to any one for the purpose of being so exhibited.

For Stolen Property.—It is an offer to compound a felony to advertise a reward for the recovery of property stolen or lost, and using words purporting that "no questions will be asked," or that the person producing the property will not be arrested, or that any person who has bought or lent on the property will be repaid their loan or advance, or any reward for its return. The person printing or publishing such advertisement is liable to a forfeiture of £50, which is recoverable in an action by a common informer.

Vehicles.—The proprietor of a metropolitan stage or hackney carriage may not affix any notice or advertisement upon the outside or inside of such carriage, so as obstruct the light or ventilation, or annoy the passengers.

Misrepresentations by.—When a misrepresentation is made to the public by means of an advertisement, the advertiser knowing the misrepresentation to be untrue, any one of the public who has reasonably incurred expense by reason of such misrepresentation will have an action against the advertiser. In a certain case, the defendant caused to be inserted in a newspaper an advertisement for the letting by tender, with possession, of a farm. The plaintiff therein was held to have a right of action for damages, in that he, believing in the *bonâ fides* of the advertisement, was induced to inspect the farm and employ persons to value it with a view to his becoming tenant, the defendant at the time he inserted the advertisement knowing that he had not power to let the farm, and that it was not even to be let.

Insertion of.—A proprietor of a railway guide gave to the defendant a written order to insert an advertisement "to last two years from date, to be renewed on the same terms at the end of that period, provided a second edition shall be printed." The defendant after the advertisement had continued two years brought out a second edition. The contract here gave the defendant the option of renewing in the second edition; but not to bind him to renew.

Contract by.—An advertisement making an offer to the public at large will, if and when such offer is accepted by any person, create a contract between the advertiser and such person. And *see* Appendix ADVERTISEMENTS; CONTRACT.

ADVICE OF COURT.—(*a*) The parties to any action may concur in stating the questions of law arising therein in the form of a special case for the opinion of the Court. The special case having been drawn up and entered, the Court will hear arguments thereon as at the trial of an action. The parties to a special case may, if they think fit, enter into an agreement in writing, which shall not be subject to any stamp duty, that, on the judgment of the Court being given in the affirmative or negative of the questions raised, a certain sum of money shall, as the case may be, be paid by one party to the other. The judgment of the Court may then be entered for the sum agreed, and execution can follow in the usual manner. (*b*) Under the Vendor and Purchaser Act, 1874, where any dispute arises between a vendor and purchaser of real estate upon any question other than whether there is a contract at all between them, the parties may go before the Court on a summons, and without commencing an action. The Court will then answer the questions submitted to it, and enforce its opinion and direct all those things to be done that are a natural result of the decision. The questions usually put to the Court in these cases are those relating to the validity of title. (*c*) Executors, administrators, trustees, heirs-at-law, next-of-kin, creditors and others interested in the estate of a deceased person, or in a trust-estate, may apply to the Court by summons for advice; for the approval of any sale, purchase, compromise or other transaction; and for the determination of any question arising in the administration of the estate or trust.

AFFIDAVIT is a statement in writing sworn before a person authorised to administer an oath. Apart from certain officials of the Court, the person who usually administers oaths is a Commissioner for Oaths. He is generally a solicitor, and his fee for the oath is one shilling and sixpence; and an additional shilling for each exhibit—any document attached to the affidavit. The person who makes an affidavit is called the deponent. He must confine himself to facts within his own knowledge; except in interlocutory proceedings, when statements according to his belief, but with the grounds of his belief set out, will be admitted. The affidavit may be in print or in manuscript, or partly in either. *See* DECLARATION.

AFFILIATION.—Any single woman may apply to the magistrate at the Petty Sessions for the district in which she may be resident for the time being, for a summons against a man alleged by her to be the father of a child in respect of which she applies. The father may be proceeded against even though he has paid a lump sum down to the mother on agreement that

no proceedings shall be taken—and even also, where the payment agreed is a weekly sum. It has been held that a single woman includes a widow and a married woman living apart from her husband, provided she can furnish sufficient evidence of non-access by her husband. The Court has no jurisdiction unless the child is born in England or Scotland, but its nationality is a matter of indifference. An order cannot be made in respect of a still-born child. If there are twins, two separate orders should be made. The application may be made before the birth of the child; but in such a case, the date for hearing the summons will be fixed beyond the period at which the mother expects the child to be born.

After birth of the child, the mother must apply for the summons within twelve months from its birthday; unless she can declare on oath that the alleged father has, during such period of twelve months, paid money towards the maintenance of the child. If she can show that the alleged father ceased to reside in England within the twelve months next after the child's birth, she may take out a summons at any time within twelve months from the date of his return. If the alleged paternity is denied, the mother must be corroborated in her story by some material particular. Such corroboration may rest upon admissions by the alleged father; or upon his letters, after proof of his handwriting. If the mother is proved to have been previously of immoral character, her evidence will be received with suspicion, and weighed carefully. The Court may order the father to pay the expenses of the birth, and funeral, if any, and a weekly sum not exceeding five shillings for its maintenance. The Court can direct that these weekly payments are to be continued until the child attains sixteen years of age. In the absence of such directions they cease when the child is thirteen years old.

AFFINITY.—Almost the only point of view in which affinity is a subject of any importance in English or Scots law is as an impediment to marriage; persons related by affinity being forbidden to marry within the same degrees as persons related by consanguinity, or blood. The word means relationship by marriage, and the above rule follows from the principle that by lawful marriage husband and wife become as one person. The practical interest in this subject gathered, until the passing of the Deceased Wife's Sister's Marriage Act, 1907, round the deceased wife's sister. According to the above rule she was "in law" the husband's sister; they were therefore incapable of valid intermarriage. In many other countries, even in British colonies, the law on this point was different to ours. The statute to which we have alluded provided that marriage with a deceased wife's sister should no longer be deemed void as a civil contract by reason only of the affinity of the parties. It did not, however, assume to alter or amend the law of the Church of England, which to-day remains as before the Act, and so was careful to exclude a clergyman in holy orders in that Church from an obligation to perform such a marriage. Whether a clergyman will perform the marriage ceremony depends entirely upon his personal inclination. The rule of affinity in this matter is expressly preserved, too, in the civil law so far as regards adultery with a wife's sister, and the preservation of the illegality of marriage with a divorced wife's sister during the lifetime of the divorced wife. "A Table of Kindred and Affinity wherein whosoever

are related are forbidden in Scripture and our laws to marry together," was ordered by Archbishop Parker to be printed and set up in the churches. This order was confirmed in the reign of James I., and so to this day the law stands, and the table appears in full in the Book of Common Prayer. *See* CONSANGUINITY.

AFFRAY is a misdemeanour at common law, punishable with fine or imprisonment without hard labour, or both. It consists in two or more persons being unlawfully assembled together and fighting in a public street or highway, to the terror and disturbance of the people and against the king's peace. It is essential that the offence should be committed in a public street or highway; for if it be in private, it is only an assault and battery. Moreover, no amount of quarrelsome or threatening words whatever will alone amount to an affray. *See* RIOT.

AFFREIGHTMENT is the contract of carriage of goods in vessels for a price called "freight." The contract is either in the form of a charter-party, or a bill of lading, and it is from such a contract that the terms of the contract of carriage are to be gathered. *See* BILL OF LADING; CHARTER-PARTY.

AFRICAN COMPANIES.—*WESTERN.*—Until 1536, Portugal enjoyed practically a monopoly of the African trade, for it was not until about that date that England began to trade with the West Coast. Thus, in view of present-day operations, it may be observed that Africa has been the scene of some of the earliest, as well as of some of the latest phases in the expansion of the British Empire. The development of Africa has been undoubtedly slow, but this may be accounted for by its geographical position. Take a map of the world, and it will be seen that Africa is in the main a place on the way, not a final goal. Newfoundland, which is commonly regarded as the oldest English colony, dates back its existence as such to 1583, but in the years 1530–32, one William Hawkins, father of the better-known Sir John, was trading on the coast of Guinea. In 1564. the son followed the father's course in a ship named the *Jesus*, combining the slave trade with the plunder of the Portuguese. When he reached America, he compelled the Spaniards there, by force of arms, to purchase his negroes. In the year of the Armada, 1588, certain merchants of Exeter and others of the West of England and of London received a charter from the Guinea Company. This was the forerunner of the African companies. In 1618 a new exclusive charter was granted to Sir Richard Rich (afterwards Earl of Warwick), who with others promoted the Company of Adventurers trading into Africa. This, not being a slave-trading company, was very little of a success; nor very successful was its successor, the company of 1631, though it is said to have supplied slaves to the West Indies. In 1662, the third African Company received its charter

from Charles II. under the title of "The Company of Royal Adventurers of England trading to Africa." It contracted to supply 3000 slaves annually to the British colonies in the West Indies; but was so unsuccessful that in 1672 it surrendered its charter to the Crown and gave way to the fourth African Company, incorporated in the same year under the title of "The Royal African Company of England." Though it had exclusive rights over the coast of Africa from South Barbary to the Cape of Good Hope, and had a capital of £111,000, it was not successful. However, in 1689, the Declaration of Rights virtually abolished its exclusive privileges, but in 1698 part thereof were restored by statute. The company continued at a low state of credit until in 1752 its property was transferred to a new African Company incorporated in 1750. In 1787, with a view to the settlement of those negroes who, having escaped from slavery, had landed in England, and thereby gained their freedom, a tract of land was bought from the natives on the peninsula of Sierra Leone. In 1791 an Act was passed incorporating the Sierra Leone Company, but the company fell upon such bad times, that in 1807 an Act was passed for its extinction at the expiration of seven years. In 1809 the company, reviving, acquired a new charter, but was finally dissolved by its charter being regranted, in 1821, direct to the colonists.

From this date, we enter upon the modern history of West Africa, and we see companies gradually making way there for Governments. In 1886 a charter was granted to the Royal Niger Company, conferring powers upon the company affecting about nine-tenths of the area and population of Nigeria. After 13½ years of successful government, the charter was surrendered on January 1, 1900; the whole of Nigeria thus coming under the administration of the Crown.

RHODESIA is administered by the British South Africa Company. A Royal Charter was granted to this company on the 29th of October 1889, the principal commercial objects being the extension northwards of the railway and telegraph systems of Cape Colony, the encouragement of emigration and colonisation, the promotion of trade and commerce, and the development and working of mineral and other concessions. The capital of the company was originally £1,000,000; in 1893 it was increased to £2,000,000; in 1895 to £2,500,000; and in 1896 to £3,500,000. On the 24th of April 1898 it was authorised to be increased to £5,000,000, and the authorised capital stood in 1909 at £9,000,000, of which £6,000,000 has been issued. Since then, by January 1910, about £3,000,000 were issued. The estimated revenue, accruing chiefly from mining, trading, and professional licenses, stand-holdings, and postal and telegraph services, amounts for 1909–10, on balance with the expenditure, to £591,000. The river Zambezi divides Rhodesia into Northern and Southern, which

include Matabeleland and Mashonaland. There are also North-Western and North-Eastern Rhodesia. *See* SOUTH AFRICAN SECURITIES.

AGE.—The years to which a person may have attained is often a point of importance in considering such person's legal rights and obligations. For example, he or she is an infant until the age of twenty-one years has been attained, and cannot until then, generally speaking, acquire rights or incur obligations under contract. For most civil purposes the full age of both man and woman is twenty-one years. At this period, other things equal, they may enter into possession of their real and personal estates, manage and dispose of them at their discretion, and make contracts and engagements. Unless he is of full age a man cannot sit in the House of Lords, nor be a member of the House of Commons, nor be admitted into any of the learned professions. He cannot be ordained as a priest until twenty-four, nor be a bishop until thirty years of age. An infant cannot make a valid will. An infant can be a witness in a court of law when he can appreciate the nature of an oath and his moral responsibility. Though an infant cannot contract to bind himself, he may be an agent and enter into contracts on behalf of others. So may an infant be appointed executor, but he cannot act until he has attained full age. An infant who has not completed thirteen years is bound to be in receipt of education.

There are also Acts of Parliament protecting children from being allowed to work in the streets or in factories under certain ages. So also does the law specially protect women in a varying degree according to their age. As to matrimony, a woman may consent to marriage at twelve, and a man at fourteen years of age; though parties under the age of twenty-one years cannot actually marry (except in Scotland) without the consent of their parents or guardians. With respect to criminal offences the law regards fourteen years as the age at which a person is competent to distinguish between right and wrong. Under the age of seven years a child is not in any case responsible by law for an offence committed by him; but above that age and under the age of fourteen, if it clearly appears that a child is conscious of the nature and wickedness of the crime he commits, he may be tried and punished for it. In cases relating to dealing with settled property it is often an essential question whether or not a particular woman is past child-bearing. A married woman of forty-nine, a widow of fifty-five, and a spinster of fifty-three, have each been held to be past that period. But a woman aged fifty-four, who had been married only three years, was not so presumed. A man above the age of sixty may be excused from serving on a jury.

AGENCY.—This is a branch of law of most far-reaching interest to business men, who have always at some time or other during their career to carry on commercial transactions either through an agent of their own or with the agent of another. Equally in the simplest and the most complicated of affairs, the most trivial and the most important, do we find the agent, as necessary as ubiquitous, and recognised and accepted by all. There are almost as many varieties of agents as there are classes of employment, yet employment is not the same thing as agency. Employment consists in the putting of another to do a certain act for the employer. Agency is something more: it is an employment to do something in the place of the employer, so as to place the employer, who is called the principal, in legal

This Agreement made the 12th day of April 1910 ~ **Between Thomas Edwards** of No 15 Aldermanbury in the City of London (hereinafter called "the agent") of the one part and **James Trunder and Sons** of 23 New Bridge Street Manchester Manufacturers (hereinafter called "the principals") of the other part **Whereby it is agreed** by and between the said parties hereto as follows :-

1 **The** principals will employ the agent who will act as the agent of the principals in the selling of cotton goods the manufacture of the principals for and during the term of five years from the date hereof but determinable as hereinafter provided for the district of London embracing the Counties of London Middlesex Kent Surrey Essex and Hertfordshire according to the best of his skill energy and judgment at No 15 Aldermanbury aforesaid or such other place within the City of London as the agent shall for the time being carry on business

2 **During** the said term the principals shall from time to time supply without delay to the agent at his warehouse for the time being in the City of London or direct to customers as he may require such quantities and descriptions of the said goods as he shall order in writing and shall also supply him with all necessary samples of the said goods for use by the agent

3 The agent shall during the said term use his best endeavour to sell the said goods within the said district at not less than the prices fixed from time to time by the principals either for ready money or to persons and firms of good credit

4 The principals shall pay to the agent all expenses properly incurred by him in respect to the carriage and delivery of goods and also the sum of Ten pounds per calendar month as a contribution to his office warehouse travelling and staff expenses and also a commission or salary at the rate of Five pounds per cent per annum upon the proceeds which shall arise from the sale of the said goods as aforesaid such commission to be charge-:able upon moneys actually received by the principals and not upon out-: standing debts

5 The sums to be paid under the last preceding clause hereof shall be payable by the principals to the agent within seven days after the receipt by them of the quarterly accounts

6 The agent shall keep all usual and proper books of account of and con-: cerning the goods received by him or by customers at his direction from the principals and the particulars of the sales thereof and of all sums of money bills of exchange and other securities received by him and of all credit given by him and of all other matters and transactions arising out of or incidental to the agency and shall forward to the principals on the Monday in every week a complete account of the foregoing as far as re-: gards the business of the preceding week and on the fourth day after

each quarter day an account of the business done during the preceding quarter including a summary of the weekly accounts showing the com: .mission due to him

7 The agent shall duly pay into the bank appointed by the principals to the credit of their account all monies received by him during the day on their account

8 The agent shall not assign or transfer the benefit of this agreement to any person or partner without the previous written consent of the principals

9 The agent shall not give credit to any person for a longer period than three months or for a greater sum than One hundred pounds or compound or release (otherwise than by full payment) any debts or securities or pledge the goods of the principals without their previous written consent

10 The principals shall not during the said term without the previous written consent of the agent sell or supply any of their said goods to any person firm or company whatsoever within the said district whether for re-sale or otherwise other than the agent or such person firm or company to whom he shall direct goods to be sold or supplied on his account

11 This agreement shall not be affected by reason of any change which may take place in the constitution of the principals firm either by death retirement expulsion or accession of members or its resolution into a company or by reason of the sale of the business of the principals or the destruction of the factory and business premises of the principals

or any part thereof or the cessation of partial cessation of manufacture by the principals

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

Witness

Arthur Jones
23 New Bridge Street
Manchester
Clerk

Thos. Edwards

Jas. Trinder & Sons

relationship with others, who are styled third parties. Amongst the different classes of agents are auctioneers, stockbrokers, factors, insurance brokers; each of which and others will be treated of elsewhere separately. Though, necessarily, there are these many kinds of agents, yet for the purposes of a general treatment of the subject, they may be divided into three great classes:—(1) *Special:* those whose duties are limited to a specific act, *e.g.* to buy a particular thing; (2) *General:* those who may do any acts within certain limits, *e.g.* an agent to manage a business; (3) *Universal:* those whose authority is unlimited, and may do anything on behalf of their principal.

Who may appoint and be appointed Agents.—Agents can only be appointed by those who can themselves enter into contracts, and are without legal disabilities. On the other hand, incapacity to act for himself does not prevent a person being appointed and acting as agent for another. Thus an infant cannot appoint an agent to incur on his behalf a liability which he as a principal could not himself incur; but an infant can be appointed and act as agent for another.

Appointment of Agents.—In most cases, and as a rule, there is no formality required in the appointment of an agent. The agency may be created verbally; and where the agency is a part of the ordinary course of the particular business, there may be an absence of express appointment or authority. But in certain cases, form is important in the creation of agency. Thus, if the agent is to contract under seal, *e.g.* to execute a deed of mortgage or a transfer of shares, the appointment must itself be under seal. Such a formal appointment is called a power of attorney; a general form of which, capable of being adapted to different circumstances, will be found in a later volume. Unless the intended duties of the agency are confined to certain very ordinary and usual business transactions, an agent for a limited company can be appointed only under seal. There is a necessity for appointment in writing, but not under seal, in those cases relating to leases within the provisions of Sections 1, 2, and 3 of the Statute of Frauds. But even in the cases where, under the Sale of Goods Act [*See* SALE OF GOODS] the contract itself must be in writing, it is sufficient for the appointment of agency in respect thereof to be verbal. We have now seen that the relationship of principal and agent may be created—(1) By deed; (2) By writing; (3) verbally. It now remains to notice that it may be also created (4) by implication arising from conduct. Such a creation of agency arises where the conduct of the alleged principal has been such, in relation to the third parties, as to prevent him denying the agency. Such a result of conduct is called ESTOPPEL.

The following are illustrations of agency by implication: A servant purchasing oats for his master's horses, the master having previously paid similar bills. A broker was employed by a merchant to buy hemp; the broker did so, and at the merchant's request the hemp was left at the broker's wharf; the broker sold the goods, and the sale was supported on the ground that the broker was the apparent agent, and that the merchant was estopped by his conduct from denying the agency. So too with husband and wife, though cohabitation does not necessarily imply agency. If the wife is allowed to deal with a tradesman for the ordinary supplies of a

household, the husband will be considered to have authorised her as his agent, and to be liable for her purchases. But in an action by the tradesman against the husband for the price thereof, it would be a good defence that he had always allowed her sufficient household money to make the incurring of debts needless. In the relations of partnership, this authority by implication is stronger. There another partner would have no like defence in a somewhat similar action. The only requirement being, that the debt-incurring partner had dealt with the creditor in the ordinary course of business. Agency may also arise *from necessity*, as where a husband wrongfully leaves his wife without means of subsistence, or as in the case of a master of a ship. But this authority from necessity does not arise as between parent and child. If one sees a starving child, and gives it food, no action for the price thereof would lie against the parent.

If a contract be entered into at a time when no agency exists, an agency may arise and relate back to the contract by *ratification*, i.e. by adoption of the contract as made. But ratification is only possible when the circumstances of the case are made up as follows: (1) In making the contract the agent held himself out as acting for, and did act for a contemplated principal; (2) The principal was existent when the contract was made; (3) The principal was legally capable of making the contract at the date of the ratification; (4) When ratifying, the principal either had full knowledge of the facts, or can be shown to have adopted the acts whatever they were; (5) The ratification must not be to part, but to the whole of the contract. When ratified, the ratification is thrown back to the time when the act was done.

As between Principal and Agent.—*Duties of an Agent to his Principal.* Broadly speaking it is the duty of an agent to do the work he has undertaken according to the terms of his authority, and with reasonable skill and diligence. It is difficult, and even impossible, to elaborate a test which may be applied in all cases, and determine whether the necessary reasonable skill and diligence has been exercised. But, as a working principle, it may be laid down that a man who undertakes to act for another must show as much skill and diligence therein as he, being a man competent for such an undertaking, would have shown if acting in his own affairs. And further than that, if the agent holds himself out as possessing a specialised and professional skill in certain matters, then when acting in such matters he must exercise that special skill. It is not sufficient for such an agent merely to do his best—he must exercise his special skill, even though he be doing the work gratuitously. Again, whatever the agent does must be done for the benefit of his principal, although it may not be done in the principal's name.

From this it follows that an agent cannot in the course of his agency, and without the permission of his principal, turn himself into a principal. If an agent is employed to sell a house for his principal, he may not, without his principal's assent, purchase the house himself. If that same agent is employed to purchase a house for his principal, he may not, unless it is done with the full knowledge of the principal, sell to the latter his own house. This rule applies equally in other matters than buying and selling houses; and is binding even in the face of a trade usage, unless the principal is aware of such usage. The reason of the rule is that an agent must not place

himself in a position wherein his interests are adverse to his principal's. In the above two cases, so long as the purchase is not completed the principal would be entitled to withdraw from the contracts and refuse to complete; or if completed, and the truth comes to the knowledge of the principal, he would have an action against the agent to recover any profit the agent may have made.

And it naturally results from the above rule that an agent may not make a profit during the course of, and connected with the agency, of which his principal is unaware. Such a profit is known as a secret profit, and frequently occurs in the shape of a commission. Such a profit, if made, belongs to the principal, who may recover it from the agent by an action, and it would moreover be such misconduct of the agent as would permit the principal to terminate the agency. Not only would the principal be able to recover the secret profit from the agent, but he would have a right of action in respect thereof against the third party. Illustrations of such cases are numerous in the law reports. Thus, in one case, where a broker was employed to purchase a ship; the vendor employed an agent and agreed to give him whatever was obtained over £8500. The agent agreed to give a part of this excess to the broker, and eventually the ship was sold by the broker for £9250. In this case it was held that the broker's principal could claim whatever the broker had obtained from the agent. Again, in another case, the plaintiff desired to procure certain shares and the defendant had agreed to buy some for him at a certain price; but as a matter of fact the defendant had already bought some for less than that price, and these he sold to the plaintiff. Here the Lord Chancellor held that the defendant was an agent, and must hand over the difference between the bought and sold price.

Closely allied to the question of secret profits, arises that of an agent receiving commissions from both sides. That this is done every day in business can hardly be questioned; still less can its immorality be denied. But as to its illegality? Until somewhat recently this was an open question, but now the rule appears to be that an agent may make such a double profit, when the second profit is known and approved by the principal; and also when a distinct usage exists, and at least constructive knowledge on the part of the principal can be shown. But it is a dangerous thing for an agent to have such a thing brought out against him in an action; for so long ago as the time of Lord Ellenborough, that great judge described a usage of double commissions as one "of fraud and plunder." Since then the Prevention of Corruption Act, 1906, has been passed. Because this practice is, as we have already said, so extensive even to-day in the commercial world, notwithstanding the statute just referred to (*see* CORRUPT COMMISSIONS, in Appendix), the following extract from a judgment of Lord Justice Bowen will be pertinent and useful. His lordship said: "There can be no question that an agent employed by a principal or master to do business with another, who, unknown to that principal or master, takes from that other person a profit arising out of the business which he is employed to transact, is doing a wrongful act, inconsistent with his duty towards his master, and the continuance of confidence between them. He does the wrongful act whether such profit be given to him in return for services which he actually performs for the third party, or whether it be given to him for his supposed influence, or whether it be given to him on any other ground at all; if it is profit which arises out of the

transaction, it belongs to his master, and the agent or servant has no right to take it, or keep it, or bargain for it, or to receive it without bargaining, unless the master knows it."

The next rule for our consideration is expressed in the legal maxim—*Delegatus non potest delegare*, which means that an agent cannot delegate his authority to another. Such is the rule, and the following are the exceptions to it: (*a*) where the delegation is customary; (*b*) where it is necessary to proper performance; (*c*) where it is permitted by agreement, express or implied. The rule, when analysed, merely imports that an agent cannot, without authority from his principal, devolve upon another obligation to the principal which he has himself undertaken to personally fulfil. This is so because confidence in the particular person employed is at the root of the contract of agency, and such an authority cannot be implied as an ordinary incident in the contract. But the exigencies of business do from time to time render necessary the carrying out of the instructions of a principal by a person other than the agent originally instructed for the purpose. Where that is the case, the reason of the thing requires that the rule should be relaxed, so as on the one hand to enable the agent to appoint what may be termed a sub-agent, and on the other hand to constitute in the interest of, and for the protection of the principal, a direct privity of contract between himself and such substitute. An authority to such effect may, and should be, implied, where from the conduct of the parties to the original contract of agency, the usage of trade, or the nature of the particular business which is the subject of the agency, it may reasonably be presumed that the parties to the contract of agency originally intended that such authority should exist, or where in the course of employment, unforeseen emergencies arise which impose upon the agent the necessity of employing a substitute.

A further rule is that an agent may not employ, save in his principal's interest, materials and information which have been obtained by, or supplied to the agent only for purposes of his agency. A *del credere* agent is also liable to his principal for any loss that may be incurred through the default of a third party, and this liability arises in consequence of it having been made a term of the agency that the agent should so indemnify his principal.

Rights of Agent as against his Principal.—The principal of such rights is that of remuneration, which may be a customary one in the business in which the agent is occupied, or it may be based upon agreement. But it is possible in the absence of custom or agreement that the agent may find that he has had to work for nothing, as it has been determined that the mere reposing of a trust is good consideration for the work undertaken. Each case stands by itself with regard to the question of remuneration, which is one to be deduced from the contract itself, and rather one of fact than of law. It will therefore be more useful to give a few cases on the point. S. was appointed sole agent for E. in a certain district at a fixed rate of commission, but was unable to transact any business owing to E. interfering in his district behind his back, and underselling him. E. was held to be not entitled to appoint any other agent in the district, nor were they entitled to effect any sales in the district, except through the agency of S. A certain house-agent was instructed to offer a house for sale, for which he was to

receive a commission of 2½ per cent. on the purchase-money if he found a purchaser, but one guinea only for his trouble if the premises were sold "without his intervention." B. obtained a card to view with terms of purchase, from the agent, saw nothing more of him, but purchased the house through a friend of the owner. It was decided that the house had been purchased through the agent's intervention, who was therefore entitled to the commission. In another case the agent was, by agreement, to have a commission on sales effected, or orders executed by him; the principal to be responsible for bad debts. By the custom of the trade, commission was not allowed on sales which produced bad debts; but it was held that, notwithstanding this, the agent was, under the agreement, entitled to commission on bad debts. Where an auctioneer took a Bill of Sale of chattels, and afterwards conducted the sale of them by auction under an agreement with an incumbrancer, he was held to be entitled to the usual commission on such sale, although no provision had been made either in the Bill of Sale or in the agreement. Again, where A. acted under a written agreement as commission agent of B. in the sale of goods and was paid a commission, A. was allowed to charge B., in addition to his commission, for attendances he had made at various places, if those attendances were matter beyond his duty as such an agent. Where an agent found a purchaser, but the principal would not complete, it was decided that the agent was entitled to a reasonable remuneration; and where a principal sold the object himself, the Court decided that the agent could recover for work already done.

The agent is also entitled to be indemnified for losses incurred in the agency. This rule is well illustrated by a case in which a broker bought, on behalf of a principal, shares in a company against which a petition for winding-up was presented before the transfer was complete, and for which shares, in accordance with the rules of the Stock Exchange, he had been compelled to pay the price to the person from whom he had bought. There the brokers, having done everything that they were bound to do, having purchased the shares in obedience to the instructions of their principals, and, having been compelled to pay the price, were held entitled to indemnity from their principals. A principal who employs an agent to purchase goods for him in a particular market, is to be taken to be cognizant of and is bound by the rules which regulate dealings therein; and the agent not having himself committed any default, and the custom of the market being legal and reasonable and well known to all those dealing there, is entitled to be indemnified by his principal for all he does in accordance with these rules. A broker, who receives only a small commission on the purchase, should not in fairness be subject to such a risk as that which was sought to be cast upon him in that case. So, in principle, the courts hold that where a person at the request of another has incurred some liability, which, though not legally enforceable, is paid in consequence of some moral pressure, as *e.g.* the danger of expulsion from a society, the principal may be legally liable to indemnify his agent. Amongst the other rights of an agent are (1) LIEN, (2) STOPPAGE IN TRANSITU, and (3) ACCOUNTS; about each of which see under their respective headings.

The authority of an agent may be either general or special according to the class to which the agent belongs. The authority of agents by implica-

tion, ostensible agents, and agents by necessity have already been considered on page 44. Generally as between the agent and his principal the authority of the agent will depend entirely upon the terms of the agreement between them; and for the purpose of discovering the extent of the authority, such an agreement must be strictly construed; that is to say, it must be read as nearly as possible in its literal meaning, and without inferring from it other and different meanings. But it must be construed so as to include all the necessary means of executing the authority. When investigating a case as between the principal, agent, and third parties, the extent of the agent's powers will depend upon the ostensible authority given to the agent, for a secret limitation of powers is no answer to the claims of third parties who are unaware of such a limitation. But if the agent's authority is known to be special, the third party must make himself acquainted with its limit, unless by the conduct of the principal he is prevented from doing so, or unless the principal leads him to reasonably infer that the authority is of a particular nature and extent.

There are certain classes of agents such as brokers, auctioneers, &c., whose authority is implied, and as we have already seen in the case of the stockbroker who was bound, because of the Stock Exchange rules, to buy certain shares to the disadvantage of his principal, the person who employs an agent of such a special class impliedly gives him authority to follow the usual custom and rules, and do the usual acts pertaining to such class. Thus an authority to settle losses on a policy of insurance has been held to include a right to refer the matter to arbitration; and an authority to "sign for me and in my name . . . any and every contract . . . and from time to time to negotiate, make sale, dispose of, assign and transfer" certain notes, was held to authorise a sale, though not a pledge. So, in a recent case, where the third party sued the principal for specific performance of a contract to sell a house, the principal had written to his agents in the words following: "Please sell for me my houses . . . and I agree to pay you by way of commission the sum of 2½ per cent. on the purchase price accepted," and had afterwards written a letter to the agents, who were also acting for the purchaser, accepting their client's offer of seven hundred and eighty-five pounds for the property, it was held that the direction to sell included an authority to the agent to make and sign on behalf of the vendor a binding contract for sale.

But not only does the law look to authorities with a view to extending, or at least liberally construing them; it also protects the principal against the agent in any way exceeding the definite limits of his agency. Thus if, for example, the authority to the knowledge of the third party is for a special agent who is a member of a firm, to sell and receive payment in cash and pay the same to the principal; but such agent, instead of so receiving payment, takes therefor a cheque payable to his firm, which banks it and afterwards, without the knowledge or consent of the principal, credits him with the amount thereof in respect of a debt due to the firm, then both the third party and the agent are liable to the principal for the amount of purchase-money. If an agent represents himself to a third party as having an authority which in fact he has not, and the third party suffers a loss thereby, then even though the agent may have *bonâ fide* believed that he possessed such authority, the third party not knowing of such absence of authority, the

COMMISSION NOTE.]

14 Union Passage.
Swansea.

10th. Novr 1910

To Mr John Field.
Estate Agent.
Swansea.

Sir,

In consideration of your taking the trouble to endeavour to procure for me a purchaser of my house at 16 George Road Swansea at a price not less than £500 I hereby agree to pay you immediately upon the completion of a purchase by any person directly or indirectly introduced to me by you or through your agency or instrumentality a commission at the rate of Five pounds per cent upon the amount of the price paid

This letter is also my authority to my solicitors Messrs Wren & Co or whoever else may act as such on the completion of the purchase to retain the amount of such commission out of so much of the purchase price as may come into their hands and to pay the same over to you in discharge of my obligation to you under this letter

I have no objection to your receiving, if you think fit, any customary commission bonus or gratuity from the purchaser introduced by you notwithstanding the above-written agreement by me

It is understood, though, that I incur no liability to you or at all

in respect of any payments or expenses you may make or incur in carrying through this agency

Yours faithfully.

John Gilldrop

agent is liable to the third party in an action for breach of warranty of authority.

As regards third parties.—The general rule is that an agent is not personally liable on the contract, but the principal is always so. There are many exceptions to the rule, but they mainly depend upon the principle that the law endeavours to meet the real honesty and justice of a case, so that where goods, for instance, are placed in the hands of a factor for sale, and are sold by him under circumstances that are calculated to induce, and do induce, a purchaser to believe that he is dealing with a principal, the latter is not permitted afterwards to tell the purchaser that the character he himself has allowed the factor to assume did not really belong to him. For the purchaser may have bought for the express purpose of setting off the price of the goods against a debt due to him from the seller. But the case would be different if the purchaser had notice at the time, that the seller was acting merely as the agent of another, for in such a case there would be no honesty in allowing the purchaser to set off a bad debt at the expense of the principal.

We will now consider the rights and liabilities of third parties under the following important circumstances. (*a*) *Where the principal is disclosed.* If a contract is in writing, and the agent appears therein as principal, although known in fact to be contracting as agent only, the agent is liable on the contract unless he can show that the contract was so drawn by mistake, or that there was a collateral agreement that he should not be liable. But this would not be the *primâ facie* rule if the contract were not in writing, for under such circumstances the presumption would be that the principal alone has any liabilities and rights, unless the agent is able to prove that he was treated as an agent merely, and was not to be held liable in any event. He would in fact be liable in cases where he was commission agent for a foreign principal, or where the principal was incapable or where the custom of trade makes him liable, even though his principal were disclosed. If the agent has an interest, *e.g.* a lien, on the proceeds of a contract not in writing, he may himself sue thereon, even though his principal is disclosed.

(*b*) *Where the principal is undisclosed.* We have already seen that an agent who enters into a contract in writing has the right to sue and is liable to be sued thereunder. So his principal will also be liable to be sued and be entitled to sue thereon, in all cases; unless from the attendant circumstances it is clearly manifested that an exclusive credit is given to the agent, and it is intended by both parties that no resort shall in any event be had by or against the principal in it. In fact it is immaterial, apart from special stipulation, whether the principal is disclosed or not. The only material point is whether the third party gives credit to the agent, or to the principal when disclosed; and as to this he has the right of election, and must not look to both. Thus, if an agent purchases goods in his own name for his principal without disclosing the latter, the principal will be liable for the price, when discovered to the vendor. If the agent purchases the goods and states at the time that he purchases as agent, but does not disclose the name of his principal, the latter will not be absolved from the contract; for the principal not being known it is impossible to say that the vendor has made his election not to trust the principal, but exclusively to trust the agent. He may give

credit to both or either; and he is not presumed to have an intention to elect to charge either exclusively until the name and credit of both are fairly before him. There is no presumption, even where a person deals with the licensee of an hotel and knows nothing of the real owner, that the licensee is a mere manager with limited authority, and that the house is tied (*Kinahan* v. *Parry*). Nor does the third party necessarily determine his election by merely making a demand upon the agent and threatening him with proceedings. But if a vendor has sold goods to and on the sole credit of the agent of an undisclosed principal, and the latter has *bonâ fide* paid therefor to the agent, whilst the vendor was still debiting the agent, knowing no one else as principal, the vendor cannot afterwards on discovery of the principal sue him for the price.

When the principal is non-existent the agent is, and is treated as the principal. He may himself sue upon the contract if he is not therein described as agent only, or when the contract has been partly performed with a knowledge of the facts. He may sue upon a charter-party, even though he has described himself therein as an agent. Cases of a non-existent principal generally occur in the course of company promotion where a person may have occasion to contract with another who describes himself as trustee for a company about to be formed. The company not being incorporated at the time of the contract, the latter is inoperative as against the company when it does come into existence. The company may, when incorporated, enter into a new contract on the same terms as the former one, but it cannot be made to; and apart from special agreement, the so-called trustee would alone be personally liable.

The agent's torts.—In order that the principal may be liable for injuries caused by the wrongful act of the agent, the act must be one within the scope of his authority. The agent must be acting in the due course of his employment, and the express command of the principal need not be shown. And the agent is equally liable with his principal in respect of his own personal participation in the wrongful act. And it is no justification that he had his principal's authority to do a thing which the principal himself had no right to do, though if the agent acted innocently he is entitled to indemnity from his principal. Where the wrongful act is not within the scope of his authority, the agent is alone liable, even though it were done for and on behalf of his principal.

Termination of Agency is possible in various ways. For example, by *complete performance* of the terms of the agency; by *expiration of time* of the term of the agency; and by *destruction of the subject-matter*, as in the case of a yacht having sunk which had been placed in an agent's hands to sell. There is also *operation of law*, as by death. In a case where the husband, who had been in the habit of buying his meat from a certain butcher, went to China, leaving his wife and family behind, and there died, the wife was held not to be liable for the meat supplied to her after his death, though before news of it had arrived. The wife was her husband's agent, and his death had revoked her authority. By Bankruptcy and Insanity an agency under certain circumstances may be revoked—each of which would be instances of the operation of law.

It remains now to consider termination *by consent of the parties.* If the principal withdraws, it is termed revocation; and if the agent, renunciation. An agreement for termination should be as formal as the creation of the agency, and notice should be given to all third parties with whom the agent

has been accustomed to deal. Without such notice, or until the expiration of such a time from the termination, or the happening of such circumstances as would lead a reasonable man to infer that the agency had terminated, the principal would continue liable in respect of his late agent's acts assumed to be done on his behalf. There are limits to the power of revocation, as where the principal is under an obligation to pay money to a person and has appointed such person his agent to collect debts from third parties and retain the same. Also where the agent has partly performed his agreement and expended time and money therein, he is entitled to compensation in the case of premature revocation. *See* also hereon, AUCTIONEER; FACTORS; INSURANCE, PAWN, STOCK BROKERS; and POWER OF ATTORNEY.

AGISTMENT, in Scotland called gross-maill, is the contract by which a person takes in horses or other cattle to depasture in his ground for a reward, usually of a weekly payment in money. Such a person is called an "agister," and is bound to permit the owner to retake the cattle upon demand, though he is under no obligation to redeliver them himself. He is bound to take reasonable care of the animals entrusted to his care, and is liable for injuries to them which are the natural result of his negligence. He has no lien upon the cattle for the price of the agistment; and subject to the provisions of the Agricultural Holdings Act, 1883, the cattle are liable to be distrained upon for rent. By that Act, live stock agreed to be agisted at a "fair price" shall not be liable to distraint if other sufficient distress can be found. If it becomes necessary to distrain, the owner may redeem by paying to the landlord a sum equal to the above-mentioned fair price, or any balance thereof remaining due.

AGREEMENT exists where two or more persons express an intention to affect their legal relations. It must not be confounded with contract which is limited to instances of agreement enforceable by the law. Agreements, on the other hand, may relate to matters which the law will not recognise, *e.g.* a bet. *See* CONTRACT.

Stamp.—The duty upon an agreement or memorandum of an agreement not under seal is sixpence. This may be denoted by a stamp to that amount fixed by the Inland Revenue authorities within fourteen days after the execution of the agreement, or by a postage-stamp to the same amount affixed to the document and cancelled by the person by whon the agreement is first executed. Any document not under seal given upon the occasion of the deposit of any security for money transferable by delivery, by way of security for loan, will be an agreement, and as such subject to the above duty. So also will any document not under seal making redeemable or qualifying a duly stamped transfer, intended as a security, of any stocks or shares. Bills of exchange and promissory notes are not required to be stamped as agreements. *Exemptions.*—The following documents do not require a stamp: (1) An agreement or memorandum the matter whereof is not of the value of £5. (2) An agreement or memorandum for the hire of any labourer, artificer, manufacturer, or menial servant. (3) An agreement, letter, or memorandum made for or relating to the sale of any goods, wares, or merchandise. This exemption extends to a guarantee by a third party for the due payment of the purchase price of goods, wares, or merchandise. A hire-purchase agreement is not with the exemption (Finance Act, 1907, section 7). (4) An agreement or memorandum made between the master and mariners of any ship or vessel for wages on any

voyage coastwise from port to port in the United Kingdom. (5) Agreements made under section 8(6) and section 20(2) of the Land Law (Ireland) Act, 1881.

AGRICULTURAL HOLDINGS.—For England, the Agricultural Holdings Act 1908 consolidates the now repealed Agricultural Holdings Act, 1883, the Tenants' Compensation Act, 1895 (partially repealed), the Market Gardeners' Compensation Act, 1897, and the Agricultural Holdings Acts, 1900 and 1906. Here, and in the article AGRICULTURE in the Appendix, we will notice, from the point of view of the English tenant, only a few of the more important provisions of the law. The Act applies to agricultural and pastoral holdings, to market-gardens, and to holdings let to tenants in connection with any employment. Their principal provisions come conveniently under six heads: (*a*) Compensation for improvements, (*b*) fixtures, (*c*) distress, (*d*) notice to terminate yearly tenancy, (*e*) resumption of holding by landlord for the purpose of carrying out improvements, (*f*) arbitration. (*a*) At common law an outgoing tenant has no claim against his landlord for compensation for improvements, except under local custom. But it is now provided that a tenant on quitting an agricultural holding shall be entitled to compensation for certain improvements made at his own expense during his tenancy. The Act does not prejudice the rights of a tenant to compensation under custom, agreement, or otherwise, in lieu of the statutory compensation.

The Act distinguishes three classes of improvements. The first class includes, among other things, the erection, alteration, or enlargement of buildings, formation of silos, laying down permanent pasture, making gardens, making or improving roads or bridges, planting hops, orchards and fruit-trees, the reclaiming of waste land. Compensation cannot be claimed unless the landlord has given his consent to the improvement. As regards the second class, which is confined to drainage, previous notice must be given to the landlord, who has the option of executing the improvement at his own cost, charging the tenant 5 per cent. interest. The improvements comprised in the third class include: Boning, chalking, liming, the application of artificial manure, laying down temporary pasture, planting vegetable crops which are productive for two or more years, and the erection and enlargement of buildings for the purpose of the trade of a market-gardener. They may be executed without the landlord's consent and without notice to him. The sum payable for compensation is, subject to the principles we have already referred to, the equivalent of the value of the improvements to an incoming tenant. Any contract made by a tenant, by virtue of which he is deprived of his rights to compensation, is void. (*b*) At common law, fixtures on agricultural holdings would belong to the landlord. The Acts now provide, however, that engines, machines, fences, or buildings, and, in market-gardens, any fixtures and buildings erected for the business of market-gardening, all of which the tenant has affixed or erected without being obliged so to do, may be removed by an outgoing tenant. But previous notice of intended removal must be given to the landlord, who may elect to purchase them at a price representing their fair value to an incoming tenant. A market-gardener may also remove, before the termination of his tenancy, all fruit trees and fruit bushes planted by himself and not permanently set out. When the tenant occupies the

land under a contract of tenancy with a landlord who has mortgaged the land, and the mortgagee has taken possession, the tenant is still entitled to compensation though there is no contract binding upon the mortgagee.

(*c*) In ordinary cases, in England, the landlord may distrain for six years' arrears of rent. In the case, however, of holdings coming under the operation of this Act, the right to distrain is now limited to one year's rent. Some partial and total exemptions from distraint are also created by the Act. An example of partial exemption will be found under AGISTMENT (*q.v.*). Hired machinery and live-stock belonging to another person, which is on the premises merely for breeding purposes, are not liable to distraint at all. (*d*) The usual tenancy from year to year can, in England, be terminated at the end of each year by a six-monthly notice. But in the case of a holding under this Act, one year's notice is now required in the absence of any special arrangement. (*e*) The Act allows a landlord in the case of a tenancy from year to year to give notice to terminate the tenancy, as to part only, if the land be wanted for labourers' cottages, or gardens, for allotments, for the planting of trees, for mines, quarries, or sand-pits, or for making water-courses or reservoirs, roads, railways, &c. The tenant may, however, within twenty-eight days after receiving the notice, inform the landlord that he accepts it as a notice to quit the entire holding.

(*f*) Arbitration is compulsory in cases where differences arise between landlord and tenant in respect to improvements the subject of these Acts. If there is no agreement that the arbitration shall be under the Arbitration Act, 1889, the arbitration shall be according to the procedure specially provided for such cases. This procedure is, in effect, on the same principle as that under the Arbitration Act. The main differences are in the time for the award to be made, in the Board of Agriculture being the authority to nominate the arbitrator in case of non-agreement of the parties, and generally that the County Court holds the same position with regard to these arbitrations that the High Court does to those under the Arbitration Act.

AGRICULTURAL GANG-MASTER is one to whom a licence has been granted by a District Council, whereby he may hire children, young persons, or women, with a view to their being employed in agricultural labour on lands not in his own occupation. Subject to penalties he may not employ a child under eight years of age, or any other age limit fixed under the Elementary Education Act; a female in the same gang with males; or a female under a male gang-master, unless a female licensed herself as a gang-master is also present. To act as a gang-master without a licence is to incur a fine of £1; and to act not in accordance with the licence 10s.

AGRICULTURAL LABOURERS. — Speaking broadly, in Scotland, Wales, the North of England, and the North of Ireland, the majority of farm servants are on yearly or half-yearly terms of engagement, and are paid a regular wage; board and lodging being usually provided free in the farm-houses for the unmarried men, and cottages in many districts for the married. This applies generally to all classes of farm servants in Scotland, and in Northumberland and Durham. In the other northern counties of England, and also in Wales, the yearly or half-yearly engagements are mainly confined to the unmarried men, while the majority of the married men regularly

attached to the staff of a firm are usually on weekly engagements. It is a frequent custom in Wales and Ireland to give the married men their meals in the farmhouses on working-days. In other parts of England (excepting the counties abutting on the Welsh border), and in Ireland, except in the north, the majority of agricultural labourers are, as a general rule, on weekly engagements, though the men in charge of animals are frequently engaged for longer periods.

Throughout the greater part of England the custom of lodging and boarding men in the farmhouses has practically ceased to exist. The system of hiring nearly all classes of farm servants at hiring fairs obtains in Scotland, the North of England, the North of Ireland, and in a few districts in Wales, chiefly in the north. In other parts of the United Kingdom the system is nearly extinct, and it is declining to some extent in all districts. In 1898 the average earnings per week of the agricultural labourer was: in England, 16s. 10d.; Wales, 16s. 5d.; Scotland, 18s. 1d.; and Ireland, 10s. 1d. It is probable that by 1911 the average wage in England and Ireland had risen a shilling. Agricultural labourers are now entitled to WORKMEN'S COMPENSATION (*q.v.*). Provision is made for the demolition of the dwelling-houses of labourers in Ireland, when unfit for human habitation, by the Labourers (Ireland) Act, 1911.

AIR.—The right to air is not an easement within the Prescription Act. Independently of that Act, every one has a right to enjoy whatever air comes to him; but speaking generally, apart from long enjoyment, or some grant or agreement, no one has a right to prevent his neighbour from building on his own land, although the consequence may be to diminish or alter the flow of air over it on the land adjoining. So to diminish a flow of air is not actionable as a nuisance. But the nature of the building, the air to which is obstructed, is an important element in the consideration of a right to air. Thus, in an action by the owner of a slaughter-house in respect of such an obstruction, the learned judge said that he would presume a lost grant and would imply therein a covenant on the part of a possible obstructor not to interrupt the free access of air suitable for the purpose of a slaughter-house, just as salubrious air would be the air suitable for the occupation of a dwelling-house. The question was, therefore, has the obstructor violated that implied covenant by interfering with the free access of air suitable for a slaughter-house? In that case, on its particular facts, his lordship answered the question in the affirmative. And so in a case of ventilation, where the cellar of the plaintiff's public-house was ventilated by means of a shaft cut therefrom into a disused well situated in an adjoining yard, owned and occupied by the defendant, the air from the cellar passing through the shaft and out at the top of the well. The cellar had been so ventilated for forty years at least, without interruption, and with the knowledge of the occupiers of the yard. There it was held that the plaintiffs could legally claim, as against the defendant, the easement of the free passage of air from the cellar, and the original existence of a grant was presumed. In connection with this topic, it may be remarked that no person can acquire a right of property in a view or prospect. Accordingly an owner of land or buildings would have no right of action against any one for erecting, even with malice, a structure, however useless or unsightly, which merely interrupted and obscured a view. *See* EASEMENT.

ALDERMAN.—This word is from the Anglo-Saxon ealdorman, carrying

the notion of some high office as well as that of rank or dignity. In modern times aldermen are individuals invested with certain powers in municipal corporations, either as civil magistrates themselves, or as associates to the chief civil magistrates of cities or corporate towns. In the Corporation of London the Court of Aldermen consists of twenty-six aldermen, including the Lord Mayor. Twenty-five of these are elected for life by certain freemen of the wards. In this way twenty-four of the wards into which the city is divided send up one alderman each; the two remaining wards send up another. The twenty-sixth alderman belongs to a twenty-seventh nominal ward, which comprehends no part of the city of London, but only the dependency of Southwark. This alderman is not elected at all, but when the aldermancy is vacant, the other aldermen have in seniority the option of taking it; and the alderman who does take it holds it for life, and thereby creates a vacancy as to the ward for which he formerly sat. The Lord Mayor is appointed from such of the aldermen as have served the office of sheriff. In the boroughs included in the Municipal Corporations Act, 1882, *i.e.* in municipal boroughs outside the County of London, the council consists of the mayor, aldermen, and councillors, elected according to custom or charter, or the provisions of the Act. The returning officer for a ward is the alderman appointed as such for the election of councillors. If himself elected a councillor he vacates his seat as alderman. He cannot, as alderman, vote in the election of an alderman, and, if an out-going alderman, vote in the election of mayor (Municipal Corporations Amendment Act, 1910). He may not be a clerk in holy orders, or in the regular ministry of a dissenting congregation. County Councils under the Local Government Act, 1888, are constituted in the same way as a borough divided into wards; the aldermen being called county aldermen. The aldermen are elected for a term of six years by the council from the councillors, or persons qualified to be councillors, in the proportion of one-third of the councillors. The half of the number consisting of those longest elected retire at the end of every three years. An alderman vacates his office by absence for twelve months. He may not vote for the chairman, but upon vacating his seat may be elected a councillor.

ALIBI is a defence often set up by habitual criminals. It consists in the proof that the accused was, at the hour the crime was committed, at a place so far distant from the scene of the crime as to make it impossible for him to have been guilty of it. When proved it is a conclusive defence, though evidence may be brought by the prosecution to rebut it. In Scotland, special notice must be given of this defence, with particulars as to the place at which the defender will allege he was, at the time of the offence charged.

ALIEN is an expression applied to all persons on British soil who are not British subjects. An alien cannot be the proprietor of a British ship (Merchant Shipping Act, 1894, sect. 1), nor can he exercise the franchise. Until 1870 he was unable to hold real property in England, but by the Naturalization Act, 1870, sect. 2, he was allowed the right to acquire, hold, and dispose of real and personal property in every respect as an English subject. The Act did not, however, qualify an alien for any office, or for any municipal, parliamentary, or other franchise. With regard to expulsion and immigration, reference should be made to the articles ALIEN (in the Appendix) and IMMIGRATION.

Professor Dicey distinguishes the following modes by which British

nationality may be acquired:—(*a*) *By place of birth.* Any person, whatever the nationality of his parents, being born within the British dominions, is a natural-born British subject. (*b*) *By descent alone.* (1) As in the case of a child, wherever born, whose father was born within the British dominions. (2) And the case of a child whose father's father (paternal grandfather) was born within the British dominions, it being immaterial where the child himself or his father was born. (*c*) *By the combined effect of descent and place of residence during infancy,* as in cases where a father, or a mother (being a widow), obtains a certificate of naturalization in the United Kingdom; every child of such father, or mother, who during infancy becomes resident in the United Kingdom, with such father or mother. (*d*) *By marriage.* Only a woman's nationality is affected by marriage. The rule is that in the case of a woman nationality follows marriage; and the result is that an alien woman upon marrying an Englishman thereby acquires British nationality. (*e*) *By Naturalization* under the Act of 1870. Neither an infant, lunatic, idiot, nor married woman can become naturalized in compliance with the conditions imposed by this Act. Regulations as to the oath of allegiance were issued in May 1910.

By the conditions of the Act, an alien who has resided in the United Kingdom for not less than five years, or has been in the service of the Crown for such a term, and intends, when naturalized, either to reside in the United Kingdom, or to serve under the Crown, may apply to the Home Secretary for a certificate of naturalization. Such a certificate may also be given to any person whose nationality is in doubt. The applicant must adduce in support of his application such evidence as the Home Secretary may require, of his residence or service, and intention to reside or serve. The Home Secretary must take the case into consideration, and may, without assigning any reason, grant or withhold a certificate. There is no appeal from his decision. The certificate, when granted, does not take effect until the applicant has taken the oath of allegiance. Forms for application for naturalization may be obtained upon application at the Home Office. The fees payable are:—On grant of certificate, £5; for registration of declaration, with or without oath of allegiance, 10s.; for certified copy of any declaration or certificate, with or without oath, 10s. A widow, being a natural-born subject, who has become an alien in consequence of her marriage, may at any time during widowhood obtain a certificate of readmission to British nationality. And *see* IMMIGRATION.

ALIMONY is a pecuniary allowance which the Court compels one of the parties to a subsisting marriage to pay to or on behalf of the other party. Alimony is either *pendente lite* (pending suit) or permanent. The latter should be distinguished from the maintenance which is ordered to be paid by the guilty party to the innocent after a final decree of dissolution of marriage. If the circumstance of the case warrant it, alimony may be paid by the wife to the husband. Alimony *pendente lite* applies to all matrimonial suits; permanent alimony applying only after a decree of judicial separation. The usual amount of alimony awarded is one-fifth of the income pending suit, and one-third after final decree of judicial separation. If the wife has separate means, her alimony *pendente lite* is such as will with her own income amount to one-third of the joint income of the married couple. In addition to his common law liability, the husband who is in default in payment of his wife's permanent alimony is statutorily liable to creditors for necessaries supplied to his wife. Alimony should be applied for directly

the matrimonial proceedings have commenced. If the wife allows her alimony to go into arrear for more than one year, the Court will not enforce payment of the arrears unless she can show good cause why earlier application had not been made. A party entitled to alimony has, generally, the same means available for its recovery as a judgment debtor. But there can be no attachment on account of the Debtors Act. If committal to prison is necessary to enforce payment, application therefor must be made upon judgment summons in the Bankruptcy Court. An affidavit must be filed proving service of the summons, the amount in arrear, and that the party in default has means to pay by instalments or otherwise. The debtor may appear in opposition to the application, but it will be granted if the Court is satisfied as to his means. If, after alimony has been granted, whether it be *pendente lite* or permanent, the financial circumstances of the party by whom it is payable have improved, application can be made for its increase. On the other hand, in converse circumstances, the party paying alimony may apply for its decrease. *See* also DIVORCE for the provisions relating to maintenance and alimony in the Matrimonial Causes Act, 1907, and SUMMARY MATRIMONIAL CAUSE. In Scotland, alimony payable to a deserted wife; to children who are unable to support themselves; in respect of illegitimate children; and to parents in poverty, is known as aliment.

ALKALI AND SULPHURIC ACID WORKS are regulated by the Alkali, &c., Works Regulation Act, 1906. These works are divided into two classes—(*a*) Alkali works and (*b*) Sulphuric Acid and other specified works. Class (*b*) comprises the following:—(1) and (2), Sulphuric acid works, being those in which the manufacture of sulphuric acid is carried on, and works for the concentration or distillation of sulphuric acid, but not being alkali works; (3) chemical manure works; (4) gas liquor works; (5) nitric acid works; (6) sulphate of ammonia works and muriate of ammonia works; (7) chlorine works; (8) muriatic acid works; tin-plate flux works; and salt works in which the extraction of salt from brine is carried on, and in which muriatic acid gas is evolved; (9) sulphide works; (10) alkali waste works; (11) venetian red works; (12) lead deposit works; (13) arsenic works; (14) nitrate and chloride of iron works; (15) bisulphide of carbon works; (16) sulpho-cyanide works; (17) picric acid works; (18) paraffin-oil works; (19) bisulphite works; (20) tar works; (21) zinc works. Alkali works are those wherein are manufactured sulphate of soda, or sulphate of potash, in which muriatic gas is evolved, or where copper ores are heated by common salt or other chlorides, whereby a sulphate is formed, and in which muriatic gas is evolved.

These works must be carried on so as to secure the condensation of acid gases, as specified in the Act, to the satisfaction of a Local Government Board inspector after his personal examination. The penalty for contravention herein is £50 for the first, and £100 for each subsequent offence. Subject to a penalty of £20 for the first, and £50 for every subsequent

offence, with a further £5 for every day of continuance, the best practicable means must be used for preventing the discharge of noxious and offensive gases. And subject to a penalty as first above-mentioned, with a further penalty of £5 per day of continuance, the acid drainage and alkali waste must be kept out of contact so as not to cause a nuisance. The sanitary authority of the district, at the request and expense of the owner of the works, must provide means for draining and carrying off the acid into the sea or a river or watercourse. Compensation must be paid in respect of any damage done by reason of such drainage. Alkali waste must not be deposited or discharged without the best practicable means being used for effectually preventing any nuisance arising therefrom. To cause or knowingly permit such a nuisance is to incur penalties of from £20 to £50. If, after receiving notice from a chief inspector to abate such a nuisance, the owner of the works fails to do so, he incurs a penalty of £20, and £5 per day for so long as it shall continue after the time limited by the notice.

Registration of Works.—No works in either of the above classes may be carried on unless previously registered and certified so to be. Application for first registration and a certificate must be made in January or February in every year, and the certificate will be issued and in force until the following 1st day of April, and thenceforth annually from that date. The duty on the certificate is £5; and in the case of a sulphuric acid works the duty is £3. Notice of change of ownership of works must be given within one month of such change. For non-registration a fine not exceeding £50 is incurred. For the purpose of the above duties, stamped forms of certificates are issued at the Inland Revenue offices.

Inspection.—A chief inspector and other inspectors of alkali, &c., works are appointed by the Local Government Board. An inspector may not be (*a*) a land agent; (*b*) employed or interested in any work to which this Act applies; or (*c*) in any patent connected therewith, or with the condensation of acid gases, the treatment of alkali waste, the prevention of discharge or offensiveness of noxious gas; or (*d*) employed in any other chemical work for gain. The owners of works must give facilities to inspectors to exercise their powers, which are as follows:—(*a*) At all reasonable times, by day or night, but so as not to interrupt the process of manufacture, enter and inspect any works to which the Act applies; (*b*) examine processes and apparatus; (*c*) ascertain the quantity of gas discharged into the atmosphere, condensed, or otherwise dealt with; (*d*) enter places for the treatment and deposit of alkali waste, or where liquid containing acid is likely to come into contact with such waste; (*e*) apply any tests and make any experiments they may think proper. Inspectors must supply detailed reports to the chief inspector, who will make an annual report to the Local Government Board.

Special Rules may, with the sanction of the authorities, be made by the owners of works for the guidance of their workmen, and fines may be annexed thereto, not exceeding £2, which may be recovered before the magistrates. A printed copy thereof must be given to each workman affected thereby.

Procedure.—In calculating the proportion of acid to the cubic foot of air smoke or gases, such air smoke or gases shall be calculated at the temperature of 60° Fahr., and at a barometer pressure of thirty inches. Actions for fines must be brought within three months after the commission of the offence, as a debt due to the inspector, in the local County Court. Appeal is to the Court of Appeal, by way of special case, agreed by both parties. If such agreement is impossible, the special case is to be settled by the judge of the County Court. In Scotland, the Court of the sheriff or sheriff-substitute takes the place of the County Court. A person is not subject to a fine for more than one offence in respect of the same works or place in respect of any one day. Not less than twenty-one days before the day of trial, in cases of failing to secure the condensation of any gas to the satisfaction of the chief inspector, an inspector must serve on the owner a notice in writing, stating, as the case may require, either the facts on which such chief inspector founds his opinion, or the means the owner failed to use, and those which in the chief inspector's opinion would suffice. It would be a defence to such proceedings that the owner had used due diligence to comply with and enforce the requirements of the Act, and that the offence had been committed by some agent, servant, or workman, specifically named, without the owner's knowledge, consent, or connivance. Where a nuisance arises from a noxious gas, wholly or partially caused by the acts or defaults of several persons, the person injured may proceed against any one or more of such persons. Damages may be recovered from each person in proportion to the extent of his contribution to the nuisance, even though the act or default of such person would not separately have caused the nuisance. This rule does not apply to any defendant who can produce a certificate from the chief inspector that in the works of such defendant the requirements of the Act had been complied with and were complied with when the nuisance arose. This Act does not, however, legalise any act or default that would, otherwise, be a nuisance or contrary to law. Nor do they deprive any person of any remedy by action, indictment, or otherwise, to which he would have been entitled if the Act had not been passed.

ALLOTMENTS.—From Anglo-Saxon times to the Tudor, nearly the entire population of England subsisted directly upon land. The lord obtained his subsistence from his demesne, which was cultivated by prædial slaves and by manorial tenants. The former had no land of their own, whilst the latter merely occupied small plots of land attached to their dwellings, with certain rights of common. The number of these small

holdings was comparatively very great. For example, in what became in the seventeenth century one farm of 160 acres, there were up to the fifteenth century at least twenty-one several holdings. In the sixteenth century the number had decreased to six. This example is a typical instance of the increasing consolidation which culminated in the sixteenth and seventeenth centuries. And during this period, money wages became increasingly common and small landholding scarcer. Legislative efforts were made to stay the process. By a statute of Elizabeth, for example, penalties were enacted against building any cottages "without laying four acres of land thereto"; and to this day the word cottage in its legal significance presumes an attachment of land. But such legislation was of no avail, for a series of common-enclosing legislative Acts was for ever increasing the lands of the landowners. From the reign of George I. to that of George III. about four thousand enclosure bills were passed, thereby depriving many labourers of their land. The Select Vestry Act of 1819 and several Acts of William IV. endeavoured to remedy the evil. Ultimately the Inclosure Act of 1845 empowered the Board of Agriculture to vest land in the churchwardens and overseers of a parish to be let in allotments to industrious inhabitants. Up to 1868, however, but little use had been made of the facilities granted by the legislature.

In 1882 the Allotments Extension Act was passed. Then, in 1887 and 1890, further Acts were passed on this subject. The combined effect of these two Acts and the Local Government Act, 1894, was to empower a District Council, on the petition of six ratepayers, to purchase land for allotments not to exceed one acre each. Now the law has been finally amended and consolidated by the Small Holdings and Allotments Act, 1908, and a Small Holdings Act of 1910 which provides compensation to tenants on whom notice to quit is served with a view to the use of the land for the provision of small holdings. Rules under the chief Act were issued by the Board of Agriculture in March 1910. Borough, Urban, District, and Parish Councils have power to purchase land and let it in allotments to the labouring classes within their area. Should such a Council make default in the exercise of these powers the County Council may act. No single person can hold more than five acres as an allotment or allotments, and the rent fixed by the Council must be an amount not less than such as may reasonably be expected to ensure the Council from loss. An allotment cannot be sub-let. A register must be kept by the Council showing the let and unlet allotments, and this should be open to the inspection of every ratepayer in the parish.

ALLOWANCE is a business term commonly understood with reference to the advantage given by the vendor to the purchasers in cases where *e.g.* a live weight is resolved into a dead weight, or a gross weight into a net weight. The intention is to cover waste, arising from certain usual and well-understood causes, and during transit. The allowance is sometimes called **tret.** The allowance described as **tare** is for the weight of the package in which the goods are packed, or of the waggon in which they are conveyed.

In law, the term applies to payments made by executors, trustees, partners, mortgagees, and agents, which the Court deem just and allow, as against persons claiming an account. Also, in cases of trespass for illegally working coal, an honest and *bonâ fide* trespasser will be allowed the expenses of severing and getting the coal and bringing it to the bank. If the trespass

is wilful, and not *bonâ fide*, only the cost of bringing the coal to the bank will be allowed.

ALLOY, as a term used in connection with the coinage, is the base metal which is added to a more precious. The term is not applied to the resultant mass of mixed metal. In the British gold coinage, the standard of fineness is 22 out of 24 carats; or 916·66 parts in 1000 of pure gold, the balance being represented by the alloy. In silver money, the pure silver is 925 parts in 1000. In Germany and the United States the standard fineness of both gold and silver has been fixed at 900. The object of the alloy is to render the coinage ductile, durable, and uniform in composition; for which copper and tin yield an alloy with remarkable advantage.

AMBASSADORS have certain important privileges in the country to which they are sent. These privileges may be grouped under two heads, inviolability of person and exterritoriality; the former relating to the ambassador's person, the latter to his property. Accordingly no legal process can affect ambassadors either in their person or their property; or at least so much of the latter as is connected with their official character, such as their furniture, carriages, &c. And so ambassadors are not amenable to any criminal court of the country in which they reside. Thus in 1603, while the Duc de Sully was the French Ambassador to England, one of his retinue quarrelled in London with some English, one of whom he killed. Justice being demanded, it was not done by a magistrate, but by the ambassador himself, who, after trying the man before a body of Frenchmen, condemned him to death and delivered him up to the civil power. James I. pardoned him, but no attempt was ever made to try him under the English law. By 7 Anne c. 12, all legal process against the person or goods of an ambassador or of his domestic servants is declared to be void. The Act is really declaratory of the Common Law and of the Law of Nations. Its benefit may be claimed by any one who is actually in the domestic service of the ambassador, whether he is a British subject or a foreigner, provided he is not a merchant or trader within the bankruptcy laws. It is not necessary that he should be resident in the ambassador's house. But if he takes a house and uses it for any other purpose than that of residence, he so far loses his privilege, and his goods are liable to be distrained for rates. Whoever sues out or executes any process contrary to the provisions of the above Act, is punishable at the discretion of the Lord Chancellor and the Chief Justices as a violator of the Law of Nations and disturber of the public repose. No one, however, can be punished for arresting an ambassador's servant unless the name of such servant is registered with the Secretary of State, and by him transmitted to the Sheriffs of London and Middlesex. Moreover, the residence of an ambassador enjoys an immunity like that of his person and property. Not only is it protected from open outrage, but it is likewise exempted from being searched or visited, whether by the police, by revenue officers, or under colour of legal process of any description whatever.

AMBIGUITY.—Where a contract expresses its intention with such uncertainty as to leave such intention unknown with precision, that contract will have no effect because of its ambiguity. Such an ambiguity is called *patent*, and it cannot be explained, nor can the intention of the contract be

ascertained by any evidence other than that to be found in the contract itself. Where there is doubt on the face of the document, the law admits no extrinsic evidence to supply it. Thus, in the body of a bill of exchange, it appeared in writing to have been drawn for Two hundred pounds, but in the margin the figures expressed the sum of £245. There thus arose an ambiguity on the face of the document, and the Court refused to admit evidence to show that the bill was really intended to be drawn for £245. It was accordingly held that the bill was good only for the £200 expressed in the body of the bill in writing, for which sum the plaintiff obtained judgment, as he would at the present day. There are two exceptions to this rule, if such indeed they are. First, the Court will receive evidence of the proper meaning of the language when it is written in a foreign tongue. Secondly, it will also receive special evidence where technical words or peculiar terms, or indeed any expressions, are used which at the time the document was written had acquired a special meaning, either generally or by local usage, or amongst particular classes. It is a *latent* ambiguity as distinguished from patent, in either of the following cases—(*a*) where the parties to the contract have not put all its terms into writing; (*b*) where terms of the contract require explanation; (*c*) where the contract relies upon the usages of a trade or the customs of a locality; (*d*) where the contract is before the Court for the rectification of mistake or its cancellation. In such cases, extrinsic or outside evidence is available. Such evidence is usual in cases deciding identity. Thus, where a testator, after making provision for his son John, devised an estate to his "grandson John Hiscocks, eldest son of the said John." Now John the father had been twice married; having a son by the first marriage, and John Hiscocks by the second. The question was, to whom should the estate go? The Court decided that though it could not receive evidence of the testator's intentions, yet it could look at the surrounding circumstances, and with the knowledge arising from those facts alone decide the question. The above estate went to the grandson, John, though he was not the eldest son. So, where the contract is for one person to "enter into the employ" of another, evidence may be given as to the nature of the employment intended. And so where a farmer contracted in writing to sell "his wool," a previous conversation between him and the purchaser was received as evidence that "his wool" meant wool in his possession bought by him from other farmers. And where a lease professed to demise premises and a yard, the presumption that a cellar under the yard was also intended to be leased, was allowed to be rebutted by extrinsic evidence. *See* CONTRACT.

AMERICAN SECURITIES; GOVERNMENT.—The following are the Government Securities of the United States:—(1) An issue of a Government 4 per cent. Funded Loan, redeemable at option after 1st February 1925. The registered bonds on 31st December 1908 amounted to $97,273,200, and the coupon bonds to $21,216,700. The bonds are to bearer, or registered. Bearer bonds can be exchanged for registered certificates, but the latter cannot be reconverted. These bonds need not be stamped by the Inland Revenue in England. (2) The Government 3 per cent. Loan issued in 1898, redeemable since 1st August 1908. At 31st December

1908 there were $40,901,580 registered bonds, and $23,043,880 coupon bonds. (3) Government 2 per cent. Thirty-year Bonds, dated 1st April 1900, and payable at the pleasure of the Government after 1st April 1930. At 31st December 1908 there were $641,129,750 registered bonds, and $5,120,400 coupon bonds. The rules as to exchange of bearer bonds into certificates, are the same in the last two loans as in the first. All Stock-Exchange quotations are based on the exchange of 4s. to the dollar. Foreign bonds when negotiable are subject in England to the law applicable to English negotiable instruments. When the security is in the form of a certificate, the law relating thereto is the same as in the case of certificates for railroad and other shares to be hereinafter referred to. **Railway Securities** have always been regarded with some favour by British investors. But generally speaking, until recent years, more money has been lost than made by English investment in American railroads. It is certainly characteristic of this field for investment, that the security of which we shall treat first, on account of its value ranking highest, is the certificate issued by receivers of railroad companies in default. Default in payment of the bonded interest, the appointment of receivers and reorganisation committees, and a host of other formalities were, until about ten years since, very usual in connection with American railroads. *Receiver's certificates.*—In consequence of default in payment of interest, the bondholders may have seized the assets of the company, new capital having to be introduced in order to release the line from its encumbrances, and to enable the property to be kept together and continued as a going concern. In such a case the receiver, who has been appointed at the instance of the bond-holders, obtains power from the appropriate American Court to issue certificates for money to be raised necessary for the management and preservation of the railroad. The debt so created becomes a first charge on the property, and on the funds in the receiver's hand after payment of the working expenses. Certificates issued, not to preserve the property, but to pay unsecured claims, cannot obtain priority over antecedent mortgages. When issued in excess of the amount authorised by the Court, they cannot be enforced against the property unless the proceeds have been used for its benefit. They cannot be issued to pay interest on bonds. A holder of these certificates is supposed to have knowledge of all proceedings of the litigation by which they were issued, and is assumed to have notice thereof. Such certificates are not negotiable, and in fact lack almost every characteristic of negotiable instruments. Purchasers of certificates are not bound to see to the application of the purchase-money. The English Courts have power to authorise the receiver of a foreign company to give a charge in priority to the debentures. *Prior lien bonds* are generally issued to pay debts having priority over the funded debt. They must be issued with the consent of the holders of the existing bonds, who generally are the persons who take them up. *Mortgage bonds* are what are known in this country as mortgage debentures secured by a trust deed. The power of a railway to create such a bond does not exist unless conferred by charter or statute. The mortgage upon which these bonds rest is drawn according to the law of the state in which the mortgaged property lies, and in which

the mortgage is completed; and the law enters into and becomes a part of the mortgage as if it were there in express terms. In the absence of a provision to the contrary, all bonds secured by mortgage have an equal lien irrespective of the time at which they were negotiated; first mortgage bonds being prior to second mortgage bonds, even if subsequently negotiated. The invalidity of some of the bonds does not invalidate the mortgage. Where the mortgage expressly covers subsequently acquired property, a railroad bond covers the road although the route differs from that originally laid out. Creditors cannot levy an attachment or execution upon the railroad, or parts of it, even though the levy be made subject to the mortgage. A railroad mortgage bond acknowledges the debt owing to the bearer and stipulates for payment of interest. It specifies the property mortgaged, and is enforceable by foreclosure in case of default by the borrowing railroad company. The method of procedure upon default is by way of Bill of foreclosure in the federal courts, usually accompanied by a prayer for a receiver. This secures the appointment of the same receiver or receivers for the entire property irrespective of the states in which it lies. Thus may be avoided, to a certain extent, possible prejudice in a state court. Demand for payment is not necessary before proceeding for a foreclosure. The Court having acquired jurisdiction, takes control through the receiver of the entire property of the railroad company; and usually continues the working of the company through such receiver for the benefit of all the creditors. American railroad bonds are not usually perpetual, but are redeemable at certain fixed periods. American *Debentures* are of no more value than are ordinary unsecured English bonds; they are not, in fact, debentures as we understand them. *Income bonds* are those the interest of which is payable only when earned, and after payment of interest upon prior mortgages. They resemble English preference shares in the sense that the holders have a preference for their interest over the dividends of the stockholders; but they do not carry any voting power.

Shares are either preference or common. Preferred shares entitle the holder to a priority in the dividends or earnings over common stock. Guaranteed stock is the same thing. In England, **the transfer** is by separate deed; in America, the deed or power of attorney is printed on the back of the share certificate, the transfer being signed in blank by the registered owner. The registered owner in England is generally a prominent banking or issue firm. It is through such registered owner that the holder receives his dividends. American railroad shares are, thus treated, virtually as bearer scrip. With a transfer so signed they can be dealt in with the same impunity as bills and notes. In case of the sale of the stock, this power of attorney becomes irrevocable; but if such power of attorney is forged, or is made by a person not competent to make it, the company is liable for allowing the transfer. A company may refuse to allow a transfer until satisfied of the party's right to make it. Apart from a blank transfer so signed as above, American shares are non-negotiable.

Municipal Securities.—The power to borrow money and issue bonds therefor is not included among the implied powers of a municipal corporation; but when a debt has been lawfully incurred, a municipal corporation

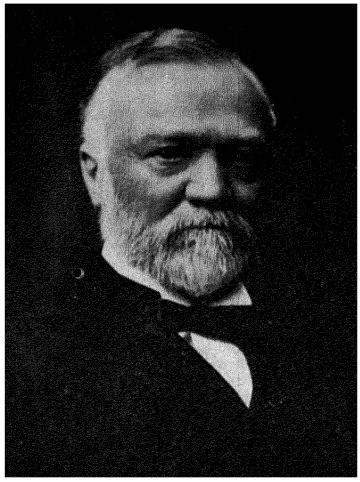


Photo. W. Crooke, Edinburgh

ANDREW CARNEGIE, who sold his ironworks in America for £40,000,000, was born in Scotland in 1837, the son of a poor weaver. He began life at a weekly wage of a few shillings. He has given £2,000,000 to the Scottish Universities, and his bequests to public libraries also run into a huge amount. He is an earnest worker in the international movement towards peace.

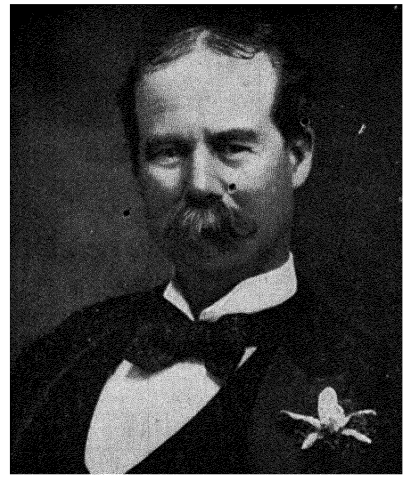


Photo. Elliott & Fry

SIR THOMAS LIPTON has thrice raced for the American Yacht Cup, with Shamrocks I., II., and III. His wealth is derived from an enormous number of provision shops, which have grown into a huge concern with tea gardens in Ceylon and packing warehouses at Chicago.

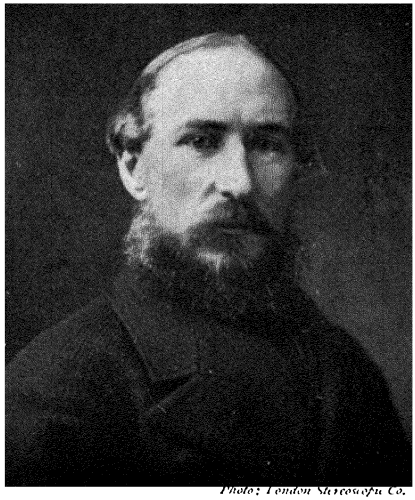


Photo: London Stereoscopic Co.

BARON WIMBORNE, born 1835, is a Director of the Port Talbot Railway and Docks Company. Was elected Mayor of Poole in 1896, and is a D.L., J.P., and County Alderman for Dorset. Lord Wimborne unsuccessfully contested Glamorganshire and Poole in 1874, and Bristol in 1878 and again in 1880, in the Conservative interest.

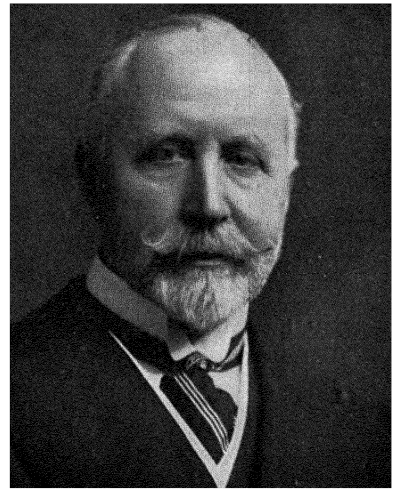


Photo. Elliott & Fry

FRANK REL IS Manager of the London and North-Western Railway, and has introduced many new features into railroading since he was appointed. A notable departure in 1909–10 was the advertising policy of the L. & N.-W., which brought railway publicity into line with modern advertising conditions.

SUCCESSFUL BUSINESS MEN

is not prohibited from issuing bonds for its payment. But such a corporation possesses the incidental or implied power to borrow money and issue bonds therefor in order to carry out its express powers, or any affecting its legitimate objects. Where a statute confers a power to borrow money and fixes the limit, a municipality cannot exceed that amount. There is an irreconcilable conflict amongst the authorities as to the power of municipal corporations to issue bonds, or other commercial paper, having the qualities of negotiable instruments. But it is easy, and it seems usual, for the State legislatures to confer the power to issue negotiable bonds. Thus it may be taken that in the ordinary course, under American law, such bonds are in the commercial sense negotiable. For precise knowledge, however, as to the legal effect of any municipal bond in particular, it would be necessary to consult the laws of the State to which the municipality belongs. Here it may be remarked that the United States is a union of independent States, each having its own independent legislature and making its own laws. Bonds which were valid under the decisions of their own State Court at the time they were issued will be upheld by the Federal Court, even though the State Court has overruled its earlier decisions and held that they were issued without authority. Regularly issued, they are not subject to prior equities in the hands of holders for value who look before maturity and want notice. As against *bonâ fide* holders for value, payment of interest on such bonds will stop the corporation from setting up a mere irregularity in their issue. The coupons usually attached thereto are detachable, and when detached are themselves negotiable. The holder of a coupon may sue thereon in his own name, even though he is not the owner of the bond.

Private Corporations.—The capital stock herein is divided into shares, which are received by the subscribers to the corporation, according to the amount of their respective subscriptions. A share thus represents the interest which its holder, who is called a stockholder, has in the corporation. The number and value of the shares into which the capital is divided, the voting power of the stockholders, and many other details, depend upon the statutory regulations, or, in their absence, the agreement of the parties forming the corporation. The ownership of shares is attested by a certificate usually, but not necessarily, under the corporate seal. Apart from such a certificate, the presence of a party's name on the stock books of the company is evidence of ownership. Shares are non-negotiable; but, as in the case of railroad shares, stock certificates with a power to transfer them endorsed thereon in blank, can be dealt in with nearly the same impunity as bills or notes; and so, upon the sale of the stock under such an endorsed power, the latter becomes irrevocable, and makes the certificate practically negotiable. The general rights of a stockholder are to attend stockholders' meetings and to participate in the profits of the business; to require that the corporate property and funds shall not be diverted from their original purposes, and if the company becomes insolvent to have its property applied to the payment of its debts. For the invasion of these rights by the officer of a company, a stockholder may sue at law or in equity, according to the nature of the case. All remedies for injury to the property or rights of such a corporate body must be prosecuted in the name of a

company; all demands against the company must be prosecuted against it by name. But where the officers and managers of a company, by fraud and collusion with third persons, are sacrificing, or are about to betray or sacrifice, the interests of the company, a stockholder may, for such breaches of trust and conspiracy, call the guilty parties to an account in a court of equity. The books of a corporation are said to be the common property of all the stockholders, and are subject to their inspection for proper purposes and at proper times; the right may be enforced by mandamus. After shares are legally fully paid, no further payment can be required from the shareholders. In some States, however, this rule is partially modified by statute. A suit for unpaid calls may be brought against a stockholder without notice; when a receiver has been appointed the call is made by decree of the Court. If a creditor of a corporation has obtained a judgment against the corporation, and execution thereon has been returned unsatisfied, he may proceed directly against stockholders for unpaid calls.

AMORTISATION in Law is an alienation in mortmain; that is, a transfer of lands in perpetuity to a corporation or charity. The law generally on this subject will be found under MORTMAIN.

In Finance its general signification is the redemption, reimbursement, liquidation, or repayment of debt. In particular it refers to the drawing and repayment of Government or debenture bonds. The investor in such securities should therefore be careful to see whether those he favours are subject to amortisation, and if so, its particular nature. There are various methods of amortisation. The bonds may be redeemable at "par" at a fixed future date; or a sinking fund may be created by the borrowers, in order to repurchase the stock whenever its price is low; or the redemption may be by means of drawings. In regard to the first above-mentioned method of redemption, it is important to the investor, especially if the bonds were purchased at above "par," to know at what date the redemption at "par" will take place. If this will happen within the course of a few years, the good interest he is probably receiving will be more than counterbalanced by their depreciation to "par," which will be their redeemable value. The investor can then provide for this contingency by setting aside a small percentage of the interest he receives as a sinking fund on his own account. For example, a security paying 4 per cent., redeemable at "par" in ten years' time, is purchased at 105s. Here, if ½ per cent. of the interest is saved annually, the depreciation would be made good by the time for redemption. In the case of a larger investment, the sinking fund would be created, of course, on a properly-calculated basis.

The second method of amortisation, by repurchase in the market, need not occupy our attention. But it is important that the investor should pay attention to amortisation by way of redemption drawings. At the time the bonds are issued, notice is given as to the number to be drawn at different periods, and the price of the redemption. At the stated periods, the requisite number of bonds will accordingly be drawn in a lottery, and the bonds will then be known as "drawn bonds." As all of the bonds issued are numbered, a list, giving the numbers of the drawn bonds, will be advertised. This list should be seen by the investor as soon as possible,

for, from the time of the drawing, all interest ceases; and if his bonds are amongst those drawn, he should present them for payment of the principal and interest.

Bankers usually undertake the watching of the lists for their customers, and, for a small fee, make the collection. In the case of bonds redeemable by drawings, the time for amortisation being uncertain, the current market price of the securities is determined, amongst other things, by that uncertainty. Accordingly, the holder of such bonds should have no need himself to provide a sinking fund. *See* further hereon, under the headings: ANNUITY; SINKING FUNDS.

ANALYSIS, by the Government staff for that purpose in the Inland Revenue department at Somerset House, is available at the request of either party on the hearing of a prosecution for ADULTERATION (*q.v.*) under the Food and Drugs Act. Where the seller or buyer objects to the certificate of the district analyst, fertilisers and feeding stuffs may be analysed by the chief agricultural chemist appointed by the Board of Agriculture. District agricultural analysts are appointed and paid by the local authorities to analyse and certify fertilisers and feeding stuffs on the demand of the buyer, in accordance with the Fertilisers and Feeding Stuffs Act, 1893, and the rules made thereunder. Their certificates are evidence of matters stated therein; but the analyst himself may be required to attend and give evidence orally. *See* FERTILISERS AND FOOD STUFFS.

ANCIENT LIGHTS—How Acquired and Preserved.—Every man on his own land has a right to all the light and air which will come to him; and he may erect, even on the extremity of his land, buildings with as many windows as he pleases. In order to make it lawful for him to appropriate to himself the use of the light, he does not require any consent from the owner of the adjoining land. He therefore begins to acquire the right to the enjoyment of the light by mere occupancy. He having erected his building, the owner of the adjoining land may afterwards, within twenty years, build upon his own land, and so obstruct the light which would otherwise pass to the building of his neighbour. But if the light be suffered to pass without interruption during that period to the building so erected, the owner thereof is entitled to enjoy the light without obstruction for ever. Windows enjoying such a right are called ancient lights. The mode in which this right can be gained is now regulated by the Prescription Act. By this Act, when the access and use of light to any dwelling-house or other building shall have been actually enjoyed therewith for a full period of twenty years without interruption, the right thereto shall be deemed absolute and indefeasible, any local usage or custom to the contrary notwithstanding, unless it shall appear that the same was enjoyed by express consent or agreement by deed or in writing. This twenty years is the twenty years immediately before any action which may be brought relating to the light. No interruption as above is sufficient unless it shall have been submitted to or acquiesced in for one year after the party interrupted shall have had notice thereof, and of the person making or authorising the same to be made.

The interruption having to be for a full period of one year, the net effect of the Act is to make nineteen years and a fraction a sufficient time in which to acquire the right. Thus an enjoyment for 19 years and 330 days,

followed by an interruption of 35 days, just before the commencement of the action, was held sufficient to establish the right. In the case of an unlawful interruption, the owner of the ancient lights should first give notice to the interrupter claiming an abatement. If this notice is not complied with, an action should be commenced for damages, and the writ endorsed with a claim for an injunction. Then, within a week or so, and without waiting for trial of the action, the plaintiff can move the Court for an interim injunction. When this has been obtained, the whole action will probably be settled, and no further proceedings and trial be necessary. Fresh actions may be brought so long as the obstruction continues. It is doubtful, however, whether a Court would interfere if the interruption had been allowed to exist for a considerable period of time; say, six years. The right to light cannot be acquired over Crown land, as the statute does not bind the Crown. If the owner of a house and land adjoining sell the house, he cannot, without express reservation of the right, obstruct the lights by building on the land. This is an implied right resulting from the rule of law that no man can derogate from his own grant. On the same principle, if the same vendor had sold the land and retained the house, he could not restrain the purchaser of the land from building thereon, even if its result was to obstruct the lights of the house.

It is no answer to a claim for light, that the window obstructed has no occasion for it; nor that the business carried on in the room is of such a nature as to make diminution in light a matter of indifference; nor that the premises are unoccupied; nor that the windows are ordinarily closed with shutters. But damage to some extent must be proved in order to sustain the action and obtain an injunction; and in each case the question of damage will be considered in relation to the uses to which the darkened property is ordinarily put. It is important to remember that a right to light cannot be acquired over land in the occupation of the owner of the windows. Thus the owner of a house may have had, during fourteen years, uninterrupted access of light from an adjoining field; but if he should then become and remain tenant of the field for six years, he would not at the end of that period have acquired his indefeasible right to light. The running of the twenty years would have been suspended during the tenancy of the field, and would not be renewed until such tenancy had been given up.

How Lost.—The right to light may be lost by bricking up the window for twenty years; or even by a closing thereof for a shorter time. But in the latter case there must have been an intention to abandon. Apart from such cases, the right may be abandoned by express agreement. The difficulty generally arises in cases of reconstructed buildings. If the new windows in the reconstructed building are absolutely coincident with ancient lights, there is no difficulty, for the right passes from the old to the new windows. Where there is a modern light in a reconstructed building coincident with an old light there, the right to be protected is not lost by putting other lights in the new building which are not entitled to protection. Consequently, a neighbour cannot, under the guise of these new lights having been added, claim to obstruct the windows in respect to which the right to an ancient light can be claimed. If there are no windows in the new building which are coincident with the old windows, there will be no light in the new building that can be considered as a continuation of any ancient

light. When a window is reconstructed, which has within its area the entire area of an ancient light entitled to protection, the addition of the area of the new window, including the area of the old, will not destroy the right which would have existed if it had been an addition of a window just by the side of the old one.

In practice it is usual, in cases where buildings are to be erected which in the ordinary way would obstruct ancient lights, to require, not that the construction be abandoned, but that it shall be so modified as to allow a line of light at forty-five degrees to the ancient lights. A railway company will not be prevented from obstructing new windows overlooking their land. *See* EASEMENT.

By Scots law, light is a servitude requiring a grant. There is no such thing as ancient lights by prescription. If there is no grant, any one can build as he likes on his own land without reference to, and even so as to obstruct, any windows overlooking it. In certain towns, however, the exercise of this right is subject to the supervision of the Dean of Guild.

ANIMALS, Cruelty to.—It is a punishable offence to cruelly beat, ill-treat, over-drive, over-ride, abuse or torture, or cause or procure such to be done to any animal. Wild animals, even in captivity, were not included in the above until the Wild Animals in Captivity Act, 1900, was passed. There must be some evidence against a person charged with cruelty to animals that he was aware of the cruelty being practised. If a man begins to kill an animal, he must proceed to kill it outright. It would not be cruelty where the suffering is inflicted by reason of necessity or with an adequate and reasonable object. Cropping a dog's ears and dishorning cattle would be cruelty. No one may use or permit a place to be used for baiting or fighting any bull, bear, badger, dog, cock, or other kind of animal, wild or domestic. Any one who has impounded an animal must provide it with sufficient food and water; and any one who conveys or carries, or causes to be conveyed or carried, any animal in a vehicle must do so in such manner as will prevent unnecessary pain or suffering. **Slaughter-houses** must be licensed; and subject to penalties, the person engaged in the management thereof must affix his name over the door; cut off the mane of a horse directly it is brought in; kill it within three days; feed it properly, and not work it in the meanwhile; keep and produce a book of identification; and not obstruct a constable whilst exercising any of his powers. **Injured animals** which cannot be removed without cruelty, may, if the owner is absent or refuses to consent to its destruction, be ordered by a police constable to be slaughtered, and the expenses may be recovered from the owner. The constable should first, if a veterinary surgeon resides within a reasonable distance, obtain a certificate from such a surgeon. The **maliciously killing or maiming** of animals, not being cattle, may be punished by a magistrate; but of cattle, the offence will be a felony. It is not such a malicious killing to trap or shoot trespassing dogs or cats; but it is an offence to wilfully and unlawfully administer or cause to be administered poison or injurious substances to horses, cattle, or other domestic animals, without reasonable cause or excuse. And *see* ANIMALS, in Appendix; CONTAGIOUS DISEASES.

The **rights and liabilities** in respect to animals are founded on the same principles as those relating to persons and property. Negligence must be shown in order to make the owner liable for mischief done by animals

usually kept under restraint, but not of a naturally mischievous nature. Or he must be shown to have a knowledge that the animal in question has a vicious tendency, or is likely to attack mankind. This is the reason why a dog is said to be allowed by law to have his first bite. But a first bite is not necessary if it can be shown that to its owner's knowledge the animal would probably bite when out of restraint. But the question of negligence has no place where a usually savage or mischievous species of animal is at fault, such as a lion or monkey. In such cases the owner keeps the animal at his peril. If a dog worry sheep, its owner is liable without any evidence of negligence or knowledge being necessary. *See* HORSES; WILD BIRDS AND ANIMALS.

ANNUITIES Charged on Land.—An annuity charged on land is a right to share to a defined extent in the profits of land belonging to another. Such an annuity is technically called an incorporeal hereditament, and is held under the same tenure and in the same way as land itself. It must be created by deed, which should be registered at the Land Registry, in order to bind the land upon which the annuity is charged. But an annuity created by a will or by a marriage settlement need not be registered. If an annuity created by deed is unregistered, and the land upon which it was charged is sold to a purchaser who has no notice thereof, the purchaser would be entitled to the land free from the annuity. In case of non-payment, the annuitant may either sue the person who in the deed covenants for its payment, or distrain upon the land. A properly drawn deed should contain full powers and directions for their execution in case of need. If the annuity is perpetual, a power to distrain would under certain circumstances be invalid as offending against the rule against PERPETUITIES (*q.v.*). Purchasers of such annuities should be careful as to this, especially in the case of that form of perpetual annuities known as fee-farm rents; and very common in Lancashire and Manchester and Bristol and Bath, and in the West of England generally. The main difference between an ordinary personal annuity and one charged on land, is that the latter affords the land as security for payment, in much the same way as land is available by distress as security for payment of rent.

The chief forms of **annuities not charged on land** are consols, or to give them their full title, consolidated bank annuities; and annuities granted by insurance offices. We will deal with the latter first. They are simply personal annuities with no security other than that afforded by the insurance companies granting the annuity. In most cases, however, that security is all that any reasonable man may wish. Before investing in such an annuity, the intending annuitant may easily decide upon an office, which after investigation will show a more than sufficient security. In the same way, consols are personal, but perpetual, annuities. They are granted by the Crown as interest for money borrowed for national purposes, redeemable upon repayment; and payment of the interest is charged upon the consolidated fund. The interest is payable half-yearly and is known as a dividend. The right to the dividends is called stock, or stock in the funds, and the legal incidents relating thereto are contained in certain Acts now consolidated by the National Debt Act, 1870. Some practical points in relation to stock may be here set out. Dividends are paid at and all transfers made in the books of the Bank of England or of Ireland. The bank may demand evidence of title before allowing a transfer. A deceased stockholder's interest is transferable by his

executors or administrators, after the bank has seen and registered the probate of the will or the letters of administration. It makes no difference what trusts or bequests there may be in a will relating to the stock, the executors and administrators alone may transfer. So the bank itself has no regard to any trusts upon which the persons registered may hold the stock. Stock so held is known as inscribed stock, and may be converted into bonds payable to bearer, and transferable by delivery. Persons wishing to prevent the transfer of stock must do so by the process of DISTRINGAS (*q.v.*); and if they wish to take stock in execution of a judgment, it must be by way of a charging order. *See* EXECUTION.

In the case of inscribed stock, the holder has his whole title thereto in the inscription of his name upon the books of the bank. It may be dealt with in any amounts; such as £100 worth, or £10, or £33, 5s. 1d. worth. A person who is already a holder of stock may, instead of taking up his dividends, have them, even though of small amount, inscribed as a further holding of stock. Cheques for dividends are sent by post to the holder, or to his banker, as he may direct. A transfer of inscribed stock is by means of inscription on the books of the banks of the signatures of the transferer and the transferee. A broker may, however, do this if he has a power of attorney from his client. Bonds to bearer are very different. The bank does not regard who the holder may be. Attached to the bonds are dividend coupons; it is in exchange for these that the dividends are paid; and they may be sent to a banker or broker for collection. The net effect of the form of a bond to bearer is to make it a negotiable instrument. It is, in fact, as available for negotiation and transfer as a bank note. Like a bank note, the consequences of its being stolen or lost may be serious. Its number should therefore be kept. And like a bank note, it can only be dealt in as a whole; if it is a £100 bond, it cannot, for example, be broken up into and dealt with as two securities for £50 each. Generally, consols have had their interest reduced from 2¾ per cent. to 2½ per cent. after April 1903, the stock not being redeemable until 1923. In addition to consols there is also a considerable amount of 2¾ per cent. annuities, and minor loans such as the Local Loans Stock, the War Loan, and Exchequer Bonds. The Local Loans Stock is at 3 per cent.; and the War Loan is a temporary 2¾ per cent. stock redeemable in 1910. These latter minor securities, it need hardly be added, are as valuable as consols strictly so-called. *See* further hereon: MONEY ARTICLE; STOCK EXCHANGE.

ANNUITY is the term applied, in its most general sense, to a fixed sum of money paid yearly or in certain portions at fixed periods of a year. There are two classes of annuities: *certain*, and *life annuities*; the latter of which are those most popularly known as annuities. We will deal first with *annuities certain*. Such an annuity is a fixed sum payable yearly, or at certain periods in a year, during and for a specific time only. Thus the lessor of a house let at £50 per annum, and having a residue of ten years of the term to run, would be in receipt and the owner of an annuity certain of £50 for ten years. So, too, may a salary be an annuity certain. Again, where a capitalist lends a sum of money to be repaid with interest at the expiration of a certain period, by equal annual payments, he is in effect purchasing by that loan an annuity certain. Intimately bound up with a consideration of annuities is the subject of interest. If capital could not earn interest, the value of an annuity certain would be simply the sum

of the annual payments. Thus, the value of the above-mentioned lease would be £500—ten times its annual value; and the value of a life annuity would be found by simply multiplying the annual payment by the average number of years to which individuals of the age of the annuitant live. But in the case of the loan we have instanced there is a question of interest. The sum paid annually is always the same, but the two elements which compose that sum vary necessarily at each time of payment. The interest constantly diminishes; and the amount of capital repaid as constantly increases. In the calculation of annuities certain there are therefore four things to be considered: the capital amount of the annuity; the rate of interest; the amount of the periodical payments; and lastly, the duration of the time for payment. Any one of these four quantities can be calculated, if the other three are known. The method of calculation is, however, except in simple cases, too complicated and tedious for the general reader unversed in mathematical processes. Accordingly tables have been at various times prepared, in order to afford a facile method of solution of all problems connected with this class of annuities. Such tables are based on this principle: the duration of the annuity and the rate of interest not varying, the amounts of the annual payments must be proportionate to the capital sum they are designed to extinguish. Of these tables, we will refer to and set out selections from two. Table I. shows the present value or purchase price of an annuity of £1 during one, two, three, &c., years, the interest being compound, at the rate of 2, 2½, 3, 4, or 5 per cent. Table II. gives the amount of an annuity of £1 at the end of one, two, three, &c., years, the interest being compound, at the rate of 2½, 3, 4, 4½, or 5 per cent.

Table I.

Showing the present value or purchase-money of an annuity of £1, *to continue for any given number of years, reckoning compound interest at* 2, 2½, 3, 4, *and* 5 *per cent.*

Years.	2 per cent.	2½ per cent.	3 per cent.	4 per cent.	5 per cent.	Years.
1	·9804	·9756	·9709	·9615	·9524	1
2	1·9416	1·9274	1·9135	1·8861	1·8594	2
3	2·8839	2·8560	2·8216	2·7751	2·7232	3
4	3·8077	3·7620	3·7171	3·6299	3·5460	4
5	4·7135	4·6458	4·5797	4·4518	4·3295	5
6	5·6014	5·5081	5·4172	5·2421	5·0757	6
7	6·4720	6·3494	6·2303	6·0021	5·7864	7
8	7·3255	7·1701	7·0197	6·7327	6·4632	8
9	8·1622	7·9709	7·7861	7·4353	7·1078	9
10	8·9826	8·7521	8·5302	8·1109	7·7217	10
15	12·8493	12·3814	11·9379	11·1184	10·3797	15
20	16·3514	15·5892	14·8775	13·5903	12·4262	20
25	19·5235	18·4244	17·4131	15·6221	14·0939	25
30	22·3965	20·9303	19·6004	17·2920	15·3725	30
40	27·3555	25·1028	23·1148	19·7928	17·1591	40
50	31·4236	28·3623	25·7298	21·4822	18·2559	50
60	34·7609	30·9087	27·6756	22·6235	18·9293	60
70	37·4986	32·8979	29·1234	23·3945	19·3427	70
Perpetuity	50·0000	40 0000	33·3333	25·0000	20·0000	Perpetuity

Table II.

Showing the amount of an annuity of £1 per annum, improved at compound interest at 2, 2½, 3, 4, 4½, and 5 per cent.

Years.	2½ per cent.	3 per cent.	4 per cent.	4½ per cent.	5 per cent.	Years.
1	1·0000	1·0000	1·0000	1·0000	1·0000	1
2	2·0250	2·0300	2·0400	2·0450	2·0500	2
3	3·0756	3·0909	3·1216	3·1370	3·1525	3
4	4·1525	4·1836	4·2464	4·2781	4·3101	4
5	5·2563	5·3091	5·4163	5·4707	5·5256	5
6	6 3877	6·4684	6·6329	6·7168	6·8019	6
7	7·5474	7·6624	7·8982	8·0191	8·1420	7
8	8·7361	8·8923	9·2142	9·3809	9·5491	8
9	9·9546	10·1591	10·5827	10·8021	11·0265	9
10	11·2033	11·4638	12·0061	12·2882	12·5778	10
15	17·9319	18.5989	20·0235	20 7840	21·5985	15
20	25·5446	26·8703	29·7780	31·3714	33·0659	20
25	34·1577	36·4592	41·6459	44·5652	47·7270	25
30	43·9027	49·5754	56·0849	61·0070	66·4388	30
40	67·4025	75·4012	95·0255	107·0303	120·7997	40
50	97·4813	112·7968	152·6670	178·5030	209·3479	50
60	135·9915	163 0534	237·9906	289·4999	353·5837	60
70	185·2841	230·5940	364·2904	461·8696	588·5285	70

To illustrate the use of Table I. we will refer to the above example of a lease. In order to receive its value, interest being at 5 per cent., the lessor should look in the column headed 5 per cent., and there opposite to 10 in the first column will be found the value of £1 = £7·7217, wherefore the value of £50 = £386·085 = £386, 1s. 8½d. = the value of the lease. To illustrate the use of Table II., we will take the case of an investor or other person who wishes to create a sinking fund [*see* AMORTISATION] to provide a sum of, say, £1087, 5s. 7d. in fifteen years at 5 per cent. compound interest. Let him look opposite to fifteen years in Table II., and under 5 per cent. is 21·578, the amount of £1 for the given time and rate. Dividing £1087, 5s. 7d. (reduced into decimals, 1087·279) by this sum, the quotient 50·387 = £50, 7s. 9d. = the annual provision required. Or again, we will assume A. owes £1000, and desires to set aside £10 per annum for its repayment; in what time will the debt be repaid, reckoning compound interest at 4 per cent.? 1000 divided by 10 gives 100. The number in Table II. under 4 per cent. nearest to 100 is 99·826, opposite forty-one years, the required time. It should be noticed that the above tables and calculations are based upon the assumption that the payments are annual. If half-yearly or quarterly, their present value would be somewhat greater than in the former case. This is so, because certain portions of the annuity are received sooner, affording thereby a gain in interest. Tables such as the above are sufficient to meet these latter cases. Thus £100 per annum, payable quarterly for ten years, interest being 4 per cent., is equivalent to an annuity of £25, payable yearly for forty years, interest being at 1 per cent. Other equivalents can be worked out on the same principle.

The method of investment on the principle of annuities certain may be very profitable. Thus, on reference to the above-mentioned sinking fund, it will be

found that the sum of £1087, 5s. 7d. has been provided for by an actual out-of-pocket outlay of only £755, 16s. 3d. Again, to a debtor it is a most advantageous method of repayment of a loan. Whilst obliging him to lay by out of his income a small sum, it allows him to insensibly free himself from the debt, by spreading over a number of years the results of his work and thrift. But capitalists do not as a rule care for this method. It parcels out their funds and forces them to receive a succession of small payments, of which the immediate employment is difficult. And the same difficulty presents itself to any one who proposes obtaining a certain ultimate sum by adopting the method of an annuity certain—the difficulty of immediate reinvestment, in order to keep the compound interest constant. This difficulty would have to be carefully grappled with and overcome; for annuity tables and calculations based thereon assume a constant and unvarying yield of compound interest. The borrowing of money and its repayment by means of the annuity system is, however, becoming more and more general and popular, especially with regard to mortgages on house property. In this instance, building and similar societies have led the way for years. The result to-day is that owners of estates of small residential properties in course of development are generally in a position, and even anxious, to make arrangements with intending purchasers for payment of the greater part of the purchase-money on the principle of an annuity certain. Again, municipal and local government loans now often take the form of annuities. Life tenants of settled estates have also power under certain acts, for certain purposes, to raise money upon mortgage and charge the estates with the repayment thereof by annuities. Of annuities there are two principal sub-classes—deferred and reversionary. The former do not commence until after a certain number of years, the latter being such as depend upon the occurrence of some uncertain event, as the death of an individual, &c.

Life annuities present any application of the theory of annuities. A life annuity is an annuity calculated upon the probable duration of the life of the person to whom it is payable. The principles on which the calculation of the value of life annuities depends will be more fully explained in the articles PROBABILITY and MORTALITY TABLES. It is sufficient here to say that their value depends upon the manner in which it is presumed a large number of persons similarly situated with the intending annuitant would die off successively. Various tables of such expectations of life have at different times been constructed from observations made amongst different classes of lives in various districts. Some make the mortality greater than others; and of course tables which give a large mortality, give the value of an annuity as smaller than those which suppose men to live longer. Until recent years the insurance companies, whose business has always depended upon such considerations, have used various tables, some upon which annuitants would be rated according to a low expectation; some upon which the expectation would be higher. At present, however, there are two tables in principal use—the H^M Table of the Institute of Actuaries, used by most of the insurance offices, and the Government Table. We will now in Table III. give a selection from the H^M 3 per Cent. Table prepared by the Institute of Actuaries—a table undoubtedly the most scientific and precise. The symbol "H^M" stands for Healthy Males, denoting that the Table has been prepared from observations on such lives, which source of observation has made it by far the best existing criterion for testing the incidence of mortality. Other Tables, prepared by the Institute upon similar lines, are the H^F (Healthy Females), H^{MF} (Healthy Males and Females), and D^{MF} (Diseased Males and Females).

Table III.

Showing the value of an annuity of £1 at certain ages.

Age next Birthday.	Value of an Annuity of £1.	Age next Birthday.	Value of an Annuity of £1.	Age next Birthday.	Value of an Annuity of £1.	Age next Birthday.	Value of an Annuity of £1.
	£		£		£		£
20	20·043	35	18·587	50	13·896	65	8·418
25	21·038	40	17·176	55	12 094	70	6·657
30	19·867	45	15·594	60	10·236	75	5·061

To use this table: suppose the value of an annuity of £100 a year on a life aged 30 is required, interest being at 3 per cent. We find, opposite to 30, 19·867. This number multiplied by 100 = 1986·7 = £1986, 14s. = the value or purchase price of such an annuity. This table is calculated upon the lives of healthy males, for which reason it is distinguished as the H^M Table. Amongst the older tables is that known as the Carlisle Table. Below in Table IV. we set out a selection from that table, showing the present value or purchase-money at 4 per cent. of an annuity of £1 on two joint lives.

Table IV.

Age	0	10	20	30	40	50	60	70
0	8·9	12·3	11·7	10·9	9·9	8·6	6·6	4·7
5	16·8	16·5	15·6	14·4	12·9	10·5	7·8	5·0
10	17·0	16·3	15·2	13·8	12·0	9·2	6·5	4 1
15	16·3	15·5	14·3	12·9	10·5	7·9	5·1	3·0
20	15·6	14·7	13·6	11·8	9·0	6·4	4·1	2·4
25	14·8	13 8	12·5	10·3	7·8	5·0	3·0	2·6

In order to illustrate the use of this table, let for example the two lives be aged 25 and 55, in which the difference of age is 30 years. In the above table, opposite to 25 the younger, and under 30 the difference in age, we find 10·3. The value of an annuity of £50 on the joint lives is therefore £515. To find the value of an annuity on the longest of the above two lives, proceed as follows:—

Table III.—Annuity at age of 55 . . .	12·09
„ „ 25 . . .	21·03
Sum . .	33·12
Table IV.—Joint annuity, 55 and 25 . . .	10·3
Difference .	22·82

The value, therefore, of an annuity of £1 per annum on the survivor is £22, 16s. 7¼d. It is, in principle, the same as if the annuity were payable to each person on condition that one annuity should be returned during the duration of the joint lives. The value of an annuity not payable until one of two persons is dead, and then during the life of the survivor, is found by subtracting twice the value of the joint annuity, instead of the value itself, from the sum of the values as above. This is so because the annuity is not payable during the joint lives. The value of an annuity payable to one person upon the previous death of another, is equivalent to the value of an annuity on the life of the former less the value of an annuity on their joint lives. Let the ages and table be as before, the age of the former life being 25. We then have :—

Table III.—Annuity at age of 25 . . .	21·03
Table IV.—Joint annuity, 25 and 25 . . .	10·3
Difference .	10·73

Whence the value of the required annuity of £1 is £10, 14s. 7¼d.

As a suggestive guide to those intending to purchase annuities, we append in Table V. a characteristic selection of rates ruling in certain insurance offices for an annuity purchased at the price of £100. The top row of figures shows approximately the highest rates, and the bottom row represents approximately the lowest. Of course most insurance companies will give a quotation without reference to their published rates, and this table is subject thereto. It may be taken, however, that the rates of any company would vary between these two extremes—probably with a tendency towards the higher rates. The lower rates appear to be based upon the Actuaries H^{M} Table; the higher to some extent on the Carlisle Table, which is distinctly favourable to an intending annuitant, and is consequently being gradually discarded by the companies.

TABLE V.

M. Males. F. Females.	40			45			50			56			60			65			70			M. Males. F. Females.
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	
M.	6	0	4	6	9	10	7	1	2	8	0	10	9	0	4	10	13	4	12	19	2	M.
F.	5	8	2	5	16	2	6	6	6	7	4	0	8	0	6	9	8	10	11	11	6	F.
M.	5	5	6	5	14	0	6	8	0	7	5	6	8	1	0	9	7	10	11	8	6	M.
F.	4	16	0	3	3	4	5	13	8	6	10	2	7	5	10	8	12	0	10	10	8	F.

In all the preceding tables and illustrations nothing more than a merely suggestive outline has been attempted. To attempt more would be to exceed the limits of this work, and even if possible, would be to some extent superfluous whilst complete tables of annuities are so easily available in handy form. To set out complete tables, with the object of general reference, would itself necessitate a small volume, and to do less would render them useless for that object. The only reasonable course has therefore been taken, viz. to introduce the subject to the reader, so that he may learn to appreciate its value and approach the complete

tables with some knowledge as to their use. In addition to the articles mentioned in the text, reference should be made to APPORTIONMENT; INSURANCE (LIFE); and INTEREST.

APPEAL may be to **the House of Lords** from any order or judgment of His Majesty's Court of Appeal in England, or of either division of the Court of Session in Scotland. **The Privy Council** entertain appeals from India and the Colonies and dependencies abroad; also in ecclesiastical matters and from judgments and orders under the Naval Prize Act, 1864. **The Court of Appeal** is one of the two permanent divisions of the Supreme Court of Judicature in England. Every appeal must be heard before three judges, except in certain cases, by consent, before two. Appeal from a final judgment must be brought within three months, and from an interlocutory order within fourteen days. Generally speaking, appeal lies to the Court of Appeal in all cases heard in the High Court of Justice, and under the Workmen's Compensation Act. But there is no appeal from a decision of the Court of Crown Cases Reserved, or from orders made by consent. Although an appeal may lie, the Court may decline to hear it, when against the general principles of the Court to do so, as where judicial discretion has been exercised, or the stake is too small. **To Divisional Courts**, appeal is chiefly from judgments of County Courts and from Petty or Quarter Sessions. Also from decisions of revising barristers, and proceedings relating to election petitions. Appeals **to Quarter Sessions** are usually from Petty Sessions or courts of summary jurisdiction. Where a person charged before magistrates, and has not pleaded guilty or admitted the truth of the information or complaint, is adjudged by a conviction or order to be imprisoned without the option of a fine, he shall be entitled to appeal to a Court of general or Quarter Sessions. But there is not this right if the conviction is for failure in payment of money, in finding sureties, entering into recognizances, or giving any security. In London, there is a right of appeal in every case of summary conviction or order, before a metropolitan police magistrate, in which the penalty inflicted is more than £3, or the imprisonment more than one month. No appeal usually lies from the dismissal of a charge. There is also an appeal to Quarter Sessions in licensing matters. By an Act of 1907, a **Court of Criminal Appeal** was established for the purpose of hearing appeals in criminal cases. *See* LICENSING.

APPORTIONMENT.—Interest on money lent has always been considered as accruing due day by day. Accordingly, if a person to whom interest is payable dies before the day appointed for payment, his estate is credited with a proportion of the interest, when paid, up to the date of his death. Rents, annuities, dividends, and periodical payments other than interest were, in the absence of express stipulation, not so apportionable. In 1870 it was enacted that such periodical payments, with the exception of annuities granted by insurance companies, should be apportionable in respect of time. The apportioned part becomes payable and recoverable when the whole has become due and payable. In the case of rent, it must be recovered when due by the successor in title to the deceased, and by him the apportioned part is payable to the executors or other parties legally entitled. It sometimes happens that a property subject to one rent is sold in portions, each portion being subject as against the vendor to only a certain

specified proportionate part of the rent. In such cases the purchasers of each portion, and their respective portions, are each severally liable to the owner of the rent, who may proceed against them therefor personally, or by distress. It is therefore arranged that one of the purchasers shall pay the rent and collect the contributions from the others. In order to protect themselves there are cross covenants between the purchasers for indemnity and cross powers of distress in aid thereof whenever possible; purchasers of land should avoid such a condition of things, and endeavour to obtain a release from the owner of the rent, so far as relates to other than their respective proportions thereof.

APPRENTICES.—An apprentice is a person bound by contract to serve another person in some trade, business, or profession, the latter person being also bound to instruct him in the mysteries of such trade, business, or profession. Any such latter person who is *sui juris* may take; and any person, whether an infant, unless under seven, or of age, may be bound as an apprentice. The relation of master and apprentice can only be created by formal instrument, usually by an indenture. A form of indenture is appended hereto, which can be modified to meet the circumstances of most cases. The stamp duty on an indenture of apprenticeship is 2s. 6d., whether a premium is paid or not. Indentures of parish and marine apprentices are exempt from stamp duty. The instruments of apprenticeship must contain the full consideration fully set out, otherwise they are null and void. A father has no authority to bind out his infant child, the child himself being a necessary party to the indenture. The duties of a master to his apprentice depend to a large extent upon the covenants contained in the indenture, but he is bound in every case to instruct or afford instruction to the apprentice in the trade or business in which the apprentice is bound to him. If the apprentice is placed with a master to learn his business, and that business consists of two or more trades, he is entitled to receive instruction in all of them; and if the master gives up any one of those trades, the apprentice may cease from serving the master, and the latter will be liable on his covenant. To an infant apprentice the master stands *in loco parentis*, and should have a care to his moral training, health, and safety; and in the absence of agreement to the contrary, the master must furnish him with clothes, food, and lodging, if the apprentice lives with him, and with necessary medical aid.

A master can correct and punish an infant apprentice for misconduct, and even chastise him; but this latter is a right that cannot be delegated, and should not at the present day be asserted. Truant and refractory apprentices where there is no premium, or where the premium does not exceed £25, may be apprehended and punished. A court of summary jurisdiction, *e.g.* a police court, which has that power, has also jurisdiction to entertain all kinds of disputes between masters and apprentices; order apprentices to do their work, pay compensation for absence, and order security for future performance of their duties. Masters may also be ordered to pay wages. It is advisable, in a case where the apprentice will attain full age before the end of his term, that the parent should join in his indenture. This would be to covenant that the apprentice shall remain in the service until the end of the term; for the apprentice can leave the service upon attaining full age. But a covenant by an infant apprentice, reasonably incidental to the contract, *e.g.* one not to carry on business within a certain area after cessation of apprenticeship, may be enforced against him personally (*Gadd* v. *Thompson*). The apprenticeship may be dissolved and

the indenture cancelled on application to a court as above, by either party, for misconduct or breach of duty of the other. So also by the joint-agreement of all the parties to the indentures, or the death of either party. The apprentice cannot be dismissed on account of occasional misconduct. He must be guilty of persistent misconduct to justify the cancellation of the indentures on that ground, and the retention by the master of the premium. The master cannot substitute another in his place without the consent of the apprentice, even upon assignment of his business; and he is liable in damages for a breach of his covenants in the indenture. The master is entitled to the earnings of his apprentice during the term, and third persons employing the apprentice must pay the value of his services to the master. If the apprentice die during the term, his parents are not entitled to the return of any part of the premium.

In Scots law the instrument creating the apprenticeship may be what is termed a probative deed. The advantage of this form is that the original may be deposited and registered in the Sheriffs' Courts; acknowledged copies and extracts being available for all purposes. After the ages of fourteen in a boy and twelve in a girl, the intending apprentice is competent, when he or she has no curators, to enter into an indenture on his or her own behalf.

I. *Short form of Indenture, the master, apprentice, and surety being parties.*

This Indenture, made the day of one thousand nine hundred and **Between** A. B. of &c. (hereinafter called "the apprentice") of the first part, C. D. of &c. [*this party will be the father, guardian, or surety, as the case may be*] (hereinafter called "the surety") of the second part, and E. F. of &c. (hereinafter called "the master") of the third part: **Witnesseth** that the apprentice of his own free will, by and with the consent of the surety, whose consent is acknowledged by his execution hereof, hereby binds himself to the master to serve him as an apprentice for the term of years from the date hereof to learn the art, trade, or business of a grocer and provision merchant [*or otherwise as the case may be*], during which term the apprentice shall well and truly serve his master, keep his secrets, and willingly obey his lawful commands; shall do no damage to his master, and at once give notice of any damage which he sees or knows has been done or permitted to be done by others; shall not waste his master's goods nor unlawfully lend them or do any other act whereby his master may incur injury during the said term; shall not buy or sell or absent himself during business hours without his master's leave, but shall behave himself in all things as a faithful apprentice to his master and all those having authority over him. And in consideration whereof, and of the sum or premium of £ now paid by the surety to the master (the receipt whereof is hereby acknowledged), the master shall take and receive the apprentice during the said term and to the best of his power, knowledge, and ability teach and instruct, or cause to be taught and instructed, the apprentice in all branches of his art, trade, and business as aforesaid, and in all things incident or relating thereto, in such manner as the master doth now or hereafter shall use or practice the same [*if the apprentice is an indoor apprentice proceed as follows to the asterisk* *], finding unto the apprentice good and sufficient meat, drink, lodging, medicines, and medical and surgical attendance during the said term. And paying to the apprentice the sum of per week [*or* per annum, *as the case may be*] during the first year of the said term, such sum to be increased by an additional sum of for and during each succeeding year

thereof. **And** for the true performance of all and every the covenants, either of the said parties bindeth himself unto the other by these presents. **In witness** whereof the said parties hereto have hereunto set their hands and seals the day and year first before written.

Signed, sealed, and delivered (being first duly stamped) in the presence of
G. H.
of &c.

A. B. L. S.
C. D. L. S.
E. F. L. S.

II. *Assignment of Indenture of apprenticeship; to be written on the back or in the fold of the original instrument.*

This Indenture, made the day of 19— **Between** the within-named E. F. of the first part, the within-named A. B. of the second part, the within-named C. D. of the third part, and G. H. of &c. [*the new master*] of the fourth part: **Witnesseth** that in consideration of the sum of £ paid by E. F. to G. H., with the consent of A. B. and C. D. (the receipt whereof is hereby acknowledged), E. F. doth hereby assign unto G. H. the within-written indenture of apprenticeship and the benefits and rights of him, E. F., thereunder and now subsisting, and to subsist until the expiration of the term therein created. **And** G. H. agrees to take A. B. as his apprentice for the remainder of the said term, subject to all the covenants in the said indenture contained; **And** C. D. hereby covenants with G. H. that A. B. shall well and faithfully serve him as his apprentice; **And** A. B. for himself agrees to serve G. H. as his apprentice during the residue of the said term and subject to all the covenants aforesaid; **And** G. H. covenants with A. B. and C. D. that he will instruct the apprentice in his trade or business of , and will abide by all the covenants contained in the said Indenture. **In witness** whereof the said parties to these presents have hereunto set their hands and seals the day and year first before written.

Signed, sealed, and delivered by the said E. F., A. B., C. D., and G. H. in the presence of me
J. K.
of &c.

E. F. L. S.
A. B. L. S.
C. D. L. S.
G. H. L. S.

III. *Very short form of Agreement for apprenticeship; binding as between master and father.*

345 PICCADILLY, LONDON.
3rd February 19—.

To Mr. JOHN SMITH.

SIR,—I hereby agree to take your son Herbert Smith as an apprentice for three years from the date hereof, to learn the business of a tea merchant, and in consideration of the sum of £200 paid to me by you, I agree to teach him such business by the best means in my power, and further agree to pay him a salary of thirty, fifty, and seventy pounds per annum during the three years. Provided always that he obeys all commands and gives his services entirely to the business during business hours.—Yours obediently, WILLIAM RICHARDSON.

APPROPRIATION of payments.—The law as to this comes into operation in a case where a person owes another several debts. If he makes a payment, the question may arise: to which of those debts shall such payment be appropriated? The question is often of considerable importance. To an action by the creditor on one of those debts, the debtor might be able to successfully set up as a defence the Statute of Limitations, whereas to another debt there would be no defence. Again, in respect of one debt, there may be a surety. If, therefore, that debt were paid, the surety would be released; but if not, the creditor could be paid his unsecured debt. Briefly, the law is that the debtor has the right in the first instance to declare in respect to which debt the payment is made; failing this, the creditor has the right, and in default of either so doing, the law considers the payment to be made in respect of the debt earliest in point of date. A creditor may appropriate a payment to a debt barred by the Statute of Limitations. In Scots law, the same thing is referred to under the general subject of Indefinite Payments; and generally the same rules apply as in England. If, however, the creditor's appropriation would be penal to the debtor, as by suffering the legal of an adjudication to expire, then the payment would be made so as to prevent such circumstances. There can be no appropriation by a creditor against a disputed legal or a trust debt. Where a cautioner has been bound for a debt, equity will divide the payment between the cautioner's debt and the others. In sequestration, a dividend might be applied to the whole debt. And *see* PRESCRIPTION and LIMITATION.

APPROPRIATION of supplies.—The necessity of supplying funds for the public service does not of itself compel annual parliaments. It is rather the appropriation of the supplies of the year to their necessary purposes that makes it legally necessary for Parliament to meet every year. The large proportion of our taxation is now permanent, and the general supply of funds is therefore assured; but apart from such permanent charges upon the revenue, as the interest on the national debt and the annuity of the late Speaker, more than two-thirds of the national liability could not be paid because of the absence of special authority. There would be no minister or official having authority to pay the army, the navy, the officers of the Crown, and most of the other expenses of the public departments. The result is that proposals by the Committee of Supply for grants from the Consolidated Fund must be made yearly in Parliament, and when adopted comprised in the Appropriation Act for each year. In order to get the supplies for the whole year into one bill, the Appropriation Act is reserved until the close of the session; and any payments, delay in the making of which would be inconvenient, are meanwhile authorised by preliminary and less specific Appropriation Acts which at the end of the session are embodied in the general Act.

APPROPRIATION of territory is in international law the basis of acquisition of territory by occupation, and is a mode of acquisition by states. Once a state has appropriated and occupied territory, its exclusive right thereto is universally recognised by civilised nations, and in respect of such right certain rules have become established by usage. Discovery alone does not constitute a valid occupation. There must follow a notification of

the fact to other nations, and of the intention to appropriate. Accordingly, a discovery which has been concealed from other nations has never been recognised as a good title to bar them from settling in a territory: it is an inoperative act. The following upon discovery of a settlement creates a perfect title in the state appropriating the territory.

APPROPRIATION of water.—Independently of appropriation and user, all owners of land through or immediately adjoining which there flows a natural stream of water, have certain rights in such streams and can maintain actions for infringement of those rights. Such owners (called "riparian owners") may obtain greater damages the more they appropriate the stream for use; though strictly speaking the appropriation does not create any new rights. Thus a riparian owner who used the water for a mill would suffer more than one whose use was merely nominal. Water may also be appropriated for use by collecting it in reservoirs or other receptacles. If water naturally percolates through the soil to a well in unknown and undefined streams, the appropriation by the well does not give its owner any cause of action against another person who, by sinking another well, or otherwise, drains away the water.

APPROVED SOCIETIES. *See* APPENDIX.

ARBITRAGE is the operation by which the merchant, banker, and the speculator make a profit out of the differences in price existing at the same time for the same thing upon different markets. The merchant may deal in commodities such as cotton or indigo; the banker in money or bills; the speculator in the same articles as the others, but most generally in stocks and shares. We will here consider arbitrage first from the point of view of the banker; secondly, from that of the speculator. **In Banking** we necessarily include the operations of the merchant when he has to deal with the remittance and receipt of money to and from foreign countries. And it is in banking that we see the national as well as international value of the system of arbitrage: it protects, to a very large extent, the metallic circulation of a state against the drainage of gold. Pounds sterling have their value upon the different money markets of the world—a value that is always minutely varying in a decreasing or an increasing degree about the sterling value, and so varying at the same time. Accordingly, the arbitrageurs, for so those are called who engage in this method of business, being in close telegraphic communication with the different markets, buy in the market where the price is low and sell simultaneously in the market where the price is high. The result is a very small rate of profit, and probably very large in amount because of the big dealing of the arbitrageur. The further result is the equalisation of price, which in its turn prevents the tendency of the gold to flow out of the country in which its price for the time being had been low. Arbitrage is either single or compound. It is the latter when the dealings are between more than three places. Simple arbitrage is, however, of the most general application, there being little speculation on the differences in prices at more than three places.

We will now deal with a simple arbitrage of exchange. Suppose a merchant in London wishes to pay a creditor in Paris, bills of exchange on Paris being at a premium in London; that is to say, for example, a bill for £100 would only yield to the creditor 2518 francs instead of 2522 as it would at par. He goes to his banker or elsewhere for advice. But if he

has a proper knowledge of the financial columns of his daily newspaper, he will look at the money article. There, in the second paragraph, he will find the rates of discount in all the chief financial centres of the world. We will assume that he sees there that in London bills on Amsterdam are at a discount, and that in Amsterdam bills on Paris are at a discount also. He therefore knows what to do, and becomes an arbitrageur at once. He instructs his bank to purchase, or goes himself to an exchange bank and purchases a bill on Amsterdam, and therewith obtains an Amsterdam bill on Paris, which latter he sends to his creditor in Paris; thereby remitting to Paris without having to pay the premium. Such operations are being conducted continually on a very large scale, and they finish by raising the price of paper upon Amsterdam in London, of paper upon Paris in Amsterdam, and by lowering the price of paper upon Paris in London.

On the Stock Exchange, an arbitrageur, say in London, being cabled by a correspondent in New York that the latter has bought Atchison's at 79¾, endeavours at once to sell the same amount of the same stock in London at 80¼. Prices on the different exchanges being known to both parties through the cable, the probability is that the arbitrageur is previously known by his correspondent to be likely to effect the sale, and so make a profit of a half per cent. The profit is small in rate, but such dealings are usually on a very large scale. The closest attention must also be paid to the rate of exchange, loss of interest, insurance, transit, &c.; or by carelessness or a mistake in calculation the margin of profit may be swallowed up. Arbitrage in this form is often carried on between different stock exchanges in the United Kingdom, the operations being confined to securities dealt generally in by all the exchanges. Such an arbitrage is called "shunting." It often occurs that the public stock of a state is at a low price on a foreign exchange, though at home there is an active demand for it. When such is the case there will be migration home of that stock from abroad, and a modification of the price. This occurred when Bismarck started a campaign against the credit of Russia. As the price of Russian stock was lowered at Berlin, the arbitrageurs in buying immediately large quantities thereof, and reselling it in Russia, France, and Holland, brought about the reimportation of the stock into Russia, lowered the exchange of the rouble, and brought about the exportation of corn. *See* EXCHANGE; MONEY ARTICLE; MONEY MARKET.

ARBITRATION is the adjudication upon a matter in dispute by private individuals appointed by the parties themselves. This is a mode of settlement of disputes now very frequently resorted to as a means of avoiding the delay and expense of actions in the regular courts of law. It creates a peculiarly efficient and satisfactory tribunal for the settlement of such causes as involve the examination of long and complicated accounts, the consideration of scientific and technical details, and the investigation of personal affairs of a private nature. But in the case of most other disputes, the Courts are, apart from a consideration of the personnel of the judges, undoubtedly the cheapest and most expeditious tribunals. It is now possible to get to trial very speedily in High Court actions, either *e.g.* by remission to the County Court, by judgment under Order XIV., by proceeding to trial without pleadings, or by having the action set down for trial in the

Short Cause List [*see* ACTIONS]. No particular qualifications are required by law for an arbitrator. In matters of complicated accounts, mercantile men or public accountants are usually preferred, whilst in matters relating to engineering, building, and property the arbitrators usually appointed are engineers, architects, and surveyors respectively. In other cases, and generally, it is the more customary practice to appoint barristers, who, being accustomed to judicial investigation, are able to estimate the evidence properly, to limit the examination strictly to the issue, and generally in the conduct of the arbitration, and in making the award, to avoid informalities, for which the latter might afterwards be set aside. The law on this subject is now digested and codified in the Arbitration Act, 1889. A dispute may be referred to arbitration either (1) as a reference by consent out of Court, or (2) as a reference by order of the Court.

A reference by consent out of Court should be made by written agreement to submit some present or future differences to arbitration, signed by both parties, or on their behalf by others having proper authority. This agreement is termed **a submission** and all the terms of the arbitration should be included therein—the matter in dispute properly defined, the mode of arbitration, and the powers of the arbitrator. The submission is generally found in that part of a contract called the arbitration clause. All policies of assurance, articles of partnership, and other documents of like importance should be searched therefor. Unless a contrary intention is expressed in the submission it will be irrevocable except by leave of the Court or a judge, and have the same effect in all respects as if it had been made an order of the Court. What is here expressed by the Act as being irrevocable is not really the submission or agreement for arbitration; but the power of the arbitrator when once he has been appointed. Again, in the absence of a contrary intention, the submission will be deemed to include the following provisions, so far as they are applicable to the reference under the submission. These provisions are more fully set forth in the first schedule to the Act.

(*a*) If no other mode of reference is provided, the reference shall be to a single arbitrator. (*b*) If the reference is to two arbitrators, the two arbitrators may appoint an umpire. This may be done in writing at any time within the period during which they have power to make an award. (*c*) The arbitrators shall make their award in writing, (i.) within three months after entering on the reference, or after having been called on to act, by notice in writing from any party to the submission; or (ii.) on or before any later day to which the arbitrators, by any writing signed by them, may from time to time enlarge the time for making the award. (*d*) If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission, or to the umpire a notice in writing stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators. (*e*) The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired; or on or before any later day to which the umpire by any writing signed by him may from time to time enlarge the time for making his award. (*f*) The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire on oath or affirmation, in relation to the matter in dispute. They shall also, subject to any legal objection, produce before the arbitators or umpire all books, papers, and documents in their

possession or power which may be called for, and do all other things which during the proceedings on the reference the arbitrators or umpire may require. (*g*) The witnesses on the reference shall, if the arbitrators or umpire think fit, be examined on oath or affirmation. (*h*) The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively. (*i*) The costs of the reference and award shall be in the discretion of the arbitrators or umpire. They may direct to, and by whom, and in what manner those costs or any part thereof shall be paid. They may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client. The parties may, if they choose, provide that the reference shall be to an official referee of the Court.

Stay of Legal Proceedings.—If any party to a submission commences any legal proceedings in any Court against any other party to the submission, in respect of any matter agreed to be referred, that Court, upon application being made, will stay proceedings if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission. The question whether the matters in dispute are or are not within the submission is one which the Court will decide, unless the parties have expressly referred that question also to the arbitrator. Inconvenience and unsuitability are not a sufficient reason; nor is it that the dispute is one of law only; or that the arbitrator is possibly biassed. On the other hand, charges of fraud, dishonesty, or anything criminal would probably be held by the Court as too serious to be tried by an arbitrator. So too an arbitration would not be enforced where the arbitrator had absolutely prejudged the case. But an arbitrator may even adjudicate on a question of his own skill. The Court must also be satisfied, before staying legal proceedings, that the applicant was at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration.

Appointment by the Court.—The Court itself will appoint an arbitrator, umpire, or third arbitrator in the following cases:—(*a*) Where the submission provides that the reference shall be to a single arbitrator and the parties do not all agree as to who shall arbitrate. (*b*) If an appointed arbitrator refuses to act or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy. (*c*) Where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him. (*d*) Where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy.

Where by the terms of the submission the reference is to two arbitrators, one to be appointed by each party, and an arbitrator does not act, the party appointing him may, unless the submission expresses a contrary intention, appoint a new arbitrator in his place. If such party fails to make such further appointment, the other party may appoint his own arbitrator to act solely in the reference. The Court may, however, set aside such an appointment.

Powers of Arbitrator. — The arbitrators or umpire acting under a

submission shall, unless the submission expresses a contrary intention, have power (*a*) to administer oaths to, or take the affirmation of the parties and witnesses appearing; (*b*) to state an award as to the whole of the issue or part thereof in the form of a special case for the opinion of the Court; (*c*) to correct in an award any clerical mistake or error arising from any accidental slip or omission.

Witnesses may be summoned by subpœna. The time for making the award may be extended by the Court, and awards may be remitted back by the Court for reconsideration by the arbitrators or umpire.

Misconduct of Arbitrator.—Where an arbitrator or umpire has misconducted himself the Court may remove him, and in the event of such misconduct, or the arbitration or award having been improperly procured, the Court may set the award aside. Fraud or corruption is misconduct; though if the parties agree that the question of fraud on the part of the arbitrator shall not be raised, the Court will not take notice of it. Excessive and extravagant charges by an arbitrator made by him as part of his award may amount to misconduct; as also might the refusal of a *bonâ fide* request to state a case. An arbitrator who intentionally decided contrary to law would be guilty of gross misconduct; so also would one who purchased one of the parties' interest in the subject-matter of the dispute, without the knowledge of the other arbitrator or umpire. In order that a mistake of law or fact shall be ground for setting aside an award, it must be shown that the arbitrator has been corrupt or has exceeded his jurisdiction, or that new material evidence has been discovered since the award.

Enforcing award.—An award on a submission may, by leave of the Court or a judge, be enforced in the same manner as a judgment or order to the same effect. By this a successful party to an arbitration is placed in as good a position and can use the same means by execution or otherwise, to obtain the fruit of his success, as a successful party to regular litigation.

References under Order of Court.—In any cause or matter, other than a criminal proceeding by the Crown, the Court may order trial before a special referee or arbitrator respectively agreed on by the parties, or before an official referee or officer of the Court. But all the parties interested who are not under disability must consent; or the cause or matter must require prolonged examination of documents or scientific or local investigation which cannot in the opinion of the Court be conveniently made before a jury or conducted by the Court through its other usual officers; or the question in dispute must consist wholly or in part of matters of account. The report thereon will be equivalent to the verdict of a jury.

Stamp duties on awards, payable in England, Scotland, and Ireland, in any case in which an amount or value is the matter in dispute.

Where no amount is awarded, or the amount or value awarded does not exceed £5									£0	0	3
Where the amount or value awarded—											
Exceeds £5 and does not exceed				£10					0	0	6
„	£10	„	„	£20					0	1	0
„	£20	„	„	£30					0	1	6
„	£30	„	„	£40					0	2	0
„	£40	„	„	£50					0	2	6

Exceeds £50	and	does	not	exceed	£100	.	.	.	.	£0	5	0
„ £100	„	„	£200	.	.	.	.	0	10	0
„ £200	„	„	£500	.	.	.	.	0	15	0
„ £500	„	„	£750	.	.	.	.	1	0	0
„ £750	„	„	£1000	.	.	.	.	1	5	0
„ £1000	.	.	.	.	.	.	.	.	.	1	15	0
In any other case	.	.	.	.	.	.	.	.	.	1	15	0

Fees of Arbitrators.—The usual fees payable to an arbitrator are two guineas for the first hour, and one guinea for each subsequent hour of the arbitration. For preparing the award the fee would be from £2 to five guineas in ordinary cases. Arbitrators who are experts in technical matter generally require a special fee, according to their professional eminence.

Forms.—The following forms will probably be found of use:—

I. *Clause in an instrument referring future disputes to arbitration.*

And it is hereby agreed that if any differences shall arise between the parties hereto touching these presents or anything herein contained, or the construction hereof or any matter or thing in any way connected with these presents or the operation thereof, then, and in every such case, the matter in difference shall be referred to two arbitrators, or their umpire, pursuant to the Arbitration Act, 1889, whose decision shall be final.

II. *Appointment of an Arbitrator under above clause.*

To E. F., of &c.

I, the undersigned, A. B., do hereby nominate and appoint you, E. F., to be the arbitrator on my behalf of and concerning certain differences which have arisen and are now pending between C. D. and myself, under and incidental to an indenture dated the day of 1902, made between myself of the one part and C. D. of the other part, and in which indenture it is provided that such differences shall be referred to two arbitrators or their umpire as therein mentioned.

Dated this day of 19—,

(*Signed*) A. B.

III. *Notice of the appointment to the other Party.*

Sir,—I hereby give you notice that I have this day appointed E. F., of &c., to be arbitrator on my behalf in pursuance of an indenture dated the day of 1902, made between myself of the one part and yourself of the other part, and as such arbitrator to settle the disputes now pending between us. And I require you within seven days from service upon you hereof to nominate an arbitrator to act on your behalf in the said disputes, failing which the same will be referred to E. F. alone.

Dated the day of 19—,

(*Signed*) A. B.

IV. *Short agreement for submission of differences to a single arbitrator (short form).*

Agreement made the day of 19— between A. B. of &c. of the one part, and C. D. of &c. of the other part, whereby it is agreed as follows; that

is to say: 1. It is hereby referred to E. F. of &c. to decide and award concerning [*here set forth specifically the matter in dispute and continue*] and all other matters in dispute arising out of or incidental to the subject of this reference. 2. E. F. to have all powers given to arbitrators by the Arbitration Act, 1889, and to make his award on or before the day of next. If E. F. shall desire an extension of time for the award, such extended time shall not exceed calendar months. 3. E. F. to have power to proceed *ex parte* in the event of either party failing after reasonable notice to attend before him. 4. This submission shall not be revoked by the death of either party before the making of the award.'

As witness our hands, the day and year first before written.

Witness: (*Signed*) A. B.
G. H. of &c. (*Signed*) C. D.

V. *Award.*

To all to whom these presents shall come I, E. F. of &c., send greeting. **Whereas** by an agreement in writing, dated the day of 190 , and made between A. B. of the one part, and C. D. of the other part, the said parties agreed to refer [*here state in detail the matters in dispute, or as follows:*] all matters in difference between them to me, so that I should decide and make my award thereon. **Now know ye** that I, the said E. F., having heard, examined and considered the witnesses and evidence of both the said parties concerning the said matters referred to me, do make and publish this my award; that is to say, **I hereby award** that the said C. D. has a just and valid claim against A. B. for £ , and the said A. B. has a just and valid claim against C. D. for £ [*a less sum*], so that there remains justly due from the said A. B. to the said C. D. the sum of £ . **And I award** that the said sum of £ shall be forthwith paid by A. B. to, and accepted in full satisfaction and discharge by C. D., and generally as a final end to the said differences in the said matters, and all demands upon, or in respect of the same by either of the said parties against the other. **And** I further award that the said A. B. shall bear and pay his own costs of and incidental to the arbitration, and shall pay to the said C. D. his costs of and incidental to the said arbitration, which I determine at £ , and shall pay the costs of this my award which I make £

In witness whereof I have hereunto set my hand this day of 19—.

Signed in the presence of G. H. of &c.

E. F.

In Scots law the general rules of arbitration are somewhat similar to those of England, but as the Arbitration Act, 1889, does not apply to Scotland, there are a few differences. The procedure is first by a deed of submission, then a contract of reference, and finally the decree-arbitral, or award. The latter contains a clause of registration, and when registered will be enforced by the Court. By the Arbitration (Scotland) Act, 1894, a reference to an arbiter not named does not make the reference invalid. The Act also gives powers to the Court as to appointment of an arbiter, when a party or both parties have failed to nominate one. It also authorises the arbiters to devolve on the oversman, or umpire, unless there is a stipulation to the contrary. If no time has been limited within which the arbiters are to decide, or there is no power to prorogate, the decision must be made within a year and a day. In order to cite witnesses, or to obtain production of documents, before an arbiter, application must be made to the Court of Session for a warrant.

ARCHITECTS are those whose profession it is to design and superintend the construction of buildings generally. The architect must be acquainted with the historical and artistic principles of building; with the cost of buildings and the means of keeping such cost within limits; with the strength, durability, and suitability of materials and the methods of their application; and also with a considerable part of the law of and incidental to building operations. The profession is open to all without examination, the result being that many a so-called architect is to the public a snare and a delusion. Intending clients should therefore be careful that the architect whom they may select is (*a*) generally qualified; as would be, for example, one who is a member of the Royal Institute of British Architects; and (*b*) specially qualified in the particular class of building intended to be constructed. If the first qualification is there, the architect approached would refuse the work if not within his powers, and advise as to a proper man. It is obvious that specialism persists very extensively and necessarily in this profession; for the architect who builds and restores Early Norman ecclesiastical examples, would scarcely be an appropriate person in whose hands to entrust the designing and construction of, for example, a modern palace of varieties.

Appointment.—There are at least three general ways in which an architect may be appointed. The building owner, whom we will call his principal, may go to him, sketch out generally the idea he has, and give the architect practically *carte blanche* authority to prepare plans as near as possible to that idea and proceed with the work. Or, the principal may approach the architect and require him to submit plans for approval before any appointment is made. Or finally, the principal may advertise inviting competitive plans, and offering the superintendence of the work to the author of the accepted plan, and prizes to certain of those who may send in plans which are not accepted. In the first of the above cases the appointment is definite and complete. In the second, the architect may not be appointed, even though his plans have been accepted, if such plans were sent in for approval only under "hope" of being employed as the architect. The principal, on keeping the plans, would only be liable for reasonable remuneration for the trouble and expense incurred by their author. In the last case, and generally in cases of advertisement, the successful competitor would be entitled to engagement in the proposed work, provided, of course, that when he sent in his plans he accompanied them with a letter definitely accepting, and in strict compliance with the terms and conditions of the offer as set out in the advertisement. Assuming now that the architect is appointed, what is his legal position?

Rights and liabilities.—As architect he is the general agent of the principal; as such he comes within the general law of that relationship, of which some account is given under the heading AGENCY. In particular, he is under an obligation to bring to bear upon the work in hand all proper and reasonable knowledge and care. And still more particularly he must also apply to that work a special knowledge and skill relative thereto; such as an architect, making special profession of that class of work, ought naturally to possess. Thus we see the necessity for engaging an architect in work to which he is accustomed. Apart from any special

circumstances of his appointment, the architect's first duty is to obtain an intimate knowledge of the proposed site; its inherent capabilities or deficiencies, as the case may be, for the class of building intended to be erected; the statutory obligations or district bye-laws, if any, affecting the site; its position with regard to the obtaining of materials; and the rights over it, if any, possessed by third parties, such, for example, as rights of way, rights of light, &c. The results of such investigation should be reported to the principal; and where necessary legal and scientific advice taken, and agreements effected. Default in this may entail stoppage of building, damages, and costs; and of these the architect may have to bear a share; not only any claimed by his principal, but also those claimed by a builder prejudiced thereby. The next duty of the architect is the preparation of the plans. In this he may require the assistance of a quantity surveyor; but before engaging one, special authority should be obtained from the principal. Otherwise, the architect may have to pay for the surveyor himself and be unable to claim this out-of-pocket from his principal. These things having been done, and all things arranged conformably therein to the principal's instructions, especially as to the cost of the building, tenders should be obtained from builders, and when accepted a building contract entered into. Here both principal and architect will seek the aid of the lawyer, and some part of what they may learn from him respecting this most important element in building, we will inform the reader under the heading BUILDING CONTRACT. Without express warranty, none will be implied in the plans, specifications, and quantities supplied by the architect to the builder. And if there be no lack therein of ordinary professional skill and care, the architect is not liable to his principal for any damage resulting from mistakes therein. If, however, they are inaccurate and incomplete as a result of collusion between the architect and his principal, the former would be liable equally with the latter to the builder in respect of any damage resulting therefrom. As to the architect's powers to vary and modify the general scheme of the building, these depend upon the building contract; for apart from that, the principal's express authority would be requisite, and the builder also must be consulted. But in the case of petty details, incidental to the work, the architect has a complete authority. There being the legitimate rights of the builder to be considered, as well as those of his principal, the architect must exercise his powers with the utmost discrimination and justice.

Certificates.—In the matter of giving certificates, the architect fills almost a judicial position. The building contract determines the mode of payment of the builder; generally, that as certain stages in the construction have been arrived at, so certain sums, proportionate to the whole payment, are to be paid to the builder. These sums are only provisional and on account, and are subject to adjustment on completion of the work. They are payable by the principal to the builder only after he has received a certificate from the architect vouching that the requisite progress in construction has been made. At the completion of the work, the architect settles the account with a final certificate. He is not bound to inform the builder in what mode his calculations have been arrived at. In giving this certificate he must be satisfied that the work is complete, and that any

extras were duly authorised and necessary. It is over the extras that are gathered most of the disputes between the principal, architect, and builder. If the architect negligently certifies, either in respect to the quality or quantity of the work done, and the money payable, he is liable to compensate his principal for any loss suffered thereby.

The **remuneration** of the architect is usually by a percentage of 5 per cent. of the cost of the building. But the law knows nothing of this; and apart from agreement the architect can only recover a reasonable reward for his trouble and expense, considered relatively to the importance and difficulty of the work. To save misunderstanding, as also to save money, an intending client should be careful to arrange in writing inclusive terms with the architect before his appointment. *See* SURVEYOR.

ARMY.—In the time of our Saxon kings the military forces of this kingdom were in the hands of leaders elected, like the sheriff, by the people in full assembly, or folkmote. The kings were hereditary, but these leaders were elective. It seems universally agreed that King Alfred first settled a national militia in this kingdom, thereby making soldiers of all his subjects. But a large independent power still appears to have been left in the hands of the elected leaders. Upon the Norman Conquest the feudal law was introduced in all its vigour. In consequence thereof all the land in the kingdom held by tenure in chivalry was divided into knights' fees, in number above sixty thousand; and for every knight's fee a knight or soldier was bound to attend the king in his wars for forty days in a year. By this means the king had, without any expense, an army of sixty thousand men always ready at his command. This personal service in process of time degenerated into pecuniary commutations or aids, until at last tenure by chivalry was itself abolished at the restoration of Charles II. In the meantime other means were adopted for defence in the case of domestic insurrections, or of foreign invasion. Thus, under Henry II. and Edward I., every man according to his estate and degree was required to provide a certain quantity of arms wherewith to keep the peace. It was then usual for the kings from time to time to issue to the sheriffs commissions of array, and send officers into every county for the purpose of mustering and setting into military order the inhabitants of every district. But it was provided that no man should be compelled to go out of the kingdom in any case, nor out of his county except in case of urgent necessity. In the reign of Mary lieutenants of counties were introduced and substituted for the sheriffs; and as lord-lieutenants and deputy-lieutenants they exist to the present. The lieutenants are standing representatives of the Crown to keep the counties in military order. The question how far they derived authority from the Crown independently of the will of the people, and the extent of that authority, became the immediate cause of the rupture between Charles I. and his Parliament. Parliament not only denied the prerogative of the Crown in this respect, but also seized into its own hands the entire control over the militia. At the Restoration the militia was declared, with all the other forces on sea and land, to be under the sole government and command of the king, and it was then, and has been several times since, reorganised, now forming part of the auxiliary forces of the Crown. At the same time, with parliamentary sanction, regular troops were kept up by the

kings, increasing, until in the reign of James II. they numbered, with unauthorised additions, thirty thousand. These troops were supposed to be a personal guard of the sovereign, and were paid out of the king's own civil list. On the Revolution of 1688 it was, however, made an article of the Bill of Rights, that the raising or keeping of a standing army within the kingdom in time of peace, unless it be with consent of Parliament, is against the law.

But the keeping of standing armies became in time a universal practice, and even necessity; and for a long time—since, in fact, 1689, the date of the first Mutiny Act—it has been judged necessary by our Legislature to maintain, even in time of peace, a standing body of troops under the command of the Crown. The necessity for this is the safety of the empire, the defence of the realm, and the preservation of the balance of power. There was thus passed in every year, in time of peace or of war, an Act known as the Mutiny Act. By this Act the maintenance of a standing army was authorised during the continuance of the Act, and temporary provision was made for enlistment, discipline, and regulation. In the year 1879 a code of military law of a permanent character was passed, called the Army Discipline and Regulation Act, 1879, which has force during the continuance of an annual Act passed for that purpose, but for no longer period. The Army Discipline, &c., Act is subject, when in force, to any provisions specified in the annual Act, but it contains, generally, provisions as to billeting and enlistment, and regulations for the government of the army and persons subject to military law. The sovereign is thereby empowered to make articles of war, erect and convene courts-martial for the trial of offences against the articles of war and the provisions of the Act. But by no means is the jurisdiction of the civil tribunals ousted; for nothing in the Act prevents a military man exercising his rights and being proceeded against in the ordinary course of law; but in the case of offences against a subject, he may be delivered over to a civil magistrate. But, on the other hand, a person subject to the regulations of the Act may suffer extreme punishment—in many cases death—at the hands of a military tribunal. Sentences of a court-martial can only be appealed from to the Crown itself, no ordinary court of law having such appellate jurisdiction. But when acting in excess of jurisdiction, they may be restrained by the ordinary courts.

From 1869 to 1881 the Annual Acts were known as Mutiny Acts; since the latter date, as Army Acts. The forces governed by the code of 1879 are the regular and auxiliary forces. Until the Territorial and Reserve Forces Act, 1907, the regular forces included the regular army, the reserve forces, and the Royal Marines. The latter, though under the control of the Admiralty, are subject to the Army Act when not serving on board ship, and are otherwise treated as soldiers. The auxiliary forces were the militia and the militia reserve, the yeomanry, and the volunteers. Now nearly the whole of the volunteer and yeomanry forces have been transferred to the new force, called the Territorial Force, created by the above-mentioned Act. This force is liable to serve in any part of the United Kingdom, but not elsewhere, though members of the force may volunteer for foreign service. In general the Army Act applies to the Territorial Force in like manner as it applies to the militia. The subject of the TERRITORIAL FORCE is dealt with in the article under that title in the Appendix to Vol. V. A

ARMIES OF EUROPEAN POWERS

THE ARMIES OF

THE armies of the six great Powers of Europe, with their areas and populations, are as follow :—

Power.	Army. Millions of Men.	With Colonies, &c.		Without Colonies, &c.	
		Area. Millions of square miles.	Population. Millions of Persons.	Area. Thous. of square miles.	Population. Millions of Persons.
	Mills.	Mills.	Mills.	Mills.	Mills.
Russia . . .	4 6	8.77	134	8660	128
Italy . . .	3.2	0.30	33	111	32
Germany . .	3 0	1.24	74	211	60
France . .	2 5	4.57	95	204	39
Austria-Hungary	1.9	0.26	47	241	45
British Empire	1.0	11.89	400	121	45
Total . .	16.2	27.03	783	9548	349

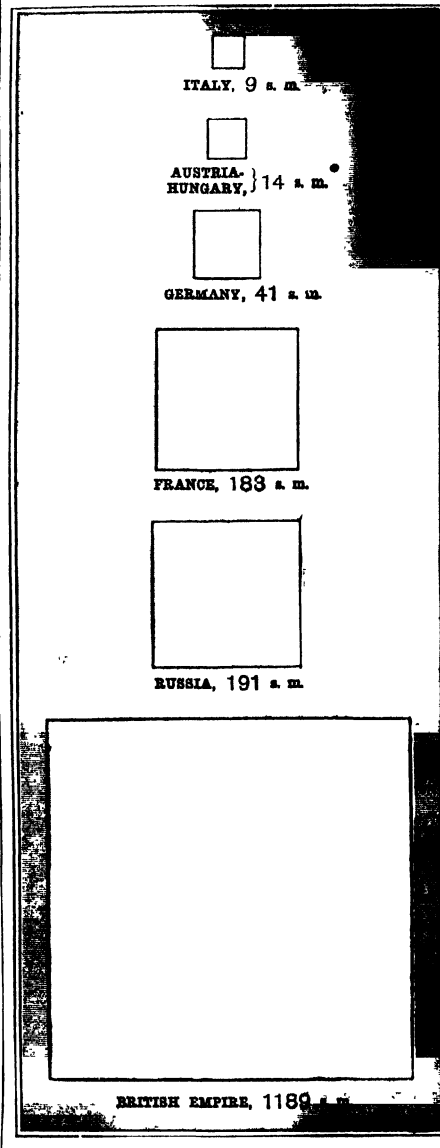
The Army figures include all auxiliary forces, and the army of the British Empire includes the native Indian army, and represents the whole military force of the Empire at its maximum strength, including the Territorial army and all Reserves under Mr. Haldane's scheme.

The army of the British Empire is not only the smallest in actual numbers, but it is also by far the smallest relatively to the area and population which have to be protected, the comparative results being :—

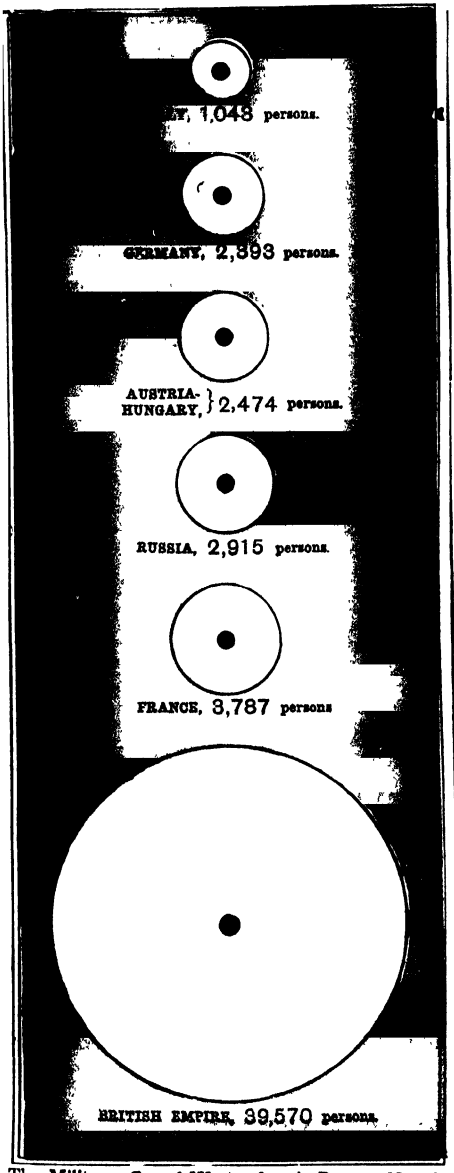
Quantity of Area (with Colonies) per 100 Soldiers.		Number of Population (with Colonies) per 100 Soldiers.	
Power.	Area per 100 Soldiers.	Power.	Population per 100 Soldiers.
	Square miles.		No. of Persons.
Italy . . .	9.4	Italy . . .	1,031
Austria-Hungary	13.7	Germany . .	2,467
Germany . .	41.3	Austria-Hungary	2,474
France . . .	182.8	Russia . .	2,913
Russia . . .	190.6	France . .	3,800
British Empire	1189.0	British Empire	40,000
All the Six	166.9	All the Six	4,834

Italy comes out best as regards the degree of military protection of area and population; but this is over-stated, for the reason that the official return of the Italian army includes all the large Territorial Militia of Italy, which makes up nearly two-thirds of Italy's army.

The very small degree of military protection of area and population possessed by the British Empire is strikingly shown by the above comparative results; on the average, 100 British soldiers have to protect 1189 square miles of British land, and 40,000 British citizens. Nor can we rightly attach no weight to the above results on the score that our vast and diffused empire does not need military protection, when we are faced by the fact that we had to send a quarter of a million of soldiers to South Africa to protect our Colonies there. It is wholly within the range of practical necessity that we may have simultaneously to carry on important wars in two parts of the Empire, and with this possibility always present one cannot look at the above comparisons without some uneasiness. The widespread and still



The **Military Guard-Work** of each Power. Namely, the **Number of Square Miles of Area** per 100 **Soldiers.** The Colonies, etc., of each Power are included in the Area to be guarded.



The Military Guard-Work of each Power. Namely, the Number of Persons per 100 Soldiers. The 100 soldiers are represented by the tiny black circles. The Colonial, etc., population of each Power is included in the population to be guarded.

growing conviction that all parts of the British Empire are equally entitled to receive Imperial defence against aggression, however far from the centre of the Empire the attacked colony may be, causes our need for adequate military forces to be not less strong than Germany's need for military defence, despite the fact that geographically the German Empire is so very much more centralised than the British Empire. The very diffuseness of the British Empire appears, indeed, to render necessary a greater degree of military defence than is needed by a more centralised Power—not a less degree: unless we wish some day to follow Italy's example in Abyssinia, in 1896, and abandon territory through inability to hold it by the force of our military arm.

To some extent, and in some circumstances, the strength of the British Navy would partly compensate the weakness of the army. But the Navy is not now up to the "Two-Power" criterion of strength which was instituted many years ago, and British naval power certainly does not adequately make up the great deficiency in military strength which has been stated in the above table, from which I extract the following comparison between the British Empire, France, and Germany:—

DEGREE OF MILITARY DEFENCE PER 100 SOLDIERS.

	Square miles of Area.	No of. Persons.
British Empire	1189	40,000
France	183	3,800
Germany	41	2,467

The amount of guard-work to be done by the British Empire's army is out of all proportion to that which has to be done by the armies of France and Germany, and our stronger navy does not nearly make up the difference.

We have to bear in mind that the British Empire is really an inter-continental Power, whose general relations and interests touch those of other nations throughout the world to an immensely greater degree than obtains in connection with any other Power. British interests outside the United Kingdom are much more vital than French interests outside France, or than German interests outside Germany, or than American interests outside the United States. For this reason, our *pro rata* degree of defence should be greater, not less, than the degree of defence possessed by Powers whose outside interests are not so vital as our outside interests. Moreover, we do not always recognise the fact that, during the last fifty years only, we have done more fighting, and on a bigger scale, than any other nation. We may again have to fight in India, possibly in North America, in South Africa—on a big scale in each place—and I repeat that there is no other Power whose interests can possibly entail such numerous and important wars as our interests have entailed and may again entail upon us.

J. HOLT SCHOOLING.

soldier may marry without the consent of the military authorities, but they will not provide for his family. He is not liable for desertion, or neglecting to maintain or leaving them chargeable to the poor-law authorities. But in cases of maintenance and affiliation, deductions may be made out of his pay. He cannot be arrested or compelled to appear before any court for a civil debt, damages, or a sum of money under £30. He may, however, be sued and execution levied, so long as it does not affect his person, pay, or military equipment. Nor can he legally assign or charge his pay or pension. He may, on actual military service, make an informal will of his personal property. When on full pay, soldiers are exempt from service on a jury. Officers on full or half-pay are prohibited from becoming directors of public or other companies without the consent of the commander-in-chief. Recruits may purchase their discharge within three months of enlistment, on payment of £10; and apprentices under twenty-one years may, subject to certain conditions, be claimed by their masters. For desertion a soldier may be charged before a magistrate and delivered over to the military authorities.

ARRAIGNMENT is the calling an accused person to the bar of a criminal court to answer formally the charge brought against him. He is called upon by name, and required to hold up his hand. The indictment upon which he is charged is then read to him, and he is required to plead thereto, guilty or not guilty. If he plead not guilty, he is without further form put upon trial before a jury. If he should refuse to plead at all, he is taken to have pleaded not guilty.

ARREST may be either in a civil proceeding or for a crime. The word denotes the apprehending of a man's person with a view to his custody by the law. In civil proceedings a man may be arrested by order of the Speaker of the House of Commons; or of a judge for contempt of Court; or by an order made under the Debtors Act for his committal for non-payment of a debt. [*See* ATTACHMENT; and article on FRAUDULENT DEBTORS.] A person concerned with business in a court of law, and when going to and returning therefrom, is privileged from arrest in civil proceedings. In criminal matters an arrest is made either by warrant or without warrant. A warrant may be granted in certain events by the Speaker of the House of Commons, a Secretary of State, or a judge of the King's Bench Division. In ordinary cases, however, the warrant is granted by a magistrate, upon complaint upon oath of a felony or indictable misdemeanour having been committed; or where an indictment has been found against the person against whom it is issued. The officer who receives the warrant is bound to execute it so far as his own jurisdiction and that of the magistrate extends. In cases of misdemeanour the officer making the arrest must have the warrant in his possession. In executing it he may make an arrest for an indictable offence on a Sunday; and at any hour of the day or night. He may also, upon admittance being demanded and refused, break through both outer and inner doors into a house. Unless there is a risk of capture or escape, the prisoner must not be treated with indignity or handcuffed; and no more force than is absolutely necessary may be used. Subject to exception in the case of a warrant to arrest loose, idle, and disorderly persons, a general warrant is void. Thus a warrant is void which authorises the arrest of all

persons suspected of a crime; or, for example, of the authors, printers, and publishers of a libel, without naming them.

Arrests without warrant may and should be made by an officer in the case of any one committing treason, felony, or a breach of the peace within his view. He may also arrest upon a reasonable charge or suspicion of such offences having been committed. Also in the case of vagrants whom he has good cause to believe are meditating certain offences. Should an officer refuse to make an arrest upon a reasonable charge, he may be indicted and fined. Generally speaking, a private person has the same right and is under the same obligation to arrest as is an officer. Thus, if he sees a felony committed he is bound to arrest. He may also arrest any person he finds committing a felony between the hours of 9 P.M. and 6 A.M., or any coinage offence. Also in certain cases of arson, the owner of the property injured, or his servant or authorised agent, may arrest the offender. A person to whom stolen property, or property he may reasonably believe to have been stolen, is offered for sale, pawn, or safe custody, is required to arrest the person offering and detain the property offered. A private person makes an arrest at his peril, and may, if he acts indiscreetly, be liable for damages in an action for FALSE IMPRISONMENT and MALICIOUS PROSECUTION, which see. He is bound to go to the aid of, when required by, an officer who is attempting an arrest. **To resist arrest** is unlawful, and in certain cases specially punishable. If resistance should lead to death or serious injury it would be indictable. Unless a prisoner's offence is capital and his escape cannot otherwise be prevented, it is unlawful to shoot or wound him when in flight.

ARSON is the felonious, unlawful, and malicious setting fire to property. If to any dockyard, arsenal, or building connected therewith within this realm, or to one of his Majesty's ships, the punishment under a Statute of George III. is death. In the case of an offender subject to naval discipline the punishment is also capital, but the trial is by court-martial. To any other ship or to the goods on board, with intent to injure the owner of the ship or goods, the punishment is penal servitude for life or imprisonment; and if a male under sixteen, with or without whipping; while to attempt the same the punishment may be fourteen years' penal servitude. Arson to a place of divine worship, a dwelling-house with any person therein, or with intent to injure or defraud a port, dock, railway station, or other similar or connected property; a public building, a coal mine or a stack of corn, cultivated vegetable produce or wood, and certain other similar property, may involve penal servitude for life. The punishment for an attempt at arson of the last-mentioned class, or for arson of goods in buildings or of crops, can be fourteen years' penal servitude; that for an attempt at arson of crops or a stack, being a term not exceeding seven years. Persons loitering at night and suspected of arson may be apprehended without warrant. It is not necessary to prove that the person charged with arson had any malice against the owner of the property, and the latter or persons in possession of the property injured can equally with other persons be guilty of this crime. If any person is burnt to death in consequence of the commission of arson the offender may be tried for murder, and if acquitted on such charge he may be retried on the same facts for the arson. If the fire is the result of negligence or accident, there is no arson; nor would there be, in any case,

without some actual ignition or charring, or if the fire were lighted with a *bonâ fide* claim of right.

ARTICLES OF ASSOCIATION.—The enactments under which the system of limited liability companies was inaugurated, now consolidated and amended by the Companies (Consolidation) Act, 1908, were provisions not merely for the benefit of the shareholders for the time being in the company, they were also intended to provide for the interests of those who might become shareholders in succession to the shareholders for the time being; and for the benefit of the outside public, and more particularly those who might be creditors of companies of this kind. The title-deeds of such companies are the Memorandum of Association and the Articles of Association. The former will be dealt with in the article under that heading. With regard to the Articles, it may be laid down that they play a part subsidiary to the Memorandum of Association. They accept the latter as the charter of incorporation of the company; and so accepting it, the Articles proceed to define the duties, rights, and powers of the governing body of the company as between such governing body themselves and the company at large. They further set out the mode and form in which the business of the company is to be carried on, and the mode and form in which changes in the internal regulations of the company may from time to time be made. The Companies Act provides that in the case of companies limited by guarantee or unlimited, the Memorandum of Association must be accompanied by Articles of Association. But in the case of companies limited by shares, which is the usual form of a limited company, it is optional whether there shall be Articles or not. In the absence of Articles of Association, their place is taken by a model form scheduled to the Act and known as Table A. When there are Articles of Association, they may exclude the operation of Table A altogether and themselves set out in detail all the rules and regulations of the company; or they may adopt Table A in part as may be specified and modified. The subscribers to the Memorandum of Association are masters of the regulations which, within the limit of the law, they wish to be comprised in the Articles; and the latter must also be duly signed by each of them in the presence of and attested by a witness. The Articles must be expressed in separate paragraphs, printed, and numbered arithmetically. Upon registration of the company, the Articles of Association must be filed and stamped (10s.) as a deed.

Where the company has a share capital, the Articles must, if the company is unlimited, or limited by guarantee, state the amount of share capital proposed to be registered; if it has no share capital then the number of members proposed to be registered must be stated.

It is also provided that, subject to the provisions of the Act, and to the conditions contained in its Memorandum, a company may, by special resolution, alter all or add to its Articles. In the same way may be made new regulations to the exclusion of, or in addition to, all or any of the regulations of the company, even to the extent of altering its capital or its distribution into shares. Of the internal regulations of the company the members of it are absolute masters, and provided they pursue the course marked out in the Companies Act, that is to say, by special resolution, they may alter those regulations from time to time. And a company cannot contract itself out of this right of alteration, though it must always conform to the limitations of

the memorandum. The latter is, as it were, the area beyond which the action of the company cannot go; inside that area the shareholders may make such regulation for their own government in the Articles as they may think fit. A company cannot claim and exercise a power under the guise of regulating its internal affairs, to go beyond the objects or purposes expressed or implied in the memorandum. If the company should enter into a contract beyond the powers contained in its memorandum, such a contract is void.

Articles of Association are a contract by the shareholders amongst themselves, and do not give a right of action to a person not such a party thereto; and it makes no difference that the person claiming a contract in the Articles was himself one of the subscribers. Thus, where in the Articles it was provided that A. should be the solicitor to the company, it was held that A. had no right of action against the company for non-employment. The nomination in the Articles was merely an authority to the directors by the shareholders to appoint such person if they thought fit. A clause in the Articles providing that the shares of any shareholder who brought an action against the company should be forfeited on payment to him of the full market value thereof would be invalid. Nor can the statutory right of a shareholder to present a winding-up petition be restricted by the Articles. A company cannot be prevented from altering its Articles of Association, and binding its present members by such alteration, although its prospectus contains representations contrary to the Articles as altered; but after signature and before registration the Articles cannot be altered without the consent of a subscriber thereto, so as to make such subscriber liable as a contributory. As we have seen above, the Articles are filed upon registration of the company. They may be inspected by any one at Somerset House upon payment of one shilling. A shareholder is entitled to a copy from the company on payment of a fee not exceeding one shilling. A company that refuses such a copy is liable to a penalty. This right of public inspection is a natural consequence of the rule that all persons dealing with a company, whether shareholders or outside creditors, are presumed to know its external position as distinguished from the details of its indoor management. *See* further hereon: TABLE A; and COMPANIES: THEIR FORMATION AND CONSTITUTION.

ARTISANS' DWELLINGS have been made the subject of a consolidating Act, called the Housing of the Working Classes Act, 1890, which has now been extended by two further schedules of 1900 and 1903. **Unhealthy areas.**—A local authority, on being satisfied of the unhealthiness of a district, may make a scheme for its improvement. Such unhealthiness would arise in the case of (*a*) any houses, courts, or alleys being unfit for human habitation; or (*b*) the health of the inhabitants or neighbours being threatened in consequence of the narrowness, closeness, and bad arrangement, or the bad condition of the streets and houses, or groups of houses, within a certain area. Also in consequence of the want of light, air, ventilation, or proper conveniences, or any other sanitary defects therein. The authority may then, having prepared its scheme, give notice to the owners of the property, stating that the same is to be taken compulsorily for the purpose of improvement. When the scheme has been confirmed by the Local Government Board, the authority may proceed to its execution, including therein the buying out compulsorily of the owners **Provision of accommodation**

for the displaced.—Before the scheme will be confirmed, the Board will require to be satisfied that equally convenient accommodation can be provided for the working-classes displaced by the scheme. This accommodation must not be within or in the neighbourhood of the unhealthy area. Regard will be had to the number of artisans and others of the working-classes dwelling within the area and being employed within a mile thereof. If twelve or more ratepayers have complained to the medical officer of the district with regard to the alleged unhealthiness of an area, and such medical officer has disregarded the complaint, and representations thereof are made to the Local Government Board, an inquiry into the complaints may be ordered. **Acquisition of land.**—As we have already seen, the local authority may give notice to owners of unhealthy property of an intention to purchase compulsorily. If no agreement can be come to with regard to the compensation or purchase-money, an assessment thereof may be made by an arbitrator. In making such assessment due regard must be paid to the nature and condition of the property, and the probable duration of the buildings in their existing state, and to the state of repair thereof. But in such an assessment any addition to or improvement of the property made after the date of advertisement of the scheme by the local authority shall not be included. The arbitrator may also take into consideration the fact, where it exists, that any house has obtained an enhanced rental by reason of being used for illegal purposes, or of overcrowding, and that such house was in such a defective condition as to be a nuisance, or unfit for human habitation. **Unhealthy dwelling-houses** being unfit for human habitation, and so represented to be, either by a medical officer of health or four or more neighbouring householders, may be ordered to be closed and demolished. Certain notices must be first given to the owner, affording him an opportunity to remedy the defects and render the house fit for habitation. If the owner does not himself close and demolish the house, the local authority may do so itself. The owner of such a house being aggrieved at the notice may appeal to a Court of Quarter Sessions. In the same way obstructive buildings may be closed and demolished. **Working-class lodging-houses.**—Where a local authority wishes to purchase existing lodging-houses for the working-classes, or erect upon any land acquired or appropriated by them, buildings suitable for such lodging-houses, the above Act may be adopted by such local authority. It may then purchase or erect lodging-houses, manage them itself, and make bye-laws for the regulation thereof; and if they are found to be too expensive to maintain, may sell them. A tenant or occupier of such a lodging-house will be disqualified to continue as such on receipt of parochial relief, except temporarily on account of accident or illness. The law on this subject applies equally to Scotland. **Low-rented dwelling-houses.**—A very important provision is included in the Housing and Town Planning Act, 1909. It is that in any contract made after the passing of that Act, for letting for habitation a house, or part of a house, there shall be implied a condition that the house is, at the commencement of the tenancy, in all respects fit for human habitation, and that the landlord will keep it so. To come within this provision, the house or part of a house must be let at a rent not exceeding: in London, £40; in a borough or urban district with a population according to the last census for the time being of 50,000 or upwards, £26; elsewhere £16. This condition does not apply, however, where the premises are let for a term of three years or more

upon the terms that the lessee put them into a condition reasonably fit for occupation, and the lease is not determinable at the option of either party before the expiration of that term. By reason of this provision a tenant would have a right to sue his landlord for damages in respect of injuries caused by the premises not being reasonably fit for human habitation.

ASSAULT is a threat by demeanour, or otherwise than by words, to do a bodily hurt to another, even without actually touching him; as if one were to lift his fist in a threatening manner against another, or strike at him but miss. Mere words, however, do not amount to an assault. If there is a touching or laying hold, even very trifling, but accompanied by an angry, insolent, or hostile manner, it is a battery. Such is a *common assault and battery*, the remedy of the party aggrieved being either by proceeding in a police court or by a civil action for damages. For assaults between husband and wife see under that title. When the assault occasions *actual bodily harm*, that is to say, any hurt or injury calculated to prejudice the health of the person assaulted, it is a misdemeanour. So also is it a misdemeanour to unlawfully and maliciously *wound* or inflict any *grievous bodily harm* upon any other person, with or without a weapon or instrument; but if done with intent to maim or do some other grievous bodily harm it is a felony. An assault on officers of the High Court in execution of their duty is contempt of court, and so punishable; whilst an assault on County Court bailiffs in execution of their duty is punishable by a fine of £5. Assaults with intent to commit felony, other than murder and robbery, and on constables in the execution of their duty, are indictable misdemeanours, though the latter may be punished summarily by a magistrate.

ASSEMBLY, PUBLIC.—The right of public meeting can hardly be said to be known to the English constitution. It is nothing more in law than the right of an individual to conduct himself as he will without trespassing upon the corresponding rights of others or infringing any special law. Accordingly, an assembling of numbers together and marching in procession through streets, or a meeting on a public highway (*Burden* v. *Rigler*), is not in itself unlawful. To be so, the assemblage should be tumultuous, to the disturbance of the public peace, and against the peace of the king. If the assemblage is peaceable and the disturbance be caused by others outside the assemblage, the persons composing the assembly would not, for that reason, have committed an offence. It might probably be otherwise if a disturbing opposition were the known, necessary, and inevitable consequence of the assembly. An unlawful assembly has been said to be a disturbance of the peace by persons barely assembling together with the intention to do a thing which, if it were executed, would make them rioters, but neither actually executing it nor making a motion towards its execution. But this seems to be much too narrow a definition. For any meeting whatever of great numbers of people, with such circumstances of terror as cannot but endanger the public peace and raise fears and detraction among the king's subjects, seems properly to be called an unlawful assembly. This would be the case where a great number of people, complaining of a common grievance, meet together, armed in a warlike manner, in order to consult together concerning the best means for the protection of their interest; for there no one can foresee what may be the consequences of such an assembly. The circumstances of terror must exist in the assembly itself, either in its object or in its mode of carrying it out.

When the rights of a public assembly are interfered with, either by another such assembly or private individuals, or even by dispersion by the police, the only proper vindication is through the courts. Resistance and strife with an opposing assembly or individual would mean an affray. Any resistance at all to the police would be still more illegal. It is illegal advice for any one to advise a public assembly when the police attempt to disperse it, to stand shoulder to shoulder, when such advice means refusal to disperse, and resistance to the police; even though not a resistance to the extent of striking. Peaceable citizens are not performing their duty if they stand shoulder to shoulder, and when the police arrive and order them to disperse, do not disperse but insist upon remaining. From that moment the assembly becomes an unlawful assembly, the people comprising it no longer peaceably sustaining any right or duty. *See* RIOT.

ASSESSMENT is the official valuation of property or income for the purposes of taxation; the word being also used in the sense of the amount of tax which has been determined as payable by a certain person. It is often the case that an elective governing body will point out that during its term of office there have been no new or higher rates or taxes imposed; although, at the same time, greater results can be shown than had previously been the rule with the same rating or taxation. Investigation will probably discover the fact that the property taxable has been assessed more highly than before, thus producing the same results as would have been produced by a new or higher rate. Ratepayers should therefore watch the assessment. In the case of **Imperial taxation** the land tax is fixed by a statutory rate on the yearly value of land and hereditaments; inhabited house duty by the yearly rent the houses are worth. Income-tax is assessed in respect of houses by the rent or annual value, and in respect of incomes from public offices by the amount received. [*See* INCOME-TAX; LAND TAX.] In **local taxation** the basis is the full rateable value, except in a few specific instances, such as the lighting and watching rates; and in the case of small tenements, for which the rates are compounded. The assessment for poor rate is generally the criterion for the other rates. In the provinces, the rateable value is the net annual value; in London, the gross value, subject to certain deductions. *See* RATING AND LOCAL TAXATION.

ASSESSMENT of Fire Losses is the term applied to the process by which is ascertained the amount payable under fire policies in respect of claims for loss by fire. The insurance company is generally represented in such matters by a person retained and paid by it, whose profession is that of an assessor of claims. Apart from such assessors, who are in the sole employment of the companies, there are professional assessors who practice independently, and whose services are available to the public in the same way as are those of any other professional man. But in ordinary cases the services of a public assessor are not required. The company's assessor, though retained and paid as aforesaid, is nevertheless in a position of trust between his office and the assured, and should endeavour to preserve a conduct of the assessment fair to all parties concerned. But as soon as the assured introduces into the assessment a public assessor to act on his behalf, the relationship of trust is at end, and each assessor becomes in effect an agent solely for his own principal. Assuming a fire to have taken place, property being destroyed thereby, which is the subject of insurance, the

assured should take immediate steps **to obtain the indemnity** payable by the insurance company in respect thereof. His first business will be to take his policy and read it through very carefully. Amongst the points he should first note are: the time allowed in which notice of the fire must be given to the company; the time for delivery of particulars of his claim; the evidence required thereof; if the policy is valued, what are the specific valuations.

Notice of the fire must be given within the time limited by the policy. Most probably the condition is that this notice is to be given forthwith; but even if a few days are permitted, it is most inadvisable not to give the notice immediately. To delay is to create a circumstance which may give rise to suspicion in the mind of the assessor, and so perhaps make the assessment a matter of keen dispute from the beginning to the end. The notice having been given, the assured should deliver **particulars of the claim.** This also must be done within the time fixed by the policy—as a rule, within fifteen days. There is no evading the obligation to deliver the particulars of claim, for the condition to do so has been held to be one precedent to the enforcement of any claim arising out of the policy. Such was found to be the case by a pawnbroker who had insured in the Norwich Union Office for £150 on his shop, and £1000 on the pledges. He did not deliver his particulars, although required by the policy to do so within three months; and consequently in an action he brought against the insurance office, the latter succeeded at the pawnbroker's cost. And the rule is the same, even in cases where the claim is for a total loss and for the full amount of the policy. Particulars of the claim must therefore in all cases be delivered. And if the time limited for the delivery thereof is expressed to be of the essence of the contract, to fail to do so within that time would be to lose all right to indemnity at all. These particulars should be in writing and drawn with care. It may be that a statutory declaration is required verifying their truth; in such case, this should be delivered with the particulars, or the latter drawn in the form of and embodied in a declaration. Amongst the points in respect to which they should satisfy the company are:—(*a*) the fact of the destruction of the property by fire; (*b*) the value of the property so destroyed; (*c*) the parts of it subject to specific valuation by the policy; (*d*) the existence or otherwise of other insurances on the same property; (*e*) the amount claimed. Generally, as to the rights of the assured, reference should be made to the articles, FIRE INSURANCE and AVERAGE.

But with particular reference to the principles and process of the assessment we will now deal. First, as to destruction by fire. Here there should be no difficulty in an undoubted case of fire; but the policy will probably be such as to allow destruction by lightning, or by explosion of gas without burning, to come within the meaning of the term fire. The more important considerations are those involved in the second and last points just enumerated. The rule is that the value that can be recovered in respect of property the subject of insurance against fire, is the actual value of the property immediately prior to the fire. Nothing more than this can be recovered; no profits, no expenses—not even remuneration for the assured's efforts in endeavouring to extinguish the fire. Particulars of the property destroyed must be set out in items, with full details as to nature and value.

In support of this value, invoices or any other necessary documents must be produced. If the property is furniture, the only question remaining will be its depreciation from cost price through age, wear and tear, which will be deducted. If a stock-in-trade of manufactured goods, deductions from the invoice price will be possible in respect of discounts, length of time in stock, variation of fashion in its relation to particular goods, and general depreciation caused by shop-wear. If general merchandise, the criterion of its value will be the current market-price; and if the stock of a manufacturer, the value will be the cost of materials, labour, rent, and perhaps interest on capital. Farming stock is generally valued by the market-price of the day, less the cost of preparing and taking to market. Goods partially damaged should be referred to the company, when it will be probably agreed between the parties that they are to be sold by auction; under which circumstance the value to be claimed in respect thereof will be the difference between their value calculated as above, and the amount realised by the sale after deducting the auctioneer's and his incidental expenses.

We have now seen how, generally, to estimate the value of the property insured. Generally as to point (*c*), it may be stated that the valuation of an article in the policy does not mean that the company acknowledges its value as specified. It rests still with the assured to prove the value. Though a portrait by Reynolds of some person indifferent to the assured may be easily proved to be of the specified value, yet a portrait of a relation of the assured, highly and affectionately regarded as such, but not painted by an artist of any repute, could be valued at a nominal sum only. And this would be so, even though specified in the policy at a high value. And in no case can the over-sufficiency of one item supply the deficiency of another. Thus any over-sufficiency in the amount of the insurance of the above portrait could not be set off against the amount, perhaps insufficient, at which the ordinary furniture has been insured.

But the points (*c*) and (*d*) also coming under consideration as average, the only part of the particulars now to be dealt with is **the amount to be claimed.** If the values of all the items in the claim have been fairly arrived at, including the amounts available for claim under the average clauses, there should be no difficulty in arriving at the total amount. It should in fact be merely a sum in compound addition. But human nature being what it is, there is always an effort, notwithstanding any knowledge as to the limits of his rights possessed by the assured, to try and get in something as a solatium to cover an indefinable and really unknown item which may, perhaps, have been forgotten. Against such an effort, reasonably made, no one can complain; and not even the insurance companies are likely to resist it. But the total amount of the claim must be reasonable. Some policies have a condition that any attempt at fraud in making an excessive claim, or any false declaration in supporting it, will forfeit all right of claim thereunder. There is therefore good reason for the assured to be careful in this respect. Though a mere claim for a larger amount than is ultimately allowed is not either an attempt at fraud or an excessive claim, yet, on the other hand, an unfair, unreasonable, *mala fide* claim for an excessive amount is undoubtedly evidence of an attempt to defraud. Efforts, therefore, of the latter class may end in entire loss of the benefit of the policy. At least

they may cause the resistance by the company of the claim, and the consequent delay and expense in litigation to the assured. And referring to litigation suggests the high probability of there being an arbitration clause in the policy. In cases, therefore, where the company and the assured, or their assessors, cannot come to terms, recourse should be had to **arbitration.** The assured must be careful to see that he has as his own arbitrator a man with a good technical knowledge of the property and of its varying values. The procedure in arbitration will be found under that head.

It only now remains to point out that in an arbitration respecting a loss by fire each party has generally to pay his own costs, and half the fees for the award. The arbitration is precedent to any action at law, and it in no way affects a plea of fraud afterwards. Thus the company may await the assured taking up the award, and subsequently taking action thereon, and may then resist the claim, and base its defence upon any fraud it may consider the circumstances of the case have disclosed.

Loss of Buildings.—Hitherto our attention has been confined mainly to the valuation of property in the nature of goods and chattels. But though the principles thereof apply equally in the case of buildings, it will be convenient to consider some special points relating to the latter. In 1865 an Act was passed with the expressed intention of deterring and hindering ill-minded persons from wilfully setting their houses or other buildings on fire, with a view to gaining for themselves the insurance money; as a consequence of which the lives and fortunes of many families, continues the Act, were likely to be lost or endangered. This Act recognised to the full that the only safe principle of fire insurance was that of mere indemnity, and that once a profit or any advantage could be obtained as a consequence of fire, not only would the safety of the person and of property be greatly jeopardised, but the insurance offices themselves would become a source of public danger. Insurance offices were therefore authorised and required, upon the request of any person interested in any building which might be burned down or damaged, to apply the insurance money towards the rebuilding, reinstating, or repairing of such buildings. This is also to be done if the insurance offices have a suspicion that the owner or occupier or any other person who has insured the same has been guilty of fraud, or of wilfully setting fire to the premises. But in both these cases the money must be paid over to the assured, if within sixty days after the adjustment of his claim he gives a sufficient security to the insurance company that the money will be laid out in rebuilding, reinstating, or repairing the premises. In view, therefore, of the strong legal position in which fire insurance companies are placed, the assured must not be surprised if he is required to furnish the most detailed particulars of his loss, and verify the value most closely. The indemnity will only be such as will place the assured in the same position as that he enjoyed immediately prior to the fire; the state of repair, age, general condition, and peculiarities of construction being all carefully taken into account. If local bye-laws require upon rebuilding, certain alterations or improvements in structure or otherwise, the cost and expenses thereof will not be covered by the policy. In fact, the insurance office will take every lawful precaution against the occurrence of a fire becoming a desirable event to the assured. If the company is going to reinstate, it may use all

material on the premises. If it is going to pay the money over, it may deduct therefrom the value of any standing material apparently available for construction, even though in consequence of bye-laws or other contingencies such material cannot be used, or have any value at all for the purposes of such construction. And the criterion for the valuation of the material may even be its availability.

ASSETS is a word derived from the Norman-French *assetz*, sufficient, and is the name given from the point of view of a creditor to a man's property. Thus *in bankruptcy* it has this meaning as against the bankrupt's liabilities. *In equity* it signifies the property of a person deceased, available for the payments of his debts and legacies.

ASSIZES, otherwise the Courts of Oyer and Terminer and of General Gaol Delivery, are held at least twice in every year in and for every county of England, except for that part thereof within the jurisdiction of the **Central Criminal Court.** At the assizes the judges sit as royal commissioners, by virtue of four authorities, viz. the commission of the peace, that of oyer and terminer, that of gaol delivery, and that of *nisi prius.* The commission of the peace is the general commission under which magistrates derive their authority. But the commission of *oyer and terminer* gives the judges authority to try cases of treason, felony, and misdemeanour. And persons may be tried under this commission whether they are in gaol or at large, but only after a true bill has been found against them upon indictment at the same assizes. The commission of *general gaol delivery* authorises the judges to try, and deliver every prisoner who shall be found in gaol when they arrive at the circuit town, whenever or before whomsoever indicted, or for whatever crime committed. Sometimes, upon urgent occasions, the Crown issues a special commission of oyer and terminer and gaol delivery, confined to those offences which stand in need of immediate inquiry and punishment. The commission of *nisi prius* is an authority for the trial of civil actions. Originally, all civil trials involving questions of fact were tried at Westminster in some Easter or Michaelmas term by a jury of men belonging to the county in which the cause of action arose "unless sooner," *nisi prius*, the judges of assize should come into that county. But since 1852 there has not been in civil actions the slightest connection with the *nisi prius* proviso. Provincial actions now proceed in the ordinary way in the local District Registries of the High Court, and upon the approach of an assize are set down for trial in the circuit town before a local jury. *See* ACTION; DISTRICT REGISTRY.

ATTACHMENT OF DEBTS is a mode of enforcing a judgment, whereby the judgment creditor may obtain payment to himself on account of his judgment debt, of debts due from third parties to the judgment debtor. **In the High Court** the creditors proceed by way of garnishee. He first of all, having discovered a person who is indebted to his debtor, makes an *ex parte* application to the Court for a garnishee order. This application must be supported by an affidavit showing that the applicant has obtained a judgment against his debtor, the amount thereof, and what is still unpaid. It must also state the name and address of the third person from whom money is due to the debtor. The Court will thereupon issue an order directed to the third person, that the latter must pay his debt, or so much as is sufficient

to satisfy the judgment debt, to the judgment creditor instead of to the judgment debtor, unless he shall show cause to the Court why he should not do so. This order *nisi* must be served upon the third person, who is called the "garnishee," and from the time of service binds all the money of the debtor in his hands, and even an accruing debt. Then, on the day fixed in the order, the Court, unless the garnishee shows cause to the contrary, makes the order absolute, and the judgment creditor may levy an execution upon the goods of the garnishee for the amount thereof. Payment by the garnishee to the judgment creditor is a full discharge as against the judgment debtor. Of course the garnishee, if there is a *bonâ fide* dispute as to his liability and he can make out a *primâ facie* case, is entitled to the same trial and advantages that he would have had as against the judgment debtor. If a judgment creditor has no actual knowledge of any person being indebted to his judgment debtor, he may take out a summons against the latter and examine him as to his means and debts due to him, and enforce the production of his books of account. Unliquidated damages due to a judgment debtor are not available for attachment; nor money due to a shareholder from a company in its voluntary winding-up; nor purchase-money payable upon completion of a sale of real property; nor wages due to a seaman, servant, labourer, or workman; nor the future income of the tenant for life of a trust fund; nor salary accruing, but not actually due; nor the pay or pension of an officer. A banker may be garnisheed in respect of any balance in his hands to the credit of the judgment debtor's account.

In the County Court the principles and practice in garnishee proceedings are substantially the same as in the High Court. An important difference, however, is that, instead of an order being issued against the garnishee, it is a summons, which, though operating to bind moneys in the same way as the order, specifies a day for the hearing of the matter, when, in case of dispute, the liability of the garnishee is generally determined without further proceedings. If the garnishee pays into Court the amount claimed five clear days before the hearing of the summons, he is not liable for any costs. *See* ACTION; COUNTY COURT; EXECUTION.

In Scotland, arrestment of debt or movables in a third party's hands is enforced by an action of forthcoming. When several creditors have taken such process, the arrestee may bring an action to have it decided who is entitled to the fund. By then paying money into Court, or giving security, he is entitled to his expenses. The creditor's debt may be either liquidated or in process of liquidation at the time of the action, but the action cannot be brought in respect of a debt not yet due. The wages of workpeople cannot be arrested, except as to the amount over twenty shillings per week, except for alimentary debts, and rates and taxes.

ATTORNEY-GENERAL is the name given to the chief ministerial officer of the Crown, to which he stands in the same relation as any other attorney or solicitor does to his client. He is legal adviser of the Crown, the Ministry, and the departments of the Government; a member of the Ministry, though never of the Cabinet. The term "General" was affixed to his designation in order, probably, to distinguish him from special attorneys of the Crown, as, for example, the Master of the Crown Office, whose official style is "Coroner and Attorney for the King." The office is one of great

dignity and importance, and is filled by barristers of the highest eminence in their profession. The chief duties of the Attorney-General are, in addition to the advisory ones above mentioned: To exhibit informations and conduct prosecutions on behalf of the Government for high offences against the good order of the State; to conduct all suits and prosecutions relating to the public revenue; to institute and conduct suits for the protection of charitable endowments; and generally to appear in all legal proceedings and in all Courts where the interest of the Crown are in question. The Attorney-General has place and audience at the head of the English Bar, and as such is absolute arbiter in all questions of etiquette and rights which may be in question amongst members of that branch of the legal profession. In practice, however, questions of professional etiquette and rights are now dealt with by the Bar Council. Originally he was paid by salary and fees, and was allowed to take private practice. At present, however, the arrangement between the Attorney-General and the Government is that whilst holding office he shall resign private practice. His salary and fees amount to about £17,000 per annum. He is assisted by a Solicitor-General. In Scotland and Ireland the similar law-officers of the Crown are: the Lord-Advocate and Solicitor-General for Scotland, and the Attorney-General and Solicitor-General for Ireland.

AUCTIONS AND AUCTIONEERS.—An auction, in Scotland called a *roup*, is a public competitive sale, in which the conductor thereof obliges himself and his principal to transfer property to the highest bidder. The person, without distinction of sex, who conducts such a sale is an auctioneer. **Historical.**—Selling by auction is supposed to have originated with the Romans, who gave it the descriptive name of *auctio*, an increase, because the offered property was sold to him who would offer the most for it. At a later day there came into practice the mode of auction known as "sale by the candle." This mode was adopted in the case of certain sales by the East India Company, and is still occasionally followed in out-of-the-way country districts in the disposition of rents and charitable property. In the case of such an auction, the goods were open to offers by bidders during such time as would suffice for the burning of one inch of candle. Another mode of auction, generally practised at the present day by a certain class of itinerant dealers, is called a "Dutch" auction. Herein there is one and only public bid, and that by the auctioneer himself, and at a price beyond the value of the property, the price being then gradually decreased until some one accepts the offer and becomes the purchaser. The modern method is by way of increasing bids on the part of the intending purchasers, the one who bids the highest having his offer accepted by the auctioneer. **Licence.**—An auctioneer is by statute required to take out an annual licence. For this licence a sum of £10 is payable, and it expires on the 5th July in every year. It expires on that date, however long or short a time may have elapsed since it was taken out. Any person acting as an auctioneer without a licence in full force is liable to a penalty of £100. And any person who has words affixed to his business premises purporting that he is an auctioneer, and has not at the same time a licence, is liable to a penalty of £20. The licence is personal to the auctioneer, and he may carry on his business at several different places. He may also act as an appraiser and house-agent without further licence; but he must not trade from town to town as a hawker, or, except in certain cases, sell excisable goods. During a sale he must expose in a public position

in the sale-room his full name and address, and produce his licence upon demand to a revenue officer.

The *authority* of an auctioneer is conferred upon him by the seller, whose agent he primarily is. Its extent will be carefully regarded. Thus it would not extend to authorise an auctioneer to sell by private contract, or to delegate his duties to a clerk. The auctioneer's clerk may, however, be engaged in merely incidental and subsidiary details. As in any other case of agency, the authority of an auctioneer may be revoked, unless coupled with an interest, or where the intervening rights of third parties would suffer by the revocation. If, as a consequence of a subsequent revocation, a sale *bonâ fide* advertised by the auctioneer has to be abandoned, a person who has lost time and expenses in consequence of the advertisement and subsequent abandonment of the sale cannot recover damages therefor from the auctioneer. It has been held that such advertising of a sale is a mere declaration, and does not amount to a contract with any one who might act upon it; nor is it a warranty that all the articles advertised will be put up for sale. The reader might refer to an apparently similar, though essentially different case, mentioned under the head ADVERTISEMENTS.

Relation of Auctioneer to Seller.—It follows from the above, that an auctioneer is primarily the agent of the seller. Indeed until the fall of the hammer he is exclusively such. He must obey his principal's instructions. When he does not he will be liable in damages. For example, he must not sell under a certain price fixed by his instructions, nor receive payment by a bill of exchange, when his instructions are that purchasers are to pay a deposit at once and the remainder of the purchase-money to the auctioneer on or before delivery of the goods. Nor can he, unless it is the custom, receive a cheque instead of cash. If he should do so, it should be with the greatest caution, and the goods should not be handed over until the cheque has been honoured. He must moreover sell the property himself. He should account for and pay over all moneys which have actually come into his hands for goods sold on behalf of his principal. If, having exceeded his authority, and in consequence thereof failed to receive money he should have received, he will be liable to his principal therefor. But he is not liable for interest upon money in his hands, unless there has been fraud or misconduct on his part; such as improperly withholding accounts and refusing to pay over the money when demanded, or applying the money to his own use. He is bound to take the same care of the property sent to him for sale that he would take of his own goods, and will be liable for any damage caused by his default or negligence. If goods are wrongfully taken out of his possession, the auctioneer can maintain an action for their recovery in his own name. So also can he sue for the unpaid price of goods he has sold; but not if he has himself signed as agent for the buyer. At a sale he may bid himself for third parties, and probably even bid openly, fairly, and in good faith for himself. Goods of the principal, when upon the auctioneer's premises at a time when distraint is made to recover rent due from the auctioneer, are absolutely exempt from distress.

Power of Auctioneer.—He has no authority, apart from special instructions, to warrant the goods he sells; and if he should do so personally, he will be liable personally. If he is in possession of the property sold, and

himself gives delivery of them, he would have an implied authority to receive the price thereof and give receipts. This would not be so if the conditions of sale merely provide for payment of the deposit to the auctioneer; nor when the latter acts as a mere crier or broker for his principal who retains possession of the goods. As soon as the sale has taken place, the auctioneer's authority has, for the purposes of the sale, absolutely determined. He cannot then, unless specially authorised, rescind or vary the contract, or deal with the purchaser in any way as to terms. The only matter then open between himself and his principal is his remuneration and indemnity (if any) for loss incurred in the proper discharge of his duty.

As to his remuneration.—This is either fixed by express contract between the parties, or it is according to the customary scale of commission, viz. 5 per cent. upon the amount realised by the sale, together with the expenses of advertising. If there has been no sale, the commission should be calculated upon the reserve. In cases of sales under distress for rent and County Court process, the auctioneer's remuneration is fixed by statute, and will be found under the titles BAILIFF and EXECUTION. As suggestive of the remuneration which may be reasonably agreed upon with an auctioneer, the following charges, generally allowed to auctioneers by the Court in bankruptcy matters, will be of some practical interest.

Scale I.

For inventory only, of chattel property, and one copy (not exceeding five folios), 10s. 6d.; for every additional folio beyond five, and one copy, 1s. 6d.; for every half-hour or fraction of half-hour necessarily occupied in going to and from the premises where the inventory has to be made, if situate more than one mile from the broker's office, 2s. 6d.

For inventory and valuation of chattel property:—On the first £100, 2½ per cent.; on the next £400, 1¼ per cent.; above up to £10,000, 1 per cent.; above £10,000, ½ per cent.; and in addition any railway fare or cab hire actually and reasonably paid.

Scale II.

For sale by private contract based on the valuation, half the above charges for inventory and valuation.

For sale by auction, including all expenses except newspaper advertisements, which the principal should stipulate to be previously authorised by himself.

Of chattel property not exceeding:—On the first £100, 10 per cent.; on the next £400, 5 per cent.; above up to £1000, 4 per cent.; above £1000, 2½ per cent.

Of estates, freehold, leasehold, &c., including prior valuations, for determining amount of reserve bids:—On the first £300, 5 per cent.; on the next £1600, 2½ per cent.; above up to £5000, 1¼ per cent.; above £5000, 1 per cent.

Now as to *the indemnity.* If the auctioneer in the proper performance of his duty does an act injurious to a third party, such as selling goods without a title, and suffers damage in consequence, his principal is liable to indemnify him. But it is necessary that the auctioneer should have no knowledge of the illegal or improper character of the sale; for if he had

such knowledge, he would be personally liable, jointly with his principal. So when an auctioneer guarantees the rent in cases where the goods are liable to a distress before the sale can take place, he is entitled to indemnity from his principal. He has a lien upon the goods entrusted to his care, or upon the proceeds after sale, so long as they are in his hands, which may act as some security for his remuneration and indemnity.

When agent of purchaser.—Immediately upon descent of the hammer, the auctioneer becomes also the agent of the purchaser to write down the name of the latter as being the purchaser. His memorandum of the transaction written contemporaneously will bind both parties under the STATUTE OF FRAUDS and the SALE OF GOODS ACT; but reference in the memorandum must be specifically made to the conditions of sale and the price and description of the property as set out in the particulars of sale or catalogue. His clerk cannot make a binding memorandum except with the express assent of the purchaser.

The Auction.—*Conditions.* Every auction sale is subject to conditions of sale either written or publicly announced. These are only binding upon a purchaser when they fairly come to his knowledge. Where they have been printed and circulated before or during the sale, or publicly announced by the auctioneer, or posted up in the auction-room, a purchaser will generally be considered to have knowledge of them. The conditions must not be misleading, and the description of the identity or the character of the property to be sold should be stated with certainty. When such description relates to real property it is called the "particulars of sale," and when to personal effects sold in lots "a catalogue." Trifling and unimportant variations in the description of an estate are not fatal to the sale if the description is substantially correct. They may, however, create a right to compensation. But if the description is such as to actually deceive the purchaser, even if such description is neither fraudulent nor wilful, the sale will be void. But the deception must not be occasioned through the purchaser's own carelessness. As a general rule, mere expressions of praise, or declarations as to value, provided they do not amount to actual misrepresentations or misstatement of fact, will not render a sale void. *Bidding.*—The auctioneer must, unless with good and sufficient reason, accept all biddings offered. But infants, lunatics, persons in drink, and other irresponsible persons, as also persons in a fiduciary position to the property on sale, who make bids may be ignored. So also may the bid of the vendor if the sale is without reserve. A sale without reserve means not only that the property will be peremptorily sold, but that neither the vendor nor any one on his behalf will bid. The auctioneer may disclose the amount of the reserve if he thinks by so doing he will benefit his principal. There may also be a condition of sale that the vendor or his agent may bid, in which case such bidding would be lawful. *Puffing.*—If the owner of property put up for sale wishes that they should not be sold under a certain price, he should state it before the auction begins, or he should reserve the right to bid himself, or through an agent. If the property is realty, such a reservation must appear in the written conditions of sale. Then all the parties to the sale meet on equal terms. But it is otherwise if one or more persons are secretly authorised by the vendor to make bids with a view only to running up the price. Such

an act, being secret and unknown to the purchaser, would be a fraud and imposition upon him. The sale would be void, and the act itself fraudulent. Such secret bidders are known as puffers, and the above is the regard in which they have always been held by the Common Law Courts. But the Courts of Equity, strange to say, regarded them somewhat more leniently, with the result that there was passed, in 1867, an Act of Parliament which provided that a reservation of the right to puff must, in sales of real property, be made as above stated. A vendor is not responsible for sham biddings, made without his knowledge or that of the auctioneer. If the highest bidder should conspire with the others to wilfully interfere with the course of the sale, and to depreciate the property and deter others from bidding, the vendor may refuse to complete the sale. *Knock-outs.*—An agreement between two persons not to bid against each other is not illegal. Nor is an agreement whereby a number of persons appoint one of their number to bid for their joint benefit. Such an agreement may create what is known as a knock-out, when, after the sale, the property bought is put up for sale privately amongst themselves [but see CONSPIRACY]. Bids may be revoked before the fall of the hammer. This is so, because a bid is but an offer, and does not become a contract until accepted, which the auctioneer can only do by concluding the sale. A *deposit* is usual at an auction sale as a guarantee for the fulfilment of the contract. This deposit is not merely a pledge, but also a payment on account of the purchase-money. A purchaser cannot elect to forfeit his deposit and avoid the sale. The terms of the sale usually provide for the time and mode of payment of the deposit, and where this is so the purchaser cannot safely pay it at any other time or in any other mode. Where the auctioneer receives the deposit as agent of the seller, it is his duty to pay it to his principal on demand. But this is not so where it is paid to the auctioneer as a stakeholder until completion of the contract; only upon such completion or failure thereof the vendor would be entitled to it. If the vendor refuses, or is unable to perform the contract, or the contract is rescinded on the ground of fraud or misrepresentation on the part of the vendor or the auctioneer, the purchaser is entitled to the deposit, and may sue either the vendor or the auctioneer therefor. Where more than one party claims the deposit, the auctioneer may take out an interpleader summons, upon the hearing of which the Court will decide to whom it should be paid.

Completion of Contract.—A purchaser at auctions occasionally refuses to comply with the conditions of sale, or to complete the contract, and pay for and take over the property he has bought. In such a case he would be liable to the vendor in damages. As a rule, the measure of damages will be the difference in price on a re-sale, the vendor acting *bonâ fide* and with reasonable care, together with all the expenses incidental to the breach of contract. It is usual, therefore, for the property to be re-sold, and then for the defaulting purchaser to be sued for the difference and the expenses. **Generally.**—When an auctioneer receives property to which his principal has no title, and upon selling delivers possession of the same to a purchaser, he is liable therefor to the true owner. If, after having sold them and received a deposit on the purchase-money, he has notice of the defect in his principal's title, the money in his hands should be paid over to the true owner, or he may be sued therefor. But he would not be if the sale had been

without any other interference on his part than the bringing together of the vendor and purchaser, between whom alone the sale was effected. Nor would he be if, without notice and in good faith, the property had been sold after receipt by him from his principal, who then had it in his disposition within the Factors Act, 1889. *See* AGENCY.

AUDIT is the term applied to an investigation of accounts, including therein an examination of their form and substance and a scrutiny of the figures. The object of the audit is to see that the accounts truly represent the state of affairs purporting to be represented by them. The person who engages in such investigations is called **an auditor.** An audit may, in most cases, be conducted by any private individual, but the practice is to place such matters in the hands of public accountants who combine with accountancy the profession of an auditor. In certain statutory cases the auditor is bound to be one who practises the profession publicly. For example, in the case of building societies, one of the auditors of each society must be a public accountant. For Friendly and Industrial Societies the accounts must be audited, in certain events, by public auditors appointed by the Treasury. But, as a rule, the statutes which make auditing compulsory do not at the same time necessitate the employment of professional auditors. Such is the case in regard to the auditing of accounts under statutes relating *e.g.* to Public Health, Municipal Corporations, Sheriffs, Local Government Bodies, Educational Authorities, Lunacy, Railway Companies, the Oxford and Cambridge Universities, and the Housing of the Working-Classes. **With regard to Companies** under the Limited Liability Acts, there is express provision necessitating the appointment of auditors. The Articles of Association, however, generally provide for an audit on the lines of the provision suggested by TABLE A (*q.v.*). For the provisions of the Acts relating to audits, reference should be made to the article on DIRECTORS. We will briefly set out the purport of the provisions of Table A on this topic, as even if a company has articles of its own, the provisions thereunder would be the same in general. At the same time these provisions will afford a hint to **private traders** as to the need and method of an audit, and will save separate treatment of this subject for their especial case.

In the first place, **the audit** must be made once in every year. The accounts of the company will then be examined and the correctness of the balance-sheet ascertained by the auditor. A member of the company may be an auditor, but not a director, nor any one who is interested in the company otherwise than as a member. The auditor should be supplied with a copy of the balance-sheet, and it will be his duty to examine it, together with the accounts and vouchers relating thereto. He should also have delivered to him a list of all books kept by the company, and should have at all reasonable times access to the books and accounts. If necessary he may, at the expense of the company, employ accountants or other persons to assist him in investigating the accounts, and may, in relation to such accounts, examine the directors or any other officer of the company. The auditor will thereupon make a report to the members upon the balance-sheet and accounts. In every such report his opinion must be given whether the balance-sheet is a full and fair balance-sheet, containing all necessary particulars. He must also state whether the balance-sheet is properly drawn up, so as to exhibit

a true and correct view of the state of the company's affairs. If the auditor has found it necessary to call for explanation or information from the directors. he must state whether the same were duly given to him, and whether they were satisfactory. For the particulars which must be shown by the BALANCE-SHEET, the reader should refer to the article under that heading. From the above the shareholder in a company will see what lies within the duty of the auditor; and the private trader will see, when he finds it necessary to have his books of account and balance-sheet checked, the place and method of an auditor with regard thereto.

Duties and Liabilities of an Auditor.—An auditor is an instance of an agent, and as such comes within the law relating to agents. He must do his work properly; if negligent and damage results, he would be liable to an action. But more than that, an auditor when engaged on behalf of a company is an officer of the company, and as such may be liable to the shareholders. But it is no part of an auditor's duty to give advice, either to directors or shareholders, as to what they ought to do. Nor has he anything to do with the prudence or imprudence of making loans with or without security. Nor whether the business of a company is being conducted prudently or imprudently, profitably or unprofitably. Nor 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. He does this 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; for unless this were so, his audit would be worse than an idle farce. He must be honest; that is to say, he must not certify what he does not believe to be true, and he must take reasonable care and skill before he believes that what he certifies is true. He must check the cash, examine vouchers for payment, see that bills and securities are in order and safe custody, and even take reasonable pains to ascertain their value and validity.

Such, briefly and generally, is a statement of the duties and liabilities of an auditor. The legal standard is doubtless a very high one; but fortunately the profession of auditors and accountants has risen to it, and even taken upon their shoulders a share in the burden of its maintenance. There is therefore no reason why any man of business should go without an accurate investigation and determination of his financial position. The only question remaining is that of the **remuneration** of an auditor. This is always a matter of agreement, and its extent depends upon the nature of the audit. In any case, the general rule is to fix upon one inclusive fee. *See* ACCOUNTANT, and articles in Supplementary Volumes.

AVERAGE is a term used in commerce to signify a contribution made by ship freight and goods on board a ship, in proportion to their respective interests, towards any particular loss or expense sustained for the general safety of the cargo and ship, in order that the particular sufferer may not in the end be a greater loser than the rest of the persons interested in the ship and goods on board. *General average* is the contribution so made by all parties towards a loss sustained by one for the benefit of all. Special or

particular average denotes any kind of partial loss happening to either ship or cargo, and does not usually come within the general subject of average. **General average** may denote an act voluntarily causing a loss, the loss consequent thereon, or the general contribution levied to make the loser's position no worse than that of the others interested. The master of the ship is the only person who can authorise a loss so as to give the loser a right to general average. And the loss can only be general average in certain cases. They are, for example, where the act is intentional and not caused by the power of the elements; where the act is for the general good and not for the benefit of individuals; where the intention is to avert a total loss; and where there is no other alternative but to commit the act, if the danger is to be averted at all. These general average losses may be either by way of sacrifice of property or expenditure of money, and each class must be borne proportionately by all interested. The question whether the ship itself or its equipments may give rise to a general average loss, is generally one open to much debate. It may, however, be stated as a general rule that where such a loss is for the general benefit, the use of the ship and the equipments being for that purpose supplied differently than is usual, an arising loss is general average. It is not necessary that the judgment of the ship's master should be borne out when the facts of the case come to be examined into. He must exercise his judgment as to the necessity for the sacrifice; but it is enough if he exercise it subject to all the circumstances. If the mast of a ship is cut away, it should not be because of its value as a mast, but because its condition is judged to be a source of danger to the vessel.

Now as to the ship or its equipment being put to some extraordinary and more hazardous use than under ordinary circumstances would be proper. In such a case, all loss arising in consequence of extraordinary sacrifices made, or expenses incurred, for the preservation of the ship and cargo come within general average, and must be borne proportionately by all who are interested. Sacrifice of goods generally takes the form of *jettison*. It may be constructive, as in a case where goods are taken out of the ship and put into boats in order to lighten her, or float her if aground. Damage incidental to jettison would also be general average. Expenditure becomes a general average loss when necessarily and extraordinarily incurred for the general safety. It may be incurred in cases of salvage, as where the ship must be taken out of a position of peril; or of compromise between belligerents and neutrals; or of port of refuge expenses. **Contributions to general average losses.**—The liability to contribute does not arise from any contract at all, but from the old Rhodian laws, and has become incorporated into the law of England as the law of the ocean. It is not a matter of contract, but in consequence of a common danger, where natural justice requires that all should contribute for the loss of property which is sacrificed by one in order that the whole adventure may be saved. The principle upon which it becomes due does not differ from that upon which claims for recompense for salvage services are founded. In jettison the rights of those entitled to contribution have their origin in the fact of a common danger, which threatens to destroy them all; and those rights and obligations are mutually perfected wherever the goods of some of the shippers have been advisedly sacrificed, and the property of the others has been thereby saved. Accordingly, all kinds of merchandise put on board

for the purposes of traffic are liable to contribute. So also is deck cargo, and gold, silver, jewels, and precious stones not attached to the persons of the passengers. But the latter when attached does not contribute. Nor do passengers' luggage, seamen's wages, or provisions.

The general principle by which the amount of contribution may be ascertained is as follows: The loss to the individual whose goods are sacrificed for the benefit of the rest is to be compensated according to the loss sustained on the one hand and the benefit derived on the other. He must be placed in the position he would have held if the sacrifice had been made by another instead of by himself; his property being treated as if it remained on board the ship and formed part of the adventure until the voyage ends. The contributory value of a ship is her worth to her owners at the time and place of adjustment; that of freight, the amount thereof eventually saved; and that of goods, their market price at the end of the voyage, less freight and expenses. *See* also ADJUSTMENT; MARINE INSURANCE.

AVERAGE in Fire Insurance is a point now frequently arising in the course of adjustment of claims in respect of losses by fire. Until 1828 there was no such thing in fire insurance policies as the average clause. The companies having been originally formed upon the mutual basis, that is, for the general benefit of all the assured themselves, questions of average were not usually expected to arise. But the development of commerce, the increase in size and constituencies of the insurance offices, and, in particular, the removal in that year of the legal restrictions of the Stamp Acts, all tended to change. The result was the insertion in fire policies of the average clause. But by 1860 the principle of average in cases of loss by fire had been much extended, with the result that the average clause itself was much developed, and three more specific clauses of somewhat similar nature had been added. These clauses thence remained substantially in the same form until 1882, when most of the companies adopted in their stead the amended clauses now generally in use. The first of these clauses is still the one generally known as the average clause, and is the one with which we propose to deal. The other clauses will be considered in the article on CONTRIBUTION. The average clause now usually appearing in fire policies is as follows:—

It is hereby agreed and declared that whenever a sum insured is declared to be subject to average, if the property covered thereby shall at the breaking out of any fire be collectively of greater value than such sum insured, then the assured shall be considered as being his own insurer for the difference, and shall bear a rateable share of the loss incurred.

The result of this condition is that the assured, as in the case of marine insurance, is himself an insurer for the proportion of the value of the property exceeding the amount of the insurance. And in such proportion is he liable to contribute in case of loss. The amount payable to the assured by the insurance company may be ascertained by the rule of three, as follows:—Value of property covered, : the sum insured, :: damage done, : damage payable. Thus, if furniture valued at £300 is insured in the sum of £100, subject to the above average condition, the insurance company will, in case of loss, be liable for only one-third of the risk, the other two-thirds being undertaken

by the assured. If in such case the damage done by the fire is £100, the assured will receive £33, 6s. 8d. If the same furniture has also been insured for £100 with another insurance company, subject to the same conditions, he will receive another £33, 6s. 8d. But if the latter insurance had been for £200, it would have been sufficient to have completely covered his loss. The object of such a condition is to prevent under-insurance; for experience shows owners of property that a complete loss of the whole of the property insured is very rare, and that apart from averaging, it is sufficient to insure only a proportionate value of the property. A striking instance of this could be found in the insurance of farm produce and stock. There, where the property would be distributed in different parcels over a very wide area, it would be almost impossible for such a fire to occur as would destroy the whole; and that consequently there would be a sufficient insurance of the whole by limiting the amount of the policy to the value of the most valuable distinct parcel. In effect, an insurance of the whole would be obtained by insurance of a part.

Apart from and perhaps without the addition of the above average clause, the modern form of policy is expressed to be by way of insurance against loss of the property insured, for example,

. . . in the several sums: buildings in £500, stock in £500, &c. . . . and that the company will make good all such loss or damage to an amount not exceeding in respect of any one of the above items the sum set opposite thereto, and not exceeding in the whole £1000.

Here the sum payable upon a loss would be on the principle set out above, with reference also to the rules relating to specific insurances contained in the article ASSESSMENT. There would be more difficulty in averaging when the property is covered by different policies, subject to average, in different offices, and relating to different portions of the property. In such a case the liability of each office would be in the proportion in which its insurance covers the property, the assured himself being taken to be the insurer of the difference, if any. We will take as an example a warehouse and goods insured by separate policies as follows: One upon the warehouse and goods for £3000, one on the warehouse alone for £3000, and one on the goods alone for £3000. Let the value of the warehouse be £5000, and that of the goods £5000 also, making the total value £10,000, whereby £1000 of the whole is left uninsured. Proportionately, the insurers of the warehouse and goods would be liable for three-tenths of the £10,000; the insurers of the warehouse, three-fifths of £5000; the insurers of the goods, three-fifths of £5000; and the owner, as his own insurer, one-tenth of the whole. Out of the salvage one-tenth part would be due to the assured, the rest being proportionately distributed amongst the companies. *See* FIRE INSURANCE.

B

BABY-FARMING, or the retaining or receiving for hire of infants for the purpose of their maintenance is now regulated for England, Ireland, and Scotland by the consolidating Children Act, 1908. In reading this article, Scotch readers should substitute the sheriff for a justice of the peace, the

procurator-fiscal for the coroner, and an inquiry by the procurator into the cause of a death for an inquest; the poorhouse for the workhouse; and the parish council for the guardians. The provisions of the Act do not extend to the relatives or guardians of any infant retained or received by them for the purpose of nursing or maintenance; the term "relatives" meaning and including the parents, grandparents, and uncles or aunts by blood or marriage of such infant; and in the case of illegitimate infants, the persons who would be so related if the infant were legitimate. Nor does the Act affect any person who receives an infant for its nursing or maintenance under a poor-law authority; nor any hospital, convalescent home, or institution established for the protection and care of infants, and conducted in good faith for religious or charitable purposes, or boarding-schools at which efficient elementary education is provided.

Any person, not excepted as above, who retains or receives for hire or reward one or more infants under the age of seven years, for the purpose of nursing or maintaining them apart from their parents, or where they have no parents, for a longer period than forty-eight hours, must within forty-eight hours from the undertaking to receive give notice to the local authority. In the county of London the local authority is the London County Council; in other places in England and in Ireland it is the board of guardians; in Scotland it is the Parish Council. The notice must state the name, sex, and date and place of birth of the infants, the name of the person receiving them, the dwelling within which they are being kept, and the names and addresses of the persons from whom they are received. Notice must also be given of any change of such dwelling and of the death of an infant. Male and female inspectors are appointed for the purpose of inspecting these infants, and the dwellings in which they are kept; and it is the duty of such an inspector to satisfy himself that the infants are properly maintained, and to give any necessary advice or directions as to their maintenance. Institutions for the maintenance of children may, at the discretion of the local authority, be exempted from inspection, if they appear to be so conducted that it is unnecessary that they should be visited. The local authority has also power to fix the number of infants under seven years of age which may be kept in any dwelling.

Should an infant in respect of which the above notices are required (*a*) be kept in any house or premises which are overcrowded, dangerous, or insanitary; or (*b*) be retained or received by any person who, by reason of negligence, ignorance, inebriety, immorality, criminal conduct, or other similar cause, is unfit to have its care, the infant may be removed to a place of safety, until it can be restored to its relatives or guardians, or be otherwise lawfully disposed of. No person who has been convicted of any offence under the Act, or from whose premises an infant has been removed under the Act, or whose premises are dangerous and from which an infant has been so removed, may retain or receive an infant for hire or reward. In the case of the death of any infant who comes under the protection of the Act, notice thereof must be given to the coroner within twenty-four hours of the death; and if there is no certificate of a registered medical practitioner that he has personally attended or examined the child and specifying

the cause of its death, an inquest will be held. The coroner will require the certificate to satisfy him that there is no ground for holding an inquest.

Policies of life insurance of infants kept for reward are now illegal.

Offences.—Every person guilty of any of the following offences will be liable to a penalty not exceeding £25, or to six months' imprisonment:—(1) omitting to give any of the required notices, or knowingly and wilfully making or causing or procuring any other person to make any false statement in any such notice; (2) refusing to allow an inspector, or other authorised person, to inspect an infant under the protection of the Act, or the premises in which it is retained or received; (3) obstructing an inspector when visiting premises under authority of a warrant; (4) retaining or receiving an infant in excess of the number allowed by the local authority to be received; (5) refusing to comply with an order taking away the custody of an infant or obstructing an inspector or authorised person in the execution thereof; (6) retaining or receiving an infant without lawful sanction after having had an infant taken away by the local authority, or after having been convicted for cruelty to children. And *see* further hereon under INFANTS.

BAIL.—In the article on bailments it will be seen that when A. deposits a chattel with B. for safe custody, such chattel is said to be bailed to B., the bailee. So when a man being in the custody of the law is handed over by the police or a magistrate to a private person who undertakes to keep him safely, and produce him to answer the charge made against him, at a specified date or place, the man charged is said to be on bail and his private custodian is called his bailee, or more commonly, his bail. We will here call the bailee a surety. Where a person is arrested without warrant, and cannot be brought before the Court within twenty-four hours of the arrest, a superintendent or inspector of police has authority to let him out on bail. In London, the constable in charge of the police station has, under like circumstance, in cases of petty misdemeanours, a similar authority. If the sureties believe that the person for whom they are responsible meditates flight from justice, they may arrest him, take him before a magistrate, deliver him up, and obtain their own discharge. Or they may apply for a warrant for his arrest, and when the arrest is effected, they will be discharged. In criminal cases, as a rule, only householders are accepted as sureties; not an accomplice, a married woman, an infant, a prisoner, or the accused's solicitor. A person who offers himself as a surety may be required to give information, on oath, as to his means, and an interval of forty-eight hours may elapse before he is accepted, and the person charged set at liberty. The object of this interval is to afford the police an opportunity to inquire into the character and solvency of the proposed surety. It is illegal for any money or security to be lodged with the surety as security against the flight of the person charged; and any contract in respect thereof would be void and could not be sued upon.

In the case of treason, bail can only be allowed by order of a Secretary of State or the High Court. In other cases of felony, and certain specified misdemeanours such as perjury, obtaining by false pretences, riot, and assault on a police officer, bail is in the discretion of the magistrate. In cases of the

unspecified misdemeanours, such as libel, he is bound to allow bail; though in these as in the others the magistrate has discretion as to the amount of the bail to be demanded, and the sufficiency of the sureties. A demand for "excessive" bail is prohibited by the Bill of Rights. It is doubtful whether the High Court can interfere with a magistrate's discretion to refuse bail on a remand of the person charged, in consequence of the adjournment of the hearing; but upon committal for trial, the prisoner has an appeal to that Court upon refusal to grant bail.

If the person charged should not surrender for trial at the time and place specified, the surety will be required to forfeit the amount of his bond, and in case of non-payment it will be recovered in the same way as a fine imposed on a conviction. Such a forfeiture is called enforcing a recognisance. In Scotland all offences except treason and murder are bailable by the magistrate having jurisdiction to commit for the offence bailed against; the application for bail should be in writing, and appeal lies to the High Court against the magistrate. In principle, the law and practice is the same as in England.

BAILIFF of a Sheriff is the officer employed to execute writs and processes on behalf of the sheriff, and is most commonly found in possession of a defendant's goods and chattels, which in default of payment are to be sold for the benefit of the plaintiff. Such a bailiff is bound to the sheriff, with sureties, for the proper performance of his duties, and is thus known as a bound bailiff. Should the bailiff commit any trespass or wrong whilst about the execution of his office, the sheriff would be liable therefor.

Of a County Court.—The service of summonses and orders and the execution of warrants and precepts issued out of a County Court are in the hands of an official called the High-bailiff, by whom are appointed and dismissed the assistant-bailiffs. It is the latter who generally come in contact with the public, the high-bailiff devoting himself to the regulation of their work and supervision of their actions. But should an assistant-bailiff make any default or commit any wrong in connection with his duty, the high-bailiff, as well as his assistant, is responsible therefor to the party aggrieved. Such a default would occur if the bailiff, by neglect, connivance, or omission, lost the opportunity of levying an execution; and apart from any action in respect thereof, the party aggrieved would have a right to apply to the County Court judge for the bailiff's dismissal. Plaintiffs in County Court actions are frequently put to much trouble and inconvenience by an unconscionable delay in the service of summonses, the levying of executions, and the arrest of defendants committed for non-payment of the judgment debt. Wherever such delays occur, complaint should be at once made to the high-bailiff, as a preliminary to an application to the judge if the delays should continue; the result of which will be a speedy performance of the bailiff's duty, and a regretful disinclination on his part to see the half-crown in the defendant's hand, whilst he is yet unable to see the defendant himself. Before an action can be brought against a bailiff for any act done in obedience to an order of the Court, six days' notice thereof must be given. A bailiff who holds a warrant for the possession of a tenement,

may enter upon the premises at any time between the hours of nine A.M. and four P.M.

For distraint for rent.—Until the Law of Distress Amendment Act, 1888, any person, however disreputable or irresponsible, was allowed to levy a distress for rent, extortion and abuse being consequently generally very much in evidence. But now, no one may act as a bailiff to levy any distress for rent unless authorised by a certificate granted by a County Court judge or registrar. The certificate may be special, so as to apply to a particular distress or distresses, or it may be a general one. Persons who hold such certificates and engage in the business of levying distress are now known as certificated bailiffs. If any one not holding a certificate should levy a distress, the person so levying, and any person who has authorised him so to levy, will be deemed to have committed a trespass. A managing director of a limited company, who distrained in person for rent due to the company, was held to have "acted as a bailiff," and so committed a trespass through not being certificated. This was in 1892, but had it occurred after the coming into force of the amending Act of 1895, that managing director, or any other person so acting without a certificate, would have been, as they now are, liable on summary conviction to a fine not exceeding £10, and would still be liable in respect of the trespass. A certificate may at any time be cancelled or declared void by the County Court judge.

A general certificate, which can only be granted by a judge, authorises the bailiff to levy at any place in England or Wales. The applicant for a general or special certificate must either be a person holding a certificate under the Agricultural Holdings Act, 1883; or a practising solicitor; or a ratepayer rated on a rateable value of not less than £25 per annum; or a person who gives security by way of bond, deposit, or guarantee, in the case of a general certificate to the amount of £20, and in the case of a special certificate to the amount of £5. He must, if the application is for a general certificate, satisfy the judge that he is resident or has his principal place of business in the district of the Court; and must state whether he has ever been refused a certificate or had a former certificate cancelled. A general certificate will—unless previously determined—have effect until the 1st of February next after the expiration of twelve months from the granting thereof, and it may be renewed from time to time for the like period. Notwithstanding cancellation or expiration by non-renewal, a certificate will have effect for the purpose of any distress where the bailiff has entered into possession before the date of the cancellation or expiration. On any application to cancel a certificate, whether the cancellation be ordered or not, the security may be forfeited in whole or in part, and the amount forfeited paid to the party aggrieved. If the certificate is cancelled, the security also will be cancelled, and the deposit, if any, returned; but if it is not cancelled and forfeiture has been ordered, a fresh security must be found. The only fees, charges, or expenses to which a bailiff may be entitled in respect of a distress are set out hereunder; a table thereof, and a list of the certified bailiffs in the district, are posted up in every County Court office; on request of the tenant the bailiff levying a distress must produce to him his certificate and copy of the table; and in case of a dispute as to the amount of fees payable, the registrar will settle it.

TABLE OF FEES, CHARGES, AND EXPENSES.

SCALE I. *Distresses for Rent where the sum demanded and due exceeds £20.*

For levying distress: 3 per cent. on any sum exceeding £20 and not exceeding £50; 2½ per cent. on any sum exceeding £50 and not exceeding £200; and 1 per cent. on any additional sum.

For man in possession, 5s. per day; to provide his own board in every case.

For advertisements, the sum actually and necessarily paid.

For commission to the auctioneer: on sale by auction, 7½ per cent. on the sum realised not exceeding £100; 5 per cent. on the next £200; 4 per cent. on the next £200; and on any sum exceeding £500, 3 per cent. up to £1000, and 2½ per cent. on any sum exceeding £1000. A fraction of £1 to be in all cases reckoned £1.

Subject to settlement by registrar in case of dispute, reasonable fees, charges, and expenses where distress is withdrawn or where no sale takes place, and for negotiations between landlord and tenant respecting the distress.

For appraisement, on tenant's written request, whether by one broker or more, 6d. in the pound on the value as appraised, in addition to the amount for the stamp

SCALE II. *Distresses for Rent where the sum demanded and due does not exceed £20.*

For levying distress, 3s.

For man in possession, 4s. 6d. per day; to provide his own board in every case.

For appraisement, on the tenant's written request, whether by one broker or more, 6d. in the pound on the value as appraised, in addition to the amount for the stamp.

For all expenses of advertisements, if any, 10s.

Catalogues, sale and commission, and delivery, 1s. in the pound on the net produce of the sale.

Subject to settlement by the registrar in cases of dispute, for removal at tenant's request, the reasonable expenses attending such removal.

FEES TO BE TAKEN BY THE REGISTRAR IN THE FOLLOWING MATTERS:—

For every application for a general certificate, 5s.; for a special certificate, 2s. 6d.; for approving security by bond, 10s. 6d.; for receiving deposit in lieu of bond, 4s.; for taxation, or settlement of dispute as to amount of charges, where required and the rent exceeds £20, 10s.; in like case where the rent does not exceed £20, 5s.

BAILMENT has been defined as the delivery of goods on a condition, express or implied, that they shall be restored by the bailee to the bailor, or according to his directions, as soon as the purpose for which they were bailed shall have been served. The person who thus delivers property to another is called the bailor, the person receiving it the bailee, and bailment is created by what is known as a contract of bail; but the contract itself, as well as the goods the subject thereof, may be each indifferently referred to as a bailment. This special form of contract has been the subject of much learned and analytical legal discussion. The net result of this discussion is found, first, in the definition of a bailment; secondly, in the determination of its classes or heads: and

finally, in the rights and obligations held to attach to the respective classes. We have already given a definition, and on this point it will be sufficient to simply illustrate a bailment, by reference to the case of a pledge of, *e.g.*, a watch with a pawnbroker in the ordinary way of his business.

The Classes of Bailments may be taken as five in number—(i.) Deposit, (ii.) Mandate, (iii.) For use, (iv.) Pledge, and (v.) Locatum. Before proceeding to the separate discussion of these different classes, it will be convenient to describe the nature of the contract generally. In the first place, the definition will be seen to include an obligation on the part of the bailee to deliver up the thing bailed at a certain time. From this it follows that the bailee must keep it safely, and would be responsible in case of loss or damage. And it is because of this obligation, and the need for definite principles in ascertaining its nature and extent, that definition and classification are, in this subject, so necessary. Justice cannot require that in every conceivable set of circumstances the bailee shall be answerable for the damage or loss of the property. On the contrary, the nature of the bailment is an essential factor in the question, so that responsibility shall be proportionate to and consistent with its nature. The ascertainment of this responsibility thus becomes, in every particular bailment, the problem involving the principal difficulty.

The first thing to be considered, therefore, is the nature of the bailment; is it such as to require an indulgent, an indifferent, or a rigorous test of responsibility? If the test is indifferent to either indulgence or rigour, then it will be that afforded by the care which every person of common prudence, and capable of governing a family and conducting business, takes of his own concerns. Such care is average, and is called ordinary care; and its omission is ordinary neglect. Indulgence or rigour in the test requires a care either less or more than this, but precise definition applicable to every case would be impossible. There are infinite shades of fault or neglect, from the slightest inattention to the most reprehensible supineness or stupidity; a want of extremely great care may be an extremely little fault, and a want of the slightest attention may be so great a fault as to almost change its nature and become a breach of trust, and even a deviation from common honesty. We have laid down the test for ordinary neglect; the other must lie one side or other of that, from fraud to accident. Where, precisely between ordinary neglect and either fraud or accident, may lie any conduct in question, is immaterial, for the law takes no notice of meeting lines, nice discriminations, and elusive quantities; the distinction must therefore be general. Accordingly, if the test be indulgent, neglect should be gross; if rigorous, it need only be a slight neglect. Having in view our definition of ordinary care, we can, as varying about that, define slight and gross neglect. The former is the omission of that diligence which very circumspect and thoughtful persons use in securing their own property; the latter being the want of that care which every man of common sense, however inattentive he may naturally be, takes of his own property. We will now consider each class of bailment in the order set out above, first, however, drawing attention to an all-important point, viz. that of payment or reward. What advantage accrues to the parties to the bailment?—is, for example, the owner of the horse to be paid for the loan of his horse, or is it lent free of charge? Is the plate deposited by Jones with his friend Smith intended to be merely kept in safe custody

by Smith or used by him; and does either party pay anything to the other in respect of the deposit? As these questions may be answered, so may vary the nature of the bailment. If the bailment is for the benefit of the bailor alone, as in the cases of deposit and mandate, the bailee is responsible for only gross neglect; if for the benefit of the bailee alone, as in the case of a bailment for use, the bailee will be answerable for slight neglect; whilst if for the mutual benefit of bailor and bailee, as in the cases of pledge and locatum, the bailee is responsible for ordinary neglect.

Deposit is a bailment for no particular purpose, without reward to the bailee. Such a case would arise where the owner of goods leaves them, merely for his own convenience, with another person, there being no particular agreement between them either as to safe custody, safe re-delivery, or a reward. Deposits on such lines as these are of everyday occurrence, as well in the private affairs of life as in business. The bailee would not be answerable if, for example, the goods were stolen without his fault; nor would even an ordinary neglect make him liable, for if he keeps the goods with ordinary care, he has fulfilled the trust imposed upon him. The bailee is therefore not responsible for the thefts, or other misdeeds, of wrongdoers, which he is not, nor cannot be, sufficiently armed against. Nor would he be responsible for the consequences of an accident, *e.g.* fire, over which he could have no control. A gentleman one evening went into a well-known West End restaurant for the purpose of dining, his overcoat being there removed by a waiter, and without any directions hung upon a peg. The overcoat disappeared, and its owner was able to recover its value from the restaurant-keeper on the ground that the custody of the overcoat having been spontaneously solicited and accepted, its unexplained disappearance alone was sufficient evidence of a lack of proper care. On the other hand, an author sent unsolicited a manuscript play to a celebrated theatrical manager. The latter lost it, but was held not to be responsible for mere carelessness apart from wilful negligence. The author had therefore to bear the loss himself.

But the degree of care must be regulated by the nature of the property bailed. Thus, if A. sends his horse to B., a mere gratuitous bailee, who turns the horse after dark into a dangerous pasture, to which it was unaccustomed, though the place might be perfectly safe to his own cattle, yet dangerous to the horse, B. would be liable to A. for any injury resulting to the animal from such incautious conduct. The bailee may not sell or pawn the property bailed, so as to affect the rights and interests of the bailor. Nor should he use it, unless it is of such a nature as would require use for its preservation. Thus the bailee should use a horse so as at least to give it proper exercise. If property is taken away or injured by a third party the bailee may maintain an action against him, or prosecute him in the same way as the absolute owner might. If property belongs to several joint-owners who concurrently deposit it with the bailee on their joint account, the bailee should not give it up except with the consent of all parties. But it would only be the parties to the deposit whose consent would be required; not that of any others of whose relation to the property the bailee became aware only after he had received the deposit.

Mandate is a case of bailment where the property is deposited for a particular purpose, but without reward. It differs from mere deposit, in

that the latter imposes an obligation upon the bailee of custody only; whilst the class of bailment we are now considering imposes upon the bailee the additional obligation of doing something. To the lawyer the word bailment, and especially the class of mandate, at once suggests the case of *Coggs* v. *Bernard*. In this case Bernard had assumed without pay to safely remove several casks of brandy from one cellar, and lay them down safely in another, but he unfortunately managed the business so negligently that one of the casks was staved. Coggs obtained a verdict for damages, but on appeal it was urged that Bernard was not liable since there was no agreement to recompense him for his pains, and that moreover it was not within his ordinary business to do such work. But Bernard was unable to get the Court to relieve him of his liability on those grounds; he obtained instead the doubtful honour of being party to a leading case, and a famous judgment by Lord Holt; and for two hundred years he has held a place in the memory of lawyers wherever the common law of England has taken root. Such a bailee is considered to have engaged himself to use a degree of diligence and attention adequate to the performance of his undertaking, and he is obliged to exert himself *bonâ fide* to the utmost of his usual ability in proportion to the necessities of the business in hand. And he must neither do anything, however minute, by which the bailor may sustain damage; nor omit anything, however inconsiderable, which the nature of the act requires to be done. Where a person undertakes, without reward, to perform a particular service, and whose situation is not such as implies skill or knowledge in the particular transaction, he is not responsible for loss when he has acted *bonâ fide*, and exercised the same care which he takes of his own affairs. If a medical practitioner attend a patient out of charity and without reward, he will be as much liable for the result of any negligent treatment as if the patient had been a paying one. Should a person improperly meddle with goods casually left in his possession, he may incur an additional degree of responsibility on account of such interference.

For use arises where the property is bailed to be used by the bailee without reward, as where a man lends his guest an umbrella to go through the rain with. In such case the borrower is responsible for any loss or damage occasioned by his own neglect; also if he uses the property in a manner not warranted by the terms of the loan; or if, facilitated by some neglect on his part, there is a robbery of the property. The bailor or lender is under an obligation to disclose to the bailee any defects in things bailed of which he is aware. Accordingly, if the bailor lent a gun which he knew would be used and which he also knew would probably burst, he would be liable in case of any injury resulting to the bailee in consequence of the gun bursting. Where the loan is for a use in which the lender has a common interest with the borrower, the bailee can be responsible for no more than ordinary neglect. For example, if A. and B. invite some friends common to both to an entertainment, prepared at their joint expense, for which purpose B. lends a service of plate to his companion, who undertakes the whole management of the feast, A. is obliged to take only ordinary care of the plate. Generally speaking, a hirer who pays for the use of the thing hired may lend or let it; but a person who, as in the case we are now considering, does not pay cannot lend or let, but must be prepared at all times to

return it to the owner in as good condition as received, fair wear and tear excepted. It is hardly necessary to add that he cannot dispose of or pawn it; a borrower of a book may not relend it.

The next kind of bailment enumerated above is that of **pledge**, but all discussion of this will be found under that title, to which reference should be made. The fifth and last kind is that called **locatum**, as where the thing is let on hire, or is bailed for work and labour to be bestowed on it, or to be carried from place to place. This leads to three subdivisions, viz. hiring in the everyday sense of the word; letting for work, &c.; and carriage. Leaving carriage for separate consideration, we will now briefly discuss the other two.

Hire.—By this bailment the hirer obtains a temporary qualified property in the thing hired, and the owner acquires an absolute property in the price of the hiring. It has been said that the hirer of goods is bound to use the utmost diligence; but it is now fully understood that a hirer is not bound to exercise more than ordinary diligence and care over the thing let to hire, such as a prudent man would use if it were his own. Nor would he be liable if the thing hired were destroyed by an accidental fire. For example, if A. hire a horse, he is bound to ride it as moderately, and feed and treat as well and carefully as any man of discretion would ride, feed, and treat his own horse. If through his negligence or misconduct, as by immoderately riding the horse, or badly feeding it, or treating it as though it were ill, imprudently giving it medicine himself, and not obtaining veterinary assistance, or leaving the door of the stable open at night, any injury or loss should result therefrom, he will be answerable therefor.

But if A. should hire a carriage and horse, and the owner send with them his coachman, A. is discharged from all attention to the horse, and is only obliged to take care of the inside of the carriage whilst he remains in it. And the hirer's responsibility extends to the negligence of his servants while acting in the course of their employment. So the hirer of a carriage is not liable to the owner for injuries thereto sustained while the hirer's coachman is driving it outside the course of his employment. It is the act of the servant which is the act of the master that involves the latter in a liability therefor. If a house be let verbally, with no other stipulation than for the rent, the tenant is bound to use the same diligence in preserving from injury the fixtures and other portions of the property that every person would use if the house were his own; in default the tenant would be liable for damage.

For work or care occurs where the bailment is to have labour or care bestowed upon it with reward to the bailee. It does not matter whether the reward be by money or some other advantage to the bailee, whether one that is obviously adequate or the contrary, or one the value of which cannot be readily ascertained. Thus the waterman may give the use of his boat in return for a fixed sum; a sportsman may lend to another his hunter in exchange for the loan of some dogs; or Jacob may, as he did in fact, undertake the care of Laban's flocks and herds for no less reward than the latter's younger daughter, whom he loved so passionately that seven years were in his eyes like a few days; in each case the bailee is equally bound to exercise such a vigilance and care as should be observed by every prudent man with regard to his own property. So acting, the bailee would not be

answerable for a theft, unless it could be shown that the bailee had used greater precautions to secure his own property than he used with regard to the property bailed. Thus, a watch was delivered to a watchmaker for repair, who locked it up in a drawer in the shop. The watch was stolen by a youth who slept in the shop with the sole object of protecting the place from theft; but the watchmaker had to recoup the owner of the watch, because other watches had been placed in a more secure place.

Rights of action.—In cases of pledge and locatum, where the property bailed is taken out of the possession of the bailee, only he can take proceedings for its recovery; but in the other kinds of bailments, proceedings may be taken by either the bailor or bailee, but should damages be recovered by either, the other will be deprived of his right to sue. In this connection reference may be made to a recent case where a horse had been sent by its owner to an auctioneer for sale, but with liberty to the auctioneer to use it until sold. While the auctioneer was driving the horse in his own carriage, both horse and carriage sustained damage through the negligence of a tramcar driver. He sued the tramway company, and was allowed damages in respect of the carriage. As to the horse he failed, for it was held that in the absence of negligence on his own part, he was under no liability to his bailor for any injuries sustained to the horse. *See* CARRIERS; HIRE-PURCHASE SYSTEM; INNS AND INNKEEPERS; PAWNBROKERS; WAREHOUSEMAN.

BAKEHOUSE is a place in which bread, biscuits, or confectionery are baked, from the baking or selling of which a profit is derived; but if steam, water, or other mechanical power is used therein it becomes a factory, and as such is subject to the general provisions of the Factory Acts. When the bakehouse is a place from which the things baked are sold retail and not wholesale, the sanitary provisions of the Factory Acts, which apply specially to retail bakehouses, are enforced by the medical officer of health of the local district authority and not by inspectors under the Factory Acts. We will here confine our attention to retail bakehouses, the wholesale being, amongst other places, the subject of the article on FACTORIES. Persons above the age of sixteen may be employed in bakehouses between the hours of five A.M. and seven P.M., but are subject to the regulations under the Factory Acts relating to the employment of what are termed male young persons. The bakehouse must be lime-washed, painted, and washed in its interior at certain specified times; must not be used as a sleeping-place, nor may any place on the same level therewith and forming part of the same building, unless it is separated entirely by a partition extending from floor to ceiling, and unless there is also an external glazed window with an area of at least nine superficial feet, of which area at least half may be opened for ventilation; nor may it be a place underground unless it was so in use on 1st January 1896. To contravene these regulations is to render the owner or occupier liable to penalties. *See* also BREAD.

BALANCE-SHEET of a bank.—The study of the statement issued every year or half-year by a bank is of great practical interest, showing as it does the strength and stability of the bank, and the policy of the directors with regard to the management of the resources committed to their charge. And these resources are in many cases absolutely vast, amounting to any

figure up to and about fifty millions; all of which represents a large part of the substance of the bank's customers, and at the same time impresses the public with an appearance of magnificent strength which induces an ever-increasing respect and confidence. Yet the amount of money entrusted to the safe custody of a bank is by no means a sure test of that bank's stability; it is in fact, considered alone, no test at all. The true test, from the customer's point of view, is ultimately the relation between that amount and the sum it preserves available as a source for the immediate repayment thereof; such available sum being termed the bank's reserves. These periodical statements are the balance-sheets, and a perusal of all those issued would disclose, in addition to the fact that such large sums belonging to the public are left in the hands of the banks, the still more startling fact that there is a universal absence of any fixed rule as to the proportion of capital, cash, or investments, that should be held against liabilities to the public. The following is an illustration of the balance-sheet of a bank:—

Liabilities.	£	*Assets.*	£
Capital paid up		Cash in hand and at Bank of England	
Current-account balances		Money at call and short notice	
Deposits		Investments—	
Other liabilities, drafts, letters of credit, &c.		Consols	
Acceptances		British Colonial stock	
Reserve fund		Foreign stock	
Rebate on bills not due		Railways	
Profit and loss		Docks, &c. &c.	
Balance brought forward		Other securities	
Net profits for the half-year		Bills discounted—	
		Three months and under	
		Exceeding three months	
		Loans and advances	
		Liabilities of customers on acceptances	
		Bank freehold and leasehold premises, furniture, and fittings	
		Other assets	

Profit and Loss Account.

	£		£
Interest accrued and paid		Balance brought from last account	
Current expenses		Gross profits for half-year, provision having been made for bad and doubtful debts	
Salaries and rent			
Rebate on bills not due			
Dividend			
Bank premises account			
Balance carried forward			

Having already indicated that the crucial test of the bank's stability is to be found in the relation of its reserve to the liabilities, we will proceed to show how it may be applied—first, however, referring once for all to the profit and loss account merely to point out that this simply shows how the profits are to be applied, it not materially affecting our consideration of the

main question. To return to the capital account, attention should be paid to the item *Reserve Fund*, this being the amount laid by out of the profits as some set-off against liabilities. But this, though a part of the general reserve, is not the real reserve of which we are speaking; in fact, when used as capital in the business, as its position in the balance-sheet would indicate, it becomes, for working purposes, really a further liability of the bank—a deposit by the shareholders as a contribution towards both capital and a resource in time of need. The policy of building up a reserve fund is a sound one, and should be encouraged as much as possible by both shareholder and customer. Though proportionately to its accretion it for the time being reduces dividends, it ultimately becomes a dividend-earning capital increasing the paid up working capital—a very desirable end in these days of banks working upon a minimum of capital, and shareholders generally fearful of a call; it also increases the whole working resources of the bank.

And now for *the liabilities*. From the point of view of customers, these may be described as the total amount of the customers' money employed in the business, and in the above balance-sheet will be comprised in the items: current-account balances, deposits, drafts, &c., in circulation, and acceptances. Of these the two first are the most important, and call for little or no explanation. Practically all of us have a drawing or current banking account, and some time or other it is our happy lot to be in credit with the bank. When this occurs, then for the time being there is a current-account balance against the bank: deposits occur where money is left specifically with the bank at interest; drafts in circulation are drafts at a short date, or on demand, drawn by provincial banks on their London agents, or by branch banks on the head-office; acceptances are liabilities the bank has incurred on behalf of its customers against a deposit of securities. Such are the liabilities of the bank, in respect of which repayment may be demanded. Deposits, which should always be separated from current-account balances in a *bonâ fide* balance-sheet, are subject to a varying period of notice before repayment; drafts and letters of credit may be cashed very quickly, or in the latter case drawn on spasmodically; acceptances mature day by day, and provision is always made for them. Fortunately the current-account customer, who more than any other may have a bank at his mercy, is on the average a solid and satisfied man, whose disposition would be to assist rather than to involve his bank at a time of panic. But business is business, and the other side of the balance-sheet must be carefully examined.

The first two items should always be kept distinct; there is a vast difference between the first, where cash is actually in hand available for immediate use; and the second, where, though at call or short notice, it is probably in the hands of the billbroker or stockbroker, who, in a time of financial stress, may be as hard pushed for cash as the bank that wants it back. The first item is the real and genuine *cash reserve*—the only one the nature of which can compare with the reserve always kept by the Bank of England. The reserve fund would probably be useless for its purpose at a time of stress, it being invested in the same manner as the rest of the bank's working resources; but some banks only invest the reserve fund in consols—there the case is different, though not so loved by the dividend-hunting shareholder.

The next item, *investments*, concludes the list of assets which are easily realised and available in time of need—the sum of which may be termed the bank's liquid assets. The first and best investment is consols, but unfortunately, though naturally, the price is high, the interest low, and a bank exists primarily to make as much profit as possible, the result being as small an investment as possible in English Government Stock. The next class, which is also not a very profitable one, includes Indian Government Stocks, Colonial Government Stocks, Corporation Stocks, and English Railway Debenture Stocks. After this come foreign government bonds and dock and water debentures and stocks; then ordinary mining and industrial debentures and shares, with land, houses, and rent charges. No balance-sheet can in any way assume to afford a conclusive satisfaction that does not set out in detail its investments according to their class, with the respective amounts represented by each; many banks do this, but a great many do not. Investment in mines and industrials are generally bad when considered from the point of view of their availability as liquid assets; they are bad also because of their constant fluctuation in value. Real estate is also bad, for nothing, especially when represented by large parcels, sells so poorly at a forced sale; it tends, moreover, to accumulate in the hands of a bank doing a local business, and the more it accumulates and its area is concentrated, the less is it available for realisation; and yet again, a question of title often unexpectedly turns up, forcing the bank either to forego the security at an absolute sacrifice, or to hold its hand for years with a view to settlement by time. But there is one thing always absent in this part of the balance-sheet. The bank may give many reasons why it is not there, but a reason is impossible that can conclusively satisfy the inquirer. What is the basis for the valuation of the investments? This is a very serious question when they total up to a sum amounting to millions. It may be that the valuation is based upon the price paid, or the money lent; or it may be upon the actual market-value at the time of making up the balance-sheet; or it may be a value struck between the two. Whatever the principle of the valuation may be, the auditors seem invariably to keep it quiet. The necessity, even the justice of satisfaction upon this point must be obvious. If, in a long list of investments representing twenty millions, there has been an all-round depreciation of value of 10 per cent., and the value has been placed at the money paid or lent, there is an undisclosed loss of about two millions. Where a bank has involved itself very largely in the finances of some great brewery whose shares have depreciated 50 per cent., what steps does it take to disclose the fact to those whose money it uses? And the same question may arise where the bank has extensively financed building operations in a locality where building has been an utter failure, and property is unsaleable at any reasonable price; so, too, in many other similar circumstances.

Proportion of assets to liabilities.—Such criticism as the above becomes particularly pertinent when we see how small a proportion is maintained between the total liquid assets and the liabilities. In view of the growing public affection for the mammoth joint-stock banks, it is curious to note that the highest proportion is that of a well-known private firm of City bankers, whose balance-sheet for June 1900 shows a proportion of nearly 62 per cent.; the four best joint-stock banks from that point of view in Decem-

ber 1900 decreasing from a lower figure than the above to 49·19 per cent., whilst the rank and file of such banks go down so low as 17·18. And these are the total liquid assets made up of the three different classes of assets already considered in detail—the 62 per cent. total including about 21 per cent. of cash in hand, and about 41 per cent. of investments; the 49·19 per cent. example, 18·48 per cent. of cash in hand, 16 per cent. of money at call, 14·71 per cent. of investments; whilst the 17·18 per cent. bank is so low as to have no cash in hand at all, 8·94 per cent. of money at call, and 8·24 per cent. of investments. In this connection it is instructive to refer to the article on the BANK RETURN and note how the Bank of England is adversely criticised when its reserve of actual gold and bullion in hand is so low as 48§ per cent. How necessary it is, therefore, that an eye should be kept upon the investment item in a bank's balance-sheet, when that item represents the most considerable part of an already too low reserve.

The items *bills and advances* should always be kept distinct; the bills first, being a better security and generally met at maturity, and the advances second, the repayments of which are not usually so prompt; but on no account should these two items be included amongst the former so as to improperly swell the amount of liquid assets. The liability of customers on acceptances, the subject of the next item, is the corresponding entry to the acceptances referred to on the other side of the balance-sheet. As to the bank premises, little need be said except that their value would be doubtful if they became vacant in consequence of the bank being forced to give up possession as a result of failure, but in any case part of the profits ought to be applied to their account by way of sinking fund or otherwise.

But there is one item we have left until the last; that of the *capital paid up*. Of course, if the bank is working at a loss, or loses heavily as a consequence of a run or a financial crisis, this will soon go, but in the meanwhile it is a valuable provision for the customer. More valuable, however, is the *uncalled capital* which does not appear in the balance-sheet itself, though it is probably mentioned in the heading. It has already been referred to in the article on BANK SHARES as a reason why the small capitalist should avoid them. To the bank customer it is a solid guarantee against loss, and its amount is always easily ascertainable. One bank, with a total capital of nearly sixteen millions, has nearly thirteen uncalled; another, with a capital of fourteen millions, has over eleven uncalled; and in much the same proportion is the uncalled to the paid-up capital in all the leading banks.

Of companies and private traders.—The preparation of an annual balance-sheet and its circulation among the shareholders is made compulsory in the case of a company, other than a private company, having a share capital, by the Companies Act, 1908. It is not in the same way compulsory in the case of private traders, but apart from the desire which every man of business should have to know accurately his financial position, it is necessary for such a trader to keep proper books, and inferentially to prepare a balance-sheet; not to do this would be to render himself amenable to the bankruptcy laws. It is, moreover, of considerable advantage to him if he should wish to make arrangements for an overdraft with his banker; the latter being accustomed to place great faith upon the balance-sheet of a customer whom they know to be personally of good business character. In case of making any post-

SIR EDWARD ALBERT SASSOON, Bart., M.P., born 1856. Head of the firm of David Sassoon & Co., merchants and bankers, of Bombay and London, and Director of the Daira Sameh Co. Has written much on economics and Indian currency.

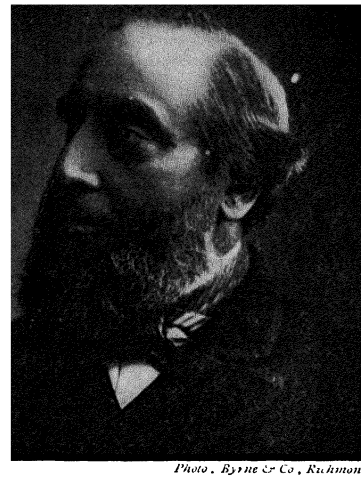
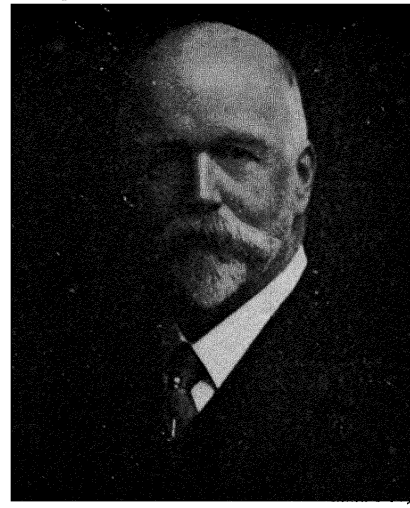


Photo. Byrne & Co., Richmond

SIR JOHN WHITTAKER ELLIS, Bart., Lord Mayor of London 1881–82, and first Mayor of Richmond (Surrey), was born 1829. Has sat in Parliament for Mid-Surrey (C.) and Kingston (C.). Chairman and Director of the Alliance Bank. Much interested in hospitals, and received the Order of Mercy from Queen Victoria in 1900.

Photo Cook, Philadelphia

JOSEPH FELS is the founder of the firm manufacturing and selling Fels-naptha Soap, and a very successful business man. He writes on his system of trading in the "Business Encyclopædia," which is known as the "money-back" method. Is an ardent supporter of Land Reform movements such as the Taxation of Land Values



SIR A. SPICER, head of the firm of James Spicer & Sons, one of the most representative houses in the paper trade. Has been a very active public man all his life, and besides representing Central Hackney in the House of Commons, is keenly interested in the work of the Chamber of Commerce and many social and political unions. Is a member of the Commercial Intelligence Committee of the Board of Trade.

SUCCESSFUL BUSINESS MEN

BALANCE-SHEET OF THE COMPANY

Made up to the day of 19

Dr. *Cr.*

CAPITAL AND LIABILITIES.			£ s. d.	£ s. d.
I. Capital.		*Showing:—*		
	1	The number of shares.		
	2	Amount paid per share.		
	3	If any arrears of calls, the nature of the arrears, and names of defaulters.		
	4	Particulars of any forfeited shares.		
II. Debts and Liabilities of the Company.		*Showing:—*		
	5	Amount of loans on mortgages or debenture bonds.		
	6	Amount of debts owing by Company, distinguishing— (*a*) Debts for which acceptances have been given. (*b*) Debts to tradesmen for supplies of stock-in-trade or other articles. (*c*) Debts for law expenses. (*d*) Debts for interest on debentures or other loans. (*e*) Unclaimed dividends. (*f*) Debts not enumerated above.		
VI. Reserve Fund.		*Showing:—* Amount set aside from profits to meet contingencies.		
VII. Profit and Loss.		*Showing:—* Disposable balance for payment of dividends (or profits).		
Contingent Liabilities.		Claims against the Company not acknowledged as debts. Moneys for which the Company is contingently liable.		
			£	£

PROPERTY AND ASSETS.			£ s. d.	£ s. d.
III. Property held by the Company.		*Showing:—*		
	7	Immovable property, distinguishing— (*a*) Freehold land. (*b*) ,, buildings. (*c*) Leasehold.		
	8	Movable property, distinguishing— (*d*) Stock-in-trade. (*e*) Plant. Cost to be stated, with deductions for deterioration in value, as charged to the reserve fund or profit and loss.		
IV. Debts owing to the Company.		*Showing:—*		
	9	Debts considered good, for which bills or other securities are held.		
	10	Like debts, for which no security is held.		
	11	Debts considered doubtful or bad. Any debt due from a director or other officer of the Company to be separately stated.		
V. Cash and Investments.		*Showing:—*		
	12	The nature of the investments and rates of interest.		
	13	Amount of cash, where lodged, and if bearing interest.		
			£	£

nuptial marriage settlement, or any voluntary settlement or disposition of his property, such as by way of gift, his balance-sheet for the time being will be valuable evidence that he was in a position to make such a settlement or disposition of his property. Again, on the sale of his business, or when taking in a partner, the balance-sheet would be the central point of investigation. On the previous page we set out a suggestive form of balance-sheet applicable to the business of a limited company; this being equally useful to a private trader, the only material variation being in item I., which in his case would not be so complicated.

The compulsory balance-sheet of a company must be completed within seven days after the fourteenth day after the annual first or only ordinary general meeting, and, duly signed by the manager or secretary, must be forwarded to the registrar of companies. It must be audited by the company's auditors, contain a summary of the share capital, liabilities, and assets, giving such particulars as will disclose the general nature of those liabilities and assets, and how the values of the fixed assets have been arrived at. But this balance-sheet need not include a statement of profit and loss. A penalty of £5 per day is incurred by default. In a balance-sheet the capital account represents all the money invested in the business otherwise than by way of temporary loan. The reserve fund depends upon the nature of the business; if it is one in which there is little property, plant, or stock, and depends mainly upon dealings in a stock that goes in and out at very short intervals, as in the case of a coffee-shop, or upon personal efforts, the reserve fund should aim at reaching the same amount as the capital originally invested. There are, of course, businesses in which such a reserve fund would not be needed; but in every case there is depreciation in buildings, plant, or stock to be guarded against. The principles upon which such a fund may be built up will be found in the articles on SINKING FUNDS, AMORTISATION, and ANNUITIES. Bad and doubtful debts should also come within the scheme of a reserve; and income-tax is a liability which should be accounted for before the final balance is struck. The principles of criticism of a balance-sheet are the same in all classes of undertakings, and this second part of our topic may be very well considered in the light of the criticism already made in the case of the balance-sheet of a bank. Reference should also be made, on the whole subject, in addition to the articles relating to banking, to those on AUDIT; BOOK-KEEPING; and PROFIT AND LOSS.

BALLOT is a method of voting at an election, the object aimed at being absolute secrecy, so that voters may be protected against intimidation and wrongful influence. This method is adopted in parliamentary, county council, municipal, school board, and district and parish council elections. The vote of each elector is recorded upon a separate paper called a ballot-paper, which contains the names and descriptions of the candidates for election. The ballot-paper is required to have a number printed on the back and a counterfoil attached to it with the same number printed on the face; there must be also an official mark appearing on both sides. The ballot-paper, duly marked, is delivered to the voter in the polling-station, his number on the voters' register having been marked on the counterfoil. Every person whose name appears on the register is entitled to a ballot-paper and to vote thereon, unless the returning-officer is satisfied that he is

not really the same person as the one on the register, or that he has previously voted at the same election, or in case he refuses to take oath or affirmation. If a voter is unable, through blindness or other physical defect, to vote in the prescribed manner, or being a Jew and the election is taking place on a Saturday, or he objects on religious grounds to vote in such prescribed manner, or if he makes a declaration that he cannot read, the presiding officer at the polling-station must, in the presence of the agents of the candidates, mark the ballot-paper on the voter's behalf and according to his directions. Should a returning-officer wrongfully refuse to allow an elector to vote, the latter will have an action against him for damages.

To vote, the elector having obtained his ballot-paper, should secretly, in one of the compartments at the polling-station provided for the purpose, place a cross on the right-hand side opposite the name of each candidate for whom he votes; and if in so doing the ballot-paper is inadvertently spoilt, another one may be obtained from the presiding officer. The cross should be placed as nearly as possible in the required position, in order that there may be no uncertainty as to the candidate it is intended to refer to. Should there be such an uncertainty; or should votes be recorded against more candidates' names than the voter is entitled to vote for; or should anything be written or marked on it by which the voter may be identified; or should the ballot-paper be without the necessary official mark; such ballot-paper and the votes recorded thereon, or intended to be, will be void and not counted. After having marked his ballot-paper the voter should fold it up so as to conceal his vote, and in the presence of the presiding officer, after having shown him the official mark at the back, place it in the ballot-box. All the officers, clerks, and agents in attendance at the polling-station are under the strictest obligation to maintain the secrecy of the ballot; so also are those engaged in the counting. Nor may any such person interfere with the voter, or attempt in any way to obtain information as to the vote he has given or intends to give.

A person who commits or attempts to commit any of the following offences is liable to punishment: a returning-officer or an officer or clerk in attendance at a polling-station, to two years' imprisonment, with or without hard labour; any other person to six months. These offences are:—(*a*) To forge, counterfeit, fraudulently deface or fraudulently destroy any ballot-paper or the official mark thereon; (*b*) to supply, without authority, any ballot-paper to any person; (*c*) to fraudulently place into any ballot-box any paper except the ballot-paper he is authorised by law so to do; (*d*) to fraudulently take any ballot-paper out of the polling-station; and (*e*) without due authority to destroy, take, open, or otherwise interfere with any ballot-box or packet of ballot-papers in use for the time being for the purposes of the election. *See* also CORRUPT PRACTICES.

BANK-BOOKS as evidence.—Where a party to an action finds it necessary to give in evidence the state of a banking account or other entries in the books of a bank, all that will be required from him will be the production by an officer of the bank of correct copies of the entries material to the case. By this means the great inconvenience attending the production of the original books is avoided. A party to litigation may also obtain an order allowing him to inspect and take copies of such entries.

BANK HOLIDAYS.—In England and Ireland, Easter Monday, the

Monday in Whitsun week, the first Monday in August, and the 26th December if a week day, or if a Sunday the 27th, are the four statutory bank holidays, and in Ireland the 17th March also. In Scotland they are New Year's Day, Christmas Day (or the following Mondays if these fall on Sundays), Good Friday, and the first Mondays of May and August. By Order in Council other and additional days may be appointed. These holidays are kept as such in all banks, the Customs and Inland Revenue offices and bonded warehouses. Bills and notes payable on such days, and notices, presentations, and forwardings thereof are payable, given, or made, as the case may be, on the following day; and no payment or act may be compelled to be made or done on a statutory bank holiday, which cannot be compelled on a Christmas Day or a Good Friday. SUNDAY; DAYS OF GRACE, may also be referred to hereon.

BANK NOTE.—A bank note is a bill of exchange or promissory note issued by the banker for the payment of money to the bearer on demand. Bank notes for less than £5 are forbidden in England; so also is it forbidden to circulate in England, Ireland, or Scotland, English notes of less than that amount. Except when tendered by the Bank of England itself or its branches, notes of that bank are legal tender for all sums above £5, and so would the notes of a county bank be a good tender if not objected to at the time of tender. Bank notes are not goods, nor securities, nor documents for debts; they are, in fact, as much money as sovereigns themselves are, or any other current coin that is used in ordinary payments as money or cash. They pass by a will which bequeaths all the testator's money or cash; on payment of them, whenever a receipt is required, the receipts are always given as for money, not as for securities or notes. As in the case of money stolen, the true owner cannot recover a bank note after it has been paid away into currency fairly and honestly upon a valuable and *bonâ fide* transaction. The holder of a bank note has, when presenting it for payment at the bank by which it was issued, a right in the first instance to refuse to say how he came by it; but on the other hand the bank, upon sufficient reason, has a right to suspend payment until it is ascertained that the party tendering it for payment is uncontaminated with theft or fraud. Such a case might arise where notice had been received of the theft or loss of the note, but it would lie upon the bank to fix the theft or fraud, or guilty knowledge thereof, upon the holder. The preservation of a bank note in its perfect state is a matter of the utmost importance, and accordingly it is protected against alteration or mutilation in a way no other instrument is protected; thus the alteration of a note by erasing the number and substituting another would be such a material alteration as to make it void. But in the case of notes other than those of the Bank of England, the alteration, if not apparent, would not prejudice the title thereto of a *bonâ fide* holder for value. We will now deal with some special aspects of our subject.

Lost Notes.—Where the holder of a Bank of England note has lost it, the proper course for him to take is to notify his loss to the Bank of England, and to get another note of equal value from the bank upon giving a good indemnity.

Halves of Notes.—The property in the halves of bank notes sent in payment of a debt due to the receiver from a third person, with an intention on

the part of both sender and receiver that the other halves are to follow, remains in the sender until he sends the second halves; the payment being until then incomplete and conditional. It is accordingly open to the sender, at any time before sending the second halves, to withdraw from the transaction, and redemand the first halves from the receiver, who is liable to an action for refusing to return them. A bank is bound to pay on the production of the half of a bank note, either with or without an indemnity from the holder.

Presentation of Notes and Payment.—If the payee of a bank note does not promptly present it for payment or put it into circulation, he cannot recover its value from the person from whom he received it, if the bank should stop payment. It may be an advantage when taking a note other than one issued by the Bank of England, to obtain the endorsement of the party from whom it is received, the effect of which would be to make him liable in case the bank by which it is payable stopped payment before presentation. A party who hands over such a note, without endorsing it, is not liable thereon; he only warrants that the note is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless. Indorsement would not be necessary in order to make the party transferring it liable, where it could be shown that the payment was conditional upon the notes being honoured. Such a condition would exist in a case where the note is cashed merely to oblige the payer, or is given in payment of a debt.

Stolen Notes.—It occasionally happens that a person finds himself in possession of a bank note which has been lost or stolen, and which, on that account, for the time being the bank refuses to pay. What is his position? The answer is very much the same as if the note had been a lost or stolen chattel. If he had found it himself he would have a right to it against all the world except the true owner, but if having so found it and made such efforts to find the owner as any honest man should and would make, he will certainly not object to the bank refusing payment when at the same time it can satisfy him that the owner has been found. There, in fact, is the end of the matter. But if the holder of the note has himself received it from another, who or whose predecessors in title had stolen it, the question is slightly more involved; and to determine it in the holder's favour it will be necessary for him to have obtained the note in such a manner as to satisfy both of the following two conditions. The first is that he took the note *bonâ fide;* the second, that he gave value for it. Total non-compliance with either of these conditions will render the note valueless in his hands. But whether a varying degree of non-compliance of either or both will have the same effect will depend upon the circumstances of the case. The second condition is often a test of the first; the payment of a grossly inadequate sum in exchange for a note is pregnant evidence of a guilty knowledge. But the mere deduction of discount at ordinary market rates, when cashing a Bank of England note abroad, would hardly be such evidence. Having once, however, fully and thoroughly established the fact that adequate value had been given for the note, it will not be enough, in order to successfully resist payment to the holder, to show that there was carelessness, negligence, or foolishness in not suspecting that there was anything wrong about the note. On the contrary, it would be necessary to

show that the person who gave value for the bill had noticed that there was something wrong about it when he took it, even though he did not know what the particular wrong might be. If a person, knowing that a note was in the hands of a man who would not be likely to have a right to it, should happen to think that, perhaps, the man had stolen it, when, if he had known the real truth, he would have found, not that the man had stolen it, but that he had obtained it by false pretences, that would not make any difference if he knew there was something wrong about the note and took it. If he takes it in that way he takes it at his peril.

If he were honestly blundering and careless, having for example forgotten the particulars of an advertisement relating to the note, and so cashed it when he ought not to have done so, still he would be entitled to payment. But if the facts and circumstances are such that the jury, or whoever has to try the question, came to the conclusion that he was not honestly blundering and careless, but that he must have had a suspicion that there was something wrong, and that he refrained from asking questions, not because he was an honest blunderer or a stupid man, but because he thought in his own secret mind—I suspect there is something wrong, and if I ask questions and make further inquiry it will no longer be my suspecting it, but my knowing it, and then I shall not be able to recover—that would be dishonesty, and the holder would not be *bonâ fide*, and would not be entitled to payment. *See* BILLS OF EXCHANGE; CHEQUE.

BANK OF ENGLAND.—This institution was projected in 1694, by William Patterson, a Scotsman. The whole of the capital, amounting to £1,200,000, was to be lent to the Government, who gave the bank its sanction and support, with the result that within ten days from the date of the opening of the bank the capital was fully subscribed. In July 1694, the bank received its first charter, which was to continue for eleven years certain, or until a year's notice after the 1st August 1705. Since then there have been numerous further and supplementary charters until, in the year 1844, was passed the Bank of England Charter Act, which remains to this day the sanction and protection of the bank; and during this period the loan to the Government periodically increased until, in 1844, it reached the amount of £11,015,000, at which figure it still remains. So soon as two years after its establishment, the bank became financially involved, and was obliged to even suspend payment of its notes. The Government, however, came to its assistance, and the above state of affairs was not repeated until 1797. In that year the Bank Restriction Act was passed, which required the bank to temporarily suspend payment of its notes in gold. This Act was as much an act of justice by the Government as the result of necessity, for the difficulties of the bank were, and have generally been, the result of the financial operations of the Government. In 1819 a Bill was passed, commonly known as Peel's Bill, which provided for the gradual resumption of cash payments. This Act provided that the Bank Restriction Act should continue in force until the 1st February 1820, after which, by certain gradual steps, an absolute payment in specie should be arrived at on the 1st May 1823; the bank, however, anticipated this latter date by two years.

In 1832, a committee of the House of Commons was appointed to report upon the expediency of renewing the charter of the bank, and into the

system on which the banks of issue in England and Wales were conducted. The report of this committee contained the opinions of the highest authorities in questions of political and financial science, as well as the experience of practical men, and it authoritatively established the principles of sound banking. It was with this report before Parliament that the charter was renewed for ten years from 1834, and the Bank Charter Act of 1844 subsequently passed. By the Bank Charter Act the issuing and banking functions of the Bank of England were separated, its issue of notes strictly limited, and a different system of account and staff of officers allocated to each department. The bank could issue notes on a fixed amount of securities to the value of £14,000,000—being the before-mentioned Government loan of £11,015,000 and certain other securities incidental to the lapsed note-issue of other banks amounting to nearly £3,000,000. The next point of importance in the Act is the absolute prohibition of any new bank with a power to issue notes, and the limitation of the issues of all then existing banks of issue to an average of the circulation of each bank for the twelve weeks preceding the 12th April 1844. It was further provided that joint-stock banks in London might accept bills for any period, instead of such bills being confined to dates of not less than three months. By the Bank Act, 1892, provision was made for the grant of a supplementary charter to regulate the internal affairs of the bank.

Since 1844 there have been a very considerable series of lapses in the note-issues of other banks, and by this means the authorised circulation of the Bank of England has increased from £14,000,000 to nearly £18,000,000. The note-issue above the amount authorised is required to be backed by certain reserves, as to which reference should be made to the article on the BANK RETURN, and a statement of affairs is required by the Bank Act to be published every week. The bank has not an absolute monopoly in the issue of notes. Any other bank which on the 6th May 1844 was lawfully issuing its own notes, and has done so continuously since then, may continue so to do, but its issue is limited to the average amount of its issues in October 1844.

The Bank of England is managed by a governor, a sub-governor, and twenty-four directors; it fixes the rate of interest [*see* BANK-RATE], and takes charge of the moneys of the Government; it holds the cash-reserves of the other banks of the country, and has practically assumed the position of protector of our financial system. As such it moves the bank-rate, circulates gold or withdraws it from circulation, lends money to the public, and by these means or others aids the money-market and general credit in times of panic and crisis. As a private bank, it opens accounts with the public; gives out cheques in books; permits cheques to be drawn upon it for any amount not less than £5; pays bills payable at it, with or without advice by the customer, according to its arrangement with the latter; takes in boxes for safe custody without requiring to know their contents; and receives dividends by power of attorney.

The bank manages the banking business relating to the National Debt, and it holds the funds paid into court. Unless a person can show that he has a *bonâ fide* interest in some unclaimed stock, the bank is not bound to

show to him its register of stockholders. *See* also BANKER AND CUSTOMER; BANK NOTE.

BANK RATE is the name given to the price at which the Bank of England states its willingness to grant loans. This price varies from time to time according to periodical financial conditions, and is generally somewhat higher than the market value of money for the time being. Though the published rate is a minimum rate, yet under certain conditions the bank will discount bills below it. Large borrowers of money avoid the bank if they can possibly do so, because it only lends at the bank rate for a period of seven days, and reserves the right to state for what period the loan shall be made.

The main reasons for the position of financial dictator to which the bank has attained are found in the privilege it possesses in the issue of notes; in its being the depository of the Government funds; in the London banks keeping accounts with it; and in its practice of lending capital to outsiders, that is, to those who do not keep an account there. The reason for variation in the rate is found in the almost automatic operation of the supply of, and demand for, gold. If, money being scarce, there is a great demand for it, the ultimate source of supply, viz. the bank, is bound to put up the rate; and this is done not only for the sake of profit, but equally and perhaps more particularly in order to protect its own stock of gold and bullion—the reserves upon which our whole commercial system practically depend. But in times of panic and commercial crises the bank has always readily come to the rescue, with the result that its responsibility over the money market is something no longer to be talked about, but rather to be considered and encouraged as a necessity to the commercial system. Thus in 1872–73 an enormous amount of bills were created with a view to withdrawing gold from England to assist in the payment of the French indemnity to Germany. The bank recognised the danger which might arise from this being carried to too great an extent, crippling thereby the ordinary business of the country, and it rapidly raised the rate of discount. In 1872 there were seventeen changes, and in 1873 twenty-four changes in the rate; the latter itself varying from 3 to 12 per cent. This was not done with a view to making large profits, but with a view to keeping the public from encroaching unduly upon the reserves, and telling them that it was a class of business the bank would do everything in its power to keep within reasonable bounds. Before raising the rate, the bank has often to take precautions that it shall be effective. This is done by borrowing largely in the money market and so limiting its supplies, and preventing undue competition from the outside.

The causes of fluctuation in the rate are many and varied; the varieties themselves interact upon one another, and are, moreover, always increasing. A few may be enumerated. Since our trade is conducted, as a whole, upon credit, active trade means increase in the capital required and a higher rate; when trade is depressed, the rate decreases. When there is a great difference between the values of imports and exports the balance must be finally paid in gold, and the rate rises; but if large sums are returning to England as repayments of loans, or for interest, the rate decreases. Add to these few instances the above-mentioned necessity to retain the gold reserves as against

the bank's own liabilities, and it will be readily seen how strong, complicated, and ever-working are the forces concentrated upon the bank rate. To raise the rate is to attract gold from abroad and to replenish our stock; to lower it is to make capital susceptible to foreign attraction. In fact the causes of fluctuation are all affected by, and dependent upon, the reserve. At the time of writing the bank rate is 3 per cent. If the reader will turn to the article on the BANK RETURN, he will find that at the same time the reserve is considered to be in jeopardy, and the bank is urged to raise its rate. At the corresponding period in the year 1900 the rate was 4 per cent., the high amount thereof being accounted for by the reserve being low, and the bank weak owing to a considerable withdrawal of gold for export. In 1899, at the same period of the year, the rate reached the high figure of 5 per cent. This was a memorable week in the history of the money market. The reserve was about a fifth less in amount than in 1901; the rate was raised from 3½ to 4½ per cent. on Tuesday, and on Thursday a further advance was made to 5 per cent. Official rates were put up all over the Continent; the markets were quite disorganised, and Consols momentarily touched 101¾. This was the time of crisis in South Africa. And so we could proceed with this subject did the limits of space allow; but sufficient has been said to show the reader how to watch the bank rate and understand generally its causes and effects. But before concluding, reference should be made to some more special effects of the bank rate. A high rate restricts trade, stops speculation, and postpones the issue of Government loans, both home and foreign. Low rates have the contrary effect, giving an opportunity, amongst other things, to the speculator on the Stock Exchange to carry over his purchases or sales. Again, the rate determines the interest allowed by the banks for money on deposit, the London banks generally allowing 1½ per cent. below bank rate, unless the latter is very low. The day after the bank rate is fixed, the London banks and discount houses advertise in the daily papers their deposit rates. *See* BANK OF ENGLAND.

BANK RETURN.—Weekly, in the money article of every newspaper having any pretension to importance, there is published an analysis of the weekly return or report of the Bank of England. The publication of the return itself by the bank is not optional, but under the Bank Act of 1844 is compulsory, not only in its nature, but in the details to be shown. As will be seen on reference to the article on the BANK OF ENGLAND, the business of the bank is divided into two departments, namely that of issue, which deals only with the issue of notes, and that of banking, which deals with the same matters as other banking establishments; and under the same two separate headings is the weekly return divided and made up. The analysis contained in the money article takes within its general view each item of the whole return, but to two in particular—those which show the reserve—is special attention and criticism mainly directed. The other items have their own importance, and indeed a very far-reaching importance, but the information they convey is of an extremely general character, the necessary result of the multifarious and complicated business of the bank. On the other hand, the items showing the reserve are definite and precise; there is not, and there cannot be, any ambiguity as to the significance of those figures and as to their meaning. Upon the state of the reserve depend the rates by

which money throughout the country will be more or less regulated, and consequentially the value of money in this country, the flow thereof in or out of the country, the profits in dealings upon the Stock Exchange, the profits of trade, and the prices of commodities. No wonder, therefore, that an especial regard is paid to the reserve; and that at times of financial tension even anxious anticipations are made of the coming return, and the prospects of a possible maintenance or change in the current bank rate. The return is made up by the bank to every Wednesday, and a copy posted up outside the bank early on the following Thursday afternoon. A small crowd are awaiting it, and immediately it is so posted, examine and copy it; it is at once published in certain of the leading evening papers, and on Friday morning appears at the head of the market intelligence in the morning papers, prefaced, as we have already seen, by examination and criticism at the commencement of the money article. The following is, in round figures, a reproduction of a typical return, and a perusal thereof will be of assistance in understanding this article:—

BANK OF ENGLAND—WEEKLY ACCOUNT.

An account pursuant to the Act 7th and 8th Victoria, cap. 32, for the week ending on Wednesday, October 2, 19—.

ISSUE DEPARTMENT.

Notes issued . . .	£53,856,000	Government debt . .	£11,015,000
		Other securities . .	6,760,000
		Gold coin and bullion .	36,081,000
	£53,856,000		£53,856,000

BANKING DEPARTMENT.

Proprietors' capital .	£14,553,000	Government securities .	£18,022,000
Rest	3,791,000	Other securities . .	27,158,000
Public deposits . .	10,874,000	Notes	23,309,000
Other deposits . .	41,204,000	Gold and silver coin .	2,077,000
Seven-day and other bills	144,000		
	£70,566,000		£70,566,000

Before proceeding to consider the reserve, there are seven out of the thirteen items set out in the banking department of the return which may be conveniently explained. The item Proprietors' Capital, £14,533,000, represents the amount of Bank of England stock held by the stockholders in, or in other words the proprietors of, the bank; this of course has to be included in the liabilities of the bank as against its assets, which are set out in the other column. The next item, Rest, represents the amount which the bank always holds in reserve for the payment of dividends to the proprietors, and which is never allowed to go below three millions, the surplus above that sum being the amount actually paid every half-year as dividends. This reserve is not the one held against the liabilities of the bank to the public, to which we have already alluded, and propose later on to consider more carefully. A stockholder in the bank has, accordingly, in the return an opportunity to

forecast the amount of dividend which he will in due course receive. The item Public Deposits represents the national money on deposit by the Government with the bank. This amount varies from time to time; increasing as taxes and payments on account of Government loans are received by the Treasury, decreasing as payments are made to contractors and others, and dividends on Government loans paid to the public. Thus, omitting the 00,000's, in the corresponding week of 1891, this item was represented by 4,8; in 1898, by 8,2; in 1899, by 10,6; in 1900, by 6,3; and 1901, as above, by 10,9. By a comparison over these years it would seem that the Public Deposits were, during the week now claiming our attention, in a very satisfactory state. But this week was one of the very many weeks of the Boer war, and the item did not in any way lead the financial expert to believe that the Government had begun to save money. On the contrary, adverse criticism prevailed. The public deposit was certainly comparatively large in amount, and showed a decline of only £9000 from the amount of the previous week; yet this was so, notwithstanding the fact that the disbursements of the Imperial exchequer during the last nine days of September had exceeded its receipts by no less than £4,600,000! It would appear, consequently, that some of the cheques sent out at the end of September had not on Wednesday evening been presented for payment; and inferentially it would appear that, like many of its patriotic supporters, the Government had in fact either overdrawn its account, or left arrangements for a further credit until very late in the day. And thus may even the politician find something to interest him in the bank return, and the victim of impecuniosity something by way of consolation.

We will now turn to the item Other Deposits, £41,204,000, which represents the money deposited by other banks and by private customers. The latter do not count for much, but the remaining portion of this item comes ultimately from the public as represented by the customers of the other banks. In the money article the item is generally termed "the market s supply of cash," and in connection herewith it should be noticed that the Public Deposits and the Other Deposits have a considerably important relationship to one another. When dividends on public funds are paid, the source thereof, the Public Deposits, shrinks, whilst the resources of the public, as represented by Other Deposits, are duly increased. On the other hand, when income-tax is generally payable, a converse result may be recognised. In the amount of Government securities, which figures first on the credit side of the return, is found the investments for the time being of the bank in Government stock, or in bills given by the Government to secure overdrafts. In the above return there is an increase in these securities of £1,339,000 over the amount held in the previous week; this may indicate that the Government had been borrowing to meet its liabilities for the time being, or that the bank had paid further instalments in respect of its own holdings of Government stock, or that it had bought Consols in the open market, or that more than one of these operations had come into play.

The item Other Securities, in the same department, affords an index to the state of the money market—generally referred to in the money article as "the market." When money is scarce in the market, borrowers have to go to the bank with their securities, and the more they go the higher the bank rate

will go also. An increase in Other Securities will tell the reader that money is scarce; a decrease, that it is becoming more plentiful. The market never cares to go to the bank for its supplies, and, on the other hand, the bank has no desire to find funds for competing institutions. In the above return there is an increase of £1,700,000 in Other Securities beyond the amount for the previous week. This was partly due to the outflow of cash to the country to meet the requirements of quarter day, the slowness with which the money disbursed by the Government came into the market, and the calling-in of outstanding cash by the executors of the late Baron Hirsch to provide succession and other duties, amounting to £1,200,000, payable in respect of his estate. The amount borrowed because of these matters, together with such disbursements to the public by the Government as did come to hand, enabled the market to meet its outflow of cash, at the same time adding an increase during the week of over £400,000 to the Other Deposits. The last item on the liabilities side of the return refers to short bills which have been issued by the bank itself, and which are called Bank Post Bills.

We now return to the all-important subject of the reserve. The bank is authorised to issue notes to the amount of £17,775,000, representing what is called its "authorised note-issue." There is, however, both a reason and, in fact, a reserve, for this issue. In the year 1844, at the time of the Bank Act, the Government owed the bank the sum of £11,015,100, and to this day is still indebted to the bank in respect of the same debt. This debt of the Government became both a consideration for the monopoly in the issue of notes granted to the Bank of England, and at the same time a guarantee by way of reserve for the due honouring by the bank of notes to that amount. In addition to this, the bank has the right to take over the lapsed power of other banks to issue notes, and up to the present the amount represented thereby, and provided for in the first part of the return by Other Securities, is £6,759,900—a very seldom changing quantity, but one that has nevertheless increased by nearly four millions since the date of the Act. These two sums added together make up the amount of the authorised note-issue. But it will be seen that the amount of notes actually issued is £53,856,000, or £36,081,000 in excess of the authorised issue. By the Bank Act the bank is under a necessity to provide for this excess by a backing of gold coin and bullion, and the fact that this provision is in existence appears in the third item on the credit side of the issue department in the return. But when we come to examine the banking department in the return, it will be seen that the bank has actually in hand, as set out in the last but one item, notes to the amount of £23,309,000, and in the last item gold and silver coin to the amount of £2,077,000. These two items amount together to £25,386,000, and since the whole of the note-issue is already provided for as appears in the account of the issue department, it follows that the bank has that sum for the time being available against its liabilities other than those in respect of its note-issue; such sum is the reserve. And this reserve may be needed; for many occasions may cause either an augmentation or a depletion of its stock of gold coin and bullion. Gold may be required for export to the United States in the autumn, when rates are high there in consequence of the money required for the harvest;

and it may return when by ordinary commercial events, or by arbitrage operations, rates are such in England as to make it unprofitable for the gold to be kept in the United States. In the return before us the reserve is £2,625,000 less than that of the previous week, a shrinkage which caused one of the soundest financial authorities to draw attention to the fact that the bank was losing strength.

Every afternoon the bank posts on its walls a statement showing the amount of gold sent and received from abroad during the day, and generally also the place to which it has gone or whence it has come. Knowing from the return the variations in the note circulation, and the increase or decrease of and from the stock of gold, the daily statements of the exports and imports of gold, it is only a matter of calculation to discover the payments and receipt of gold to and from the country. Accordingly, we find that the above shrinkage was caused by the export of £636,000 in gold, the circulation of £843,000 of gold into the country, and an increase of £1,146,000 in the note circulation, the total loss of gold being £1,146,000. In the following week there may be a further outflow of gold into the country; but, on the other hand, notes may return, and but little gold be withdrawn for abroad. Banks are supposed to keep a reserve equal to one-fourth of the deposits of the public, such reserve being often referred to as the "legal minimum." But the directors of the Bank of England endeavour to preserve a ratio of 40 per cent. It will be seen that the proportion of reserve to liabilities, as represented by the public and other deposits in the above returns, is $48\frac{5}{8}$ per cent., which is a decrease from $54\frac{1}{16}$ of the previous return; but this is in fair comparison with the bank's own standard of reserve, and with the $44\frac{3}{8}$ at the same period of the previous year. But the monetary conditions at and about the period of the return were such as ought not to have permitted the bank to reduce its reserve to the extent shown above; thus the outcry of the financial authorities. Apart from the possible outflow of gold into the country, there were anticipated shipments of gold to Egypt and South America, and possible autumnal exports to the United States; and with it all the fact that the foreign exchanges were adverse to this country, and an unusual amount of foreign money employed here. To regain and keep its strength, the bank would be compelled to take measures to protect its gold. Moreover, notwithstanding its then hard-up condition, the Government in the following week would be required, as the financial authorities are careful to point out, to meet the quarter's instalment on its debt and other outstanding payments amounting to £5,160,000; to do which, it was anticipated that it would have to borrow some three or four millions, although the amount required to be borrowed was somewhat reduced by the fortunate payment of duties in respect of Baron Hirsch's estate. Again, it was forecasted that the Government would find it necessary to borrow £10,000,000 from the bank and the National Debt Commissioners before the following January. All these facts, therefore, gave reason for dismay at the comparatively small reserve, and the possibility of the Government borrowing heavily from the bank, and absorbing funds which are regarded as the reserves of the whole banking community. And so we see the value of a knowledge of the technique of the bank return and the scope of the money article. *See* BANKER AND CUSTOMER; BANK RATE; MONEY ARTICLE.

BANK SHARES are not for the speculator in differences, nor are they for the small capitalist. The first class are met by an Act known as Leemans' Act, which requires the delivery of all bank shares sold on the Stock Exchange. The result is that a purchaser of such shares must take them up, and is unable to have them carried over from account to account, and to realise a profit in case of a rise without having actually paid for and taken delivery of them. So it is impossible to become a "bear" on such shares, unless the operator is in a position to deliver upon sale. They are also of little value to the small capitalist as an investment, on account of the large liability generally attaching to them in respect of uncalled capital; moreover, the directors of the bank whose shares are proposed to be transferred may exercise their right to refuse acceptance of the purchaser where he does not appear to be of appropriate financial position. Some persons who have a great faith in the bank at which they are customers, are often desirous of strengthening their connection therewith by becoming shareholders. To these it should be pointed out that from the point of view of having a security readily available for borrowing purposes in case of need, such shares would be useless when tendered as a security to their own bank, for the reason that banks do not deal in, or lend money upon, their own shares. To the substantial capitalist, bank shares have deservedly a considerable attraction. In face, however, of the increasing competition between the banks, it may be safely said that the already well-established banks have now reached the high water-mark in the matter of dividends; but there still continues, and most probably will persist, a characteristic periodical fluctuation in the prices of their shares. This fluctuation results from the periodic changes in the state of trade. When trade is bad, the profits of a bank are proportionately small; that is the time to purchase its shares, for the price is low. On the other hand, when trade is good, the profits increase and the price of shares rises; that is the time to sell. If we take the last ten years for a criterion, it will be found that the bank dividends steadily decreased from the first of those years to the fifth, and from the sixth as steadily increased to the tenth year, when the dividends all round were approximately the same as in the first year. If therefore the investor, instead of dealing on the strength of the short-period fluctuations, were to reserve his capital and attention for the cyclic fluctuation of the long period, his profits would probably be much larger; but, after all, life is short, and profits may be small if they are only quick.

But in the question of investment there always enters the necessary factor of the essential financial soundness of the bank in which the investment is proposed. It would be impossible here to go into details with regard to stability of every bank; and to make a selection of one would appear invidious. It rests with us, therefore, as our only alternative, to direct attention to the balance-sheet of the bank in view. What are its liabilities, its investments and their nature, and its quickly available reserve? This subject is considered in some detail in the article on BALANCE-SHEET OF A BANK, to which the reader should refer. In the meanwhile it seems impossible to refrain from interjecting the opinion that most of the banks conduct their business on the smallest reserve possible, seemingly content to run all risk of an emergency, a run, or a crisis, and relying

apparently upon the general assistance which might be given by the Bank of England and the other banks, and upon the uncalled capital, which the investor would probably be sorry to have to part with under such circumstances. See also the various articles relating to banks and banking.

BANKER AND CUSTOMER—The Business Relationship.—The whole system of modern trade is based upon credit; and the branch of trade more dependent than any other upon credit is that of banking. The first general impression is that a bank is the one modern institution standing upon a cash foundation as distinguished from one of credit; consideration, however, will show that the money lent and dealt in so extensively by a modern bank is that of other people—its customers. Only a very small portion thereof belongs to the bank itself, for the main effort of every banking institution is to conduct the largest possible business upon the least possible capital. As a moneyed concern, a bank is merely the conduit-pipe between the man who has capital available for investment and the other man who requires more money. A glance at some figures readily proves this. Thus, the ratio of paid-up capital to liabilities to the public was at the end of 1900, in the case of Lloyd's Bank, 5·54 per cent.; that of the Union Bank of London, 9·26 per cent.; Parr's Bank, 5·97 per cent.; the London and County, 4·41 per cent.; and the Capital and Counties, 4·7 per cent.! In early times banking was chiefly concerned in the issue of notes; in later times the deposit of money became an important item in the business. To-day, the business of a bank may be roughly classed as follows: (1) issuing notes; (2) receiving deposits at interest; (3) keeping current accounts for customers; (4) discounting bills of exchange; (5) advancing money to customers upon security; (6) acting as agents for other banks. With the first and last classes of business we need not here deal; the first is discussed under the headings of BANK NOTES and BANK-RETURN, the last is a subject which can have but little practical interest for the general reader. Our immediate subject, therefore, resolves itself into a consideration of the dealings between banker and customer with reference to an account between them.

To open a banking account an intending customer requires two things: money in his hand, and an introduction to the bank from some person known to it, vouching for his position and respectability. The money may be done without, if the customer has a security and wishes to open a debit account; but an introduction or good references are required by every respectable bank in every case. If the intending customer is already, or has been previously, a customer at another bank, his pass-book with that bank should be produced. The customer having been accepted, the only thing remaining is to proceed with his business and open an account.

Deposit account.—It may be that the customer does not require a current account, that is to say, one into which he will periodically make payments, and from which he will draw by cheque as required, but desires to deposit his money with the bank at interest. After signifying his intention to that effect he will be required to write his signature in the signature-book, and after paying to the banker the money he will receive a receipt known as a deposit receipt. In London he should get interest at a rate 1½ per cent. below bank rate; that is, if the bank rate is 5 per cent. he will obtain 3½.

But in provincial towns, where there is competition between the banks, a higher rate may be obtained; a depositor should therefore try to get the highest rate he can—not less, in any event, than that allowed for the time being by the Post-Office Savings Bank. Upon receiving his deposit receipt the customer should be careful to note that the date and the amount deposited, in figures and in writing, are both correctly stated; if possible, he should get inserted therein the rate of interest to be allowed. Before the deposit has been made it should have been well understood what notice is required for withdrawal; this will appear on the receipt, and is usually seven or fourteen days. But, when required, a bank is generally willing to repay the deposit without insisting upon the requisite notice. Should the deposit be by more than one person all the names will appear on the receipt, and the money will not be paid over except upon the signatures of them all; it would, where desired, be convenient to have the receipt made out payable upon the signature of a certain one only. If the depositor dies, the money can be withdrawn by the executor or administrator upon production of the probate or letters of administration. Care should be taken, where money is on deposit, to present the receipt every six months in order to have the interest calculated and added to the principal. The bank will not allow such a calculation and addition if left to themselves, so that if the depositor wishes to gain the advantage between compound and simple interest he should be careful not to overlook this. The interest may be taken out without the principal. So any part of the principal may be withdrawn. In the North of England many of the banks issue pass-books to depositors and allow them to withdraw by cheques. This is an advantage which every depositor should endeavour to obtain from his bank, as by this means the calculation of interest is made in the pass-book by the bank itself and placed to capital every six months. Depositors should never be too secretive with regard to a deposit, for if one should die and the receipt were overlooked or lost, and consequently no demand ever made for repayment, the bank would never think of communicating with the deceased's representatives; and thus another unclaimed deposit may be added to those which, at the end of six years, become in effect the bank's own property.

Credit account.—Having become a customer, the only thing necessary, upon signing the signature-book, is to pay money into the account, after which the account may be freely operated on by payments in and withdrawals out by cheque. The law with regard to the appropriation of payments will be considered below, but it will be convenient to relegate all discussion about CHEQUES, from their practical as well as their legal aspect, to the article under that title. There are a few points to be considered. Either a separate receipt or the pass-book should be taken away after the opening of the account; it may be that death may ensue, and as a consequence another unclaimed balance may go into the bank's coffers. If the account is one in which there will be an average monthly credit balance of £100 or more, the customer should insist both upon the account being worked without charge and upon interest for that balance; the usual charge for working an account is $\frac{1}{8}$ per cent. upon the withdrawals, no charge being made for clearing cheques; and the bank will also state a minimum balance the keeping of which will permit them to work the account without charge at all. Upon opening the accounts, executors, trustees, or partners should

state their position to the bank, and the signature to be used should be agreed upon and maintained throughout all transactions.

Overdrafts are generally manipulated by the banks in the following way. The customer borrows a certain sum from the bank, which is debited with interest to an account called the loan account; the whole of this sum is then placed to the credit of his current account. The result of this method is that the customer has to pay interest on the whole sum borrowed, even though the necessities of his case may require most of it to lie to his credit in the current account, which in its turn may be the subject of rather high charges. This system may, in some cases, make borrowing from the bank rather expensive, but on the whole it is probably the cheapest and best way available to the average man. The following securities are named approximately in the order of their value:—Consols, Colonial Government stock, municipal bonds, railway debentures, good industrial stocks and shares, real property, other industrial stocks and shares, personal securities, and life policies. On any of such securities overdrafts may be obtained, in the first four cases to a sum very close to their price for the time being, and at the lowest rate of interest the bank would be willing to do business upon at all. The industrials, both good and bad, depend for their value as a security, quite apart from their intrinsic value, upon the general state of the market and its prospects. Real estate, though a large part of the securities upon which banks make advances, is only available as such up to two-thirds of its value, nor do banks care to retain such securities so long as they would those of the first class. But it would be possible, and a very convenient course, for a customer in good credit, who wished an advance on real property repayable by instalments, to obtain it from his bank—the costs would be considerably less than those of a mortgage in the usual way; the bank would accept repayments of capital before they became due, which private capitalists do not care to do; and there would be none of the irritating detail of a mortgage with a building society. Overdrafts are also made upon good personal security, such as the guarantee of responsible sureties, together, in some cases, with the deposit of a policy of insurance. The latter alone would be a good security up to a margin of its surrender value. In this connection it would be well to refer to the account of the cash-credits system set out in the article on BANKING, SCOTCH. This method could be pressed upon the attention of the banker, and with a good customer would probably be adopted. *See* further hereon under INTEREST.

Discounting Bills is a subject that need not detain us. If they are good trade bills they will be taken by the bank and discounted without hesitation; if on the other hand they are bills offered by a customer whose occupation or position is one that is not in the ordinary course connected with bills, they will be looked upon with suspicion; and if obviously accommodation bills, they will probably be declined altogether. Instead of to discount accommodation bills with his banker, the customer should propose an overdraft and offer the persons who would join in a bill as sureties. It should be mentioned that discounting bills is a characteristic and essentially legitimate operation in all sound modern banking.

Generally.—A customer may pay into any branch of his own bank, and his payment will be accepted and in due course credited to his account; if in

the locality of a branch he may arrange to draw cheques up to a specified amount for payment at such branch; if going abroad his bank will furnish him with letters of credit; he may deposit his valuables for safe custody; periodical payments such as club subscriptions and rent will be made on his behalf at the specified times by his bank upon his general authority so to do; and the bank will make an inquiry and report to him as to the position of any person with whom he proposes doing business. The bank will also cash coupons and buy and sell stocks and shares. In the former case they should be paid into the account seven days before maturity; in both cases the customer should see that he is credited with the full amount and that the charge for commission is debited separately.

The legal relationship.—*Generally.*—The relation between a banker and a customer who pays money into the bank is the ordinary relation of debtor and creditor, not that of trustee and what is termed in law *cestui que trust*, or beneficiary under a trust; but to that ordinary relation an obligation is imposed on the part of the banker to honour the customer's drafts so far as his assets permit. This obligation has arisen from custom. Upon bankruptcy the customer has merely a right of proof in respect of any money to his credit. The mere fact of a customer's account being guaranteed by a surety does not prevent the banker suing him for the debit balance in the same way as for an ordinary debt. Where there have been many and complicated transactions between the bank and its customer, and there is a dispute as to the items or the balance, the customer may sue the bank for an account. If money is deposited with a banker and remains in the latter's hands for six years without any payment by him of the principal or allowance of interest, the customer would be barred by the Statute of Limitations from suing for its recovery. A bank need not pay bills accepted payable there by a customer even if the latter is in sufficient credit. It must keep the customer's affairs secret, unless it has reasonable ground for disclosing them, as when called as a witness. In connection with the article ATTACHMENT, it should be borne in mind by debtors that directly a bank receives a garnishee order *nisi* it may refuse to honour cheques, even if the garnishee is only in respect of a much smaller sum than the amount to the customer's credit. It is a dangerous thing, therefore, for a debtor to allow his creditor to garnishee his bank. The law does not imply, from the mere existence of a trade partnership, that one partner has authority to bind the firm by opening a banking account on its behalf and in his own name; nor, where a firm keep several accounts at a bank, each partner having a right to draw cheques and have individual accounts at the same bank, is the bank under any obligation to inquire into the propriety of any transfer of funds which may be made from and between the different accounts. Upon the death of one partner the survivors have a right to draw cheques upon the partnership account. The acting member of a firm may assent to the transfer of its account from one banker to the other without the express assent of the others; but the bankers to which the account is transferred would have no further rights over it than the former banker. If a bank allows an executor to overdraw, knowing that it is the executorship account which is being overdrawn, and the money is misapplied, the bank cannot recover against the estate. Where money is paid into a bank on the joint account of persons not partners in trade, the

banker is not discharged by payment to one without the authority of the other. To transfer money on deposit to a current account is, in effect, to open a fresh account, and would discharge the liability of a retiring partner. A banker is not bound, on payment-in of a cheque, to inform the payee that the drawer has no effects, even where both parties to the cheque are customers of the same bank. He would be liable if he paid a cheque in which the drawer's signature was forged, but not where the indorsement is a forgery. Should a bank cash a customer's cheque, and then discover that it had no assets of his, it cannot recover the money back from the person to whom it has been paid. And this rule would apply directly the money has been handed over the counter; even if the customer were the party so receiving the money, it could not be taken back, but only sued for.

Interest and commission.—Bankers generally take accounts with their customers by charging interest on advances in a separate column up to the day of lodgment made, deducting the latter from the principal, and so on until the end of six months or a year, when what is termed a "rest" is made. The first item in the next account is made up of the balance of principal and interest. Rests made at the end of three months would not be sustained in law; but after an acquiescence in accounts half-yearly or annually furnished, an agreement that the balance of principal and interest shall bear interest will be presumed. Where an account is kept at compound interest, and the customer dies, the final balance at his death, in the absence of contract, carries no interest; and it is the same where the balance is in the customer's favour, and the banker dies, or ceases to carry on business, or becomes bankrupt. If a banker take a mortgage from his customer as security for an overdraft, the relationship of banker and customer is at an end in respect of that transaction, and gives place to the relationship of mortgagee and mortgagor, with all the incidental rights and obligation incidental thereto; compound interest would cease, and the whole transaction would be subject to the usual principles.

Securities.—Bankers may pledge bills deposited with them by a customer, even though the latter is in credit, provided the parties receiving the bills are unacquainted with that fact; and so far as the necessary demands of the customer require, they may negotiate them without his express authority. Subject to special agreement against the exercise of the power, and to circumstances obviously opposed thereto, a banker has an absolute power to dispose of indorsed bills of exchange deposited with him by a customer. A banker's deposit note is not such a security for money as will pass under a bequest in a will "of all bonds, promissory notes, and other securities for money"; nor is it a negotiable instrument capable of passing by indorsement like a bill of exchange. Where a bank accepts a deposit for a special purpose, as, for example, for shares in a company, it must use it for that purpose only. If, in respect of a certain security, the customer should assert that it was intended to cover a particular debt only, and the bank contends that it was intended to secure the balance of a current account, it will lie upon the bank to prove its contention; whoever asserts that a security is intended for such a balance, is under an obligation to prove his part of the case first. If, without there being negligence on the part of the person benefiting under the trust, a trustee gives a trust property to a bank as security, the bank can

take no interest in it as against the beneficiary. Where securities are deposited with a bank for safe custody and are stolen by a clerk, the bank would not be liable therefor unless it had acted with gross negligence; nothing short of knowledge or reasonable grounds of suspicion by the bank that the clerk was unfit to be trusted, would render the bank liable.

Appropriation and set-off.—In an ordinary banking account the first item of the debit side is discharged by the first item of the credit side. This principle applies to dealings between a company and its bankers, so that in a case where a former shareholder had transferred his share, he was held to be exonerated from contributing to the company's debt to its bankers if, before the winding-up, sufficient money had been paid to the bank to cancel the amount due to the bank when the shareholder relinquished his holding. Where a customer made a payment to a country banker, with instructions to remit a part thereof, amounting to £500, to a London banker, and the country banker, instead of so remitting, directed a bill-broker to remit certain other money to the London banker, and the country banker next day stopped payment—it was held that the £500 was appropriated, and the customer was entitled to recover it back in full, as against the other creditors of the country banker. This case illustrates, at the same time, the duty of a banker to apply money according to the particular purpose for which it is deposited with him. Where a debt is due to the banker and a former partner, and not to the banker alone, the latter cannot appropriate thereto a payment by a customer. So where money was paid into a bank for the express purpose of taking up a particular bill then lying there for payment, and the bank clerk said at the time that he could not give up the bill until he had seen his principal, it was held that the money could only be used for the above purpose, and not applied by the bank to the general account of the party who paid in the money. It sometimes happens that a man has a number of cheques in the hands of his creditors and no money at the bank, and only sufficient in his possession to provide for two or three of them. Under such circumstances, if he is anxious that certain of those cheques should be honoured in preference to the others, he should pay into the bank the money he has, and on the paying-in slip make an appropriate memorandum as follows:—"To provide for the following cheques specially: J. Jones, £20; R. Roberts, £75; and F. Graham, £15." If the bank accepts the payment with a special direction in this form, it will be bound to prefer and honour the cheques so specially mentioned, even if it has a debit balance against the customer, and is anxiously awaiting an opportunity to recoup itself. Upon the death of a surety a bank usually closes the account and opens a new one, thereby preventing future payments-in to go to the credit of the secured account. If a customer keeps several separate accounts at his banker's, upon some of which he may be indebted to the banker, and upon others the banker may be indebted to him, should either party sue the other, the latter would be entitled to set-off his credit in other accounts against the debt due to the former.

Lien.—The general lien of a banker is part of what is known as the law merchant, and as such is always recognised in the courts of law. It is the right of a banker to hold any securities or property belonging to his customer, and which have come into the hands of the banker in the ordinary

way of business, as a security for the repayment of any debt due to him from the customer. The debt may be any general balance that may be due. But the security on property must be received under such circumstances as would bring it within the above general rule; for example, there could be no lien on deeds casually left in the bank after the banker had refused to lend money on them as a security, or where the securities had been deposited with him for a special purpose. Nor would a banker have a general lien on boxes containing securities deposited with him for safe custody, nor a right to retain or open them; nor on trust deeds fraudulently deposited by a trustee. But he would have a lien on negotiable securities taken by him in good faith and under such circumstances as would give rise to no suspicion. A banker who has discounted bills for a customer would have no lien on that customer's cash balance during the currency of the bills. A lien would be abandoned by the return of the security or property to the customer; and it is always limited in its extent by the extent of the customer's right thereto.

Trust-moneys.—If a trustee pays trust-money into a bank without in any way ear-marking it as such, the bank would still be indebted to the trust therefor, except for such part of it as had been paid out in the ordinary course to the trustee's order. The bank is in no way under an obligation to see that the trustee spends the money properly, even if the money is the subject of a specific trust account; but if the bank is cognisant of an intended misapplication, it should and may refuse to honour the trustee's cheque. Where a trustee mixes the trust-money with his own, as between him and the beneficiaries under the trust, all sums he has drawn for his own use will be considered to have been drawn out of his own moneys in preference to the trust-money.

Pass-book.—Entries in a pass-book are only *primâ facie* evidence against a banker; that is to say, he may explain them, or give evidence, modifying or extending their effect, provided the customer has not been made to change his position in consequence of such entries. To enter the new title in the pass-book, upon a change in the banking firm, is to give the customer notice of the assignment to the new firm of the securities given to the old firm. If the book has been sent to the customer in the ordinary course, it is evidence against him as to the entries contained therein.

Branch banks are considered as one, for the purpose of the bank consolidating accounts kept at different branches, but they are separate for notices of dishonour and payment of cheques. *See* also CHEQUES; BILLS OF EXCHANGE.

BANKING, Scotch.—The issue of bank notes in Scotland is regulated by an Act of 1845, founded upon the same principles as the English Act of 1844, which serves as a charter for the Bank of England. But the Act of 1845 did not create an exclusively privileged bank; for since the seventeenth century banks in Scotland had been freely founded, and had multiplied exceedingly without the aid of State privilege, but as a result of private enterprise. In 1695, however, by an Act of the Scotch Parliament, an exclusive privilege of banking in Scotland had been granted to the Bank of Scotland. This monopoly was limited by the same Act to the duration of a period of twenty-one years; since the expiration of which all banks have enjoyed equal rights of banking, and, subject to the Act of 1845, an unlimited

right to issue notes. The leading provisions of the latter Act may be briefly enumerated. All existing banks which then issued notes had reserved to them the sole right to issue in the future, thus practically preventing the creation of new banks in Scotland. The banks were allowed to issue notes without the security of a reserve of gold, or otherwise, up to an aggregate amount of £3,087,209; each bank to issue only up to its own proportionate part of that aggregate, as determined by a process set out in the Act. All notes issued beyond the fixed limit were required to be provided for by the issuing-bank, such provision to be a reserve of coin representing the excess. Banks amalgamating are allowed to retain the aggregate fixed issue of the separate banks; the circulation of £1 notes is allowed; Bank of England notes are not legal tender in Scotland. The banks must make a return of the amount of notes in circulation, and if notes are issued in excess of the authorised circulation without reserve against such excess, there is a forfeiture of the amount not covered by gold; and the Government reserves the right to inspect the books of the bank in order to verify the returns.

The Scotch banks of issue were, at the time of the Act, nineteen in number, but since then there has been a reduction in number through amalgamations and failures. There has also since been substituted for the unlimited liability of the shareholders, which was formerly the rule, with a few exceptions, the system of incorporation with limited liability. Now the banks are ten in number, and allowing for the preservation of the right to issue in cases of amalgamations and for the loss thereof in cases of failure, the present aggregate authorised circulation of notes amounts to £2,676,350. As illustrating the increasing importance of the bank note in the system of Scotch banking, it should be observed that fifty years after the Act, that is in 1895, the circulation of notes had reached the sum of £6,938,879, there thus being an excess of the authorised issue amounting to £4,262,529, against which would be held in reserve an equal amount in gold. The development of Scotch banking has always been on characteristic lines. In the first place its origin was earlier than that of banking in any other modern country; whilst, in the second place, the nature of its operations has been peculiarly adapted to the wants and means of the small and thrifty capitalist—a class absolutely overlooked and disregarded in English banking almost to the present time. All this is very obvious upon the consideration of two comparisons; one of which is that a few years ago there was in England one banking-office to every 8915 inhabitants; in Scotland one to every 4260. The other is that, at about the same period, there was in England one bank share in the hands of each 416 persons; in Scotland, one in each 253. From these comparisons we may say, generally, that in Scotland there are twice as many people, proportionately, as in England who deal with a bank, and nearly twice as many who are shareholders in banks. Thus the banks and the people are, in Scotland, in close touch one with the other; the people, though customers, being at the same time proprietors, or at the least having such an interest in the banks' stability and property as to develop confidence and prevent general runs in times of panic and commercial disaster. The banking operations, which have always been characteristic to Scotland, are found in the issue of bank notes, and the systems of interest on current accounts, of deposits, and of cash credits.

Bank notes we have already dealt with generally, and it only remains to point out a few incidents relating thereto. The result of the Act of 1845 in restricting the issue of bank notes to the banks already then in existence was in effect to grant to them a monopoly of banking. With bank notes an essential feature of banking, it would be impossible for any new bank, unable to issue them, to compete successfully with its older rivals. Not only would the new bank be on the face of it incomplete in its functions in the view of the public, but it would also be seriously handicapped by the absence of any right to obtain such credit for its necessary operations as is afforded to the existing banks by their uncovered note-issue within the statutory limits. But discussion of the why and wherefore of the monopoly is needless in face of the fact that no other banks do exist than those within the privileged circle.

Interest on current accounts has always been a prominent feature in Scotch banking. The rate was fixed by the banks in 1863, and continued until 1898, for daily balances from 1½ to 4 per cent., and for minimum balances from 2 to 4½ per cent.

Deposits.—All banking establishments in Scotland take in deposits and allow interest upon very small sums lodged with them; a fact which may account for the very small number of savings banks in that part of the kingdom. The interest allowed varies according to the current market rate. In a House of Commons report of 1822, it was stated that the aggregate amount of the sums on deposit was then about £21,000,000. In 1865 the amount had risen to £57,140,000; and in 1894 to £93,489,068. These large and increasing deposits show most clearly the prudence, thrift, and industry of the Scotch people; a great part of the depositors belonging to the labouring, fishing, and small trading classes of the community, from which, mainly by means of the deposit system, have arisen many of the most thriving and flourishing farmers, traders, and manufacturers. In Scotland, a few years ago, the cash deposits amounted to £90 per head of the adult male population: a far greater proportion than in England or Ireland.

Cash credit is another peculiar system of Scotch banking which was introduced so far back as the year 1729. The nature of the system consists in the bank giving credit on loan to the extent of a sum agreed upon, to any individual or firm that can give two or more persons of undoubted financial position as joint and several sureties on a bond for the repayment on demand of the sum credited, with interest. The sureties have a right to inspect the bank books in order to see that the account is in strict accordance with the bond. Whoever obtains such a credit may employ the amount in his business, paying interest only upon the sum actually used, and having interest allowed from the day of repayment of any part of the loan. These loans, when advanced in the notes of the bank, are to the advantage of the bank in the call produced by these credits for the issue of notes. Apart from this, the credits afford an opportunity for the profitable employment of part of the bank's deposits. Cash credits are equally advantageous to traders, supplying, as they do, additional capital for the use of which interest is payable only in proportion to the amount employed. But to make the system as advantageous and secure as possible to the bank, it is necessary that the credits should be frequently operated upon; for if the bank should

find that they are used as dead loans yielding interest only, or that the operations of the borrower are infrequent, so that the amount of notes or money called for is inconsiderable, an end will speedily be put to the credit. Here, too, is a point in Scotch banking to which the English reader may usefully pay attention, and endeavour to obtain the same advantages from his own bank.

BANKRUPTCY is in England the subject of, and regulated by, the Bankruptcy Acts, 1883–1890, of which the Act of 1883 is the principal; and the Bankruptcy Rules which have been made thereunder. The term is applied to the distribution of the property of an insolvent person among his creditors with a view to the complete discharge thereby of the insolvent.

Who may become bankrupt, and how.—Generally speaking, all persons capable of making binding contracts may be the subjects of bankruptcy proceedings, except married women without separate property and not carrying on trade separately from a husband. Thus, foreigners ordinarily residing or having a dwelling-house or place of business in England, convicts, peers, persons already undischarged bankrupts, and partnership firms may be proceeded against in bankruptcy. But a limited company should be proceeded against by way of winding up. In order that a man may make himself a bankrupt, all that is necessary is for him to present a petition to the Court, the procedure relating to which will be found in the article PETITION. But for a man to be liable to be made bankrupt by another, it is necessary that such other person should be his creditor in respect of a debt which he can prove upon oath; and that he himself should within the preceding three months have committed an ACT OF BANKRUPTCY. Only under such circumstances can a creditor force his debtor into bankruptcy, upon presentation of a petition to the Court. The debtor may, however, as an exceptional proceeding, be made a bankrupt upon the hearing of a judgment summons.

The Court.—Bankruptcy in the London Bankruptcy District is within the jurisdiction of the High Court of Justice; outside that district it is within that of the County Courts. The London Bankruptcy District includes the city of London and all parts of the metropolis and other places situate within the district of any of certain County Courts. Such County Courts are—Bloomsbury, Bow, Brompton, Clerkenwell, Marylebone, Shoreditch, Westminster, and Whitechapel in Middlesex, and Lambeth and Southwark in Surrey. The rules determining the jurisdiction of the above Courts in particular cases, as also those relating to the nature of the debt upon which intending bankruptcy proceedings may rest, are set out in our separate consideration of the petition. We will here assume that the act of bankruptcy has been committed, that the creditor's debt is available for a petition, and that the latter is in course of presentation.

It can never be too late for the consideration of a man's financial position so long as the irrevocable steps have not been taken and his property seized and sold. Bankruptcy is capable either of being a benefit or an injury to the bankrupt. If he is insolvent, it is for their benefit that his creditors should have his property equally distributed amongst them, and it is for his own benefit that he should be released from all further claims. It may be an injury, if he has a profitable business or a lucrative position or profession, the value

of which, present and future, depends upon his preserving an appearance of solvency.

By committing the act of bankruptcy and allowing a receiving order to be made against him upon the hearing of the petition, and suffering a subsequent adjudication of bankruptcy, all his property will be realised for the purpose of distribution amongst his creditors. Such realisations of property often produce very little, and never the full value. Bankruptcy, moreover, apart from its sentimental effect, entails disabilities professional and social, and most probably a diminution of the power of earning money in the case of salaried persons and those engaged in personal and professional occupations. Bankruptcy may involve, therefore, a very material ruin to the person concerned; a ruin out of which only the most ingenious and determined may hope to emerge without serious loss of position, property, and self-respect. Wherefore special attention should be given to the subjects of ACTS OF BANKRUPTCY (*q.v.*) and of the petition. And no less attention should be paid to the subsequent proceedings, especially the possibilities of a composition or a scheme of arrangement, the proposal and acceptance of either of which may at the last moment prevent a bankruptcy adjudication and its inevitable results. And still later lies the possibility of annulment. Whilst this view of the subject has occupied our attention, we will assume that the creditors' petition has been granted.

The Receiving Order.—Upon the presentation of a petition by the debtor himself, the Court will make a receiving order forthwith. The Court will also do so in the case of a creditor's petition upon being satisfied with the proofs required. The effect of a receiving order is not to divest the debtor of his property; its operation being simply its protection. Except as afforded by the bankruptcy procedure no creditors to whom the debtor is indebted in respect of any debt provable in bankruptcy has thereafter any remedy against the property or person of the debtor in respect of such debt; nor may he commence any action or other legal proceedings except by leave of the Court. Legal proceedings that may be then pending against the debtor may be continued unless they are stayed in terms by the receiving order; and secured creditors may proceed to realise their securities. But executions already levied must be withdrawn; no committal order will be made on a judgment summons; and if any warrants for arrest are out against the debtor in respect of debt, such warrants cannot be executed. But a person in prison for rates cannot be discharged because of a receiving order. Notice of the order is advertised in the *London Gazette*, and the production of the latter paper containing such advertisement is conclusive evidence that the order has been duly made, and as to its date. Shown to a bailiff, his hand will be stayed. Unless the estate is to be administered in a summary manner, advertisements that the receiving order has been made are inserted in such local papers as the Board of Trade may direct; but in default of such direction, the official receiver makes the selection of the papers in which the notice is to be advertised. A sealed copy of the order must be served upon the debtor. The Court may amend the receiving order, and will annul or rescind it where a majority of the creditors in number and value are resident in Scotland or Ireland. To obtain annulment or rescission for this reason, application must be made

to the Court, and notice of the intended application, together with copies of affidavits in support thereof, served upon the official receiver at least seven days before the day fixed for the hearing of the application. A receiving order made against a firm is of the same effect as if it had been made against each one of the persons who, at its date, was a partner in the firm. After the receiving order has been made, the Court may from time to time order that for such time, not exceeding three months, as the Court may think fit the debtor's letters shall be re-directed and delivered through the Post-Office to the official receiver, or the trustee of the debtor's estate, or otherwise as the Court may direct.

Merely because a receiving order has been made, the debtor is neither divested of his property, as we have already seen, nor is he made a bankrupt. As a plaintiff he may sue, even without giving security for costs; but whatever he may recover by his action must be handed over to the official receiver for the benefit of his creditors.

Statement of affairs.—A receiving order having been made, the debtor will receive a circular from the official receiver drawing attention to certain provisions of the Bankruptcy Act and Rules, and in particular requiring a statement of the debtor's affairs. Such a statement of affairs should be made out and submitted to the official receiver. It must be verified by affidavit, and show the particulars of the debtor's assets, debts, and liabilities, with the names, addresses, and occupations of his creditors. The securities held by the creditors should be described, with the dates when they were given; also such further or other information will have to be furnished as the official receiver may from time to time require. The statement of affairs is required to be submitted within the following times, namely—(i.) If the receiving order is made on the petition of the debtor, within three days from the date of the order; (ii.) if the order is made on the petition of a creditor, within seven days from the date of the order. But the Court may in either case, for special reasons, extend the time. If the debtor should fail without reasonable excuse to furnish his statement, the Court may, on the application of the official receiver, or of any creditor, adjudge him bankrupt. Every debtor will be furnished by the official receiver with instructions for the preparation of his statement. It should be made out in duplicate, one copy of which must be sworn to. It is evidence against the debtor on a criminal charge.

If the debtor cannot himself properly prepare the statement, the official receiver will provide him with competent assistance, the remuneration for which will be a prior claim upon the estate. In partnership cases, each member of the firm must submit a statement of his own separate affairs, in addition to the statement relating to the affairs of the partnership. The statement may, at all reasonable times, be inspected at the office of the official receiver, and copies taken thereof, by any person who states himself in writing to be a creditor of the debtor. This may equally be done by an agent of a creditor; but it will be a punishable contempt of Court for any person to untruthfully state himself to be a creditor.

As soon as convenient after the receiving order has been made, the official receiver will require the attendance at his offices of the debtor. The latter will be then asked a series of questions relating to his affairs, the

scope and ingenuity of which will probably astonish him. These questions follow an official precedent, printed and circulated by the Board of Trade under the provisions of Bankruptcy Rule 347. Apart from sub-questions and queries incidental to main questions, they number more than fifty—too many to allow of insertion in so necessarily a brief article as the present. A copy may, however, be seen in any standard work on Bankruptcy Law, and reference should be made thereto by any person who has in front of him the possibility of his own bankruptcy and this incidental ordeal. A perusal thereof will show him how absolutely futile will be all attempts to hoodwink the Court or his creditors with regard to his estate and his dealings with it. His occupations, places of business and of residence, partnerships, and books of account during the previous six years will have to be disclosed. So also all mortgages, charges, pledges, deposits, and assignments of any part of his estate; when first he became aware of his insolvency, and the expectation he then had of paying his debts; his household and personal expenditure, and his income during the preceding three years; and any settlement he may have made during the preceding ten years, the dates and particulars thereof, and his financial position at the time of so making. In addition to these matters, and amongst many others, the debtor will be narrowly cross-examined as to his property, whether in possession, reversion, remainder, or in expectancy. This catechism will be gone through privately with the official receiver, who will take down all the answers and require the debtor's signature thereto.

If the answers are unsatisfactory, or there is reason to believe that the debtor is endeavouring to evade discovery of his property, the Court may, at any time after the receiving order has been made, cause further investigation to be made. For this purpose it may summon the debtor, or his wife, or any person known or suspected to have in his possession any of the estate or effects belonging to the debtor, or supposed to be indebted to the debtor, or any person whom the Court may deem capable of giving information respecting the debtor, his dealings, or property. Any such person may be required to produce any document in his custody or power relating to the debtor, his dealings, or property. He will be examined upon oath, and if when examined he admits that he is indebted to the debtor, or admits that he has in his possession any property belonging to the debtor, the Court may order him to pay the amount admitted, or deliver up the property belonging to the debtor, to the official receiver, or trustee. Any person so summoned, who refuses to appear before the Court, may be arrested; but if too ill to attend, he may be examined at his own residence.

Proof of debts.—Demands in the nature of unliquidated damages arising otherwise than by contract, promise, or breach of trust, are not provable in bankruptcy; nor are debts incurred after an act of bankruptcy with a creditor having notice of such act of bankruptcy. But with these exceptions, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the receiving order; or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order, are debts provable in bankruptcy. Where the debt does not bear a certain value, because of its being subject to any contingency or for any other reason, its value is to be estimated by the

trustee; from whose estimate there is an appeal to the Court. If, however, the Court should decide that the value of the debt is incapable of being fairly estimated, the debt will be one not provable in the bankruptcy. A liability which may be proved in bankruptcy is distinguished from a debt. It includes any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether the breach does or does not occur, or is or is not likely to occur, or capable of occurring before the discharge of the debtor. Generally, it includes any express or implied engagement, agreement, or undertaking, to pay, or capable of resulting in the payment of money or money's worth, whether the payment is as respects amount fixed or unliquidated; as respects time, present or future, certain or dependent upon any one or more contingencies; as to mode of valuation, capable of being ascertained by fixed rules, or as matter of opinion.

Mutual credit and set-off.—An account will be taken in cases where there have been mutual credits, mutual debts, or other mutual dealings between a debtor against whom a receiving order has been made and any other person proving or claiming to prove a debt under such receiving order. The account will have in view the ultimate amount due from one party to the other in respect of such mutual dealings; the sum due from one party being set off against any sum due from the other party, the balance of the account, and no more, to be claimed or paid on either side respectively. But a person will not be entitled to claim the benefit of any set-off against the property of a debtor in any case where he had, at the time of giving credit to the debtor, notice of an act of bankruptcy committed by the debtor, and available against him.

Debts having priority.—The following debts are payable in full, and forthwith, unless the property of the debtor is insufficient to satisfy them all, in which case they will abate equally amongst themselves. (*a*) All parochial or other local rates due from the debtor at the date of the receiving order, and having become due and payable within twelve months next before that time; and all assessed taxes, land-tax, property- or income-tax assessed on the debtor up to the 5th April next before the date of the receiving order, and not exceeding in the whole one year's assessments. (*b*) All the wages or salary of any clerk or servant in respect of services rendered to the debtor during four months before the date of the receiving order, but not exceeding £50. (*c*) All the wages of any labourer or workman not exceeding £25, whether payable for time or for piece-work, in respect of services rendered to the debtor during two months before the date of the receiving order; and (*d*) Compensation payable to an injured workman under sect. 5 of the Workmen's Compensation Act, 1906. If any money has been paid by an apprentice or articled clerk to a bankrupt as a premium, the trustee may pay such sum as he may think reasonable, out of the bankrupt's property, to or for the use of the apprentice or clerk; but regard should be had to the amount of the premium, to the length of time actually served, and to the other circumstances of the case.

The landlord, or other person to whom any rent is due from the bankrupt, may at any time, either before or after the commencement of the bankruptcy, distrain upon the goods of the bankrupt for the rent due. This power is subject to the limitation that, if the distress be levied after the commencement of the bankruptcy, it shall be available only for six months' rent accrued

due prior to the date of the order of adjudication; but the landlord or other person to whom the rent may be due from the bankrupt may prove under the bankruptcy for the surplus due for which the distress may not have been available.

Proof in ordinary cases.—Every creditor is required to prove his debt as soon as possible after the making of a receiving order. The debt may be proved by delivering or sending through the post in a prepaid letter to the official receiver, or, if a trustee has been appointed, to the trustee an affidavit verifying the debt; an available form of affidavit, which requires a shilling stamp to be affixed by the creditor, being sent to the creditor by the official receiver, with notice of the debtor's statement of affairs and of the first meeting of creditors. The affidavit must be made by the creditor himself, or by some authorised person on his behalf; when, if made by such an authorised person, it should state his authority and means of knowledge. A statement of account, showing particulars of the debt, should be either contained in or referred to by the affidavit, the vouchers, if any, being specified by which the debt can be substantiated. The affidavit should state whether the creditor is or is not secured. A creditor who has lodged a proof is entitled to see and examine the proofs of other creditors before the first meeting, and at all reasonable times. A creditor, when proving his debt, must deduct therefrom all trade discounts; but he need not deduct any discount, not exceeding 5 per cent. on the net amount of his claim, which may have been merely an agreed allowance for payment in cash.

Proof by secured creditors.—A secured creditor may either surrender his security to the debtor's estate and prove for his debt as unsecured, or he may realise his security and prove for the balance, or he may submit to valuation and prove for any balance. In case of realisation, the creditor must deduct the net amount realised in order to find the balance for which he may prove. In case of surrender of security the whole debt is available for proof. A secured creditor who does not either realise or surrender his security is required, before he may rank for dividend, to state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, he being then entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed. In order that a creditor may not make too low an assessment, it is provided, in cases of valuation by the creditor, that the official receiver or trustee may at any time redeem it upon payment to the creditor of the assessed value. Moreover, if the official receiver or trustee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed upon with the creditor, or in default of such agreement, as the Court may direct. If the sale be by public auction the creditor, or the trustee on behalf of the estate, may bid or purchase. But the creditor has the right at any time, by notice in writing, to require the official receiver or trustee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realised. Should the trustee not, within six months after receiving the notice, signify in writing to the creditor his election to exercise the power, he will not be entitled to exercise it; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the official receiver or trustee, will vest in the creditor, the amount of his

debt being reduced by the amount at which the security has been valued. Subject to the possibilities in the event of the creditor's valuation being thus accepted, no creditor shall in any case receive more than twenty shillings in the pound and interest.

Where a creditor has valued his security as above, he may at any time amend the valuation and proof on showing to the satisfaction of the trustee or the Court that the valuation and proof were made *bonâ fide* on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation. But unless the trustee will allow the proposed amendment without application to the Court, it must be made at the cost of the creditor, and upon such terms as the Court may direct. The valuation having been amended, the creditor must forthwith repay any surplus dividend received by him in excess of that to which he would have been entitled on the amended valuation; or, as the case may be, he will be entitled to be paid any dividend which he may have failed to receive because of the inaccuracy of the original valuation.

Proof in special cases.—If the debtor was at the date of the receiving order liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor, and also as a member of a firm, proof may be made, in respect of such contracts, against the properties respectively liable on the contracts. And this is so, although the firms are in whole or in part composed of the same individuals; or the sole contractor is also one of the joint contractors. In the case of periodical payments, such as rent, or other payments falling due at stated periods, and when the receiving order is made at any other time than one of those periods, the creditor may prove for a proportionate part up to the date of the order, as if the rent or payment grew due from day to day. On any debt payable at a certain time, or otherwise, whereon interest is not reserved, or agreed for, and which is overdue at the date of the receiving order, the creditor may prove for interest at 4 per cent. from the time the debt was payable to the date of the order. A creditor may prove for a debt not payable when the debtor committed an act of bankruptcy, as if it were payable forthwith; dividends therefor being received equally with the other creditors, except that the debt will be subject to the deduction of a rebate of interest of 4 per cent. from the date of the declaration of the dividend to the time when the debt in the ordinary course would have become payable.

Admission or rejection of proofs.—The trustee is required to examine every proof and the grounds of the debt; and in writing admit or reject it, in whole or in part, or require further evidence in support of it. If he rejects a proof, he must state in writing to the creditor the grounds of the rejection. Where the trustee considers that a proof has been improperly admitted, the Court may, after notice to the creditor who made the proof, expunge the proof or reduce its amount. If a creditor is dissatisfied with any decision of the trustee in respect of a proof, he may apply to the Court to reverse or vary it. Generally, in all matters relating to proof of debts, the official receiver has all the rights and powers of a trustee until the latter has been appointed. A "harsh and unconscionable transaction," within the Moneylenders Act, may be re-opened.

First and other meetings of creditors.—As soon as possible after the making of a receiving order against a debtor, there must be held a general meeting of his creditors, known as the first meeting of creditors. This meeting is held for the purpose of considering any proposal for a composition which the debtor may put forward; or any scheme of arrangement that may be suggested; or whether the debtor shall be adjudged bankrupt; and generally as to the mode of dealing with the debtor's property.

The first meeting should be summoned by the official receiver for a day not later than fourteen days after the date of the receiving order; and not less than seven days' notice of the time and place thereof must be advertised in the *London Gazette*. Notice must also be sent to the creditors, together with a summary of the debtor's statement of affairs, including the causes of his failure, and any observations thereon which the official receiver may think fit to make; but the proceedings at the first meeting will not be invalidated because any such notice or summary may not have been sent or received before the meeting. The chairman of the first meeting will be the official receiver, or some person nominated by him; but at subsequent meetings the chairman will be appointed by resolution of the meeting. No person is entitled to vote as a creditor at the first or any other meeting of creditors until he has duly proved a debt provable in bankruptcy to be due to him from the debtor, and the proof has been duly lodged before the time appointed for the meeting; nor can a creditor vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

Secured creditors.—For the purpose of voting, a secured creditor must, unless he surrenders his security, have stated in his proof the particulars of his security, the date when it was given, and the value at which he assesses it; he then being entitled to vote only in respect of any balance remaining due to him, after deducting the value of his security. If he should vote in respect of his whole debt he will be deemed to have surrendered his security, unless he can satisfy the Court that his omission to value arose through inadvertence. This power of voting is a limited one in respect of debts on, or secured by, current bills of exchange or promissory notes held by him. Thus, he can only vote in such cases if he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the debtor, and against whom a receiving order has not been made, as a security in his hands; being consequently willing to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

The trustee, or the official receiver, may require the creditor to give up a security for the benefit of the creditors generally on payment of the value estimated, with an addition thereto of a bonus of 20 per cent.; but such a requisition must be made within twenty-eight days after the proof estimating the value of such a security has been made use of in voting at any meeting.

Partnerships.—If a receiving order is made against one partner of a firm, any creditor to whom that partner is justly indebted with the other partners of the firm, or any of them, may prove his debt for the purpose of voting at any meeting of the creditors, and will be entitled to vote.

Rejection of proofs.—The chairman of a meeting has power to admit or reject a proof for the purpose of voting, but his decision is subject to reversal by the Court. If he is in doubt whether the proof of a creditor should be

admitted or rejected, he is required to mark the proof as objected to, but must allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

Proxies.—A creditor may vote either in person or by proxy. He may give a general proxy, or voting-letter, to his manager or clerk, or any other person in his regular employment; but in such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor. A minor may not hold a proxy. The official receiver may also receive a general proxy. The following is the usual form of proxy:—

(TITLE OF PROCEEDINGS.)

I, of , a creditor in the above matter for the sum of £ , hereby request the official receiver for the said estate to record my vote $\frac{\text{for}}{\text{against}}$ the acceptance of the proposal as set forth in the report of the official receiver hereto annexed, $\frac{\text{and against}}{\text{or for}}$ any amendment thereof which shall, in the opinion of the official receiver, be calculated to benefit the general body of the creditors.

Dated this day of 19—,

Signature of witness. }
Address of do. } (Signature of creditor.)

A similar form to the above is usually sent to the creditors, together with the notice of the meeting, and it may be modified to meet a case where a person other than the official receiver is intended to be appointed. A proxy cannot be used unless it is deposited with the official receiver or trustee before the meeting at which it is to be used.

No solicitation may be used by, or on behalf of, a trustee or receiver in obtaining proxies, or in procuring the trusteeship or receivership, except by the direction of a meeting of creditors. In cases of such solicitation, the Court has power to order that no remuneration shall be allowed to the person by whom or on whose behalf the solicitation has been exercised, notwithstanding any resolution of the committee of inspection or of the creditors to the contrary. No person acting either under a general or special proxy may vote in favour of any resolution which would directly or indirectly place himself, his partner or employer, in a position to receive any remuneration out of the estate of the debtor otherwise than as a creditor rateable with the other creditors. But where any person holds special proxies to vote for the appointment of himself as trustee he may use such proxies, and vote accordingly.

Quorum and adjournment.—The chairman may, with the consent of the meeting, adjourn the meeting from time to time, and from place to place. The meeting will not be competent to act for any purpose, except the election of a chairman, the proving of debts, and the adjournment of the meeting, unless there are present, or represented at the meeting, at least three creditors, or all the creditors if their number does not exceed three. The chairman should cause minutes of the proceedings at the meeting to be drawn up, and entered in a book to be kept for that purpose, and these

MORTALITY IN DIFFERENT TRADES

MORTALITY IN DIFFERENT TRADES

THE last Supplement to the Annual Reports of the Registrar-General contains an exhaustive analysis by Dr. Tatham of the mortality of males engaged in certain occupations in England. This important matter has now been scientifically treated: crude death-rates in this or that occupation, arrived at without consideration of the ages of the men employed, have rightly been ignored as wholly misleading, and all the results which follow have been based on a due consideration of the number of men employed in each trade and upon their ages. The facts relate to males aged 25-65 years, these years representing the main working period of life, and also marking the period of life during which the effects of occupation are most conspicuous.

The occupations with the highest mortality are as follow; the adjusted death-rate for all males (aged 25-65) being taken at 100, the adjusted comparative mortality-figure for each occupation is:—

Occupation.	Comparative mortality-figure.
Innkeeper (in Industrial Districts)	203
Inn or hotel servant (in London)	197
Dock labourer	183
File maker	181
Lead worker	178
Inn or hotel servant (all)	172
Potter	171
Innkeeper (in London)	168
Costermonger, hawker	165
Innkeeper (all)	164
Inn or hotel servant (in Industrial Districts)	158
Coalheaver	153
Cutler, scissors maker	152
Glass manufacture	149
Brewer	143
Tin miner	141
Manufacturing chemist	139
Copper worker	138
Wool, silk, &c., dyer	137
Seaman	135
Slater, tiler	132
Chimney sweep	131
Lead miner	131
Nail, anchor, chain, &c., maker	130
Carman, carrier	128
Copper miner	123
Gunsmith	123
Messenger, porter (not Railway or Government)	122
General labourer	122
Musician, music master	121
Bargeman	120
Zinc worker	120
Stone, slate quarrier	118
Coach, cab service	115
Coal miner (in Monmouthshire and South Wales)	114
Cotton, &c., manufacture	114
Plumber, painter, glazier	112
Hatter	111
Hairdresser	110
Butcher	110
Printer	110
Wood turner, cooper	109
Plasterer, whitewasher, paperhanger	109
Engine, machine, boiler-maker, or fitter	109
Law clerk	107
Milkseller, cheesemonger	106
Bookbinder	106
Railway platelayer and labourer	106
Coach, carriage, maker	104
Draper	101

The death-rate in each of these fifty occupations is above the common gauge of 100, which here represents the normal death-rate for all men in England and Wales at the ages 25-65.

The mortality among innkeepers (in Industrial Districts) is more than twice as high as the standard rate of 100; the mortality among drapers (the last on this list) is only just over the standard—101 to 100.

In many instances, the nature of the trade suggests reasons for a high mortality, but not in all instances. For example, the high mortality among musicians is possibly due not to the nature of their occupation, but to the fact that persons of inferior health may follow this calling; musicians usually die of phthisis.

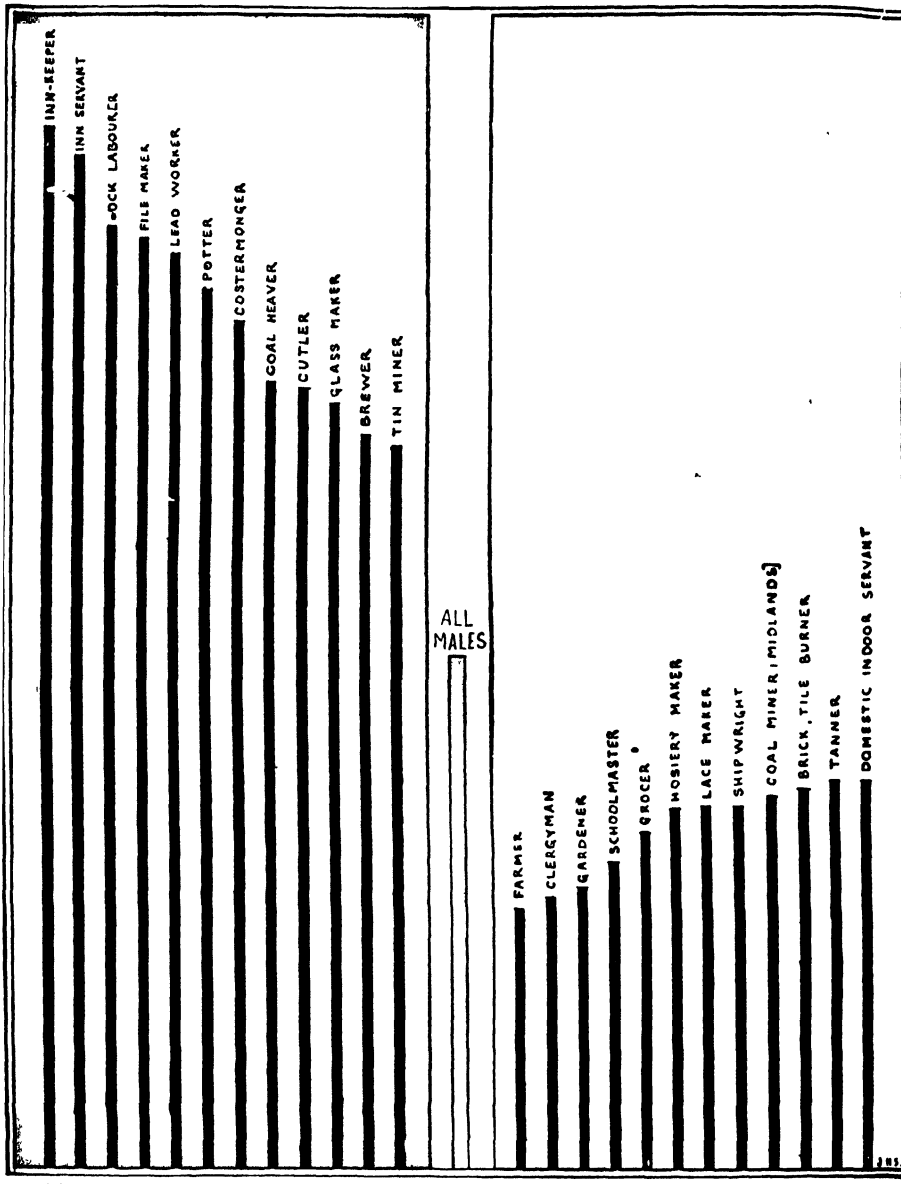
The occupations with the lowest mortality are as follow; the adjusted death-rate for all males (aged 25-65) being taken at 100, the adjusted comparative mortality-figure for each occupation is:—

Occupation.	Comparative mortality-figure.
Farmer, &c. (in Agricultural Districts)	51
Clergyman	53
Gardener	55
Farmer, grazier (all)	56
Schoolmaster	60
Agricultural labourer	63
Grocer	66
Hosiery manufacture	70
Lace manufacture	71
Shipwright	71
Coal miner (in Derbyshire and Notts)	73
Brick, tile burner	74
Tanner	76
Domestic indoor servant	76
Sawyer	77
Ironstone miner	77
Coal miner (in Durham and Northumberland)	77
Wheelwright	78
Artist, engraver, &c.	78
Railway official, clerk	78
Carpenter, joiner	78
Coal merchant	80
Ironmonger	81
Railway engine driver	81
Barrister, solicitor	82
Railway guard, &c.	82
Publisher	83
Corn miller	84
Fisherman	84
Carpet rug manufacture	87
Maltster	88
Tallow soap manufacture	90
Paper manufacture	90
Coal miner (in West Riding)	91
Blacksmith	91
Commercial clerk	92
Shoe and bootmaker	92
Baker, confectioner	92
Silk, satin, manufacture	92
Saddler, harness maker	92
Locksmith, bellhanger, gasfitter	92
Chemist, druggist	93
Rope, twine, cordmaker	93
Coal miner (all)	94
Watch, clockmaker	94
Fruiterer greengrocer	95
Commercial traveller	96
Fishmonger, poulterer	96
Physician, surgeon, &c.	97
General shopkeeper	97

The death-rate of each of these fifty occupations is below the common gauge of 100, which has been used throughout as a measure for comparing the comparative mortality in different trades or occupations.

The farmer stands at the head of the list, with a mortality that is only one-half of the normal mortality for all men of his age in England and Wales. The farmer's mortality is just one-quarter of that of the innkeeper in Industrial Districts. The Clergy are nearly as well placed as the farmers, and the gardener and the schoolmaster have a very low

MORTALITY IN DIFFERENT TRADES



The Comparative Mortality in the Twelve Worst Occupations, and in the Twelve Best Occupations, contrasted with the Mortality of All Males of the same ages. [*See text for the actual figures.*]

mortality. The male domestic servant (indoor) has a low mortality, 76, as compared with the normal 100.

Coal miners, as a whole, have a comparative mortality figure of 94, 6 points below the normal. Only those in Monmouthshire and South Wales have a high figure, 114 per 100. Artists, barristers, solicitors are all about 20 points under the normal 100. Commercial clerks are 8 points below the 100. and commercial travellers have 4 points in their favour. Doctors' mortality is 3 points below the normal 100.

J. HOLT SCHOOLING.

minutes must be signed either by himself or by the chairman of the next meeting. If, within half-an-hour from the time appointed for the meeting, three creditors—the number composing a quorum—are not present or represented, the meeting must be adjourned to the same day in the following week, at the same time and place, or to such other day as the chairman may appoint; but the interval of the adjournment must not be less than seven or more than twenty-one days.

Business and procedure.—At a meeting of creditors the wishes of the meeting are expressed by passing resolutions, which may be either ordinary or special. An ordinary resolution is one decided upon and passed by the votes of a majority in value of the creditors present or represented by proxy. A special resolution is one decided upon and passed by the votes of a majority in number and three-fourths in value of such present or represented creditors. By ordinary resolution, the creditors may resolve to adjudge the debtor a bankrupt, and they may appoint some fit person, whether a creditor or not, to the office of trustee of the bankrupt's property. As to the duties and position generally of a person filling this important position, *see* under the heading TRUSTEE IN BANKRUPTCY.

By special resolution, the creditors may accept a proposal by the debtor for a composition, or a scheme for the arrangement of his affairs.

Committee of Inspection.—A committee under this name, formed for the purpose of superintending the trustee's administration of the bankrupt's property, may be appointed at either the first or any subsequent meeting of creditors. The appointment is made by way of ordinary resolution, voted upon only by creditors fully qualified to vote. Any creditor, whether qualified to vote or not, may be a member of the committee; but if not qualified, a creditor so appointed cannot act until he has proved his debt, and the proof has been admitted. The number of the committee may not be more than five nor less than three. Membership may be resigned by notice in writing; or will be vacated if the member becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee; or may be rescinded by an ordinary resolution at any meeting of creditors, of which seven days' notice has been given, stating the object of the meeting. In case of vacancy, the trustee will at once call a meeting, by which the vacancy may be filled up, though meanwhile the committee may continue to act, so long as its membership is not reduced below two. In the absence of a committee, the Board of Trade, or the official receiver, may exercise its functions.

The duties of the committee are, as we have already seen, to superintend the administration by the trustee of the debtor's estate. To do this, it may give directions to the trustee, who must follow them, and in certain cases the trustee cannot act in any way without the permission of the committee; it should require, once in every three months at least, the production by the trustee of his cash-book, audit it, and give a certificate of such audit; it must hold a meeting at least once a month, and attend any meeting thereof which a single member may take upon himself to summon. The committee acts by a majority of its members present in meeting, but cannot act unless such a majority is present. Its acts may be reviewed by the creditors in general meeting; as also, if necessary, by the official receiver and the Board

of Trade. No member may make any profit, directly or indirectly, out of any transaction incidental to the bankruptcy; nor may he, except by leave of the Court, directly or indirectly become the purchaser of any part of the estate.

The public examination of the debtor is held by the Court as soon as possible after the expiration of the time for the submission of the debtor's statement of affairs. Notice of the time and place is given to all the creditors and to the debtor; the latter being liable to arrest if he should fail to attend. At the examination, which will be in open Court, the whole of the debtor's conduct, dealings, and property will be rigorously inquired into; this being the time when any discrepancies in the debtor's statement of affairs, and his answers on an earlier occasion to the questions put to him by the official receiver, will be publicly gone into in the light afforded by the independent investigations of the official receiver and the trustee. The debtor must disclose all his affairs. He will be examined upon oath, and may be questioned by the Court, the official receiver, the trustee, by any creditor who has delivered a proof, and by any such creditor's representative duly authorised in writing. All questions which are allowed by the Court to be put must be answered by the debtor—he cannot claim privilege; answers to them must be given, even if they tend to incriminate him; the answers will be taken down in writing and afterwards read over to the debtor, who must sign them; and these may be read by his creditors at all reasonable times. In the case of frauds by agents, bankers, or factors, it is provided that a statement or admission made by any person, in any compulsory examination before a Court in any bankruptcy matter, shall not be admissible as evidence against that person in any proceedings in respect of such frauds. When the Court is of opinion that the debtor's affairs have been sufficiently investigated, the public examination may be concluded; but this will not be done until after the day appointed for the first meeting of creditors, or even until such meeting has been held. Until the conclusion of the public examination, the debtor cannot apply for his discharge; nor will the Court approve of any proposal for a composition or for a scheme of arrangement. Should the debtor fail to disclose his affairs, or to attend the public examination, or any adjournment thereof, no good cause being shown for such failure, the Court may adjourn the examination *sine die*. If the affairs of the debtor do not make his arrest worth while, his penalty for such failure is the consequent inability to obtain his discharge or other advantages obtainable after the conclusion of the public examination. And should he at any time afterwards desire to get through with his examination, he will probably have to personally pay the expenses of the notice thereof to the creditors and of the gazetting.

Adjudication of bankruptcy.—At the time of making a receiving order, or at any time thereafter, the Court may, on the application of the debtor himself, adjudge him bankrupt. Such application may be made orally and without notice. But where creditors apply for an adjudication, certain conditions must be fulfilled. A debtor will then, after a receiving order has been made, be adjudged bankrupt in any of the following circumstances—(*a*) when a quorum of creditors do not attend at the time and place appointed for the first meeting, or one adjournment thereof; (*b*) where the official

receiver satisfies the Court that the debtor has absconded, or that the debtor does not intend to propose a composition or scheme; or (*c*) where a composition or scheme is not accepted by the creditors at the first meeting, or one adjournment thereof; or (*d*) where the public examination of the debtor is adjourned *sine die*, and the debtor has not previously been adjudged bankrupt; or (*e*) where the debtor has made default in payment of any instalment in pursuance of a composition or scheme. Notice of the adjudication is advertised and gazetted in like manner to the receiving order. The effect of the adjudication is to cause all the property of the debtor to vest in the official receiver or trustee, and to become divisible amongst his creditors.

Property of a bankrupt.—The property so vested as the result of an adjudication will pass from official receiver to trustee and from trustee to trustee, and vest in them for the time being during continuance of office without any conveyance, assignment, or transfer whatever. But the following property is excluded from that which passes upon adjudication for the benefit of the creditors:—(i.) Property held by the bankrupt in trust for any person. (ii.) The tools of his trade and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools, apparel, and bedding, not exceeding £20 in the whole. It comprises, however, the following:—

(i.) All such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge.

(ii.) The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy, or before his discharge, except the right of nomination to a vacant ecclesiastical benefice.

(iii.) All goods being, at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof: provided that things in action other than debts due or growing due to the bankrupt in the course of his trade or business, shall not be deemed goods within the meaning of the Bankruptcy Acts. For an explanation hereof the reader should refer to the article on the ORDER AND DISPOSITION CLAUSE. The word property includes money, goods, things in action [*see* CHOSE IN ACTION], land, and every description of property, whether real or personal, and whether situate in England or elsewhere; also obligations, easements, and every description of estate, interest, and profit present or future, vested or contingent, arising out of or incident to property as above defined. But though adjudicated a bankrupt, the debtor has, until the trustee interferes, a good title to all property, other than realty, acquired after the bankruptcy. Until such an interference, all transactions by a bankrupt after his bankruptcy, with any person dealing with him *bonâ fide* and for value, in respect of his after-acquired personal property, whether with or without the knowledge of his bankruptcy, are valid against the trustees. The *bona fides* of the bankrupt is immaterial.

Disqualifications of a bankrupt.—When adjudged bankrupt, a debtor cannot (i.) sit or vote in the House of Lords, or on any committee thereof,

or be elected thereto as a peer of Scotland or Ireland; (ii.) be elected to, or sit or vote in, the House of Commons; (iii.) be appointed, or act as, a police of the peace; (iv.) be elected, or hold office as mayor, alderman, or councillor; or (v.) as guardian of the poor, overseer, member of a sanitary authority, school board, highway board, burial board, or select vestry; or (vi.) as member of a county council. If a person whilst holding the positions iv., v., and vi. is adjudged bankrupt, his office will thereupon become vacant. None of these disqualifications shall exceed a period of five years from the date of any discharge which may be granted. They are, moreover, removed, and cease when the adjudication is annulled; so also where the debtor obtains his discharge with a certificate to the effect that his bankruptcy was caused by misfortune, without any misconduct on his part.

Annulment of adjudication.—Where, in the opinion of the Court, a debtor ought not to have been adjudged bankrupt, or where it is proved to the satisfaction of the Court that the debts of the bankrupt are paid in full, the Court may, on the application of any person interested, annul the adjudication. Any debt disputed by a debtor will be considered as paid in full for the purpose of annulment, if the debtor enters into a bond, in such sum and with such sureties as the Court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt, with costs. If a creditor cannot be found, the debt will be deemed paid in full, if the amount thereof is paid into Court. In the case of an annulment, all dispositions of property and payments of money made as a result of the bankruptcy will be valid; but unless otherwise ordered, all the property of the debtor shall revert to him for all his estate or interest therein. An annulment will also remove all the disqualifications involved in the bankruptcy. In annulling an adjudication the Court has regard to the good of the community as well as to the interests of the creditors.

Compositions and schemes of arrangements.—On the adoption hereof by the creditors an adjudication of bankruptcy may be avoided, and the receiving order discharged. It is therefore necessary that special attention should be paid to the provisions of the Bankruptcy Acts on this subject. Compositions and schemes of arrangement may be proposed either before adjudication or after; but in any case the proposal must come from the debtor. The terms themselves are readily understood by a business man, and do not require special definition. It is sufficient to say that any arrangement would come within the meaning of the terms whereby less than 20s. in the £ is proposed to be paid by the debtor to all his creditors in full satisfaction and discharge of their claims; or whereby the full amount of such claims or any agreed proportion thereof is with a like object proposed to be paid in some time or manner other than forthwith in cash. Should a debtor intend to make such a proposal, it should be submitted within four days from the delivery of his statement of affairs. The proposal must be in writing signed by the debtor, embodying the terms of the composition or scheme which he is desirous of submitting for the consideration of his creditors, and setting out particulars of any sureties or securities proposed. It should be lodged with the official receiver within the above-mentioned period. The official receiver will thereupon hold a meeting of creditors before the public examination is concluded, and send each creditor, before the meeting,

a copy of the proposal, together with his, the official receiver's, report thereon. The proposal will be considered duly accepted by the creditors, if at the meeting a majority in number, and three-fourths in value, of all the creditors who have proved their debts pass a resolution of acceptance; but it will not be finally binding until it has been approved by the Court. At the meeting the debtor may amend the proposal, if such amendment is, in the opinion of the official receiver, calculated to benefit the general body of the creditors.

After the conclusion of the public examination, the debtor or the official receiver may apply to the Court for its approval of the proposal; notice of the application must be given to each creditor who has proved who may, even though he has voted at the meeting accepting the proposal, oppose its approval by the Court. In any case, the Court will, before approving, hear a report of the official receiver as to the terms thereof, and as to the conduct of the debtor, and any objections which may be made by any creditor. Nor will it approve the proposal if, in its opinion, the terms thereof are not reasonable; or are not calculated to benefit the general body of the creditors; or provision is not made for payment in priority to other debts of all debts directed to be so paid in the distribution of the property of a bankrupt; or where the debtor has so acted as to require the Court to refuse his discharge. In the latter case, before approval can be obtained, the proposal must provide reasonable security for payment of not less than 7s. 6d. in the pound on all the unsecured debts provable against the debtor's estate. Though such a proposal, when duly approved by the Court, is binding upon all the creditors, yet it does not release the debtor from any liability under a judgment against him in an action for seduction, or under an affiliation order, or under a judgment against him as a co-respondent in a matrimonial cause, except so far as the Court expressly orders in respect of such liability. The provisions of a composition or scheme may be enforced by the Court on application by any person interested, and any disobedience of an order of the Court made on the application will be punishable as a contempt of Court; and a composition or scheme may be annulled if it appears that it cannot be worked out satisfactorily to the interests of the creditors, or that the debtor is in default in payment thereunder, or that it was obtained by fraud.

Dividends.—Although, as we have already seen, a creditor is not entitled to share in the distribution of a bankrupt's estate until he has proved his debt, yet in the calculation and distribution of a dividend it is obligatory upon a trustee to make provision for provable debts appearing in the debtor's statement to be due to creditors residing at a distance and who have not had an opportunity to send in their proofs. In like manner provision must be made for unascertained or disputed claims, and for the costs and expenses of the bankruptcy. Subject to such provisions, all money realised and in hand must be distributed to the creditors *pro rata;* regard being had, however, to claims which are required to be paid in full. The first dividend, if any, must be declared and distributed within four months after the conclusion of the first meeting of creditors; subsequent dividends at intervals of not more than six months. There is no remedy against a trustee personally for not making sufficient provision for a reserve in cases where he could not possibly have known that there would be any deficiency in realising a secured

creditor's security. So long as there are any undivided assets available for distribution in the bankruptcy, a creditor may come in and prove his claim. A dividend in the hands of an official receiver or trustee cannot be garnished; nor does any action lie against the trustee for a dividend. But in the latter case the Court may compel the trustee to pay a dividend, even after his release, provided he has available funds in hand.

Discharge of the bankrupt.—The debtor having had a receiving order made against him, duly filed his statement of affairs, relinquished his property to the official receiver or a trustee, passed his public examination, possibly made a proposal for a composition or scheme, submitted to the investigations of meetings of his creditors, been adjudicated a bankrupt, and had his property realised and distributed amongst his creditors, desires now but one thing, and that is his discharge. Until this is obtained he is what is termed an undischarged bankrupt, and as such is liable to imprisonment if he should obtain credit with any person to the amount of £20 or more without disclosing the fact of his bankruptcy, and that he has not been discharged therefrom. The offence is committed even if there was no intent to defraud, or if the credit was not stipulated for. Merely receiving and keeping such an amount of goods, though sent in execution of an order for goods below £20, would be sufficient to bring the undischarged bankrupt within the reach of the law. This position, therefore, amounts in fact to a prohibition from trading on his own account. Moreover, until he receives his discharge the disqualifications enumerated above continue in full force; and to make the discharge immediately available, it should be accompanied by a certificate of conduct.

We will now describe the conditions of discharge. At any time after being adjudged bankrupt the debtor may, notwithstanding he has been convicted under the bankruptcy laws, apply to the Court for his discharge. The application can only be heard after the conclusion of the public examination and in open Court. The discharge may be absolute, or suspended for a specified time, or subject to conditions as to earnings or income which may afterwards become due to the bankrupt, or as to his after-acquired property; or it may be refused. In deciding as to the course to be adopted, the Court will take into consideration the report of the official receiver as to the bankrupt's conduct and affairs both before and during the proceedings of the bankruptcy, and any mitigating circumstances. The Court may also put such questions to the official receiver and to the debtor, and hear other evidence; and if the discharge is granted, the debtor may be required to give any assistance yet necessary in the winding-up of his estate.

Facts determining question of discharge.—The Court will absolutely refuse the discharge in all cases where the bankrupt has committed any misdemeanour under the Debtors Act or under the principal Bankruptcy Act, or any felony or misdemeanour connected with his bankruptcy, unless for special reasons the Court otherwise determines. The misdemeanours under the Debtors Act will be found in an article under the title of that Act, to which the reader should refer. For the present attention should be paid to the following twelve sets of circumstances, which have an important bearing on the question of discharge, as will subsequently be seen:—

(i.) Where the bankrupt's assets are not of the value of ten shillings in the pound on the amount of his unsecured liabilities, the Court not being

satisfied that the fact of such disproportionate value has arisen from circumstances for which he cannot justly be held responsible:

(ii.) Where the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by him, and such as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy:

(iii.) Where the bankrupt has continued to trade after knowing himself to be insolvent:

(iv.) Where the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it:

(v.) Where the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities:

(vi.) Where the bankrupt has brought on, or contributed to, his bankruptcy by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs:

(vii.) Where the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him:

(viii.) Where the bankrupt has within three months preceding the date of the receiving order incurred unjustifiable expense by bringing a frivolous or vexatious action:

(ix.) Where the bankrupt has within three months preceding the date of the receiving order, when unable to pay his debts as they became due, given an undue preference to any of his creditors:

(x.) Where the bankrupt has within three months preceding the date of the receiving order incurred liabilities with a view of making his assets equal to ten shillings in the pound on the amount of his unsecured liabilities:

(xi.) Where the bankrupt has on any previous occasion been adjudged bankrupt, or made a composition or arrangement with his creditors:

(xii.) Where the bankrupt has been guilty of any fraud or fraudulent breach of trust.

Then, on proof of any of such facts, the Court may either (*a*) refuse the discharge; or (*b*) suspend the discharge for a period of not less than two years; or (*c*) suspend the discharge until a dividend of not less than ten shillings in the pound has been paid to the creditors; or (*d*) require the bankrupt, as a condition of his discharge, to consent to judgment being entered against him by the official receiver or trustee for any balance, or part of any balance, of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, such balance or part thereof to be paid out of the future earnings or after-acquired property of the bankrupt, in such manner and subject to such conditions as the Court may direct; but execution will not be issued on the judgment without leave of the Court, which leave may be given on proof that the bankrupt has since his discharge acquired property or income available towards payment of his debts. But if at any time after the expiration of two years from the date of any order so made, the bankrupt satisfies the Court that there is no reasonable probability of his being in a position to comply with the terms of the order,

the Court may modify the order in such manner and upon such conditions as it may think fit.

Punishment of debtor.—If, after a bankruptcy notice has been issued or a bankruptcy petition presented, it appears that the debtor has absconded, or is about to abscond, he may be arrested and his papers and goods seized. So also, if after the presentation of a petition he is about to remove his goods, or conceal or destroy his goods or documents; or removes any goods in his possession above the value of £5 without leave; or fails to attend any examination without good cause. If it appears that the debtor has been guilty of any misdemeanour in bankruptcy, the Court may commit him for trial; and if he has been guilty of any criminal offence he may be prosecuted, even though he has obtained his discharge, or a composition or scheme has been proposed or accepted. Though the official receiver does not ask for a prosecution, the Court must nevertheless consider whether a prosecution is necessary.

It is a punishable felony for any person, in respect to whose estate a receiving order has been made, after, or within four months before the presentation of a petition, with intent to defraud, to quit or attempt to quit England, and take with him property to the amount of at least £20, which ought to be divided among his creditors. There are a number of other offences constituted by the Debtors Act, and relating mainly to bankrupts, the commission of any of which is a criminal offence.

Generally, and for further information on this subject and matters incidental thereto, reference should be made, in addition to articles mentioned above, to those on FRAUDULENT CONVEYANCES; UNDUE PREFERENCE; and with regard to bankruptcies in which the property of the debtor does not exceed £300, to SMALL BANKRUPTCIES. It will now be sufficient to conclude with a few short points. There must be an indebtedness of £50 at the least to support a bankruptcy petition. Proceedings in bankruptcy will not be permitted for the inequitable and collateral purpose of extortion or exercising pressure over a debtor; nor in any case where they constitute an abuse of the process of the Court. An action for damages is maintainable against one who maliciously and falsely takes bankruptcy proceedings. Bankruptcy usually terminates the contracts of agency, master, and apprentice, and partnership; but not those of hiring, purchase, and sale; nor does it abate an action, or revoke a submission to arbitration.

BANKRUPTCY, SCOTCH.—Bankruptcy in Scotland means public insolvency, and stands midway between a private insolvency and sequestration, by which latter a debtor is divested of his property for the benefit of his creditors. The technical term is notour bankruptcy, and it is constituted (*a*) by sequestration, or by an adjudication of bankruptcy in England or Ireland; (*b*) by insolvency, with a duly executed charge for payment followed by imprisonment, absconding, or execution; or with a sale of any of the debtor's effects under a poinding or a sequestration for rent; or with his retiring to sanctuary for twenty-four hours, or making application for the benefit of *cessio bonorum*. Strict proof of inability of the debtor to meet his obligations as they arise is not always required; it being sufficient if his actions are such as to give rise to an inference of insolvency. Notour

bankruptcy is not the same thing as English bankruptcy proper; it refers to the position of the debtor before he has been sequestrated. Sequestration would be the Scotch equivalent of the English bankruptcy, the term bankruptcy in Scotland being applicable in England to the position of a person who has committed an act of bankruptcy. After notour bankruptcy, the creditors are in principle the true owners of the debtor's property, and from this it follows as an effect of notour bankruptcy, that the debtor must abstain from any act that can affect the preference of his creditors; he cannot effectually do any deed to alter their condition and to confer preferences on his friends. Not even can he establish any equality between them. The debtor may, however, make in his ordinary course of business necessary and proper payments in cash in respect of debts due at the time; so, too, he may carry through transactions in the ordinary course of his trade, so long as there is no collusion and no notice to the creditor of his insolvency; and also he may pay new debts, the result of new transactions, where the price paid is a just one, give conveyances for full value, and fair security for money borrowed. A second effect of notour bankruptcy is that of the equalisation of diligences and *pari passu* ranking of creditors. A further most important effect is the right of creditors to petition for sequestration. This may be done within four months after the constitution in any particular of notour bankruptcy; but the debtor must have a personal residence or carry on business in Scotland. From this it will be seen that the notour bankrupt, and his dealings with his property and creditors, are subject to similar principles and effects as are the insolvent debtor and his dealings in England. *See* SEQUESTRATION.

BANNS OF MARRIAGE, or a registrar's certificate, are a necessary precedent to lawful marriage according to the rites of the Church of England. They must be published in an audible manner according to the form in the rubric, upon three several, not necessarily consecutive, Sundays preceding the marriage; morning service, immediately after the second lesson, is the appointed time, but if there is no morning service, the evening service may be substituted. The clergyman may require seven days' notice in writing, and the publication must be in the full names of the parties, by which they are generally known; the banns are in force for three months after the last publication. In Scotland, the banns are proclaimed at the commencement of divine service, and though three successive Sundays are required by strict law, proclamation on two or even one Sunday would be sufficient.

BARBED WIRE means any wire with spikes or jagged projections; and its use for fences in roads, streets, lanes, and other thoroughfares is prohibited in the United Kingdom by the Barbed Wire Act, 1893. Where there is on any land adjoining a thoroughfare, a fence made with barbed wire, or in which barbed wire has been placed so that it may probably be injurious to persons or animals lawfully using such thoroughfare, such fence will be deemed a nuisance. The local authority may give notice to the occupier of land requiring him to abate the nuisance within a time not less than one month nor more than six months after the date of the notice. If the occupier does not comply with such notice, the local authority may apply to a court of summary jurisdiction; which court, if satisfied that the fence is probably injurious as above mentioned, will direct the occupier to abate the nuisance; in default of

his so doing, the local authority may itself do whatever it deems necessary, and charge the occupier with the expenses. Unless the local authority is itself the offender, in which case a ratepayer may take the above proceedings, it would seem that such proceedings can be taken by the local authority only.

Apart from statute, a person who uses barbed wire does so at his own peril; but if the injury is to a mere trespasser and the wire is entirely on such person's own land, there would be no liability. Where S. was lawfully passing along a public footpath, and the wind blew his coat against an adjoining barbed fence belonging to W., the latter was held liable for the damage done to the coat, on the ground that the fence was dangerous and a nuisance.

BARRATRY.—Common barratry is the offence of frequently exciting and stirring up suits and quarrels between his Majesty's subjects, either at law or otherwise. The offence is a misdemeanour, punishable by fine and imprisonment, and it should be distinguished from an offence bearing to it a near relation, and called *maintenance*. The latter occurs where any one officiously intermeddles in a suit that in no way concerns him, by maintaining or assisting either party with money or otherwise, to prosecute or defend it; it being an offence against public justice, keeping alive strife and contention, and perverting the remedial process of the law into an engine of oppression. A man may, however, maintain the suit of his near relative, servant, or poor neighbour, out of charity and compassion, with impunity; but otherwise the punishment is fine or imprisonment. Also closely allied hereto is the offence of *champerty*, which is a kind of maintenance and is punished in the same manner, and consists of a bargain with a plaintiff or defendant by which, in case of success, the subject of the litigation is to be divided between them, the "champertor" agreeing to carry on the suit at his own expense. Such a bargain cannot be enforced in law, it coming under the head of illegal contracts, and is therefore void.

In marine insurance the term barratry may be defined as including every wrongful act wilfully committed by the master or crew with intent to defraud the owner, or, as the case may be, the charterer. It is essential that the wrongful act should be done with criminal or fraudulent intention, and not as a result of merely gross ignorance, mistake, or misapprehension of instructions. To sail out of port without paying port dues, whereby the ship and goods become liable to forfeiture; to wilfully break through a blockade, though for the owner's benefit, and to engage in smuggling, are all instances of barratry on the part of the master. Shipowners are liable to the owners of the cargo for damage resulting from barratry, unless there is an express exemption therefrom in the contract. The exception of "danger of the seas and fire" introduced into a bill of lading does not extend to except a liability for barratry.

BASTARD is the term applied to an illegitimate child; one not born in lawful wedlock, or one, though so born, who has been declared illegitimate by legal process. From the earliest period the English law has been peculiarly strict on the subject of legitimacy, and so far back as the thirteenth century, when it was desired to introduce the rule of the canon law, whereby illegitimate children are legitimated by the subsequent marriage of their parents, the barons assembled at Merton made their celebrated declaration "that

they would not consent to change the laws of England hitherto used and approved." In those days the fact of birth after marriage was conclusive of legitimacy; but to-day the fact of birth during marriage, or within a competent time after the husband's death, is only a strong presumption of legitimacy, which may be rebutted by satisfactory evidence to the contrary; if, however, the husband and wife are living apart, the presumption will be that the child is illegitimate, though that presumption may also be repelled. The effect of illegitimacy upon a child is found in certain disabilities under which he labours. These disabilities are few in number, and are chiefly confined to the cases of inheritance and succession; they commence with the legal fiction that he is *filius nullius*, a son of nobody. From this it results that he cannot be an heir-at-law; nor can he be next-of-kin to any other than those to whom he is related other than as a descendant; nor can he be born the possessor of a surname, though he may acquire one by reputation. Thus he is not the heir-at-law to any of his reputed or natural ancestors; nor is he entitled to a share in the distribution of the personal property of his parents, if they die intestate, or of any collateral ancestor. Such a child can only take under a will where he is distinctly and specifically described; not if he is referred to under the general description of child, son, or daughter, for such a description is presumed to include legitimate children only. If he die without a wife, issue, or will, his property reverts to the Crown, though the latter will usually, upon proper application being made, resign a portion of the estate in favour of his natural relations. If he have property, the Court will appoint a guardian over him. He may marry without consent, but is required to do so without the table of affinity, as if he had been born in wedlock; he is thus capable of incest. The father of an illegitimate child has very little, if any, parental authority; its mother being alone entitled as of right to its custody, though in law she is strictly only a stranger to the child; but in deciding as to the party to have its custody, the Court will primarily consider the child's welfare. The father can, however, in addition to or in substitution for the mother, be made liable for its support by the poor-law authorities, as also he can by the mother in AFFILIATION (*q.v.*) proceedings. If the mother should marry, then her husband is liable for the support of her illegitimate children; and, at the instance of the poor-law authorities, the putative father is liable although the husband is able to maintain them.

In Scotland the law differs considerably from the English. The duties of the parents of *filii nullius* comprehend both maintenance and education, and come under the term *aliment*. The mother is entitled to the custody of the bastard during infancy, after which the father may take its rearing into his own hand. To determine its father for the purpose of awarding aliment, there must be in the first place some evidence of his parentage other than that offered by the mother; after this has been supplied, the mother may give evidence in corroboration or completion. In deciding the amount payable by the father, the circumstances of the mother must also be taken into account, as the law requires both of them to contribute to the aliment. A child may be legitimated *per subsequens matrimonium*, which is by the subsequent marriage of the parents, provided the marriage would have been lawful at the time of the birth; the result of such legitimation being to

entitle the child to all the rights and privileges in Scotland of lawful issue. But such a child could not succeed as heir-at-law to real estate in England, the descent of that class of property being regulated by the law of the place in which it is situated.

BATHING.—It is an indictable offence for a man to undress himself on the beach and to bathe in the sea near inhabited houses from which he may be distinctly seen, although the houses may have been recently erected, and till then it may have been usual for men to bathe in great numbers at the place in question. The same would apply to bathing in rivers. There is no common law right for all persons to bathe upon the sea-shore, and to pass over it for that purpose upon foot, or with or in bathing machines, even though it be Crown property. It may be that the owners of adjoining land and houses, and the inhabitants of adjacent villages, have in many cases such a right; but it must always be exercised so as not to become a public nuisance.

BAY OR BOW WINDOW.—In London, where the street is not less than forty feet wide, these windows may be erected to private dwelling-houses, provided they are placed on private land, and not on the public way; where the street is not so wide the consent of the county council must be first obtained. Outside London, their erection is subject to the control of the local town or urban district councils. If the house is held on a lease or freehold grant which prohibits the erection of buildings projecting in its front or rear, such a window cannot be erected.

BEARER SECURITIES are those documents of title which pass from hand to hand by mere delivery, the formalities of assignment or indorsement not being required. Examples are a bill of exchange, or a debenture, expressed to be payable to bearer.

BEER—BEER-HOUSES—BEER-RETAILERS.—In early times in England ale and bread were considered to be equally victuals or absolute necessaries of life, and from the reign of Henry III. to that of Henry VIII. laws were made regulating the price and quality of these commodities, not relatively to some indifferent standards, but relatively to one another. But this interdependence was bound in time to become extremely inconvenient, and consequently, in the twenty-third year of the latter reign, brewers were allowed to fix the price of beer without regard to the price of bread, though subject to the discretion of justices and mayors, and to the palate of the ale-conner.

Adulteration.—The ale-conner held an office of the highest antiquity, his duty being to examine and assay beer and ale and take care that they were of good quality and wholesome, and sold at the prices fixed by the laws and regulations for the time being in force. These laws or regulations were called *assizes*. The ale-conner has persisted until the present day; he is found still occupying a sinecure office in an occasional manor, or under some ancient corporation. But in the old days he was an official with important duties, and was to be found in almost every town and parish throughout the country. To-day, beer can apparently be made of any substance, chemical or otherwise, so long as it is not injurious to health. Most of the prosecutions which have been taken in respect of adulterated beer have been the result of a too great proportion of salt in the beer. And these were almost

the only prosecutions, until recently the discovery of arsenic in beer gave rise to another ground for proceeding. The special statute law on the subject now in force is as follows:—"A dealer in or retailer of beer shall not adulterate or dilute beer, or add any matter or thing thereto (except finings for the purpose of clarification), and any beer found to be adulterated or diluted or mixed with any other matter or thing (except finings) in the possession of a dealer in or retailer of beer shall be forfeited, and he shall incur a fine of £50." There is a similar enactment with regard to brewers. There is an implied warranty under the SALE OF GOODS Act, on the sale of beer by retail by description, that the beer is of a merchantable quality.

Licensing.—It was in the reign of Henry VII. that restrictions were placed upon the sale of beer; until then any one who pleased might brew and sell ale and beer and keep an alehouse, the only restriction being the one he shared with his fellow-traders, that he should so conduct his business as not to create a public nuisance. But it would seem that such a business could not be so conducted without becoming a public danger. Accordingly a statute of Edward VI. placed the alehouses directly under the control of the local magistrates, and so inaugurated the licensing system which is with us to this day. And probably the jealousy with which that system has been preserved is as much due to the presence through all these years of a watchful temperance party, as to a careful police. The temperance party, considered as an opposing force to the licensed trade, can hardly be said to be of modern growth. If there was not a party so-called there were certainly its elements, present too, in high places. Thus in the year 1635 we find the Lord Keeper Coventry, in his charge to the judges previously to the circuits, inveighing against the licensed houses in the strongest terms. He says: "I account alehouses and tippling-houses the greatest pests in the kingdom. I give it to you in charge to take a course that none be permitted unless they be licensed; and, for the licensed alehouses, let them be but a few, and in fit places; if they be in private corners and ill places, they become the dens of thieves—they are the public stages of drunkenness and disorder; in market-towns, or in great places or roads, where travellers come, they are necessary . . . let care be taken in the choice of alehouse keepers, that an alehouse be not appointed to be the livelihood of a great family; one or two is enough to draw drink and serve the people in an alehouse; but if six, eight, ten, or twelve must be maintained by alehouse keeping, it cannot choose but be an exceeding disorder, and the family, by this means, is unfit for any other good work or employment. In many places they swarm by default of the justices of the peace, that set up too many; but if the justices will not obey your charge herein, certify their default and names, and I assure you they shall be discharged. I once did discharge two justices for setting up one alehouse, and shall be glad to do the like again upon the same occasion."

Until the reign of George II. little change was made in the method of licensing and the regulation of alehouses; but in that reign, what with the startling and extraordinary increase of spirit-drinking amongst the lowest classes, and with the necessity which had arisen for arrangements by which the excise duties might be collected with facility and certainty, the legislature found it expedient to seriously approach this important subject. Accordingly,

two Acts were passed, the latter of which continued as the authority for licensing beerhouses until the nineteenth century; then after one or two Acts of slight importance there was passed in 1828 a general Act regulating the granting of licences and repealing all former statutes on the subject. This latter Act, as amended and supplemented by subsequent Acts, ending with the Licensing Act of 1910, is now the authority for licensing beerhouses. A beer retailer is not necessarily an innkeeper.

Applications for Licences.—Except in certain cases, a licence known as a justice's certificate must be first obtained from the local justices, and then the excise licence must be taken out—the latter will not be granted until the former has been obtained. The licence duties payable by a beer retailer are now defined by the Finance (1909–10) Act, 1910, and will be found in the article on LIQUOR LICENCES in the Appendix to Vol. IV. The certificates are in force for a whole year from the date of granting, which date is, in Middlesex, Surrey, and London, the 5th day of April, and elsewhere the 10th day of October; but of course a temporary or occasional licence would continue in force only so long as the magistrate's order. The cases which are excepted from the necessity of first obtaining a justice's licence or certificate are—(*a*) Dealers in beer, not being brewers, who sell at one time to be consumed off the premises, strong beer only in casks containing not less than four and a half gallons, or in not less than two dozen reputed quart bottles; (*b*) Proprietors of theatres duly licensed for stage plays. Generally, in other cases, the justice's certificate or licence is a necessary preliminary to obtaining the excise licence. Wholesale dealers of beer, as above, may sell at any time, even within prohibited hours; provided they sell not less than the minimum total quantity in one transaction, the beer may be put up in any size of bottle, small or large, that may be desired. The bar of a theatre cannot be kept open beyond the closing hours of the place in which the theatre is situated.

In order to obtain a justice's licence, application must be made to the magistrates either (*a*) at the general annual licensing meeting and its adjournment; (*b*) before the confirming authority; (*c*) at a special transfer sessions; or (*d*) at Petty Sessions. The general annual meeting is known as the Brewster Sessions, and due notice of its date and place is given to the public. By the Licensing Act of 1910 this meeting is held, in every licensing district, within the first fourteen days of the month of February in each year; and every adjournment thereof is held within one month of its date. An intending applicant for a licence must give written notice of his intention, and serve the same on one of the overseers of the place in which his premises are situate, and on the superintendent of the police of the district, at least twenty-one days before making the application. If his premises have never before been so licensed, he must also affix a written notice upon the principal door, or one of the doors, of the church or chapel of the parish in which his premises are situate. This must be done within twenty-eight days before the application, and the notice must be maintained during two consecutive Sundays. The notice must also be advertised in a local paper not more than four and not less than two weeks before the proposed application.

Closing hours in London are: on Saturday night from midnight until 1 P.M. on the following Sunday, and then from 3 P.M. to 6 P.M.; on Sunday night from 11 P.M. until 5 A.M. on the following morning; and on all other days from 12.30 A.M. until 5 A.M. on the same morning. Elsewhere, generally,

in a place with a population of not less than a thousand, the closing hours are: on Saturday night from 11 P.M. until 12.30 P.M. on the following Sunday; on Sunday from 10 P.M. until 6 A.M. on the following morning; on other days from 11 P.M. until 6 A.M. on the following day. In other cases the hours are: on Saturdays from 10 P.M. until 12.30 P.M. on the following Sunday; on Sunday from 10 P.M. until 6 A.M. on the following day; and on other days from 10 P.M. until 6 A.M. on the following day. In Wales the premises must be closed during the whole of Sunday. *See* also INNKEEPER; LICENSING.

BEGGARS—BEGGING LETTER.—To go about, as a general practice of life, gathering or collecting alms is to become a rogue and vagabond and liable to punishment. To obtain money by sending or delivering a lying begging letter is to obtain money by false pretences; whilst to attempt so to do, or to obtain charity of any description, under any false or fraudulent pretence, including an untrue begging letter, is also to become a rogue and vagabond, and on a second conviction to become liable to be dealt with and punished as an incorrigible rogue. *See* FALSE PRETENCES AND CHEATING.

BETTING AND BETTING-HOUSES.—It appears that about the year 1853 the Legislature became rather suddenly aware of a widespread practice of betting, with the result that in the same year was passed the Betting Act, 1853. The preamble to the Act shows the view taken by the Legislature both of the nature of betting and of its effects; setting forth, as it does, that a kind of gaming had then of late sprung up, tending to the injury and demoralisation of improvident persons, by the opening of places called betting-houses or offices, and the receiving of money in advance by the owners or occupiers of such houses or offices, or by other persons on their behalf, on their promises to pay money on events of horse-races and the like contingencies. The Act then proceeds to provide for the suppression of betting-houses, and, subject to certain modifications, its operations extend to Scotland. In the first place, no house, office, room, or other place may be used by any person, whether owner, occupier, manager, or agent, for the purpose of conducting, in any way, the business of betting with persons resorting thereto. Nor may such a place be used by such a person for the receipt of money or any valuable on account of any betting transaction relating to any horse or other race, fight, game, sport, or exercise. Receiving money to open a deposit account is unlawful (*Rex* v. *Mortimer*). A place so kept becomes a common nuisance and contrary to the law, and is, moreover, a common **gaming-house**, subject to the law relating thereto. Any such person as before mentioned is liable, on summary conviction, to a fine of £100 and costs, or imprisonment with hard labour for six months. Such a person, moreover, who receives a deposit on account of a bet, or gives any acknowledgment, note, security, or draft in respect of such receipt will, on summary conviction, be liable to a fine of £50 and costs, or three months' imprisonment with hard labour.

In this connection it should be noticed that any money or valuable received by such a person as aforesaid as a deposit or consideration for a bet may, or its value may, be recovered from such person by the party from whom it was received. The above provisions do not extend to the stakes or deposit to be paid to the winner of any race, or lawful sport, game, or exercise, or to the owner of any horse engaged in any race. If a complaint or

information has been laid in respect of a betting offence, and with which the complainant has failed or neglected to proceed with due diligence, the magistrates may authorise any other person to proceed on the same complaint. A special search-warrant may be granted by a magistrate.

Many points arising out of the Betting Act have been at various times judicially considered. For example, as to the person liable, it has been held that no liability attaches to persons who are not in control *and occupation* of the place which is alleged to be the betting establishment; thus a race-course company would not be liable in respect of the temporary betting establishment thereon of a betting man. Nor would a person who carried on and managed a lawful business of his own, taking no share or part in the illegal business of a betting-house carried on in the same place; but the owner or occupier of that place would be liable if he knowingly and wilfully permitted the betting business to be carried on there. A "house, office, room, or other place" includes for the purposes of the Act any place which is sufficiently definite as a locality for the time being of a betting business; accordingly a stool covered by a large umbrella, a certain spot with a loose wooden box, a piece of vacant ground to which the public have free access, and an archway leading from a street to a private yard in which were some private houses, have all been held to come within the meaning of the Act. Payment of a bet already made and lost would not be betting, and a bookmaker could safely use the bar of a public-house, or any other place for receiving such payment. To promote a sweepstake on a horse-race would not be an offence within the Act; nor would merely walking about a field making bets, but not exercising the business of a bookmaker on a particular piece of ground; but to do so within a certain definite enclosure on a race-course would constitute an offence. As we have seen above, the company owning the racecourse, and knowing of and permitting such a user of the enclosure as has been last mentioned, would not be liable under the Act—a decision having the high authority of the House of Lords, but otherwise incomprehensible in view of the other cases. The result of the decision is to make it difficult to decide when the owner or occupier of premises used for legitimate business is liable in respect of a betting business conducted therein to his own knowledge and with his consent. The safest course by far is for the man with a respectable business to have nothing to do with a betting business, and not to permit it to be conducted on his premises Members of a *bonâ fide* club may bet amongst themselves; so also may betting be carried on privately in a private house amongst the owner's friends and *bonâ fide* guests. Betting in streets or public places, or in any open place to which the public are permitted to have access, including a railway carriage, is punishable under the Street Betting Act, 1906. And bye-laws, under the Municipal Corporations Act, 1882, and the Local Government Act, 1888, are made against the frequenting of streets and public places for the purposes of betting. *See* ADVERTISEMENTS; GAMING.

BICYCLES, tricycles, and velocipedes, and other similar machines, are subject to the following regulations:—(1) During the period between one hour after sunset and one hour before sunrise, every person being or riding on such a machine shall carry attached thereto a lamp, which shall be so constructed and placed as to exhibit a light in the direction in which he is proceeding, and so lighted and kept lighted as to afford adequate means of

Photo Elliott & Fry

SIR W. H. LEVER has had a remarkably successful business career in the soap trade. Chairman of Lever Bros., Ltd., of Port Sunlight, a model town owned by the firm. Is a Lancashire man, born at Bolton, 1851, and built up his huge business from the smallest beginnings. Extensive advertising has played a great part in the development of Lever Bros., Ltd.

Photo. Elliott & Fry

LORD FURNESS is now one of the wealthiest merchant princes; is chiefly known as a shipowner, and as the head of the Furness Line of Steamers. Is interested in labour questions, and has been prominent through his experiment in copartnership. Was created Peer in 1910.

Photo: Elliott & Fry

SIR WILLIAM ARROL, LL.D., the head of the firm of William Arrol & Co., Engineers, was responsible for the construction of the present Tay Bridge, but the marvellous Forth Bridge, which he subsequently erected, brought him much greater reputation. M.P. for S. Ayrshire 1895-1906.

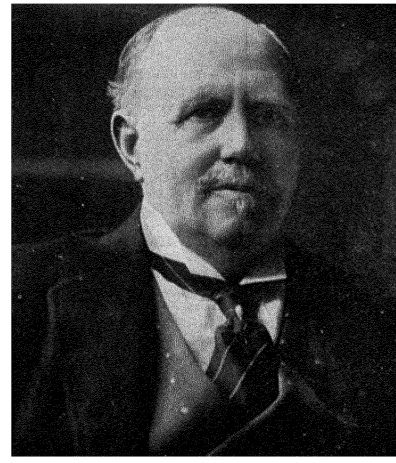


Photo Elliott & Fry

SIR THOMAS SUTHERLAND, G.C.M.G., is Chairman of the Peninsular and Oriental Steam Navigation Company and of the London Board of the Suez Canal Company. He was one of the founders of the Hong-Kong Docks and of the Hong-Kong and Shanghai Bank. M.P. for Greenock 1884-1900.

SUCCESSFUL BUSINESS MEN

signalling his approach and position; and (2) upon overtaking any cart or carriage, or any horse, mule, or other beast of burden, or any foot-passenger, being on or proceeding along the carriage-way, every such person shall, within a reasonable distance from and before passing such cart or carriage, horse, mule, or other beast of burden, or such foot-passenger, by sounding a bell, whistle, or otherwise, give audible and sufficient warning of his approach. A rider committing merely a breach of these regulations cannot be arrested without a warrant; he can only be summoned, when he may be fined forty shillings, and in default of payment or distress, imprisoned without hard labour. Sunset and sunrise mean the actual times thereof at the place and on the day when the breach of regulations is alleged to have occurred. It should be borne in mind that the foot-passenger has the primary use of a highway, even in that part of it devoted to carriage and horse traffic; consequently a cyclist may not ride down a foot-passenger who may be impeding his progress, even in the case of wilful obstruction.

BIGAMY is a felony punishable by penal servitude or imprisonment. Whoever, being married, marries any other person during the life of the former husband or wife, whether the second marriage takes place in England or Ireland, or elsewhere, is guilty of the crime. But a person not a subject of his Majesty, who contracts a second marriage elsewhere than in England or Ireland, could not be convicted of bigamy. Nor could a person be convicted for marrying a second time whose husband or wife has been continually absent from such person for the space of seven years then last past, and was not known by such person to have been living within that time. A divorced person, or one whose former marriage has been declared void by sentence of any court of competent jurisdiction, does not incur the penalties of bigamy upon marrying a second time. It will lie upon the prosecution to prove the first marriage; but if the accused can prove that this marriage was absolutely void at the time of its celebration he will escape conviction. Marriage with a deceased wife's sister was, until recently, a familiar instance of an absolutely void marriage, even though it may have been solemnised in a country where such marriages were valid. The subsequent marriage must also be proved, for it is that second marriage which constitutes the offence: and it should be noticed that it is not even so much the second marriage in fact, as going through the form of a second marriage. Thus, in a well-known case, the prisoner, during the life of his wife, went through the ceremony of marriage with his niece, with whom, because the parties were within the prohibited degrees of affinity, valid marriage was impossible, apart from the fact of the existing first marriage; it was nevertheless held that the second marriage was bigamous, and the prisoner was accordingly convicted. It must not, however, be understood that every fantastic form of marriage to which parties might think proper to resort, or a marriage ceremony performed by an unauthorised person, or in an unauthorised place, would constitute a bigamous second marriage. It is sufficient, said Chief Justice Cockburn, that where a person already bound by an existing marriage goes through a form of marriage known to, and recognised by, the law as capable of producing a valid marriage; for the purpose of a pretended and fictitious marriage, the case is not the less bigamous by reason of any special circumstances which, independently of the bigamous character of the marriage, may constitute a legal disability in

the particular parties, or make the form of marriage resorted to inapplicable to their individual case.

The prosecution must also prove that the first husband or wife was alive at the time of the solemnisation of the second marriage; and if that fact is not proved conclusively, it will be sufficient if such facts are proved as will satisfy the jury as a strong, almost irresistible inference therefrom, that he or she was in fact so alive. The first wife cannot give evidence either for or against her husband so as to prove any part of the case, but the second wife may. The only defences to a charge of bigamy, apart from denial of alleged facts, have been now all referred to. It will, however, be useful to refer to the case of *Reg* v. *Tolson*. There the prisoner was convicted of bigamy by reason that she went through the ceremony of marriage *within* seven years after she had been deserted by her husband, the jury finding, however, as a fact that at the time of the second marriage she, in good faith and on reasonable grounds, believed her husband to be dead. That finding of the jury saved her, and as a consequence the conviction was quashed, for it is a good defence to an indictment for bigamy that the jury is satisfied that the accused at the time of contracting the bigamous marriage *bonâ fide* believed, and had reasonable grounds for the belief, that his or her wife or husband was dead; and this is so, even when the wife or husband has been continually absent from the accused for seven years, or such period had not elapsed at the time of the second marriage since the accused last knew of his or her wife or husband being alive. The result is that if one of a married couple has disappeared under such circumstances as would satisfy the Court of Probate, or an insurance company, that he or she had died, the survivor is entitled to re-marry: but great caution should be exercised before taking such a step.

BILL OF COSTS is the name given to the detailed statement of his charges rendered by a solicitor to his client; and it would include such a statement rendered to a party other than his client who is made liable therefor under a judgment or order of Court. The matters in which a client may incur costs to a solicitor may be either contentious or non-contentious. First, then, as to **contentious matters**. In such cases the charges in respect of the different items, as well as the items claimable themselves, are regulated on different scales. Thus, the costs in an action in which a sum of over £1000 has been recovered will be more liberally allowed than those in an action where the amount is only something over £50, and the latter will in their turn be on a higher scale than where the amount recovered is under £20. Again, the scale of costs in respect of an action in the High Court is higher than the scale for County Court actions; each of these Courts having sliding scales also. Speaking generally, the usual allowance for a letter is 3s. 6d.; for an attendance, 6s. 8d.; for drawing documents, 1s. per folio of seventy-two words; copying, 4d. per folio; but not every letter written may be allowed by the Court, either in a bill as between solicitor and client, or in one *as between party and party*, nor would every attendance, or document prepared or drawn; the test would be whether the item in question was a reasonable and necessary one. There is a distinction between a bill as between solicitor and client and one as between party and party. The latter occurs where a party to an action has been ordered to pay the costs

of the other side; this bill being taxed as a matter of course, and is payable directly afterwards unless it is otherwise ordered. A party and party bill is, moreover, confined absolutely to services performed in the action as between the solicitor and the other side, and does not include services by the solicitor to or for his own client, the consequence being that the latter finds that although the party has been ordered to pay the costs, there are yet further costs which he himself must pay to his solicitor. Sometimes, however, a party to an action is ordered to pay the costs of the other side to be taxed as between solicitor and client; in such a case, the other party to the action should not be required to pay his solicitor anything further.

As between solicitor and client.—This bill should give credit for any costs received by the solicitor in respect of a party and party bill. It must be delivered with all the charges separately made in items, and must distinguish payments out of pocket from profit costs; it must be signed at the foot thereof by the solicitor rendering the bill, and should also bear the date of its delivery. It will be sufficient if it is sent to the client through the post in the ordinary way. The solicitor cannot sue for it until one month has expired from the date of delivery; during which period the client has a right to have it taxed. It may, however, be taxed at any time within a year from delivery; and if more than one-sixth is taxed off, the solicitor will have to pay the costs of the taxation. Ordinary out-of-pocket payments are included in the amount of the bill for the purpose of arriving at this one-sixth. To obtain taxation of such a bill, all that is necessary is to take out a summons in the High Court; and by taking out a similar summons, a solicitor who refuses altogether to deliver a bill will be forced to do so and to submit to its taxation; should the result of the taxation be such that money is found payable to the client, the solicitor may be imprisoned if he makes default in payment. Even if the client has entered into a written agreement for payment to the solicitor of a specific remuneration, such agreement is open to review by the Court where the circumstances of the case render it unjust, and the solicitor may, notwithstanding the agreement, be ordered to deliver a bill and submit to its taxation.

Non-contentious matters.—The bills should be in items, delivered and signed in the same way as in contentious matters, but the items may be each comprised of a lump sum upon the scales presently to be referred to. The rules and practice relating to taxation are also the same; and so, too, are they as to special agreements for remuneration. Such an agreement is valid only when signed by the person to be bound thereby, or by his agent. The agreement may provide for remuneration to such amount and in such manner as the solicitor and client may think fit, either by a gross sum, or by commission or percentage, or by salary and otherwise. The agreement may be sued upon, and impeached or set aside if the Court thinks fit. If, upon taxation, the solicitor relies upon an agreement which the client suggests is unfair or unreasonable, the Court, upon just cause being shown, will cancel and set it aside, or reduce the amount payable thereunder.

Sales, purchases, and mortgages.—The following is the scale applicable hereto:—

	For the first £1000.	For the second and third £1000.	For the fourth and each subsequent £1000 up to £10,000.	For each subsequent £1000 up to £100,000.
	Per £100.	Per £100.	Per £100.	Per £100.
	s. d.	s. d.	s. d.	s. d.
Vendor's solicitor, for negotiating a sale of property by private contract . .	20 0	20 0	10 0	5 0
Vendor's solicitor, for conducting a sale of property by public auction, including the conditions of sale—				
When the property is sold . .	20 0	10 0	5 0	2 6
When the property is not sold, then on the reserve price . . .	10 0	5 0	2 6	1 3
N.B.—A minimum charge of £5 to be made whether a sale is effected or not.				
Vendor's solicitor, for deducing title to freehold, copyhold, or leasehold property, and perusing and completing conveyance, including preparation of contract, or conditions of sale, if any .	30 0	20 0	10 0	5 0
Purchaser's solicitor, for negotiating a purchase of property by private contract	20 0	20 0	10 0	5 0
Purchaser's solicitor, for investigating title to freehold, copyhold, or leasehold property, and preparing and completing conveyance, including perusal and completion of contract, if any . .	30 0	20 0	10 0	5 0
Mortgagor's solicitor, for deducing title to freehold, copyhold, or leasehold property, perusing mortgage, and completing	30 0	20 0	10 0	5 0
Mortgagee's solicitor, for negotiating loan	20 0	20 0	5 0	2 6
Mortgagee's solicitor, for investigating title to freehold, copyhold, or leasehold property, and preparing and completing mortgage.	30 0	20 0	10 0	5 0

The vendor's or mortgagor's solicitor is entitled to an extra £2, 10s. for procuring execution and acknowledgment of deed by a married woman. Where a solicitor is concerned for both mortgagor and mortgagee, he is entitled to charge the mortgagee's solicitor's charges, and in addition one-half only of those which would be allowed to the mortgagor's solicitor up to £5000, and on any excess above £5000 one-fourth thereof. Fractions of £100 under £50 are to be reckoned as £50; but fractions of £100 above £50 are to be reckoned as £100. Where the remuneration under the above scale would amount to less than £5, the remuneration shall be £5; but in respect to transactions under £100, the remuneration for vendor, purchaser, mortgagor, or mortgagee is to be £3.

Leases at a rack rent.—The following is the scale of charges for leases, or agreements for leases, at rack rent; but this would not include a mining lease, or a lease for building purposes, or an agreement for the same, which are provided for in the subsequent scales:—

Lessor's solicitor for preparing, settling, and completing lease, and counterpart:—

Where the rent does not exceed £100	£7, 10s. per cent. on the rental, but not less in any case than £5.
Where the rent exceeds £100 and does not exceed £500	£7, 10s. in respect of the first £100 of rent, and £2, 10s. in respect of each subsequent £100 of rent.
Where the rent exceeds £500	£7, 10s. in respect of the first £100 of rent, £2, 10s. in respect of each £100 of rent up to £500, and £1 in respect of every subsequent £100.
Lessee's solicitor for perusing draft and completing	One-half of the amount payable to the lessor's solicitor.

Building leases, &c.—The following is the scale of charges relating to conveyances in fee, or for any other freehold estate reserving rent, or building leases reserving rent, or other long leases not at rack rent (except mining leases), or agreements for the same respectively:—

Vendor's or lessor's solicitor for preparing, settling, and completing conveyance and duplicate, or lease and counterpart:—

Amount of Annual Rent.	Amount of Remuneration.
Where it does not exceed . . . £5	£5.
Where it exceeds £5 and does not exceed 50	The same payment as on a rent of £5, and also 20 per cent. on the excess beyond £5.
Where it exceeds £50 and does not exceed 150	The same payment as on a rent of £50, and 10 per cent. on the excess beyond £50.
Where it exceeds 150	The same payment as on a rent of £150, and 5 per cent. on the excess beyond £150.

Where a varying rent is payable, the amount of annual rent is to mean the largest amount of annual rent.

Purchaser's or lessee's solicitor for perusing draft and completing	One-half of the amount payable to the vendor's or lessor's solicitor.

With regard to both of the two last preceding scales, it may be noticed that a short lease not a rack rent does not appear to be included. Where a solicitor is concerned for both vendor and purchaser, or lessor and lessee, his charge should be the vendor's or lessor's solicitor's charges, together with one-half of that of the purchaser's or lessee's solicitor. If a conveyance or lease is partly in consideration of a money payment or premium, and partly of a rent, then, in addition to the above remuneration in respect of the rent, the solicitor may charge a further sum equal to the remuneration on a purchase at a price equal to such money payment or premium. Fractions of £5 are reckoned as £5.

Other matters.—For drawing, perusing deeds, wills, and other documents not included within the above scales, the fees charged must be fair and reasonable, having regard to the care and labour required, the number and lengths of the papers to be perused, and the other circumstances of the case.

In ordinary cases, a solicitor may charge: for drawing, 2s. per folio of seventy-two words; engrossing, 8d. per folio; fair copying, 4d. per folio; perusing, 1s. per folio; and for each attendance, 10s. In respect of the abstract of title, the fee is 6s. 8d. for drawing each brief sheet of eight folios; and for a fair copy of the same 3s. 4d. For journeys from home, in ordinary cases, for every day of not less than seven hours employed on business or in travelling, 5 guineas; but where a less time than seven hours is so employed, 15s. per hour.

BILL OF EXCHANGE.—The law relating to bills of exchange has been summed up in, and codified by, the Bills of Exchange Act, 1882, for Scotland as well as the other parts of the United Kingdom. As the subject is somewhat technical, attention should be paid to the following **interpretation** of terms. So far as the context allows, the word "acceptance" will mean an acceptance completed by delivery or notification; "action" will include counter-claim and set-off; "banker," a body of persons, whether incorporated or not, who carry on the business of banking; "bankrupt," any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to bankruptcy; "bearer" will mean the person in possession of a bill or note which is payable to bearer; "bill," a bill of exchange, and "note," a promissory note; "delivery," transfer of possession, actual or constructive, from one person to another; "holder," the payee or endorsee of a bill or note who is in possession of it, or the bearer thereof; "endorsement," an endorsement completed by delivery; "issue," the first delivery of a bill or note, complete in form, to a person who takes it as a holder; "value," a valuable consideration; and "person" will include a body of persons whether incorporated or not.

Form and Interpretation—*Definitions.*—A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to, or to the order of, a specified person, or to bearer. Any other form of instrument is not a bill; nor is an order to pay out of a particular fund. But it would be a bill where there is an unqualified order to pay, coupled with (*a*) an indication of a particular fund out of which the drawee is to reimburse himself or a particular account to be debited with the amount, or (*b*) a statement of the transaction which gave rise to the bill. A bill is not invalid because it is undated; or does not specify the value given, or that any value has been given therefor; or does not specify the place where it is drawn or payable.

Inland and Foreign Bills.—An inland bill is one which is, or purports to be, either both drawn and payable within the British Islands, or drawn within the British Islands upon some person resident therein. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill. The Islands of Man, Guernsey, Jersey, Sark, and those adjacent to any of them, are within the British Islands for this

purpose. The following is the usual form of an inland bill, with the acceptance written across its face :—

£100 · 0 : 0. Due: *4th May* 19—. 503 CHEAPSIDE, LONDON,
1st February 19—.

Three months after date pay to me (*or to some third party*, E. F.), or order, the sum of one hundred pounds, value received.

(*Signed*) A. B. (the drawer).

To C. D. (the acceptor),
414 High Street, Bath.

The following is the usual form of a foreign bill, which differs from an inland bill in that, to provide against risk in transmission, it is usually drawn in sets, each bill being transmitted by a different conveyance :—

£100 sterling. First PARIS,
1st February 19—.

At sixty days after sight of this our first of exchange (second and third of same tenor and date being unpaid) pay to our order (*or to* C. D., or order) the sum of one hundred pounds sterling, for value as advised by

To C. D. (*Signed*) A. B.

Parties to bill.—A bill may be drawn payable to, or to the order of, the drawer or the drawee. Where in a bill the drawer and drawee are the same person, or where the drawee is a fictitious person or one not having capacity to contract, the holder may treat the instrument, at his option, either as a bill or a promissory note. The drawee must be named or otherwise in a bill with reasonable certainty ; and a bill may be addressed to two or more drawees whether partners or not; but an order addressed to two drawees in the alternative, or to two or more drawees in succession, would not be a bill of exchange. So where a bill is not payable to bearer, the payee must be named or indicated with reasonable certainty. A bill may be made payable to two or more payees jointly, or be made payable in the alternative to one of two, or one of some of several payees. It may also be made payable to the holder of an office for the time being ; but if the payee is a fictitious or non-existing person, the bill may be treated as payable to bearer.

Negotiability.—When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable. A negotiable bill may be made payable either to order or to bearer. The usual method is to write across the face of the bill the words "not negotiable." A bill is payable to bearer when it is expressed so to be, or on which the only or last indorsement is an indorsement in blank. A bill is payable to order when expressed so to be, or when expressed to be payable to a particular person, and does not contain words prohibiting transfer, or indicating an intention that it should not be transferable. Where a bill, either originally or by indorsement, is payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order, at his option.

How and when payable.—A bill may be made for a sum payable : with interest ; by stated instalments ; by such instalments with a proviso that upon

default in payment of any instalment the whole shall become due, according to a rate of exchange indicated by the bill, or to be ascertained according to directions contained therein. In case of discrepancy between the words and figures as to the sum payable, the words will determine the amount. If payable, with interest, the same runs from the date of the bill, or if undated, from the date of its issue. A bill payable on demand is one either (*a*) payable on demand, or at sight, or on presentation; or (*b*) in which no time for payment is expressed. A bill accepted or indorsed when overdue is, as regards the acceptor or any indorser when so overdue, a bill payable on demand. An instrument payable on a contingency is not a bill, nor does it become so upon the happening of the event; a bill may, however, be payable at a fixed period after date or sight, or on or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain. If a bill is undated, the holder may insert the true date of issue or acceptance; and if the holder in good faith and by mistake inserts a wrong date, and in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course, it will be payable as if the date so inserted had been the true date. The date on a bill is deemed to be the true date, but evidence may be given to show that another date is the true one; a bill may be ante-dated, post-dated, or dated on a Sunday. Three days, called days of grace, are added to the date on which a bill, not one payable on demand, is payable, and the last of these days is the one on which it becomes really due and payable. Where the last day is either Sunday, Christmas Day, Good Friday, or a day appointed by Royal Proclamation as a public fast or thanksgiving day, the bill becomes due and payable on the preceding day; but where such last day is any other bank holiday, or when the last day is a Sunday and the second day of grace is a bank holiday, the bill is due and payable on the succeeding business day. To calculate the time of payment of a bill payable at a future determinable time, the day from which the time is to begin to run is excluded, and the day of payment included; the term "month" always meaning a calendar month when determining the time of payment of any bill. Where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the bill be accepted, and from the date of noting or protest if the bill be noted or protested for non-acceptance, or for non-delivery.

Case of need and optional stipulations.—The drawer or any indorser of a bill may insert therein the name of a person to whom the holder may resort in case the bill is dishonoured. Such a person is called the referee in case of need; but the holder has the absolute option of resorting to him, or not doing so. The drawer or any indorser may insert in a bill an express stipulation (*a*) negativing or limiting his own liability to the holder, or (*b*) waiving as regards himself some or all of the holder's duties.

Acceptance.—The necessary conditions of a valid acceptance are—(*a*), it must be written on the bill and be signed by the drawee, whose mere signature without additional words is sufficient; and (*b*), it must not express that the drawee will perform his promise by any other means than the payment of money. The bill may be accepted before signature by the drawer, or whilst otherwise incomplete, and when overdue, or even after dishonour. When a bill payable after sight is dishonoured by non-acceptance, and the drawee

subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance. Acceptance may be either "general," that is to say, without qualification to the order of the drawer; or "qualified," as when in express terms the effect of the bill as drawn is varied. The following are instances of qualified acceptance: *conditional*, where payment by the acceptor is made dependent on the fulfilment of a condition therein stated; *partial*, where part only of the amount of the bill is accepted payable; *local*, where the acceptance is to pay at a particular specified place only, and not elsewhere —the omission of the last four words would make the acceptance general; qualified as to time; and the acceptance of some one or more of the drawees, but not of all. The words: "Accepted. John Smith," and "Accepted. Payable at Lloyd's Bank, London. John Smith," constitute general acceptances. The following are instances of qualified acceptances: "Accepted. Payable at Lloyd's Bank only and not elsewhere. John Smith;" "Accepted for £50 only. John Smith;" "Accepted. Payable by monthly instalments of £20 each. John Smith;" "Accepted on condition of a three months' renewal. John Smith." In the case of a bill drawn payable after sight, the acceptance should state the dates, thus: "Accepted. 4th March 1912. Payable at Lloyd's Bank. Due 7th June 1912. John Smith."

Incomplete instruments.—Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a *primâ facie* authority to fill it up as a complete bill for any amount the stamps will cover, using the signature for that of the drawer, or the acceptor, or an indorser; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a *primâ facie* authority to fill up the omission in any way he thinks fit. In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given; reasonable time for this purpose is a question of fact. But if any such instrument after completion is negotiated to a holder in due course it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

Delivery.—Every contract on a bill, whether it be the drawer's, the acceptor's, or an indorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto. But where an acceptance is written on a bill, and the drawee gives notice to, or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery (*a*) in order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing, as the case may be; or (*b*) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill. But if the bill be in the hands of a holder, in due course a valid delivery of the bill by all parties prior to him, so as to make them liable to him, is conclusively presumed. Where a bill is no longer in the possession of a party who has signed it as

drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

Capacity and authority of parties.—A party having capacity to contract may incur liability as a party to a bill; if, for example, a minor is party to a bill, he would not be liable to the holder, but the latter may sue the other parties, if any, thereto. No person, not having signed a bill, is liable thereon; but where a person signs in a trade or assumed name, he is liable thereon as if he had signed in his own name; and the signature of the name of a firm is equivalent to the signature by the person signing of the names of all the partners in that firm. A forged or unauthorised signature is absolutely inoperative; but an unauthorised signature may be subsequently ratified. Signature by procuration is notice that the agent has only a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority. Where a person signs, and adds words to his signature indicating that he signs on behalf of a principal, or in a representative character, he is not personally liable; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability. In determining whether a signature on a bill is that of the principal or that of an agent by whose hand it was written, the construction most favourable to the validity of the instrument will be adopted.

Negotiation.—A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill. A bill payable to bearer is negotiated by delivery; one to order, by indorsement of the holder together with delivery. A bill is not a negotiable instrument unless it is payable to bearer; or being payable to order, until it has been indorsed by the drawer. Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the transferor's indorsement. Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative present liability.

Indorsement.—An indorsement in order to operate as a negotiation must comply with the following conditions:—(1) It must be written on the bill itself and be signed by the indorser; his simple signature being sufficient. An indorsement written on an allonge, or on a copy of a bill issued or negotiated in a country where copies are recognised, is deemed to be written on the bill itself. (2) It must be an indorsement of the entire bill; neither an indorsement of part only of the amount payable, nor one to two or more persons *severally*, would operate as a valid negotiation. (3) Where a bill is payable to the order of two or more payees or indorsees, who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others. (4) Where the name of a payee or indorsee is wrongly designated or misspelt, it may be indorsed as therein described, with the optional addition of the correct signature. (5) Where there are more than one indorsement, each is deemed to have been made in the order appearing on the bill, until the contrary is proved. (6) The indorsement may be blank, special, or restrictive; but if conditional, the condition

may be absolutely disregarded. An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer, while a special indorsement specifies the person to whom, or to whose order, the bill is payable, and such an indorsee comes under the same rules as the payee of a bill. Where there is an indorsement in blank, any holder may convert it into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person.

Restrictive indorsement.—Such is an indorsement which prohibits the further negotiation of the bill, or expresses that it is a mere authority to deal with the bill as thereby directed, and not a transfer of the ownership thereof. Thus, a bill indorsed "Pay D. only," or "Pay D. for the account of X.," or "Pay D., or order, for collection," would be restrictive. As a result of such an indorsement the indorsee acquires the right to receive payment of the bill and to sue thereon, but he has no power to transfer his rights as indorsee unless he is expressly authorised so to do. Where a restrictive indorsement authorises further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement. An indorser may append to his signature the words *sans recours*, by doing which he escapes liability on the bill.

Overdue or dishonoured bill.—Where a bill is negotiable in its origin it continues so to be until it has been (*a*) restrictively indorsed, or (*b*) discharged by payment or otherwise. An overdue bill can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had. A bill payable on demand would be overdue if it had been in circulation for an unreasonable length of time. Except where the indorsement bears date after maturity, every negotiation is *primâ facie* deemed to have been effected before the bill was overdue. Where a bill which is not overdue has been dishonoured, any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour, but this rule would not affect the rights of a holder in due course. Where a bill is negotiated back to the drawer, or to a prior indorser, or to the acceptor, such party may reissue and further negotiate it, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

General duties of the holder—*Presentment for acceptance.*—Where a bill is payable after sight, presentment for acceptance is necessary in order to fix maturity. Where presentment for acceptance is expressly stipulated for, or where the bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment; in no other case is presentment for acceptance necessary. Delay in presentment for acceptance before presentment for payment is excused where the bill is payable elsewhere than at the place of business or residence of the drawee, and the holder has used reasonable diligence. A bill payable after sight must be presented for acceptance, or negotiated, within a reasonable time, otherwise the drawer and prior indorsers are discharged. A bill is duly presented for acceptance which is presented in accordance with the following rules:—(*a*) The presentment must be made

by or on behalf of the holder to the drawee, or to some person authorised to accept or refuse acceptance on his behalf at a reasonable hour on a business day and before the bill is overdue; (*b*) where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only; (*c*) where the drawee is dead, presentment may be made to his personal representative; (*d*) where the drawee is bankrupt, presentment may be made to him or to his trustee; (*e*) where authorised by agreement or usage, a presentment through the post-office is sufficient. It is usual to present during ordinary business hours, and in London to call for it on the following day. Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance—(*a*) where the drawee is dead or bankrupt, or is a fictitious person, or a person not having capacity to contract by bill; (*b*) where, after the exercise of reasonable diligence, such presentment cannot be effected; (*c*) where, although the presentment has been irregular, acceptance has been refused on some other ground. Presentment is not excused because the holder has reason to believe that the bill will be dishonoured thereon.

When a bill is duly presented for acceptance and is not accepted within the customary time, the person presenting it must treat it as dishonoured; and if he do not, the holder loses his right of recourse against the drawer and indorsers. A bill is dishonoured by non-acceptance (*a*) when acceptance is refused, or cannot be obtained, upon due presentment; or (*b*) when presentment is excused and the bill is not accepted; and when a bill is dishonoured by non-acceptance, the holder has an immediate right of recourse against the drawer and indorsers, no presentment for payment being necessary. The holder may refuse a qualified acceptance, and, in default of obtaining the acceptance unqualified, may treat the bill as dishonoured. Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorised the holders to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill; but this would not be so in the case of a partial acceptance whereof due notice has been given. Where a foreign bill has been partially accepted, it must be protested as to the balance. If the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder, he will be deemed to have assented thereto.

Presentment for payment.—Presentment is dispensed with in the following cases:—(*a*) Where, after the exercise of reasonable diligence it cannot be effected—though the fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment; (*b*) where the drawee is a fictitious person; (*c*) as regards the drawer, where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented; (*d*) as regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented; (*e*) by waiver of presentment, express or implied. Save when the case comes within the above rules, if a bill be not duly presented the drawer and

indorsers will be discharged. The following are the rules for due presentment:—(1) Where the bill is not payable on demand, presentment must be made on the day it falls due. (2) Where the bill is payable on demand, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable. In determining what is a reasonable time, regard must be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case. (3) Presentment must be made by the holder, or by some person authorised to receive payment on his behalf, at a reasonable hour on a business day, at the proper place, as hereinafter defined, either to the person designated by the bill as payer, or to some person authorised to pay or refuse payment on his behalf, if, with the exercise of reasonable diligence, such person can there be found. (4) A bill is presented at the proper place:—(*a*) Where a place of payment is specified in the bill, and the bill is there presented; (*b*) where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented; (*c*) where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business if known, and if not, at his ordinary residence if known; (*d*) in any other case if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence. (5) Where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorised to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required. (6) Where a bill is drawn upon or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all. (7) Where the drawer or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found. (8) Where authorised by agreement or usage a presentment through the post-office is sufficient. Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

Dishonour.—A bill is dishonoured by non-payment (*a*) when it is duly presented for payment and payment is refused or cannot be obtained, or (*b*) when presentment is excused and the bill is overdue and unpaid. Generally speaking, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder. And so, generally, when a bill has been dishonoured by non-acceptance or non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged. But where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission will not be prejudiced by the omission. And where it is dishonoured by non-acceptance, and due notice of dishonour is given, it will not be necessary to give notice of a subsequent dishonour by non-payment unless the bill shall in the meantime have been accepted.

Notice of dishonour, in order to be valid and effectual, must be given in accordance with the following rules:—(1) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill. (2) The notice may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not. (3) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given. (4) Where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore set out, it enures for the benefit of the holder, and all indorsers subsequent to the party to whom notice is given. (5) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment. (6) The return of a dishonoured bill to the drawer or an indorser is, in point of form, a sufficient notice of dishonour. (7) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill will not vitiate the notice unless the party to whom the notice is given is in fact misled thereby. (8) Where notice of dishonour is required to be given to any person, it may be given either to the party himself or to his agent in that behalf. (9) Where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative if such there be, and with the exercise of reasonable diligence he can be found. (10) Where the drawer or indorser is bankrupt, notice may be given either to the party himself or to the trustee. (11) Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others. (12) The notice may be given as soon as the bill is dishonoured; but must be given within a reasonable time thereafter. In the absence of special circumstances, notice is not deemed to have been given within a reasonable time unless (*a*) where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill; (*b*) where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post at a convenient hour on that day, and if there be no such post on that day, then by the next post thereafter. (13) Where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder. (14) Where a party to a bill receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after the dishonour. (15) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post-office.

Delay in giving notice of dishonour is excused where the delay is caused

by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the notice must be given with reasonable diligence. Notice of dishonour is dispensed with—(*a*) When, after the exercise of reasonable diligence, proper notice cannot be given to, or does not reach, the drawer or indorser sought to be charged: (*b*) By waiver, express or implied. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice: (*c*) As regards the drawer in the following cases, namely, (1) where drawer and drawee are the same person; (2) where the drawee is a fictitious person or a person not having capacity to contract; (3) where the drawer is the person to whom the bill is presented for payment; (4) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill; (5) where the drawer has countermanded payment: (*d*) As regards the indorser in the following cases, namely, (1) where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the bill; (2) where the indorser is the person to whom the bill is presented for payment; (3) where the bill was accepted or made for his accommodation.

Noting and protest.—It is not obligatory to note or protest a dishonoured inland bill; but if a dishonoured foreign bill is not protested, the drawer and indorsers are discharged. The protest and noting should be on the day of dishonour, and the holder may cause a bill to be protested "for better security" before it matures, where the acceptor has become bankrupt, or insolvent, or has suspended payment. The protest must be made at the place where the bill is dishonoured. But when a bill is presented through the post-office, and returned by post dishonoured, it may be protested at the place to which it is returned, and on the day of its return if received during business hours, and if not received during business hours, then not later than the next business day. And when a bill drawn payable at the place of business or residence of some person other than the drawee has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is payable, and no further presentment for payment to, or demand on, the drawee is necessary. The protest must contain a copy of the bill, and be signed by the notary, and specify (*a*) the person at whose request the bill is protested; (*b*) the place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found. Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may may be made on a copy or written particulars thereof. Protest is dispensed with by any circumstance which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence. Where a bill is required to be protested within a specified time, or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date

of the noting. Should a dishonoured bill be required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate will in all respects operate as if it were a formal protest of the bill. The following form is sufficient, and may be used with any necessary modifications:—

Know all men that I, A. B. [*householder*], of in the county of , in the United Kingdom, at the request of C. D., there being no notary public available, did on the day of 19 , at demand payment [*or* acceptance] of the bill of exchange, hereunder written, from E. F., to which demand he made answer [*state answer, if any*], wherefore I now, in the presence of G. H. and J. K., do protest the said bill of exchange.

(Signed) A. B.
G. H. } Witnesses.
J. K. }

N.B.—*The bill itself should be annexed, or a copy of the bill and all that is written thereon should be underwritten.*

Duties of holder as regards drawee or acceptor.—In order to render the acceptor liable, it is not necessary to present for payment when the bill is accepted generally. When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures. In order to render an acceptor liable it is neither necessary to give notice of dishonour or to protest. Where the holder of a bill presents it for payment, he must exhibit it to the person from whom he demands payment, and when paid must deliver it up to the party paying.

Liabilities of parties.—A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept is not liable in the instrument. The case would be different in Scotland, for there, if the drawee of a bill has in his hands funds available for the payment thereof, such bill operates as an assignment of the sum for which it is drawn in favour of the holder, from the time when the bill is presented to the drawee.

Liability of acceptor.—The acceptor of a bill, by accepting it, (1) engages to pay it according to the tenor of his acceptance; (2) is precluded from denying to a holder in due course (*a*) the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill; (*b*) in the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement; (*c*) in the case of a bill payable to the order of a third party, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

Liability of drawer or indorser.—The drawer of a bill, by drawing it, (*a*) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any

indorser who is compelled to pay it, provided that the requisite proceedings on dishonour are duly taken; (*b*) is precluded from denying to the holder in due course the existence of the payee and his then capacity to indorse. The indorser of a bill, by indorsing it, (*a*) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken; (*b*) is precluded from denying to a holder in due course the genuineness and regularity in all respect of the drawer's signature and all previous indorsements; (*c*) is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto.

Stranger signing bill.—Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course.

The sum payable on dishonour is the amount of the bill, interest, and the expenses of protest and noting; this is recoverable as liquidated damages and may be the subject of a specially indorsed writ in the High Court, or of a special bill of exchange summons for speedy recovery issued in the County Court. If the bill has been dishonoured abroad, the amount of re-exchange and interest thereon may be recovered instead of the above. If justice require it, the Court may refuse to allow interest wholly or in part, even though the rate is expressed in the bill itself.

Transferor by delivery and transferee.—Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a "transferor by delivery"; he is not liable thereon. But such a transferor warrants to his immediate transferee being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of the transfer he is not aware of any fact which renders it valueless.

Discharge of Bill.—*Payment in due course.*—A bill is discharged by payment in due course by or on behalf of the drawer or acceptor. "Payment in due course" means payment made at or after the maturity of the bill, to the holder thereof, in good faith and without notice that his title to the bill is defective. When the bill is paid by the drawer or an indorser it is not discharged; but (*a*) where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not reissue the bill; (*b*) where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill. Where an accommodation bill is paid in due course by the party accommodated the bill is discharged.

Banker paying—forged indorsement.—When a bill payable to order on demand is drawn on a banker, and the latter pays it in good faith and in the ordinary course of business, the banker would not be liable in case the indorsement has been forged or made without authority.

Acceptor holding at maturity.—Waiver.—If the acceptor is the holder of the bill in his own right at or after maturity, it is discharged. When the holder of a bill at or after its maturity absolutely and unconditionally

renounces his rights against the acceptor, the bill is discharged. The renunciation must be in writing, unless the bill is delivered up to the acceptor. The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity; but all waiver by renunciation is without prejudice to the rights of a holder in due course without notice of the renunciation.

Cancellation.—Intentional apparent cancellation by the holder or his agent discharges the bill, and any party liable thereon is also discharged. In such a case any indorser who would have had a right of recourse against the party whose signature is cancelled is also discharged. Unintentional, mistaken, or unauthorised cancellation is inoperative; and upon whoever claims the advantage of an apparent, but disputed cancellation, lies the burden of proof of effective cancellation.

Alteration.—Material alteration without the assent of all parties liable on a bill, avoids the latter except as against a party who has himself made, authorised, or assented thereto, and subsequent indorsers. But where a bill has been materially altered, the alteration not being apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor. In particular the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent.

Acceptance and payment for honour.—*Acceptance for honour.*—Where a bill has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene, and accept the bill *supra* protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn. A bill may be accepted for honour for part only of the sum for which it is drawn. Such an acceptance in order to be valid must—(*a*) be written on the bill, and indicate that it is an acceptance for honour; (*b*) be signed by the acceptor for honour. Where such an acceptance does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer. Where a bill payable after sight is accepted for honour its maturity is calculated from the date of the noting for non-acceptance, and not from the date of the acceptance for honour. The acceptor for honour, by accepting, engages to pay the bill on due presentment, according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts. He is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted. Where a dishonoured bill has been accepted for honour, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need. Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honour is in some place other than the place where it was protested for non-

payment, the bill must be forwarded not later than the day following its maturity for presentment to him. Delay is excused under the same circumstances as delay in presentment for payment or non-presentment for payment. There must be a protest upon dishonour by acceptor for honour.

Payment for honour.—Where a bill has been protested for non-payment, any person may intervene and pay it *supra* protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn. Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference. Payment for honour must be attested by a notarial act of honour. Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for, and succeeds to both the rights and duties of, the holder as regards the party for whose honour he pays, and all parties liable to that party. The payer for honour is entitled to delivery of the bill and the protest on payment of the amount and of the notarial expenses; if the holder should not on demand deliver them up, he will be liable to the payer for honour in damages. Where the holder refuses to receive payment *supra* protest, he will lose his right of recourse against any party who would have been discharged by such payment.

Lost instruments.—Where a bill has been lost before it is overdue, the holder who has lost it may compel the drawer to give him a duplicate bill against an indemnity. In any action or proceeding on a bill, the Court may order that the loss of the instrument shall not be set up, provided an indemnity is given against the claims of other persons upon the instrument in question.

Bill in a set.—Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill. Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills. Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders deemed the true owner of the bill; but this rule will not affect the rights of a person who in due course accepts or pays the part first presented to him. The acceptance may be written on any part, and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill. When the acceptor pays without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof. But subject to the preceding rules, where one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

Conflict of laws.—Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties, and liabilities of the parties thereto are determined as follows:—(1) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance or indorsement, or acceptance *supra* protest, is determined

by the law of the place where such contract was made. But where a bill is issued out of the United Kingdom, it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue. Also, where a bill issued out of the United Kingdom conforms, as regards requisites in form, to the law of the United Kingdom, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in the United Kingdom. (2) Generally speaking, the interpretation of the drawing, indorsement, acceptance, or acceptance *supra* protest of a bill, is determined by the law of the place where such contract is made; but where an inland bill is indorsed in a foreign country the indorsement will, as regards the payer, be interpreted according to the law of the United Kingdom. (3) The duties of the holder with respect to presentment for acceptance or payment, and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured. (4) Where a bill is drawn out of but payable in the United Kingdom, and the sum payable is not expressed in the currency of the United Kingdom, the amount will, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable. (5) Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable.

Evidence in Scotland.—In any judicial proceeding in Scotland, any fact relating to a bill of exchange, bank cheque, or promissory note, which is relevant to any question of liability thereon, may be proved by parole evidence. But nothing is to affect the existing law and practice whereby the party who is, according to the tenor of any bill of exchange, bank cheque, or promissory note, debtor to the holder in the amount thereof, may be required, as a condition of obtaining a sist of diligence, or suspension of a charge, or threatened charge, to make such consignation, or to find such caution as the Court before whom the cause is depending may require. The above, however, does not apply to any case where the bill of exchange, bank cheque, or promissory note has undergone the sesennial prescription.

Stamps.—All bills must be written on paper stamped before execution with the appropriate impressed stamp. After execution a bill cannot be stamped. Any person who issues, indorses, transfers, negotiates, presents for payment, or pays any bill liable to duty, and not being duly stamped, incurs a penalty of £10. The person taking or receiving such a bill not duly stamped, either in payment or as security, is barred from recovering thereon, or making it in any way available.

The stamp duty where the amount or value of the money for which the bill is drawn does not exceed £5 is—						£0	0	1
Exceeds £5	and does not exceed	£10				0	0	2
„ 10	„	25				0	0	3
„ 25	„	50				0	0	6
„ 50	„	75				0	0	9
„ 75	„	100				0	1	0
„ 100 for every £100, and also for any fractional part of £100 of such amount or value						0	1	0

If the bill is payable on demand, the duty is fixed for all amounts at the sum of one penny, which may be denoted by an adhesive stamp, to be cancelled by the party by whom the bill is payable. *See* further hereon: ACCOMMODATION BILL; CHEQUE; PROMISSORY NOTE; USANCE.

BILL OF LADING.—A bill of lading is the written evidence of a contract for the carriage and delivery of goods sent by sea for a certain freight, the contract being in legal language a contract of BAILMENT. In its usual form there is an undertaking to deliver to the order or assigns of the shipper. By delivery of the goods on board, the shipmaster acquires a special property to support that possession of them which he holds in the right of another, and to enable him to perform his undertaking; the general property remaining with the shipper of goods until he has disposed of them by some act sufficient in law to transfer his property therein. The transfer is by a mere indorsement of the bill of lading in the same way as a bill of exchange is indorsed, this being, in effect, simply a direction for the delivery of the goods. A bill of lading has been the usual instrument in cases of carriage of goods by sea for over two hundred years, and during this time has continued to generally preserve its original and rather quaint and archaic language. There are, however, different modern forms in use in various countries and ports, and even amongst large shipping companies, such as the Peninsular and Oriental Steam Navigation Company, whose form, by their courteous permission, we reproduce. Attempts are now being made to obtain the international adoption of a specified form. The following is according to the old usual form:—

N.B.—SHIPPED, in good order and well-conditioned, by A. B., merchant, in and upon the good ship called *Argo*, whereof C. D. is master, now in the river Thames and bound for Dublin, the goods following, viz., twelve cases of champagne, marked and numbered as per margin, to be delivered in the like good order and condition, at Dublin aforesaid, the act of God, the King's enemies, fire, and all and every other dangers and accidents of the seas, rivers, and navigation, of whatever nature and kind soever, excepted, unto the said A. B. or his assigns, he or they paying for the said goods at the rate of five shillings per piece freight, with primage and average accustomed. In witness whereof I, the said master of the said ship, have affirmed to three bills of ladings of this tenor and date; any one of which bills being accomplished, the other two are to be void.

C. D., Master.

London, this 14th day of October 1910.

A bill of lading is required to be stamped with a sixpenny stamp before signature, a penalty of £50 being imposed in case of stamping afterwards. It is usually made out in sets of three, one being marked *original*, and the others *duplicate*, or one being marked *first*, and the others accordingly. One copy is delivered to the master of the ship, another forwarded to the consignee. A glance at the above-mentioned forms will show that a bill of lading has three characteristics—first, it is a receipt for goods; secondly, a contract for their carriage, and generally a symbol of property. As a **receipt for goods**, its production, in case the ship were lost and the cargo insured, would be required by the underwriters as evidence that the goods had actually been shipped, and also as evidence of ownership in the party claiming the insurance.

A bill of lading in the hands of a consignee, or indorsee for valuable consideration, representing as it does that certain goods have been shipped on board a vessel, will be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods, or some part thereof, may not have been shipped. But if the holder of the bill of lading at the time of receiving is aware that the goods have not been actually shipped, the master will not be liable, nor will he be, where the misrepresentation in the bill was caused by the fraud of the shipper, the holder, or some person under whom the holder claims.

As **a contract of carriage** it will be noticed that the bill of lading provides that the goods shall be delivered in the same order and condition as received—they must, in fact, be carried safely; but this is subject to the exception with regard to the act of God and other dangers. Such a bill of lading as either of those reproduced in this article would be called a "clean" bill, as it acknowledges that the goods have been received in good order and well-conditioned; the effect of which being that the master must so deliver them even if their actual order and condition when shipped were very different. To escape such a liability, in case through some oversight goods in bad condition should be acknowledged as in good condition, there is generally added in the margin, or at the foot of the bill, the memorandum: "Weight, contents, and value unknown"; in the Peninsular and Oriental form this appears as the first condition. It is usual to consign the goods under a private and distinctive mark, by which means neither the consignor nor the consignee run any risk of other persons at the place of delivery knowing with whom the business is being done. Thus a trader in the midst of competition is able to obtain his goods without his competitors knowing from whom he obtains them; and, on the other hand, a wholesale dealer, who is not overscrupulous and has agreed to supply only one person in the same place, is enabled to supply others as well. The primage mentioned in the forms refers to a small percentage on the amount of the freight, or a fixed sum on certain packages, and is theoretically the perquisite of the master of the ship, average being a charge divided between the owners of the ship and of the cargo for small expenses necessarily but extraordinarily incurred for the general benefit. The duty of the master is to deliver the goods to the person who first presents to him the bill of lading. Should one of the documents of the set get into improper hands, the master, if he acts *bonâ fide*, incurs no responsibility in delivering the goods; but he would be liable therefor to the true owner if he acted collusively or negligently. Technical terms occurring in either of these bills of lading, and having any general importance, will be found explained on reference to their appropriate headings; whilst the law generally as to carriage will be found under the heading of CARRIER.

As **a symbol of property.**—We have already seen the bill of lading may be transferred by indorsement. This indorsement may be in blank—not specifying the particular person to whom it is transferred, and thereby giving the ownership of the property to the holder of the bill for the time being; or it may be special—that is to say, specifying the particular person to whom the ownership of the goods has been transferred. The reason for this method of transfer is obvious. A cargo at sea while in the hands of the carrier is necessarily incapable of physical delivery; during which period of transit and voyage, the bill of lading is universally recognised as its symbol, and

the indorsement and the delivery of the bill operates as a symbolical delivery of the cargo. Property in the goods passes by such indorsement and delivery of the bill of lading wherever it is the intention of the parties that the property shall pass, just as under similar circumstances the property would pass by an actual delivery of the goods. And for the purpose of passing such property in the goods, and completing the title of the indorsee to full possession thereof, the bill of lading, until complete delivery has been made to some one rightfully claiming under it, remains in force as a symbol, and carries with it not only the full ownership of the goods, but also all rights created by the contract of carriage between the shipper and the shipowner. It is the key which in the hands of a rightful owner is intended to unlock the door of the warehouse, floating or fixed, in which the goods may chance to be. Those who propose purchasing goods comprised in a bill of lading, or lending money on its security, should bear in mind that the common law rule is that a transferee of a bill of lading, even though *bonâ fide* and for valuable consideration, can only get as good, or bad title, as the case may be, as has the transferor; this is an important difference between a bill of exchange and a bill of lading. But there may be some exception to this rule under the Factors Act. By that Act, where a mercantile agent is, with the consent of the true owner in possession of the bill of lading, any sale, pledge, or other disposition of the goods made by him when acting in the ordinary course of business as a mercantile agent, will, subject to the general provisions of the Act, be as valid as if he were expressly authorised by the owner of the goods to make such disposition; but the person taking the same must act in good faith, and not have had at the time of the disposition any notice that the person making the disposition had not authority to make the same. For the meaning of the term "mercantile agent" *see* FACTOR; and generally hereon *see* CARRIER; CHARTER-PARTY.

BILL OF SALE of a ship.—Every transfer of a British ship is required to be by way of a bill of sale, that is to say in the form specified in the Merchant Shipping Act, and of which a copy is reproduced in this work. The document must be under seal, attested by a witness and registered by the registrar of the port at which the ship is registered. The peculiar characteristics of ships, their ownership, transfer, and mortgage, will be discussed in the article on SHIPS.

A bill of sale of goods and chattels may be either absolute or conditional; the former of which will be first considered.

Absolute: of goods and chattels.—The party who, being the owner of goods and chattels, transfers or assigns them to another, is called the grantor; the other party is called the grantee. Wherever the grantor continues in the possession of the property at the time of and after the transfer or assignment, the document of transfer is called a bill of sale; when the transfer or assignment is absolute, the bill of sale is called absolute: when conditional, as where the property is to re-vest in the grantor upon the happening of some event, as *e.g.*, the repayment of money lent, the bill of sale is called conditional. Broadly speaking, where a bill of sale is given by way of security for payment of money, it is a conditional one; if given otherwise than such a security, it is absolute. Absolute bills of sale may be given in any form the parties desire; thus the following may be absolute bills of sale: assignments, transfers, declarations of trust without transfer, inventories of

goods with receipt thereto attached, or receipts for the purchase-moneys of goods. The following are not bills of sale: assignments for the benefit of creditors, ante-nuptial marriage settlements, transfers of goods in the ordinary course of business. Nor are: bills of lading, warehouse-keepers' certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods; or authorising, either by indorsement or delivery, the possessor of such document to transfer or receive goods thereby specified.

Necessary requirements.—In respect to documents which are absolute bills of sale, it is provided that they should be duly attested, registered within seven days, and duly set forth the consideration. We will deal with these three requisites in their order; and first with the attestation. The execution of the bill of sale must be attested by a solicitor, and the attestation is required to state that before execution, the effect of the bill of sale had been explained to the grantor by the attesting solicitor. Registration is to be made in the central office of the Royal Courts of Justice within seven clear days after the making or giving of the bill of sale. A true copy of the bill is filed, and upon application for registration it must be accompanied by an affidavit. The copy must include everything contained in the bill of sale—schedules, inventories, and attestations; and the affidavit must state the time when the bill of sale was made and of its execution and attestation, also the residence and occupation of the grantor and of every attesting witness. Registration, to be effective, is to be renewed once at least in every five years. The consideration must be truly stated in the bill of sale; that is to say, the latter must state clearly and accurately the value or advantage which passed to the grantor from the grantee and for which the bill of sale was given.

The effect of non-compliance with the above requisites is to render the bill of sale fraudulent and void as against the trustee in a subsequent bankruptcy of the grantor, or under an assignment for the benefit of his creditors; and also as against the sheriff or other persons levying executions, and execution creditors. But as between grantor and grantee the bill of sale is good notwithstanding such non-compliance.

Conditional: of goods and chattels.—Reference should be made to that part of our topic dealt with in the division devoted to absolute bills of sale in order to discover the difference between absolute and conditional bills of sale. It will, nevertheless, bear repetition to state that a conditional bill of sale is one given by the grantor as a security for the payment of money. It is absolutely necessary that it should be in the form prescribed by the Bills of Sale Act (1878) Amendment Act 1882; but the Act does not apply to any debentures issued by any mortgage, loan, or other incorporated company, and secured upon the capital stock or goods, chattels, and effects of such company. We now set out a bill of sale, which may be adapted to a case where the repayment of the money secured is to be by instalments; this is a form, when so adapted, somewhat more extensive than that actually set out in the Act, but it is one which has already stood the test of judicial criticism, and pronounced valid; the necessity for a form providing for repayment by instalments was apparently overlooked by the legislature.

This indenture, made the first day of April one thousand nine hundred and ten, **Between** *John Smith* of 14 Grahame Road, in the City of Oxbridge in the County of Lincoln, stockbroker's clerk (hereinafter called "the grantor"), of the

one part, and *James Gordon*, of 169 Lower Baker Street, in the county of London, private inquiry agent (hereinafter called "the grantee"), of the other part: **Witnesseth** that in consideration of the sum of Thirty-six pounds now paid to the grantor by the grantee (the receipt whereof the grantor hereby acknowledges) [*or, if such is the case:* that in consideration of the sum of Thirty-six pounds now owing from the grantor to the grantee], the grantor doth hereby assign unto the grantee, his executors, administrators, and assigns: **All** and **singular** the several chattels and things specifically described in the schedule hereunto annexed by way of security for the payment of the sum of Thirty-six pounds and interest thereon at the rate of Twelve pounds per cent. per annum: **And** the grantor doth further agree and declare that he will pay to the grantee the principal sum aforesaid, together with the interest then due, on the first day of October next, and if the said principal sum is not paid on that day, then will pay interest thereon, or on so much thereof as shall for the time being remain owing, after the rate aforesaid half-yearly on the first day of April and the first day of October [*or, if such is the case:* **And** the grantor hereby agrees and declares that he will pay to the grantee the said principal sum of Thirty-six pounds by equal monthly instalments, Three pounds each, the first instalment to be paid on the first day of May next, and the remaining instalments to be paid on the first day of every subsequent calendar month, until the whole principal money shall be paid, and also will on the same monthly days respectively pay to the grantee the interest then due on the principal sum for the time being remaining unpaid: **Provided always** that if any monthly instalment shall be in arrear fourteen days, the whole of the principal money then remaining unpaid shall become payable immediately]: **And** the grantor doth also agree with the grantee that he will, at all times during the continuance of this security, keep the said chattels and things insured against loss or damage by fire in the sum of Forty pounds at least in the Old World Insurance Office, or in some other insurance office to be approved of by the grantee, his executors, administrators, or assigns: **And** also duly and regularly pay the rent, rates and taxes payable by him in respect of the said messuage or dwelling-house, and also will produce to the grantee, his executors, administrators, or assigns, upon demand in writing, the last receipt for such rent, rates or taxes, and the policy of such insurance as aforesaid, and the receipt for the last premium payable in respect thereof, unless he shall have a reasonable excuse for not doing so: **Provided always** that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the grantee for any cause other than those specified in section 7 of the Bills of Sale Act (1878) Amendment Act, 1882. **In witness** whereof the said parties to these presents have hereunto set their hands and seals the day and year first before written.

The SCHEDULE above referred to.

One Broadwood grand piano in walnut, No. 350,187; one gilt overmantel; dining-room table in mahogany, three insertions; six walnut dining-room chairs in green morocco, stuffed backs.

Signed, sealed, and delivered by the above-named John Smith, in the presence of me,

George Herbert Jones,
16 Forest Road,
Oxbridge,
Chartered Accountant.

JOHN SMITH. (L.S.)

Statutory requisites.—It will be convenient to go through the above bill of sale point by point, beginning with the date. It is necessary that the true date of the execution of the document be given, but an error, obviously a mistake, will not be material if it can be corrected from the affidavit. The parties, namely, the grantor and grantee, should be correctly described with their proper names, addresses, and occupations; that is to say, they must be so described as to render outside evidence unnecessary for their identification. The next point is *the consideration;* and in respect to this, truth and accuracy in the statement of it is most necessary, careful note being taken, however, of the fact that every bill of sale given in consideration of any sum under £30 will be void. No other general rule for stating the consideration can be given than that it should be so stated that it contains on the face of it substantially the whole transaction (*Rosefield* v. *Provincial Union Bank*). Thus, if it is money, then the whole amount passing should appear; if a past debt, then the fact thereof, and of the agreement to give the bill of sale; if a past debt and a present advance, the two elements should be carefully distinguished. The application of the money need not be stated; but in order to evade the rule that the consideration must be at least £30, it will be no good to pay over that sum with one hand, and take part of it back with the other—such evasions as these, suggested in infinite variety as they may be by an infinite number of different circumstances, will do nothing but render the bill of sale void. Take one example where the evasion was apparently absolutely *bonâ fide* in intent: a bill of sale, stating the consideration as "money now paid," was executed three days before the money was handed over to the grantor, it having been at the time of execution on deposit at a bank under notice, but with the full intention on the part of the depositor that it should ultimately be paid to the grantor; this bill of sale was held to be void as there was no "money now paid," only an agreement to lend.

The property transferred is the next part of the bill of sale to which we come. It does not need a bill of sale to mortgage a house, which is not a chattel; or a chattel the possession of which is delivered to the lender, as in the case of a pledge with a pawnbroker. But the grantor retaining possession, a mortgage of goods and **chattels** (*q.v.*) must be by way of bill of sale. As against creditors, or any one other than the grantor, the bill of sale will be void in respect of any chattels it affects to mortgage, of which the grantor was not the true owner at the time of the execution of the bill of sale; the assignment must therefore not be expressed so as to include future or after-acquired property. Every bill of sale must have annexed to it or written thereon a schedule containing an inventory specifically describing the chattels comprised in the bill of sale; non-compliance with this rule will render it void, except as against the grantor, in respect of any chattels not so specifically described. Care must be taken that the description is absolutely specific, so that the identity of the chattels mortgaged can be ascertained without reasonable doubt; in the absence of such description the bill of sale will be void in respect of such insufficiently described chattels. The description may be specific in general, though not so in particular: thus "all the silver coffee-pots now in my house" would be sufficient, without a particular description of each coffee-pot; but "twenty-

one milch cows" would not be sufficient in the absence of anything to show that they were the only cows on the premises.

The condition for payment.—The sum payable, both principal and interest, must be clearly and definitely stated; and, in addition, the rate of the interest should be specified. An agreed lump sum as interest or bonus would invalidate the bill of sale; the rate itself must be stated, although not necessarily in terms of percentage—thus "one shilling in the pound per month" would be sufficient. The time for payment must also be definite and certain—on demand, or a specified time after demand, would be a worse than useless stipulation. A bill of sale cannot, consequently, be given as an indemnity to a surety, for the latter cannot know with certainty when the need for the indemnity will arise.

Power of seizure and sale.—Chattels assigned under a bill of sale are liable to be seized or taken possession of by the grantee for only certain causes. They are the following:—(1) If the grantor shall make default in payment of the sum or sums of money secured by the bill of sale at the time therein provided for payment, or in the performance of any covenant or agreement contained therein and necessary for maintaining the security. The covenants referred to would be those such as for insurance, payment of rent, or otherwise; (2) if the grantor shall become a bankrupt, or suffer the goods, or any of them, to be distrained for rent, rates, or taxes; (3) if the grantor shall fraudulently remove or suffer the goods, or any of them, to be removed from the premises; (4) if the grantor shall not, without reasonable excuse, upon demand in writing by the grantee, produce to him his last receipts for rent, rates, and taxes; (5) if execution shall have been levied against the goods of the grantor under any judgment at law. But the grantor may, within five days from the seizure or taking possession of any chattels on account of any of the above-mentioned causes, apply to the High Court, and if the Court is satisfied that by payment of money or otherwise the said cause of seizure no longer exists, it may restrain the grantee from removing or selling the chattels, or may make such other order as may seem just. Goods and chattels so seized must remain on the premises where seized or taken possession of, and must not be removed or sold until after the expiration of five clear days from the day they were seized or taken possession of. A bill of sale does not protect any property against rent, taxes, or poor and parochial rates.

Attestation need not be by a solicitor; but the witness must give his proper description, address, and occupation.

Registration is necessary, and is effected in the same way as in the case of an absolute bill of sale. Without registration it would be void. It is most important that the proper name, address, and occupation of the grantor and the attesting witness are given. There must be no doubt possible as to the identity of either, or the address or occupation; as to the latter, such expressions as "gentleman," "clerk," &c., are useless, and will only lead to the avoidance of the bill of sale. Registration must, if necessary, be renewed. Upon the discharge of the grantor from his liability under the bill of sale, he is entitled to obtain from the grantee a consent that satisfaction may be registered, and upon the consent being filed, together with an affidavit by a witness to the signature thereof, the satisfac-

tion will be entered in the central office, and this will be as extensively advertised as was the bill of sale itself when registered. Any person may search at the central office and obtain an official copy of any bill of sale; it may be an advantage to a creditor to do this when he finds an execution blocked by a bill of sale about the *bonâ fides* of which he has his doubts: a large number of bills of sale are created merely to keep out creditors.

Stamps and fees.—The stamps on absolute bills of sale are on the same scale as those on conveyances; and on conditional, as on mortgages. The following are the fees:—On filing a bill of sale and affidavit where the consideration (including further advances) does not exceed £100, 5s.; above £100 and not exceeding £200, 10s.; above £200, £1; affidavit of re-registration, 10s.; fiat of satisfaction, 5s.; request for search and certificate, 5s. *See* also hereon: ACT OF BANKRUPTCY; BANKRUPTCY; DEFEASANCE; FRAUDULENT CONVEYANCE; HIRING AGREEMENT; POSSESSION; REPUTED OWNERSHIP.

BILL OF SIGHT.—When the importer of any goods from want of information as to their precise description, quantity, and value, is unable to make the requisite particular entry, he may on subscribing a declaration before the appropriate Customs' officer, make an entry by bill of sight. The declaration sets out that the importer has not received sufficient invoice, bill of lading, or other advice, from whence the quality, quantity, or value of the goods can be ascertained. This bill of sight is a mere provisional authority for the landing of the goods for examination by the importer or his agent in the presence of the proper officer of the Customs, and the importer is required within three days after the landing, and before delivery of the goods, to convert the bill of sight into a perfect entry. This is done by indorsing upon it the full particulars of the goods, as in the case of a perfect entry in the first instance, whether for payment of duty, delivery duty free, or for the warehouse. If the importer should not within three days complete the entry of goods delivered by bill of sight, the goods will be conveyed to the King's warehouse. And, if the entry is not completed and the duties with the charges of removal and warehouse rent are not paid, within a month after the landing of the goods, they may be sold for the payment thereof.

BILL OF STORE.—Whatever may have been the origin of this term, and however inexpressive it may be of the purposes for which it is used, it has acquired a distinct legal signification, and the name is retained as a designation familiar to the mercantile world. By the law regulating the Customs, reimported British goods are, as regards duty and the general conditions of their admission into the United Kingdom, dealt with as foreign goods. They may, however, be entered as British provided the reimportation is within five years after their exportation, and the Commissioners of Customs are satisfied that they are British goods returned. In such case the entry is called a Bill of Store, and should be made in accordance with the prescribed form. All foreign goods on reimportation into the United Kingdom, whether they have paid duty on their first importation or not, are liable to the same duties, rules, regulations, and restrictions as if then imported for the first time.

BILL-BROKER.—There are two persistent facts in our modern commercial system: the one is that manufacturers, traders, and the mercantile

community generally, working as they do to a very large extent upon credit, eagerly avail themselves of the medium of bills of exchange in order to obtain and extend their credit; the other is that the banks, which are the repositories of so much of the uninvested capital of the public, seek means for its profitable investment, and at the same time for the creation of a reserve, and find such means in bills. There is thus created on the one hand a great supply of bills, and on the other, a great demand for them, the bill-broker forming the link between the supply and the demand. He must not be confounded with the money-lender, or the ordinary bill-discounter; he is rather a banker. The banks, in effect, invest with him large sums of money upon the security of a never-ceasing supply of bills, payment of which he personally guarantees, and the best class of merchants furnish him with the bills. The banks leave all responsibility of selection of the bills to the broker, it being sufficient for them that he carries on a well-established business, and that his name is indorsed on the bills. It is therefore an essential part of the bill-broker's business that he should have an intimate knowledge of the financial worth and credit of the names on the bills he discounts. For a bill to be dishonoured would be for him to pay; and it is a perfect illustration of the remarkable financial stability of the commercial classes generally that the bill-broker can exist. His rate of discount is about the market rate only, and the total amount of bills he deals in would be at times enormous; yet the average of dishonoured bills of this class is such that he can not only keep solvent, but even make large profits. For dealings in foreign bills, *see* FOREIGN EXCHANGE.

BILLETING. *See* APPENDIX.

BILLIARDS.—No person, unless he is a licensed victualler, may keep a billiard or bagatelle table for public play, unless he holds a licence therefor; such licence is annual, and must be applied for from the magistrates in the same way as a liquor licence, and the holder is required to print up outside his premises, in a conspicuous manner, the words, "licensed for billiards." To so keep a table without licence, or having a licence not to duly print up the above words, is to render the offender liable to a penalty of £10, or imprisonment with hard labour. A public billiard-room must be closed between the hours of 1 A.M. and 8 A.M., and all day on Sundays, Christmas Day, and Good Friday; nor, subject to penalties, may gaming, drunkenness, disorder, or the consumption of excisable liquors, be permitted therein. A licensed victualler does not require a special billiard licence, but he must not permit his customers, guests or friends, to play during closing time; nor, at any time and between any persons, may any money be staked on the game. The keeper of a beerhouse only may permit his lodgers or friends to play during closing time.

BILL-STICKING.—As will be seen on reference to the article on Advertisements, it is a punishable offence to stick up bills of an indecent nature; moreover, within the Metropolitan Police District, a penalty of forty shillings is incurred by posting a bill upon any building, wall, fence, or gate, without the consent of the owner, and a person so doing within the view of a constable may be there and then arrested by the latter; outside that district the nuisance is dealt with, if at all, by local Acts. Apart from any statutory enactment, such bill-sticking constitutes a trespass, and the offender may be sued for damages. When buildings are being erected,

altered, or demolished, so that a hoarding is necessary, the question may arise as to whether the right to post bills thereon has vested in the building owner or in the contractor; as this right may be valuable, attention should be paid to it in the contract. *See* ADVERTISEMENTS.

BIRTH, CONCEALMENT OF.—Any person who, upon the delivery by a woman of a child, endeavours to conceal its birth, by any secret disposition of the dead body of the child, whether such child died before, at, or after its birth, is guilty of a misdemeanour, and liable to two years' imprisonment. Actual concealment from view is not necessary, if the body is placed with that intent, and where it is unlikely to be discovered.

BIRTHS AND DEATHS REGISTRATION—Births.—In the case of every child born alive it is the duty of the father and mother of the child, and in default of the father and mother, of the occupier of the house in which, to his knowledge, the child is born, and of each person present at the birth, and of the person having charge of the child, to give to the local registrar of births, particulars concerning such birth, and in the presence of the registrar to sign the register. The particulars include: when born, name (if any), sex, name and surname of father, name and maiden surname of mother, rank or profession of father; and they must be given within forty-two days from the date of birth. No fee is payable to the registrar; but a penalty of forty shillings is incurred by omission to register. After the expiration of three months registration can be made only after certain formalities and declarations have been made and gone through. In the case of an illegitimate child, no person will, as father of such child, be required to give information concerning its birth; nor will the name of any person be registered as father of the child, unless at the joint request of the mother, and of the person acknowledging himself to be its father, who in such case must sign the register together with the mother.

Apart from registration it is now necessary, under pain of penalties, in localities where the Notification of Births Act, 1907, has been adopted, to give notice within thirty-six hours to the local medical officer of health of the occurrence of the birth of a child.

Deaths.—Where a person dies in a house, the parties required to give information to the local registrar are the nearest relatives of the deceased present at the death, or in attendance during the last illness of the deceased; and in default of such relatives, the obligation falls upon every other relative dwelling or being in the same sub-district as the deceased. If there are no such relatives, the information must be given by the occupier of the house in which, to his knowledge, the death took place; and in default, by each inmate of such house, and by the person causing the body of the deceased to be buried. Five days is the time within which the information is to be given, and the penalty for not doing so is forty shillings. To wilfully give false information to the registrar concerning *birth or death*, or to make any false certificate or declaration, or any false statement with intent to have the same entered in the register, is now, under the Perjury Act, 1911, to commit a misdemeanour and become liable to penal servitude.

Evidence of birth.—It is sometimes necessary to prove in a court of law the age of a particular person. Thus the defendant in an action may have set up the defence of infancy. The certificate of registration of his birth is of little value for this purpose, and can just as easily be dispensed with, for the proper way to prove the fact is by a witness, such as a parent or elder sister,

for example, who was present at his birth and can give the date thereof from his or her own knowledge. If, however, such a witness is not available, the registration certificate should be produced, and a witness adduced who can identify the person referred to in the certificate as the same person as the defendant. A certificate of baptism is really more valuable than one of birth, for to obtain the former the child itself was bound to be produced, whilst in the latter case, the registration is made upon the mere information of a casual caller at the registrar's office.

BLACKLEG is the epithet applied to a man who either refuses to join a trade-union, or when employees are out on strike enters into the service of the employer who is an object of, or a party to, the strike. The word would not in itself sustain an action for libel or slander, unless it could be shown that special damage had resulted from its use. In another connection the word signifies a cheater at cards, and could give rise to an action, provided the bystanders or others in whose presence it was used understood its meaning in that sense.

BLACK LIST.—This is a term applied to lists of names published in trade or other journals, for the purpose of warning their readers or the public against dealings with the persons mentioned. Such a list may appear in various forms. It may be practically the sole contents of a journal or gazette, devoted to the publication of the names of those who have been adjudicated bankrupts, or have made arrangements with their creditors, or have granted bills of sale on their personal effects, or against whom judgments have been entered; or it may be a list of persons similarly situated but limited to those who are connected with a certain trade, such list being inserted in, and taking up only a small portion of a journal devoted to the interests of that particular trade. Though the publication of such lists is of the greatest benefit to traders, and indeed to the solvent class of the community generally, it is obviously, on the other hand, a great disadvantage and a distinct prejudice to those whose names have the misfortune to be included therein. The first and very natural impression upon recognising a name in such a list, is that the owner is in financial difficulties—the general character of the list compels this impression. And yet it is possible for a person to appear therein whose solvency and credit may be undoubted; for example, we read that A. has given a bill of sale, and that B. is the subject of a County Court judgment. If the true facts of the case were known, it might appear that the bill of sale was an absolute one, and represented an ordinary and *bonâ fide* sale of chattels only, except that the chattels were for good reasons to remain in the possession of A. for a certain period; and it might also appear that B. had really been defending *bonâ fide* an outrageous claim for damages for personal injuries, which, as a result of his defence, had been materially reduced, the judgment appearing in the register because the plaintiff had delayed taxation of costs, until when the defendant had in his turn delayed satisfaction. But nevertheless the stigma of appearing in the list will remain; and consequently when the appearance there is absolutely unwarranted, there arises a serious and proper question as to the legal position of the party injured. It becomes, in fact, a question of libel, and it is as a branch of the law of libel that we propose dealing with it here. Assuming a person to be aggrieved upon finding his name and address set out in such a list, and he sues the publisher for damages, what are the defences mainly available to the

latter? Generally speaking, they would be three in number; it could be pleaded that the entry was true in substance and in fact, or that it was a true extract from an official register open to public inspection; or that the list and the journal in which it was published was privileged. For the defendant to sustain either of these pleas would be for the plaintiff to fail in his action. We will consider these defences in order.

Truth.—At the head of a list of judgments there will probably appear the following words, or words to like effect: "No distinction is made in the register between actions for debt, or damages, or properly disputed cases, neither is it known which of the judgments remain unpaid at the present time, and it is probable that a large proportion of them have been settled between the parties or paid. It may also be observed that some of the judgments registered are against defendants in a representative capacity." This being so, no action will lie in the case of a mistaken entry unless it can be proved that, although the entry was in the register, the publisher knew that at the time of such entry the judgment was satisfied, and that the publisher republished it himself maliciously. The essence of a libel is that it should be defamatory, but in a case where such a headnote as the above exists, the insertion in the list cannot be alleged to suggest that the defendant was insolvent, and a person to whom credit ought not to be given. But the case would be different if the publisher had made a mistake, fathering the identity of the debtor upon the wrong man. So would it be in the case of a list of meetings of creditors, if the publisher inserted such a wrong name for the debtor as to suggest another person.

Extract from official register.—This is a defence of privilege. It is directed by the law that a register shall be kept of certain classes of judgments, acts of law, and deeds, and that such register is to be open to public inspection. Thus there are, for example, registers of judgments, bankruptcies, bills of sale, and deeds of arrangement. The legislature has enacted that people may look at the registers, obviously not for the purpose of mere curiosity, but that they may act on the information thereby obtained; so that any tradesman who is considering whether he shall give credit to a person may inspect the registers and see whether there are judgments, or other prejudicial transactions against him therein recorded. That being so, the publisher of such a list is only doing for the public what they may do for themselves, and is only giving that information to the public and to tradesmen which the legislature has thought it right they should have. Therefore the publication of such a list is privileged, and an action will not lie for it, unless the privilege has been abused. If the publication has been from an indirect motive, *e.g.*, for the purpose of extorting money, or if there were any actual malice, *e.g.*, if the publication were to gratify a feeling of revenge, then, no doubt, the privilege would be rebutted; but so long as the publication is *bonâ fide* and without actual malice, it is not actionable.

Privilege.—If a report were made to a subscriber by a trade protection agency as to the credit of a specified person, such report, though false, would be privileged if made without malice. And it would appear, on the principle of the cases, that a circular list would be equally privileged, though sent unsolicited by the agency to its subscribers. Where a person—and it should be equally true of a society—is so situated that it becomes right in the interests of society that he should tell to a third person certain facts;

then if he, *bonâ fide*, and without malice, does tell them, it is a privileged communication. This doctrine would not, however, apply in the case of a public trade journal, for example, in which is included a black list, where certain statements contained in such list are untrue and are not founded upon some official public record.

Of trade-unions.—Lists of employers are occasionally published by trades-unions for the purpose of keeping their members out of such employers' shops. Strictly speaking, such a list is not libellous, but its publication, or the publication of any other document of the same nature, would be restrained by the Court where it contained statements injurious to trade, and where the Court is satisfied on the evidence before it that such statements are false. *See* LIBEL; COMBINATIONS.

Licensed Victuallers are not now allowed, by reason of the Licensing Act, 1902, to serve persons with intoxicating liquors who, within the previous three years, have been convicted as habitual drunkards and placed by the magistrate on the "black list."

BLACKMAIL.—Whosoever sends, delivers, or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter or writing accusing or threatening to accuse any other person of certain crimes, with a view to extort or gain by means of such letter or writing any money or valuable thing from any person, is guilty of a felony, and liable to penal servitude for life. The above-mentioned crimes are: any crime punishable with death or penal servitude for not less than seven years; any assault with intent to commit a rape; and any attempt to commit a rape or an infamous crime. To send such a letter demanding money or property with menaces; or to demand money or property in any other way, with menaces or by force, are also felonies. A mere request, such as asking charity, without imposing any conditions and without menace, would not constitute the crime. But it is immaterial whether the accusation of the crime is true or not, so long as the demand for the money has actually been made, together with the accusation or threat to accuse; the guilty intent, however, must be proved, and in order to prove it, other letters received by the prosecutor from the alleged blackmailer upon the same subject may be given in evidence.

BLANK TRANSFER.—It is a common practice, upon the occasion of a temporary loan, for the borrower to deposit with the lender a transfer of any shares he may possess as a security for payment, the transfer being duly signed and executed by him, but a space or blank left for the lender's name to be inserted. The object and intention of this operation is to permit the lender, in default of the agreed payment, to insert his own name, or that of his nominee, in the blank space, and so become absolute transferee and owner of the shares; the latter in the meanwhile remaining untransferred, and the borrower continuing to retain his position of shareholder, with its attendant rights and obligations. But such a document is not, in fact, a transfer, but only an agreement to transfer; though if the lender were to fill in his name and then re-transfer to a *bonâ fide* purchaser for value, who had no notice of the real nature of the transaction, such purchaser would have a good title as against the borrower, in case he had not been dealt with fairly by the lender. More than that, he has a good title as against the true owner of the shares, if the latter, or any one through whom he claims, has executed the transfer; even if the borrower had not dealt honestly with the

shares. Being only an agreement to transfer, the lender has no legal right to fill his name into the transfer when the stipulated event has happened as agreed between him and the borrower. He must either obtain a newly-executed transfer from the borrower, or apply to the Court for power to realise his security. Should he insert his name in the transfer and so become a shareholder in the stead of the borrower, or re-transfer to a purchaser, he does it at his own risk.

The importance of all legal points relating to the transfer of shares is obvious, when it is remembered that neither on the certificate nor on the register of shareholders would any mention be made, or notice taken of the fact, when it is so, that the holder of the shares is a trustee, or has otherwise only a limited property in them.

In a well-known case, a trustee was the registered holder of a sum of stock of a company, which stock was part of the trust fund. He deposited with a bank, as security for an advance, the stock certificate, a loan note undertaking to execute a proper assignment when required, and a blank transfer executed by himself. This transfer was not stamped, and was expressed to be on consideration of 5s. The bank, who had no knowledge of the trust, subsequently inserted its own name in the blank transfer and executed it; but the deed was not re-delivered or re-executed by the borrower, nor executed in his presence, nor by his authority under seal. The transfer was duly registered by the company, of which fact the bank informed the borrower. It was held by the Court of Appeal that *the transfer was not the deed of the borrower, and did not pass the legal title to the stock;* and, therefore, although the bank was not tainted with knowledge of the breach of trust, its title had to be postponed to the prior equitable title of the persons interested under the trust. In this case, the fact that the blank transfer was not stamped and did not state the true consideration, did not in itself invalidate the transfer, as the special Act regulating the particular company had not made those incidents essential to the validity of the transfer. That the transfer was a blank one was the determining fact.

The preceding remarks have had in view a transfer required to be by deed or under seal, the usual form of transfer of shares in a company. Shares, bonds, debentures, and other securities passing merely by delivery, and known as **bearer securities**, being negotiable, do not come under the above rules; nor would a transfer by signature only, and not under seal. *See* TRANSFER OF SHARES.

BLASPHEMY.—In 1842, in summing up to the jury at the conclusion of a trial for blasphemy, Mr. Justice Erskine read the following from Archdeacon Paley: "Serious arguments are fair on all sides: Christianity is but ill-defended by refusing audience or toleration to the objections of unbelievers. But whilst we would have freedom of inquiry restrained by no laws but those of decency, we are entitled to demand, on behalf of a religion that holds forth to mankind assurances of immortality, that its credit be assailed by no other weapons than those of sober discussion and legitimate reasoning." The learned judge continued: "Our law has adopted that as its rule, and men are not permitted to make use of indecent language in reference to God and the Christian religion without rendering themselves liable to punishment." And subsequently, in sentencing the prisoner, his lordship declared that "the arm of the law is not

stretched out to protect the character of the Almighty; we do not assume to be the protectors of our God, but to protect the people from indecent language." Though other judges have laid it down that blasphemy consists in the character of the matter published, and not in the manner in which it is stated; and that, consequently, to merely say "there is no God" is *primâ facie* blasphemy; yet the only safe and practical rule is that which depends on the sobriety, reverence, and seriousness with which the teaching or believing, however erroneous, are maintained. In fact, to quote the late Lord Coleridge from a judgment which practically settles the law: "If the decencies of controversy are observed, even the fundamentals of religion may be attacked without a person being guilty of blasphemous libel."

BLEACHING AND DYEING.—This industry is often carried on by the aid of such processes as would bring the factory within the statutory regulations relating to ALKALI WORKS and chemical process; reference should accordingly be made to the articles under these titles. In the process of Turkey-red dyeing young persons and women may be employed on Saturdays beyond the hours generally prescribed by the Factory Acts; so also may they be employed in the same work at any time in order to prevent damage arising from spontaneous combustion, or in the case of open-air bleaching, from any extraordinary atmospheric influence. Apart from these exceptions, the works and conditions of employment are regulated by the general provisions of the FACTORY ACTS (*q.v.*) with regard to non-textile factories.

BLOCKADE.—This is a term in international law, and signifies the act, in time of war, of investing a town or a seaport in order that nothing may enter therein in the shape of men, arms, munitions, or articles of sustenance. A blockade is applied either to towns which are too effectively defended to be taken by siege, or to seaports whose commerce it is sought to interrupt. The right to blockade the strong places, seaports, and parts of the seashore of a people against whom the blockaders are prosecuting a war, has been at all times enforced, and is recognised by all civilised nations. The declaration of a blockade being an act of sovereign power, it is bound to emanate from the government itself, or from some authority to which the right to make such a declaration has been expressly delegated. The commander of a fleet or the commander-in-chief of an army has not generally power to establish a blockade, nor to extend to a neighbouring place one which is already existing against another place and has been regularly declared; but in the case of war-like operations at a great distance from the centre of government, such officials would be probably held to impliedly possess the necessary power. Blockade is a means of enforcing submission of the enemy without destroying it, but from a commercial point of view it is the gravest step that international law allows to be taken against neutrals. In effect it weighs more heavily upon neutrals than upon the blockaded belligerent. International law prohibits neutrals from holding communication or engaging in commerce with a blockaded place. Accordingly, the inoffensive neutral ship bearing only neutral merchandise is placed, when it violates a blockade, absolutely upon the same footing as an enemy ship, or a ship bearing contraband of war for the benefit of the enemy. Though contraband of war includes only certain classes of merchandise, the number of which tends always to be restricted, yet the prohibition resulting from a blockade is applied to goods and merchandise of every class and nature.

In order that a blockade may produce the required effect upon the rights of neutrals, it is necessary that it should be real or effective; that is to say, it must be maintained by a force sufficient to really and effectively prevent access from the sea, or surrounding country, as the case may be, to the enemy. Moreover, to make it acquire a genuine and legitimate character, public notification must be made of the blockade. Notification may be either of three kinds. The first consists in the commander of the blockading force signifying the commencement of the blockade to the authorities of the places whose communications with the enemy he intends to cut off; the second is the official notification communicated to the neutral governments through the usual diplomatic channels; the third is the special notice given on the spot by the blockading commander, as occasion requires. A blockade automatically ceases so soon as it becomes ineffective; it also ceases upon the blockading force withdrawing and giving notice thereof, as it always should, to the neutral governments. In case of a violation of blockade, ships guilty thereof, together with the cargo, may be seized, and even corporal punishment and death inflicted upon those implicated in the offence; but the owners of the cargo are entitled to relief if they can rebut the presumption that the violation was intended for their benefit. A ship that attempts to go into a blockaded port; or to come out of it with a cargo laden after the commencement of the blockade; or to start on a voyage with the intention of entering the port; or to place itself so near thereto as to be in a condition to enter unobserved, would be guilty of violation.

Pacific blockade is the name given to those aggressive acts, evidently and intentionally hostile, which are manifested in a time of peace, by stationing a more or less considerable naval force before a certain port, and temporarily prohibiting commerce with that port. The practice of pacific blockades has not yet been reduced to uniform rules, and has only received a conventional sanction; but it may be safely assumed that any private neutral ship attempting to violate the blockade would be seized and confiscated, together with all the private property on board. *See* CONTRABAND; NEUTRALITY.

BOARD OF AGRICULTURE.—This Board was established by Act of Parliament in 1889. Amongst its duties are the collection and preparation of statistics relating to agriculture and forestry, and the inspection of certain schools in which agriculture and forestry are subjects of learning. The Board has also power to make orders for prescribing and regulating the muzzling of dogs, and the keeping of dogs under control; and also for prescribing and regulating the seizure, detention, and slaughter of stray dogs, and dogs not muzzled or under control. Amongst the duties transferred to the Board are those relating to contagious diseases amongst animals; and to tithe rent charges, the enclosure of commons, allotments, land drainage and improvement, and agricultural holdings.

BOARD OF TRADE—History and Constitution.—By the Harbour Transfer Act, 1862, it is enacted for the purposes of that Act that "the term 'Board of Trade' shall be taken to mean the Lords of the Committee of Privy Council for the time being appointed for the consideration of matters relating to trade and foreign plantations." The reader will probably at first sight conclude that this interpretation of the term is a special one, and is in no way indicative of the Board of Trade as it exists and is known

to-day. But though the interpretation is mainly for the purposes of the Act, it is interesting and instructive as being probably the first statutory or legislative recognition of a body bearing that name; and what is perhaps more important, being a very succinct and correct definition. The Board of Trade exists in the eye of the public as a great and important Government department presided over by a president, and as such coming under Government control. It is, however, in the eye of the law a committee, now more or less hypothetical, of the Privy Council, appointed to consider all matters relating to trade and foreign plantations—the latter term representing what are now known as the colonies—and is a continuation and development of the older Committee of Council for Trade. Being thus a committee of the Council, its president has no more exclusive authority than any other member of the committee, which includes to this day, amongst others, as members specially appointed to advise on matters of trade, the Archbishop of Canterbury, the Bishop of London, and the first Lord of the Admiralty. The constitution of the Board of Trade is peculiarly illustrative of the characteristic constitution of our country. The above-mentioned three magnates, with a number of others, such as the Speaker of the House of Commons, are constitutionally equally entitled with the president to do the work done by the Board of Trade—but as a matter of fact they never interfere; although, there being no quorum required, any one of them might do the work, and attempt to usurp the position of the president, which he himself has been able to maintain only through that same absence of quorum. But throughout the whole of our constitution these theoretical rights would avail their assertor very little, in view of the statutory and customary checks that have from time to time sprung into existence, many of which are unknown or forgotten. The president is a Cabinet Minister, and is sworn into the Privy Council as President of the Committee of Council for Trade. The committee was founded in 1782, and was itself the successor of the older Commissioners of Trade and Plantations.

In 1832 was established the Statistical department; in 1850 that for Railways; in 1850 the Marine, which in 1866 was divided into Marine, Financial, and Harbour; in 1883 the Bankruptcy; and in 1886 the Fisheries. During this development of the functions of the Board of Trade there has been a corresponding change in the nature of its operations. As we have already seen, the Board originated as a merely consultative and advisory committee of the Privy Council, and so it continued until 1840. In that year, coincident with the introduction of the railway system, was granted to the Board of Trade its power to settle and approve bye-laws, and to administer certain branches of the laws relating to trade and commercial enterprise; thereupon, as these powers increased, its consultative and advisory function gradually decreased until, when its last client, the Foreign Office, established for itself a consulting department, it altogether ceased in 1872. From that date it has centred its efforts in the administration of the law and of trade regulations, and has merged its consultative and advisory functions into its own statistical and commercial department, for its own use.

Its Departments.—*Commercial, Labour, and Statistical.*—This department prepares, amongst other things, statistics, accounts, returns and abstracts of shipping, labour, railways, emigrations, tariffs, wages, the condition of labour, trades-unions, and strikes. It also edits the *Board*

of Trade Journal and *Labour Gazette*, wherein appears certain of the information acquired by the department, as well as trade notices of public importance, such as tariffs, and post-office and quarantine notices. The *Railway department* has very extensive duties. It overlooks and approves all the works of railways before they are opened to the public, holds inquiries into the causes of accidents, approves bye-laws, and grants certain certificates under private Railway Acts. Canals, steam tramways, electric lighting, the patent office, and registration of joint-stock companies are also within this department. So also is the regulation of the rates and traffic of railways and canals. The *Marine department* enrols apprentices, engages and discharges seamen, examines offices of the mercantile marine, and grants certificates. It supervises the accommodation of seamen, their food, health, and discipline. It surveys and gives or refuses certificates as to the tonnage and construction of ships, cables, and anchors; regulates lights, signals, and codes; supervises all life-saving associations and apparatus, investigates wrecks, and inquires into charges of misconduct against officers; and generally advises and instructs in all marine matters the consuls, colonial officers, as well as, if necessary, the government offices. The *Harbour department* watches the foreshores belonging to the Crown, and navigable harbours and channels; enforces the Pilotage Acts, regulates the shipment of explosives, and settles bye-laws; controls the lighthouse funds; registers ships; and examines and reports upon private bills as to their effect on navigation. The *Finance department* has charge of the funds and accounts of the Board of Trade and of certain other offices; and the *Fisheries department* deals with matters relating to inland and sea fisheries, protects and preserves them, and has a care that foreign treaties are carried out. The *Bankruptcy department* retains the staff of official receivers, and superintends them and their work. This department has also control over liquidators of insolvent companies, and trustees in bankruptcy and under private deeds of arrangement.

BOARDING-HOUSE.—An agreement for board and lodging need not be in writing, and a boarder or lodger is entitled to the use of all the necessary conveniences of a dwelling-house. Where a lump sum is paid for the board and lodging, and the boarder has no exclusive occupation of any particular room, or part thereof, the boarding-house keeper cannot distrain for arrears of payment of such lump sum; but it would be otherwise if the boarder had such an exclusive occupation as aforesaid, and a certain portion of the total sum payable by him was paid and appropriated specifically in respect of the rent thereof. A boarding-house keeper differs from an innkeeper, in that the former keeps a house which is private and closed to the free entry of the public, receives guests who will make a more or less permanent stay, charges usually by the week or month, and makes a separate contract with every person received; whilst the latter keeps a house into which the public have a free right of entry, receives guests as a rule for a temporary sojourn, charges usually by the night, and without making any special contract, provides board and lodging for all-comers at a reasonable price. Accordingly, the rights and liabilities as between a boarding-house keeper and his lodgers differ from those as between an innkeeper and his guests; for example, the boarding-house keeper has not, like the innkeeper, a lien upon the goods of his lodgers in respect of any moneys due and in arrear, and should he attempt

to detain the goods for such a reason the lodger may obtain an order from a magistrate for their delivery to him.

There is a fallacy in the suggestion that because a boarding or lodging-house keeper does not come under the full liability of an innkeeper, he is exempt from all obligation to take care of his lodger's goods. The instance in *Calye's case* of a man "lodged with another who is not an innholder, upon request, if he be robbed in his house by the servants of him who lodged him or any other he shall not answer for it," does not establish it, and is not inconsistent with a duty to take ordinary care. The object of the illustration is merely to show that a guest lodging with another is not entitled to the same degree of protection as he would be entitled to in an inn. But the instance confers no immunity upon lodging-house keepers from such liability as would otherwise arise from their receiving into their charge for reward a guest and his baggage. Nor does there seem any reason in principle why they should be so exempt. The general control of the house must be in the keeper. By the nature of the arrangement itself the custody of the lodger's effects must be in him when the lodger is not in his room, and the consideration paid ought as a matter of business to secure some protection to the lodger where the ordinary conditions to which he is expected to conform put it out of his own power to look after his effects himself. There is no reason why there should be a presumption of immunity in his case from the common duty of a person accepting a charge to exercise at least ordinary care; *a fortiori* where he undertakes it for reward. The guest and baggage are both in a house of which he has the control, and his obligations to both of them arise in the same way out of the relation itself. The *onus* lies on those who affirm there is no duty (per Master of the Rolls in *Scarborough* v. *Cosgrove*, following *Dansey* v. *Richardson*). And *see* BAILMENT; LODGER.

BOILER EXPLOSION.—Notice hereof must, under a penalty, be given to the Board of Trade within twenty-four hours. A boiler requiring such a notice would include any closed vessel used for generating steam, or for heating water or other liquids, or into which steam is admitted for heating, steaming, boiling, or other similar purposes, as well as a pipe conveying steam from a boiler outside to an engine inside a coal-mine; but boilers used exclusively for domestic purposes, or to heat non-residential business premises, or used in the King's service, are not boilers such as would require notice to be given in case of their explosion.

BONÂ FIDE.—This expression is as frequently used by the layman as by the lawyer, and by both it is used with very much the same meaning. The literal translation of the phrase is "in good faith," and it was originally used in Roman law in the opposite sense to *mala fide*, "in bad faith," or to *dolus*, "fraud." The expression frequently appears in Acts of Parliament, generally meaning that the acts referred to must not be done to evade the law. In the customary legal sense, as used in regard to contracts and other transactions not coming strictly under the denomination of contract, it is

used according to its literal meaning, as opposed to, and implying the absence of all dishonesty, fraud, deceit, wilful misrepresentation, or suppression of the truth. Speaking broadly, it may be said to be a necessary element in all contracts; and in some, *e.g.* contracts of insurance or guarantee, not only must there be a bare good faith, but even the strictest good faith. A *bonâ fide* traveller would be a man who is actually a "traveller," the law taking no cognisance of the object of the journey; and it is the same when the expression is used in conjunction with such words as occupation, or parishioner, the addition of *bonâ fide* being mere surplusage. *Bonâ fide* mistakes, purchases, and payments mean respectively: genuine mistakes of law or fact, not erroneous views thereof deliberately adopted after consideration; genuine purchasers, who are not merely donees taking gifts, or others taking advantages with paying value, or proportionate value therefor, under the form of purchases; and genuine payments which are not made with the intention of being reclaimed, or with some secret arrangement as to their return or application to objects not apparent on the face of the actual transaction. For *bonâ fide*, in connection with BILLS OF EXCHANGE, *see* that title as well as HOLDER FOR VALUE. Reference may also be made to DECEIT; FRAUD; MISREPRESENTATION; UBERRIMA FIDES.

BONDED WAREHOUSE.—These warehouses are established for the storage of goods which are liable to customs or excise duties. When a merchant imports such goods he takes advantage of this system in order to delay payment of the duties until they have been sold, or are otherwise required to be dealt with by him. If he paid duty on all the unsold goods which he might import, that payment would often necessitate the sinking until sale of a large amount of capital; he therefore warehouses the goods and enters into a bond that they shall not be removed until the duty has been paid. While the goods are so warehoused they are said to be In Bond. The proprietor of the warehouse is also required to enter into a bond—thus the name, bonded warehouse. He is not only responsible to the owner for the safe custody of the goods, but he is also responsible to the Crown for the duties to which they are subject. But this responsibility is in effect materially diminished by the great care taken by the Crown as to the position and construction of the warehouses, the preservation of the goods stored therein, and as to their removal.

Before any building can be used as a warehouse, it must be approved by the Crown, and a bond must be given with one or more sufficient sureties for £3000, or even a larger amount. The penalty of the bond is only £1000 in the case of a bottling warehouse. Nor is the privilege of keeping a bonded warehouse accorded to an applicant as a matter of course, for he is required to satisfy the authorities that such a warehouse is necessary and is desired by the local merchants. Certain officers of the Crown are also responsible for the security of the warehouse, and to this end all locks, doors, and windows are placed under their supreme control. Neither the owner of the goods, or even the warehouse keeper, may by himself, or by any person in his employ, open or gain access to a warehouse except in the presence of an officer acting in the execution of his duty. The warehouses are bound to be numbered and distinguished, and their contents arranged in a manner convenient for inspection; and books must be kept which show precisely the daily receipts

and deliveries of goods, and all dealings therewith, and these are checked by the officers. It is impossible to even "rack" wine (pour the contents of one cask into another) without due permission, and a supervision and record of the operation. Goods are delivered into the warehouse on the authority of a document called a warrant, and they are taken out by a "permit," which is obtained from the collector of the duty after its payment. Carriers also are licensed, and known as bonded carmen, who alone may remove goods subject to duty; they are always accompanied by an officer. *See* CUSTOMS; IMPORTATION AND EXPORTATION.

BONDS—Generally.—A bond or obligation is a deed whereby a person obliges himself, his heirs, executors, and administrators, to pay to another person a certain sum of money; the party binding himself is called the obligor, and the obligee is the person to whom the money is to be paid. Bonds are generally subject to a condition—for example, that on payment of the sum mentioned therein, or in the event of the obligor performing a certain act, or refraining from doing certain things, the bond shall be void; and the obligor, in such bond, subjects himself to payment of the sum mentioned therein as a penalty in case the condition is not duly performed. This instrument is distinguishable from an INDENTURE (*q.v.*) by its being obligatory only on the obligor, and requiring only one seal, expressive of the assent of the party intended to be bound by it. The first part of the document is the bond proper, and the second part is the condition. The statute of limitations does not run as against a bond until twenty years after the right to sue thereon has accrued; had the terms thereof been embodied in an ordinary agreement, the statute would have commenced to run six years after. There may be more than one obligor, and the obligation may be joint, or joint and several. The sum inserted in the bond as a penalty to secure the performance of the condition is usually double the amount of the sum intended to be secured by the instrument; but in case the forfeiture has accrued by reason of non-payment of money, only the actual sum owing and interest may be recovered, and when by reason of any other non-performance of the condition, only the actual damages sustained. The obligor has not the option of paying the penalty and continuing to break the terms of the condition. Thus, if the condition of the bond is that the obligor should not engage in a certain trade in a certain locality during a certain period, the bond shall be void, the obligor cannot pay the penalty, and engage in the trade in the specified locality and time. Should he do so, the Court will not only make him pay the penalty, but will also restrain him from committing the breach of the condition.

Foreign and Government.—Coupon bonds of United States municipal and business corporations are there negotiable, as also are the coupons, which may be detached and sued on separately after the bond has been satisfied. By the English, as well as by the American law, such bonds are held to be analogous to promissory notes and negotiable in the same way; a *bonâ fide* holder for value thereof is unaffected by want of title in the vendor, and is presumed to act in good faith; even gross negligence alone would not prove *mala fides*. Such a bond cannot, at its inception, be made payable to some certain obligee or bearer like a bill or note; but after it is complete it may be transferred by indorsement so as to become payable to bearer. The term

bond is also applied to certain securities issued by foreign governments and commercial corporations; these are either of a like nature to our own government securities or, in the case of commercial bonds, to what in England are known as debentures. There are many classes of these bonds—payable to order, or to bearer; redeemable at a fixed date, or by drawing, and so on. So also in England the Government have issued Exchequer bonds.

English—*Official—Judicial.*—The object of an official bond is to secure indemnity against the misuse of an official position. It is generally entered into by the intending officer, together with one or more sureties as may be required, all of which obligors would be jointly and severally liable for any misconduct of the officer provided for in the bond. There have now been established guarantee and trust companies which, in consideration of a premium, will enter into such a bond as surety, thus relieving the principal obligor from the necessity of asking the favour from a private friend. These bonds are generally of a continuing character, wherein they differ from those required in the course of judicial proceedings. The latter are more definite in their terms, conditions, and operation, and are usually made for the particular occasion. Thus, for example, *an administrator* is required by the Court to give a bond for his due administration of the estate about to be committed to his hands. The obligee in such a bond is the judge for the time being of the Probate Division, and the obligor is joined by one or more surety or sureties, who must be responsible persons. One surety is sufficient where the estate does not exceed £50, and where a husband administers his wife's estate. Where a married woman is administratrix, her husband may be a surety for her. Occasionally, the sureties have to "justify"; that is to say, they each make an affidavit that they are severally solvent to the amount of half the penalty of the bond. The penalty is equal in amount to double the gross value of the personal property of the deceased, and the gross annual value of the real property. Where there is a difficulty in finding so few a number of sureties equal to the amount of the penalty, the Court may allow a greater number than two. The sureties cannot claim to be discharged from their bond, and others substituted for them. Should the administrator fail in the performance of his duty, the sureties will be liable, and the Court will assign the benefit of the bond to some party, in order that he may take legal proceedings on the Court's behalf.

Stamps.—There is a 5s. stamp payable on an administration bond in England or Ireland, or on a confirmation of testament in Scotland. But (1) a bond given by the widow, mother, child, father, brother, or sister of any common seaman, marine, or soldier, dying in the King's service; and (2) a bond given by any person where the estate to be administered does not exceed £100 in value, do not require this stamp. An annuity bond securing payment for the term of life, or any other indefinite period, is liable to a stamp duty of 2s. 6d. for every £5, and also for any fractional part thereof, of the annuity or sum periodically payable. But where the annuity is for a definite and certain period, so that the total amount ultimately payable can be ascertained, the duty will be *ad valorem* the same as in the case of a bond for the total amount—this will be 2s. 6d. per cent.

BOOK DEBTS, like any other legal choses in action, may be the subject of a legal assignment. The assignment should be absolute, and not by way of

Know All Men by these Presents that I John Herbert Richardson of 5 Pretoria Avenue in the City of Manchester Financial Agent am held and firmly bound to Gertrude Rayner of 5 Ruston Street in the same City Widow in the sum of **Six thousand pounds** to be paid to the said Gertrude Rayner **Sealed** with my seal **Dated** this thirteenth day of August One thousand nine hundred and ten

Signed sealed and delivered by the said John Herbert Richardson in the presence of } J. H. Richardson (L.S.)

Geo Pinkstone
11 Rodway Road
Manchester
Clerk

Whereas the above bounded John Herbert Richardson hath agreed with the said Gertrude Rayner for the sale to her of an annuity of One hundred pounds during her life for the sum of Three thousand pounds such amount to be secured by the Bond of the said John Herbert Richardson **And whereas** in pursuance of the said Agreement the said Gertrude Rayner hath paid to the said John Herbert Richardson the said sum of Three thousand pounds as the said John Herbert Richardson hereby acknowledges and the said John Herbert Richardson hath executed the above written Bond.

Now the condition of the above written Bond is such that if the said John Herbert Richardson shall pay to the said Gertrude Rayner during her life one annuity or yearly sum of One hundred pounds by equal half yearly payments on the twenty fifth day of March and the twenty ninth day of September in every year the first half yearly portion of the said annuity to be paid on the twenty fifth day of March next **then** the above written Bond shall be void otherwise the same shall remain in full force and virtue

charge only. Future debts may be assigned. Whether, in a particular case, a part of a debt may be assigned is a question which can be determined only after a consideration of the cases *Foster* v. *Baker*, and *Skipper and Tucker* v. *Holloway and Howard*. The assignee takes the debts subject to any equities affecting the assignor; that is to say, if, for example, the debtor has a set-off or counter-claim against his original creditor, the assignee takes the debt subject thereto. The assignment is required to be in writing, and notice thereof must be given to the debtor. Until such notice is given the assignment is not complete. The following is a convenient form of an assignment of book debts, the stamp required being the same as that on a conveyance :—

This Indenture, made the fourteenth day of October one thousand nine hundred and one, **Between** John Jones, of 3 Cricklade Terrace, in the City of Salisbury, grocer (hereinafter called "the vendor"), of the one part, and Robert Holmes, of 17 Pretoria Road, in the same city, clerk (hereinafter called "the purchaser"), of the other part: **Whereas** the vendor hath for some time past carried on the business of a grocer at No. 3 Cricklade Terrace aforesaid, and in the course of such business the persons whose names and descriptions appear in the first column of the schedule hereto have become and now are indebted to the vendor in the sums set out in the second column of the said schedule against their names respectively: **And whereas** the purchaser hath agreed with the vendor for the purchase of the said debts for the sum of One hundred pounds, and the vendor hath delivered to the purchaser the books of account relating to the said debts, setting forth the amounts and particulars thereof: **Now this Indenture witnesseth** that in consideration of the premises, and of the sum of One hundred pounds to the vendor, paid by the purchaser on or before the execution hereof (the receipt whereof is hereby acknowledged), the vendor, as beneficial owner, hereby assigns unto the purchaser: **All those** the books and other debts now due and owing to him on account of his said trade from the persons mentioned in the first column of the schedule hereto, the amounts of which debts are set out in the second column against the names of such persons respectively: **To hold** the same unto the purchaser absolutely; **And** the vendor hereby irrevocably appoints the purchaser his attorney for him, and in his name or otherwise to sue for, recover, and receive and give effectual discharges for the debts hereby assigned: **And** in addition to the covenants for title implied by law, the vendor hereby covenants with the purchaser that the said debts are correctly stated and set forth in the said books of account so as aforesaid delivered by the vendor to the purchaser. **In witness** whereof the said parties to these presents have hereunto set their hands and seals the day and year first before written.

THE SCHEDULE.

Henry Savage, 14 Royal Crescent, Taunton.	£72 16 3
John Richards, The Royal Oak, Bridgewater.	41 2 6

Signed, sealed, and delivered by the above-named John Jones, in the presence of,

Mary Jones,
3 Cricklade Terrace, Salisbury.

JOHN JONES. (L.S.)

It is not always necessary or convenient to use so formal a document as the above; for debts may be effectively, though only equitably, assigned by mere appropriation. Thus A. owes B. £100, and is being pressed for pay-

ment, but A., though he has not that amount of money by him, is a creditor of C. for a similar sum. A. accordingly writes a document in the following terms, and hands it to B.:—

27th October 1911.

To Mr. C.,—I hereby order and request you to pay to Mr. B., of &c., the sum of £100 out of moneys due or to become due from you to me, and his receipt for the same shall be a good discharge.

B. retains this document, but at once writes C. a letter to the following effect:—

I hereby give you notice that, by a memorandum in writing, dated the 27th day of October 1911, Mr. A., of &c., ordered and requested you to pay me the sum of £100 out of moneys due or to become due from you to him, and my receipt for the same shall be a good discharge.

Upon receipt by C. of this letter from B., the £100 may only be paid to the latter; should C., in the face of the notice, pay the money to A., or to any person other than B., he would have to pay it over again to B. The disadvantage of an equitable assignment is that in case of legal proceedings against C. it is necessary to join A. as co-plaintiff with B.

Ordinary book debts are barred, in England, after six years; in Scotland after three. *See* LIMITATION OF ACTIONS; PRESCRIPTION.

BOOK-KEEPING is the art of keeping accounts. In some form or other this art has been practised since the beginnings of commerce; for wherever there is trade there also must be its records. The accounts, which are the subject of book-keeping, are those of financial transactions, not necessarily of cash transactions in the strict sense. At first, doubtless, before credit had become so all-pervading a factor in commercial life as it is to-day, the transactions the subject of book-keeping were limited to those based on cash. The essential principles of book-keeping are very simple; but in practice the details are often complicated and diversified. Not only would this be the result of the nature of the business dealt with, but just as frequently the consequence of personal inclination. In a business of the simplest character, the system of book-keeping may be either absolutely simple, or, on the other hand, profoundly intricate; and the latter is not by any means necessarily the better method of the two. Again, the simplest system of book-keeping may, either through ignorance or carelessness, become in fact most intricate and unintelligible. It will be the object of this article to outline the subject in such a way as to teach the business man, or the private individual, how to keep his accounts with some degree of accuracy and judgment. To do more than this would be impossible within the limits imposed upon the subject.

Before going further into the subject it will amply repay the delay to pause and draw attention to a few very important points. In the first place, business being carried on as it is mainly upon credit, the immediate object of book-keeping is to record credit transactions, in other words, transfers of accounts. When we talk of credit, we do so in the widest sense: a so-called cash transaction, whereby goods in course of transit by sea, the title to which is represented by the bill of lading, are sold upon payment by cheque of the agreed price, is in fact a double credit transaction, or a mutual transfer of two separate and independent accounts. Both the bill of lading and the

cheque may be themselves subsequently passed on again in the same manner by their new owners, who in their turn may have made a profit or loss on the transaction without having touched either goods or money. Or without even bills of lading or cheques, goods may be sold and bought as cash transactions —simply by entries in books of account. In fact, the nearer we go to the centre of finance, and the larger quantities of goods and amounts of money we deal with, the less likely are any transactions to be effected other than by means of such entries. At the bottom of our whole commercial system is its characteristic feature of book-keeping—a feature made up of individual and independent entries of accounts, but yet so entirely the same in principle and accuracy as never to drag, but always to hasten the wheels of commerce. To be a business man, therefore, and indeed to do any business at all upon proper lines, it is necessary to keep a systematic set of accounts. The nearer one may be to perfection in this respect, the nearer will there be a harmonious relationship with the commercial world and successful business operations; but, on the other hand, failure alone is the inevitable end to the business man without system in the keeping of his accounts.

The next point to which attention should be paid is the objective of all book-keeping. This is The Balance. Any system of book-keeping should have in view as its supreme end the production of a balance-sheet showing the relation of assets to liabilities, and the balance thereof to profit or loss, as the case may be. Upon first consideration it would seem that the real object of book-keeping would be to set out the relative positions of debtor and creditor in the various transactions of the business; but in spite of first impressions the fact must be insisted upon that the ultimate object is the general balance-sheet of the business. It is because this is so, that quite apart from the particular necessity of circumstances, the debtor and creditor accounts arising in the course of business should be accurately and intelligibly shown. Such accounts are after all subsidiary in the eyes of the proprietor to the final account, which discloses his own position. But nevertheless, though subsidiary, and though not the final object of the book-keeping, they are yet absolutely necessary both in themselves and in the relation to the final object. These accounts must all themselves have balances as an objective leading up to the final general balance. Let the book-keeper grasp the necessity and utility of balances, and it is almost possible for him to arrange for himself, without further knowledge, a sufficiently effective and accurate system of accounts. But let him be regardless of the principle of a balance and his most simple system will be really complex and absolutely unintelligible to any one but himself.

Every one has at some time or another had dealings with a business man, so-called, who if required to furnish his customer with a statement of account has to turn back through many pages and past many and varied items and entries in order to find those for which he seeks; and even when these are found they are rendered with hesitation and diffidence, the unfortunate "man of business" being doubtful whether he has included too many or too few. Such a man, having a business of a simple nature, a retentive memory, and the good fortune to occasionally happen upon a profitable speculation, may live and die well-to-do in this world's goods, but generally his chief certain place of resort is the Bankruptcy Court and its purlieus.

Again, and also in connection with the topic of the Balance, the necessity

for neatness and accuracy should be emphasised. Neatness in the rough waste-books in which first entries are made is, perhaps, not always possible, but accuracy is, and it must be insisted upon. It happens very frequently in the course of litigation, that there is some dispute as to the date upon which a payment was made, or goods ordered or delivered, or as to the amount of the payment, or the quantity or description of the goods. In such cases, and in many others of a similar nature, the first entry may become a fact of the greatest value. The evidence before the Court on the disputed fact may be verbal on both sides, there being no documentary proofs in existence. But the person who made the entry, and made it at the actual time of the occurrence or immediately afterwards, is allowed to take his entry into the witness-box and refresh his memory therewith. The entry is not itself evidence against the other side, but when the judge and jury see its existence and hear the witnesses' evidence that it was made by him at the time, it is highly probable that that person's statement as to the facts in dispute will be accepted as the true one. Such an entry may even be evidence as against the other side. This would be the case where it was made by a person, since dead, in the ordinary course of his employment, and against the interest of the person so making it. Thus, A. sues B. for £50 balance of a debt of £60 incurred more than six years before commencement of the proceedings, the £10 payment on account having been made within the six years. B. sets up the statute of limitations by way of defence, alleging that the debt is barred because more than six years have elapsed since it had been incurred; and as to the £10 alleged to have been paid on account, which if proved would take the case out of the operation of the statute, and so enable A. to recover, says that he did not in fact pay the £10. A. has therefore got to prove that he received the £10 from B. on the specified date on account of the aforesaid debt; but C., who at the time had been A.'s collector, is dead. Now if the £10 appears in the collector's cash-book credited to B., and necessarily charged against himself to be accounted for to his employer, there would be an entry by C. against his interest. All A. has to do, therefore, is to prove that C. is since dead, and that the entry was made at the time of the alleged payment in the course of C.'s ordinary employment, and the £10 will be taken as proved to have been paid at the alleged time by B. The latter will accordingly fail in his defence of the statute of limitations, and A. will recover the £50, the result of a careful entry in the collector's book. And even an entry made by the party himself in his own shop books may itself be evidence in taking accounts in Chancery (Order xxxiii. R.S.C.); and, probably, in a common law action, if made within one year before action brought (7 Jac. I. c. 12, revivified and made perpetual by 26 & 27 Vict. c. 125).

All the relevant books of account of a litigant may be inspected by the other side prior to the hearing of the case, and, on notice, must be produced at the trial. This is to see that the books support the case raised by their owner. Should he tell one tale himself and his books another, it is most probable that the latter will be believed. Should the books be irregularly and doubtfully kept, their owner will be exposed to an extremely critical and suggestive cross-examination, with the probable result that both he and his books will be disbelieved, and that his opponent will gain the day. And the entries may frequently have a most important bearing on the

case. Should the case of the defendant be that he is a part surety for the owner's real debtor, and that certain payments made by the debtor in respect of his debt were in fact appropriated by the owner himself to the items for which he was such surety, the owner, in order to win his case, must produce books which show conclusively in his favour the order in which payments by the debtor had been appropriated. Entries out of chronological order, in doubtful positions, and made evidently at different times, will all count in favour of the defendant. *See* APPROPRIATION OF PAYMENTS.

The chief books absolutely necessary for a small trader conducting a business of a simple nature would be as follows:—Journal, Debtor's Ledger, Bought Ledger, and Cash-book. These books will each be referred to separately in special articles. For the present purpose it will be sufficient to allude to them generally.

The Journal could be one book so-named, or two—a sales and cash journal and a bought and paid journal. In the first should be entered all the orders taken, and also all cash paid by the customer. Each day should be headed separately with its own date, and the entries should be made as and when each of the sales and payments are made. The entries may be made either directly into the journal, or first of all into a rough *waste-book*. Where there are a number of persons continually taking orders and payments, the best course is for each of such persons to have two waste-books for himself—one, No. 1, for Mondays, Wednesdays, and Fridays; the other, No. 2, for Tuesdays, Thursdays, and Saturdays. By means of this system the waste-books can be fair copied into the journal on the following day. When orders are sent out, they should be entered in a *delivery-book*, and the carter should obtain the signature of the person to whom they are delivered, whether he be the customer himself, or a carrier through whom delivery is to be made. If the customer pays the carriage, the carrier is in law his agent, and consequently delivery to the carrier is good delivery to the customer. The advantage of this appears in many ways. Should, for example, the goods be lost or injured in transit, the damage falls upon the customer; should it be necessary to sue the customer who lives in Scotland while the seller lives in England, the action will lie in England, as delivery of the goods was effected to the customer in England, and the same rule would apply where seller and customer live in different parts of the country, and the seller wishes to sue in the County Court in his own neighbourhood; should, again, delivery of the goods be disputed, it will be sufficient for the seller to prove receipt thereof by the carrier. The delivery-book is, therefore, a valuable adjunct to effective book-keeping.

At the time of consigning goods, an *invoice* should be forwarded. This should clearly state the quantity, price, and description of the goods, the channel of delivery, and the terms of payment. To merely state on the invoice that interest will be charged if the price is not paid at a certain date is not to cast a legal liability on the purchaser to pay it. He must either expressly accept the condition, or it must be made to him under such circumstances as to raise an implication that he has accepted it. In case of a dispute, the fact of not having sent an invoice would weigh heavily against the seller. And here the copy *letter-book* should be noticed. In business transactions all correspondence should be on record. Press copies of letters

sent should be taken, and the originals of those received preserved. In order to put in evidence a copy letter, notice must first be given to the other side to produce the original; failing such production the copy will be evidence. It is not really sufficient to preserve the originals of those received, having first torn off the fly-leaves or other parts not written on. The law requires production of the whole paper of a written document, and the opposite side might object that only part is in evidence. The principle of the Bought and Paid Journal is the same as the journal we have just considered; it relates instead to purchases by the business man, and payments in respect thereof. Invoices when received should be checked with the goods, and either filed or pasted in a book. Such a book is generally called a Guard Book.

Debtor's Ledger.—Every entry in the journal must find its way into the ledger. To so in its turn enter up the ledger is called posting. Each customer has an account opened for him with his name at the head. On the debit side is entered the date and amount of the entry in the journal, the folio, or page of the latter, and usually the words "To Goods." The items of the journal entry are not usually carried into the ledger. On the credit side are placed all payments, with the date and folio of the journal from which they are taken. Every quarter or half-year, as the case may be, the account is ruled off and a balance struck and carried down, and with this balance is the new quarter or half-year commenced. When the balance is thus struck, it is the rule to send to the customer a statement showing how the balance is arrived at; and in the case of complicated accounts it would be well to obtain from the customer an acknowledgment that he has examined the account and finds the balance correct as stated. Such an acknowledgment would constitute an ACCOUNT STATED, the advantages of which to the creditor appear in the article under that title. In the same way would the bought ledger be posted up, and balanced from time to time. The balances should then be taken out and totalled; for these are necessary for the preparation of the general balance-sheet.

In conjunction with these ledgers should be mentioned the Bill-books, Empties ledgers, Stock-books, and impersonal ledgers. The latter will be separately treated in a special article which should be read together with the article on DOUBLE ENTRY. The *Bill-books* should be: one for the entry of bills of exchange taken as payment by the business, and another for bills given in payment. The main object of these books is to show what bills are running, and when they are due for presentation and payment. In the debtor's ledger they have probably been credited to the customer as cash, so it will be in the bill-book that they must be watched. Even if dishonoured, they would not necessitate alteration in the ledger, for they can be sued upon by themselves without reference to the account which gave rise to them.

The *Empties ledgers* are in some trades of almost equal importance with the ordinary ledger. Thus a firm of brewers and wine merchants would keep very elaborate accounts of the casks, bottles, cases, syphons, &c., sent to their customers. The numbers and marks on each article would be noted, and in case of non-return, certain fixed charges would be made. A similar book would be kept for empties received and returnable. The *Stock-book* is another book which may be usefully kept by every trader. Accounts can be

opened for certain goods or classes of goods, and debit and credit entries posted to them as in the case of the ordinary ledgers. But whether such a book is kept in this form or not, it is necessary that there should be a stock-book to show the results of the periodical stock-takings, and from which the general balance-sheet may be supplied with the requisite balances in respect to stock.

The Cash-book is the last chief book of account we shall refer to. This is the journal devoted to the payment and receipt of cash. It is in fact a ledger in which cash is regarded as goods, a customer, or any other subject of a ledger account. But with a system of single entry book-keeping in a small and not complex business it presents little need for explanation. It should, however, be supplemented by a *petty cash-book*. The keeper of this book should have a certain sum of money deposited with him sufficient to last a particular time. It should be checked regularly with the cash in hand, and when the balance is running down, the same amount should be again supplied. By this method there is a certain automatic check preserved against unusual expenditure.

From the above, and having before him those books ruled as sold by the stationer, the reader should have no difficulty in commencing a system of single entry book-keeping; and after reference to the article on the BALANCE-SHEET, he should be in a position to make out a satisfactory balance-sheet. Before attempting book-keeping by double entry, he should thoroughly grasp its principles as set out in the article on that subject; but whether he does this or not, there need be no further excuse to vainly strive to make a waste day-book serve the purpose of a proper set of books.

BOOKS AND PRINTS.—It is a misdemeanour to print and publish, or expose for sale, or to the public view, any indecent writing or print, or to publicly exhibit the same. That there was no intention to corrupt public morals is no defence. The magistrates may issue a warrant authorising a search for, and the seizure of, any such obscene books or prints kept in any shop or other place for the purpose of sale or distribution, or published for the purposes of gain. The occupier of the shop or other place may be summoned to show cause why the articles should not be destroyed, and if the magistrates are satisfied that they are obscene, they will be destroyed. At the time of writing, a bookseller, having been indicted for and convicted of the above misdemeanour, has been imprisoned for eighteen months, and, in addition, fined £50. *See* COPYRIGHT.

BOTTOMRY and RESPONDENTIA.—Bottomry, in maritime law, is the pledge of a ship as security for the repayment of money advanced to an owner for the purpose of enabling him to carry on the voyage. The contract is usually in the form of a bond, called a Bottomry bond. The term bottomry is derived from a Low German word, signifying the keel or bottom of a ship, and by a not unusual development in sense has come to mean the ship itself; thus, trade is often spoken of as being carried on in foreign *bottoms*. The conditions of a bottomry bond are that, if the ship is lost on the voyage, the lender loses the whole of his money; but if it reaches port,

both the ship itself and the borrower personally become liable for the money lent and the agreed interest. As the nature of the bond is to make the lender a co-adventurer with the owner on the success of an undertaking advantageous to the public, and as the lender usually comes to the financial rescue of the ship at a critical and doubtful time, the contract of bottomry has never been subject to the laws directed against usury; consequently the interest on such a bond has been, and is still generally, at a higher rate than that obtaining in less speculative adventures.

It is by a bottomry bond that the master of a ship borrows money when he is abroad, and has a real and pressing necessity to repair the vessel or to procure things essential to the prosecution of his voyage; the pressing necessity is the only recognised authority for his so doing. Should there be no such necessity, the owner would not be liable on the bond, and accordingly the master should be careful that the necessity really exists. Where several of these bonds are given for the same ship at different times, the last bond in point of time has priority of satisfaction, for the reason that it is given in order to preserve the security available for the earlier bonds. When the security for the loan includes the cargo as well as the ship, the transaction is called *respondentia*, but it is subject to the same rules of law as a bottomry bond. A bottomry bond may also be given on the security of the freight; but the cargo must not be the only subject of the pledge. Nor may the master give a bond unless it is impossible to obtain the necessary advance on the personal security of the owner alone.

BOUGHT AND SOLD NOTES.—A broker who buys and sells on commission puts the bargain and its terms into writing and forwards a "bought note" to the buyer and a "sold note" to the seller. These notes are supposed to be copies of entries already made in the books of the broker, though in practice the entries are often made after the notes have been sent off, or omitted altogether. The object of the notes is to determine definitely the terms and conditions of the sale or purchase, to impose a liability in respect thereof upon the broker's principal; they are accordingly also called "contract notes." The following is the form of a "bought" contract note as generally used by a stockbroker:—

4 THROGMORTON STREET, E.C.,
22*nd July* 1910.

We beg to advise you that we have this day *bought* on your account, subject to the rules of the Stock Exchange, as under: for settlement 31st July 1901.

100 shares Anglo-Russian Petroleum, 2½ . . .	£250	0	0
Commission, 6d. per share	2	10	0
Stamp on transfer	1	5	0
Registration	0	2	6
Contract stamp	0	1	0
	£253	18	6

The stamp duty is set out in the article on STAMP DUTIES. As set out above, it shows that the broker has bought certain shares at the price mentioned, that he charges £2, 10s. as commission for his services and one shilling for the contract stamp, and that £1, 5s. will

be the value of the stamp required to be impressed upon the transfer, and 2s. 6d. the fee payable to the company for registration of the transfer. It further states that the next settlement day for transactions of this description is the 31st July 1910, by which time the broker should receive from his principal the total sum mentioned, so that he may be in a position to pay for and take delivery of the shares. A "sold note" would be in the same form as the above, except that a person who sells would not have to pay for the stamp on the transfer, or the fee for its registration.

The following is the form of a contract note generally used by a merchant, the word "prompt" meaning the date for payment, when the goods will be tendered and the purchase should be completed.

14 GREAT ST. HELENS, E.C.,
12*th October* 19—.

HOLMES, GANTHONY & Co.,
Produce Merchants and Brokers.

To Messrs. SMITH & PARRISH.

We have this day bought of [*or* sold to] you on customary terms and conditions, as under:—

Quantity.....*Description*.....*Price*.....
Delivery.....*Discount*.....*Packing and mark*.....
Prompt.....*payment*.....

We are, Gentlemen,
Your obedient servants,
HOLMES, GANTHONY & Co.

If the above note had been sent out by a broker, it would contain the words "on account of our principals," instead of the words "customary" to "conditions," and the principals would probably be named.

Should a stockbroker not make and transmit to his principal a contract note, or should he make or execute the note unstamped, he will be liable to a penalty of £20, and be unable to recover his commission, except where the sale is of stock or a marketable security of less value than £5.

A contract cannot be enforced if the principal countermands the authority of the broker after an agreement to buy or sell, but before the contract note is made out. If a sold note is signed by the broker who is acting for both buyer and seller, the document becomes a memorandum sufficiently signed by the party to be charged, or by his duly authorised agent, to satisfy the statutes that require in certain cases a signed contract. Should the broker sign the contract note merely as a broker, and without disclosing his principals, he cannot himself sue thereon; cases similar to this often arise when dealing with an outside broker, who though posing as a broker, in fact is really a principal. Where a broker is authorised by one man to sell goods, and by another to buy the same goods, he may, by entering in his books a memorandum of the sale thereof by one to the other, create a binding contract between his two principals. In a sale between brokers, the bought and sold notes were not exchanged, and there was no evidence that the seller had notice of the contract, but the seller having partly performed, it was held that the contract was binding. Should a broker omit to enter and sign any contract in his

book, but sends bought and sold notes to the buyer and seller which vary materially, no binding contract would be constituted, but it would be otherwise if the bought and sold notes substantially agreed with each other. Nor would any valid contract arise if a broker employed both by seller and purchaser, though having negotiated the sale, had by mistake delivered to the several parties bought and sold notes differently describing the goods. Should, in the City of London, goods be sold by a broker to be paid by a bill of exchange, the vendor has the right, within a reasonable time, *e.g.* within two or three days, if not satisfied with the sufficiency of the purchaser to annul the contract. But the vendor must intimate his dissent as soon as he has had an opportunity to inquire into the solvency of the purchaser.

BOUGHT LEDGER.—This is one of the most important books that a trader keeps, being as it is a summary of the purchases he has made and his payments and credits in respect thereof. An account should be opened for every person or firm from whom purchases are made, and unless the account is certain to be a very limited one, there should be exclusively devoted to it at least one whole page. At the head of the account should be written in bold characters the name and address of the person or firm, and also a note made as to the terms of payment, *e.g.* "5 per cent. at one month." The name, together with the folio, should be duly indexed. Only the totals are required to be entered in this ledger, such as "By Goods," "To Cash," "To empties returned," &c.; and care should be taken that no entry is made in this ledger except from one of the subsidiary books, such as the bought journal or the cash-book. The principle of posting up this ledger is the opposite to that of the sales ledger, as the items in the cash-book here go to the debtor side of the accounts, and those in the journal to the credit side. At the quarterly or half-yearly balancing, the accounts should be ruled off in red ink, and the balances carried down. It will be found convenient to post into this ledger all the sundry trade expenses which are not strictly the subjects of credit accounts; this may be done either by opening separate accounts for such expenses as carriage, for example, or by opening a general sundry creditors' account, or by opening accounts of both these classes, according as the necessities or the convenience of the business demand. Below we set out some specimen pages of a bought ledger, the first being an account unbalanced, the second an account balanced with the balance carried down; the initials C.B./43 and B.J./110, mean, with the figures, "Cash-book, folio 43," and "Bought journal, folio 110" respectively, and indicate that the items have been posted from these books and pages. *See* BOOK-KEEPING.

Dr. Richard Clothier & Co., Leeds. 5 per cent. at a month. *Cr.*

1901						1901					
Feb. 3	To Cash	C.B./43	47	10	0	Jan. 3	By Goods	B.J./ 18	50	0	0
	To Discount		2	10	0	Apl. 13	By do.	B.J./110	95	0	0
June 27	To Cash	C.B./97	95	0	0	Aug. 7	By do.	B.J./209	42	10	0

Dr. The Airedaile Spinning Company, Ltd. *Cr.*

1901						1901					
Mar. 25	To Cash	C.B./91	120	0	0	Jan. 7	By Goods	B.J./ 12	59	17	6
	To Empties	E.J./10	1	0	0	Feb. 13	By do.	B.J./115	8	3	0
						„ 27	By do.	B.J./130	43	18	0
			5	6	9	Mar. 2	By do	B.J./209	14	8	3
			126	6	9				126	6	9
							By balance		5	6	9

BREACH OF PROMISE.—This is the name given to an action for damages for breach of a contract of marriage. It is therefore, strictly speaking, an action founded upon contract, but nevertheless it partakes so much of the nature of a personal action as to be within the doctrine of *actio personalis moritur cum persona* (q.v.). Action may be brought, however, by the personal representatives of a deceased party, when damage has been specially sustained by the property of the deceased as the contemplated result of the action of the parties at the time of the promise. Either the man or woman may bring an action for breach of promise.

The contract and its breach.—An infant cannot make such a promise as will render him liable to an action in case of breach, nor can he ratify it upon attaining his majority; he must make another promise. Nor can a married man, if the woman knows of his marriage at the time of the promise. The promise need not be in writing, but it must be corroborated in some material particular; the presentation of an engagement ring, an introduction to the plaintiff's family in the character of a betrothed, a remaining silent when charged with the promise, are instances of what may be corroborative facts. A mere promise without acquiescence by the other party, an offer without acceptance, would not constitute a contract. Marriage is apparently not so important an undertaking as effecting an insurance; for in such a case complete openness and candour is of the essence of the contract. In marriage a promise may be unwittingly made to a lady just released from a lunatic asylum, or from prison, or to one suffering from an incurable disease; if the offer is accepted, the promiser must go through with the marriage, or run the risk of an action. But though this is the case, the promisee may not induce the promise by false and fraudulent misrepresentations; to do so would be to open a door for the escape of the promiser. A lady of doubtful antecedents should remain silent, unless they have reference to her unchastity, for such an antecedent undisclosed to and not otherwise known by the promiser would release him from his engagement. After the promise has been made, the lady must continue to have a care for her moral character, but her subsequent health is a matter of indifference. On the other hand, it is no defence to an action that the defendant is too ill to marry—so ill even that marriage would mean death; but if such a defence were established, the damages would

be probably very light. If no date has been agreed upon for the marriage, one party may require the other to fulfil the promise, and to marry within a reasonable time.

Damages are generally a rough estimate of what the plaintiff has financially suffered through the promise not being performed. If the defendant is a lady, whether she is rich or poor, it is doubtful whether a jury would award the plaintiff very substantial damages; but if the circumstances showed that he had really suffered serious damage, there is no reason why he should not recover some recompense. But almost invariably the plaintiff is a lady, and the law considering that marriage is itself an advancement and advantage to her, damages to some extent must always be awarded. Riches and social position of the defendant constitute an important item in her favour; but against this the defendant may show that he is in bad health, much older than the plaintiff, has dissolute habits, a bad character, and rough and brutal manners—these facts, in their turn, tell against heavy damages. Again, the plaintiff may prove seduction by the defendant, or the defendant may allege that the plaintiff is an immodest woman; to fail to prove either of these allegations would probably increase the damages against the party preferring them. The defendant may also state that he is willing to marry the plaintiff, and if the jury believe him, and that the willingness is *bonâ fide*, it will probably diminish the damages.

BREAD.—The manufacture of bread is regulated in London and within ten miles of the Royal Exchange by the Bread Act, 1822, and in other parts of England and Scotland by the Bread Act, 1836, the provisions of both Acts being practically identical. The Sale of Food and Drugs Acts, 1875 to 1899, which are set out in the article ADULTERATION, have also reference to bread, its manufacture and adulteration. Bread made of flour or meal of wheat, barley, rye, oats, buckwheat, Indian corn, peas, beans, rice, or potatoes may be made with any common salt, pure water, eggs, milk, barm, leaven, potato or other yeast, and mixed in such proportions as the baker may think fit, but with no other ingredient or matter whatsoever. Any baker, or person who makes bread for sale, or his servant, who should make bread by any other mixture than the above is liable to a penalty of £10, and the fact of the conviction will be published at his expense in the local papers. A penalty of £20 will be forfeited by any person who, in grinding or selling any corn, meal, or flour, mixes therewith any ingredient not the real and genuine produce of the corn or flour so ground or sold. Bread made or sold, or exposed for sale when made, wholly or partially of peas, or beans, or potatoes, or of any sort of corn or grain other than wheat, is required to be marked with a large Roman M; for non-compliance herewith the penalty is ten shillings for every pound weight of bread so made, sold, or exposed for sale. But this mark is not required when only potato yeast is used in the making of wheaten bread. The magistrates may direct a search of the premises of millers, bakers, and others, and if any ingredient for adulteration, or any adulterated flour or bread is found, the same may be seized and disposed of; the offenders will be penalised, and they will also be punished in case of obstruction to the search, or of opposition to any other execution of the provisions of the Bread Act. All complaints under the Act must be made within forty-eight hours after the offence has been committed,

Except in the cases of French or fancy bread, or rolls, all bread is required to be sold by weight; the avoirdupois weight of sixteen ounces to the pound, and a beam and scales, with proper weights, or other sufficient balance, must be fixed in a conspicuous part of the shop, on or near the counter, so that all bread there sold may be weighed in the presence of the purchaser. Similar scales and weights, suitable for the purpose (*Turner* v. *Holder*), should be carried in every cart or carriage in which bread is carried or sent out for delivery; and, upon request so to do, the bread must be weighed in the presence of the person purchasing or receiving it. Non-compliance with any of the above provisions as to weights and weighing would subject the offender to penalties.

Where a customer asks a baker for bread by weight, the baker, whether he gives him ordinary bread or fancy bread, is bound to serve him with it as bread sold by weight, and which has been weighed. If the baker has only fancy bread, he should so inform the customer. The understood weight of a quartern loaf is four pounds; it is not sufficient that the loaf weighed this before baking, if when sold it weighed less. Mere superiority in the quality of bread will not class it with fancy bread, as distinguished from ordinary; there must also be a dissimilarity in size, shape, and appearance from ordinary household bread. But merely making in separate loaves, baking so as to be crusty all over, and differing from ordinary bread only in the manner of baking, will not constitute French or fancy bread, even if the particular bread is known in the trade as French or fancy.

If a servant or journeyman has, through wilful misconduct, caused his master to incur any penalty, the master may complain to the magistrates, who will punish the servant or journeyman. After the hour of half-past one in the afternoon of Sunday, a baker may not bake or sell bread, or bake meat or pies, or in any way exercise his trade, except only to prepare for his next day's baking; so far as it is an authorisation to bake on Sunday, this regulation does not extend to Scotland. A miller or baker may not act as a justice in respect of any of the above offences.

Prosecutions for adulteration may be under the old Bread Acts or the Food and Drugs Acts. The latter would probably be the Acts preferred by the prosecution, as the penalties thereunder are severer than those inflicted by the older Acts, and it is not necessary to prove guilty knowledge on the part of the offender or his servants in order to obtain a conviction. Proof of such knowledge would lie upon the prosecution when proceeding under the Bread Acts; indeed, a leading case on the doctrine of "guilty knowledge" arose out of a prosecution in respect of bread adulterated with alum, but this was in the year 1814, some time before the Bread Acts. But the case is interesting, as it was held, and the holding is still adhered to, that the use of alum in the manufacture of bread is a noxious adulteration, and that a man who made and sold such bread could be criminally responsible for any injuries to health resulting from the eating thereof. Apart, however, from this case, alum cannot be lawfully used in the manufacture of bread, for, as will be seen above, it is not one of the ingredients permitted by the Bread Acts. But technical opinion differs to-day as to the injurious effect of the use of alum; it is, however, agreed that its use enables the baker to substitute inferior flour for good. *See* BAKEHOUSE.

BREAKING OPEN DOOR.—In a celebrated case reported three hundred

years ago by Sir Edward Coke, we read "that the house of every one is to him as his castle and fortress, as well for his defence against injury and violence as for his repose." Nor was this new law even then, for by an old statute of the reign of Richard II., which not only remains unrepealed, but is recognised as fully to-day as ever, it was enacted as follows: "And also the king enjoineth that none from henceforth make entry into any lands and tenements but in case where entry is given by law, and in such case not with strong hand nor with multitude of people, but only in lawful, peaceable, and easy manner. And if any man from henceforth do to the contrary and thereof be duly convicted, he shall be punished by imprisonment of his body, and thereof be ransomed at the king's will." This statute has been held to prohibit any person giving to another leave and licence to break and enter into his dwelling-house. If therefore a lease, for example, or a hire-purchase agreement, contains an express condition that in certain events the house may be forcibly entered, such condition is null and void; should any person act under its assumed authority, he may in certain events be liable for damages. Except in execution of criminal process, and then only after admittance has been required and refused, the only way to effect an entry into a dwelling-house is by an open outer door. A bailiff for rent may, however, climb over a wall, but should the distress be preceded by a forcible entry, it will be void and illegal, and he will be a trespasser. But should the offender be a sheriff or bailiff of a Court attempting to execute a civil process, the execution would not be void, but the offender would be liable for damages and to punishment by the Court of which he is an officer. *See* DISTRESS; EXECUTION.

BREWER.—To brew beer, ale, porter, spruce beer, black beer, Berlin white beer, or any other description of beer, or any liquor which is made or sold as a description of beer, or as a substitute for beer, such as a concoction of herbs, sugar, and water, and which contains more than 2 per cent. of proof spirit, is to come within the legal definition of a brewer. If a person does not brew for sale, and the annual value of the house he occupies and actually resides in does not exceed £10, the beer brewed by him is not charged with duty; but he will be required to give such particulars of his brewing as the Inland Revenue authorities may require, which particulars should be entered in the forms hereinafter mentioned. If the premises are below £8 in annual value no licence is required, unless the beer is brewed for consumption by farm labourers; but if above £10 and not exceeding £15, an annual licence is required which carries a duty of 9s. Beer so brewed can only be used for the brewer's own domestic use, or for comsumption by farm labourers employed by him in the actual course of their labour or employment. The brewing may be either on the private brewer's own premises or on premises gratuitously lent to him by a brewer who publicly carries on a business as such. Should the private brewer brew otherwise than in accordance with the above regulations, or should he sell, or offer for sale, any beer brewed by him, he will incur a penalty of £10. Moreover, any excise officer may at any reasonable time enter and inspect any premises used by the private brewer for the purposes of brewing, and examine the vessels and utensils used by him. Where the private brewer occupies a house exceeding £15 in annual value, he will be required to pay the same beer duty as a brewer for sale. So he

will if he is a farmer who brews for his labourers and occupies a house exceeding £10 in annual value. The annual licence duty is 9s. where the annual value of the premises exceeds £10 but does not exceed £15. Before commencing to brew, the private brewer, whose brew will be subject to duty, must obtain from an Inland Revenue officer a certain prescribed form. This must be then filled up and produced on demand; and in the meanwhile the entries in it are not to be cancelled, obliterated, or altered. The entries are intended to show the quantity of malt, corn, and sugar intended to be used in the brewing, and they must be absolutely correct.

A brewer for sale, as he is called in distinction from a private brewer, is required to take out an annual £1 licence where the number of barrels brewed during the previous year has not exceeded one hundred. Where such number of barrels has exceeded one hundred, then the annual licence is £1 for the first hundred and 12s. for every further fifty barrels or fraction of fifty barrels. For the purpose of this scale, barrels may be taken at the option of the brewer either to be bulk barrels or standard barrels, a standard barrel being thirty-six gallons of beer of an original gravity of 1055°. The licence expires on the 30th September in each year. By brewing without the licence he will incur a penalty of £500, and will forfeit all his beer, materials, and utensils. In addition to this annual licence there is an excise duty on beer. The duty is payable immediately upon its being charged to the brewer, and must be paid before the fifteenth day of the following month; and should default be made in its payment, the Inland Revenue authorities will distrain therefor, and sell any beer, materials, and utensils that may be necessary to provide for its payment. In order to afford the authorities adequate facility to obtain a knowledge of the amount and quality of the brewings, the brewer is required to keep on his premises all the necessary scales and weights, to give every assistance to, and provide every convenience for, the officers of excise to gauge and measure the brewings and to take the accounts. In fact, from the time of commencing his business, when he has to supply full details of all his premises and plant, and of their positions and purposes, until he ceases brewing altogether, all his appliances and operations must be disclosed to the excise officers. His rooms and utensils are required to be specified, marked, and numbered; the position of the vessels maintained without alteration, so as to afford facilities for gauging or measuring; his books must show the hours and dates of the brewings, the quantities of malt, corn, and sugar to be used, and the hour when the worts will be drawn off the grains into the mash tubs; and the true original gravity before fermentation is also to be duly entered. This is only an outline of the very detailed regulation of the brewer's business, but should he omit compliance in any respect he would incur very heavy penalties. The officers are continually paying visits to the brewery awaiting the mashings, watching that the brewing-book is duly entered up, and checking the quantity of materials used; so important are their duties that an attempt at their bribery would result in a fine of £500. *See* BEER: LICENSING.

BRIBERY is the offence of giving or offering and taking a bribe, recompense, or reward as the consideration for, or inducement to, the neglect or perversion of an official duty or public act. The English law distinguishes between three main classes of bribery—namely, that of a magistrate, that of a public ministerial officer, and that having reference to the giving or procuring of votes.

Since the Revolution of 1688, bribery of the first class—judicial bribery—has been altogether unknown in England, and at the present day it is the

last offence that even the most malignant detractor would venture to impute to any one of our judges. But before that time the state of affairs was very different. Even that supreme philosopher and wisest of Englishmen, Lord Bacon, was charged with and ultimately confessed the commission of this offence, alleging in extenuation that it was a general vice of the age. And yet he himself on an earlier occasion, as Lord Chancellor, addressed the following caution to a newly-appointed judge: "that his hands and the hands of those about him should be clean and uncorrupt from gifts and from serving of turns, be they great or small." In the fourteenth century one Sir William Thorpe, Chief Justice of England, having confessed to a remarkable amount of judicial corruption, was condemned to be hanged, and all his goods forfeited to the Crown; he was, however, immediately pardoned, and for centuries afterwards the corruption of the judges was notorious and unquestionable.

Bribery of the second class, that of a public ministerial officer, is a misdemeanour at common law in the person who takes, and also in him who offers the bribe. A clerk to the agent for French prisoners of war at Porchester Castle, who had taken money for procuring the exchange of certain prisoners out of their turn, was indicted for bribery and severely punished; and a criminal information was granted by Lord Mansfield against a person who offered the First Lord of the Treasury a sum of money for a public appointment in the Colonies. Bribery with reference to particular classes of public officers has been dealt with by several Acts of Parliament. Of such officers may be mentioned customs' officers, and also commissioners, collectors, officers, and other persons employed in relation to the Inland Revenue. Connected herewith is the offence of bribing a juryman, or attempting to influence him as to his verdict; such an offence may be the subject of criminal proceedings. So also is it a misdemeanour, both on the part of the person who offers or gives the bribe and the person who solicits or receives it, to bribe members, officers, or servants of corporations, councils, boards, commissions, and other public bodies, with a view to their doing or forbearing to do anything in respect of any matter, actual or proposed, in which the public body is concerned.

The third class of bribery, so far as it relates to parliamentary and municipal elections, has always been an offence at common law. Only prosecutions under statute are recorded in parliamentary instances, but in respect of municipal elections there is a recorded case in which a criminal information was granted against a man for promising money to a member of the corporation of Tiverton to induce him to vote for a particular person at the election of a mayor. This part of the subject is considered under the title CORRUPT PRACTICES.

BRITISH PHARMACOPŒIA.—This is the name given to a book published under statutory authority by the General Medical Council. It contains a list of medicines and compounds, and the manner of preparing them, together with the weights and measures by which they are to be prepared and mixed. All medicines and compounds contained therein are to be prepared and mixed only in accordance with the authorised formularies; to do otherwise, except in the case of a medicine manufactured under letters patent, is to incur heavy penalties. A legally qualified medical practitioner who has passed an exami-

nation in pharmacy in order to qualify for his diploma, and also a veterinary surgeon in respect of medicines to be used by him in his practice, may prepare and mix any medicine of the B.P. without reference to its formularies.

BROKER—Generally.—Though brokers are often mentioned in the statute law, and many regulations have been enacted respecting them, the law does not seem to have defined what the precise character of a broker is. From the general current of judicial decisions, as well as from now well recognised mercantile usages, a broker may be shortly defined as one employed merely in the negotiation of commercial contracts. He is not entrusted with the possession of goods, and does not act in his own name. His business has always consisted in negotiating exchanges, or in buying and selling stocks and goods; but for at least a century the term has included persons who act as agents to buy, sell, and charter ships, and effect policies of insurance. Strictly speaking, the negotiations of a broker are private; not like those of an auctioneer, who is not a broker, and whose negotiations are public. The man who buys and sells second-hand furniture on his own account, though popularly so called, is not in fact a broker. A broker is a "mercantile agent" within the meaning of the Factors Act, but not being entrusted as a broker with possession, derives no authority from that Act to sell or pledge his principal's goods. Generally speaking, the authority of a broker to bind his principal rests upon the same basis and is governed by the same rules as the authority of an agent, but when dealing with a broker, it should be remembered that there may be some custom or usage in his special trade extending or limiting the more generally implied authority of an ordinary agent. As instances of such special cases, London stockbrokers, Liverpool insurance brokers, and Irish provision brokers may be mentioned. But the principal would not be affected by an unreasonable custom, or by one which would without his knowledge change the intrinsic character of the contemplated contract.

A broker may sign a contract on behalf of his principal, but his clerk cannot. He may sell on credit where it is customary to do so; but not otherwise, as in the case of stocks and shares which are not sold on credit. Although his principal may be known to the other parties, yet an insurance broker may receive payments on his behalf; no other class of broker can do this, so as to give a sufficient receipt to the party paying, unless, of course, he has a special authority from his principal to receive the money. He has no authority to contract in his own name, nor to cancel or alter a contract without the consent of his principal, nor can he sell his own goods to his principal without the latter's knowledge. Like an agent, a broker must obey his principal's instructions, do things necessary and customary in relation to the matter in hand, and in his turn he is entitled to indemnity and remuneration from his principal. When acting for a foreign principal, a broker cannot pledge his principal's credit, and all persons who deal with a broker under such circumstances must be content to give credit to him alone.

A broker cannot recover any commission or remuneration in respect of illegal contracts. Thus, if a broker of the class that usually designates itself "matrimonial agents" negotiates a marriage, he cannot recover any fee or reward whatsoever for his trouble in the matter; and this notwithstanding that the party from whom payment is claimed has given him a duly signed commission note. In fact, if either party has paid the com-

mission, or any part of it, the marriage-broker may be sued for its recovery. The same thing applies to gaming contracts. *See* also AGENT; PAWNBROKER; STOCKBROKER.

Insurance brokers are those whose business it is to effect insurances and to negotiate between the insurers and the assured. Until recent years an insurance broker's business was almost entirely identified with marine insurance, with the result that the great body of the law on the subject has been laid down in cases relating to marine insurance brokage. To-day there exist many insurance brokers whose business is devoted to the negotiation of insurance against fire and other non-maritime risks. The law, however, as it has now been laid down during the last century, may be taken as generally applicable to all classes of insurance brokers as distinguished from merely insurance agents. In marine insurance the insurers are known as underwriters, and this term we shall retain while treating of brokers of this class. By usage of trade, insurance brokers are invested with powers and liabilities unknown to any other class. This is the result of the peculiar characteristics of the insurance broker's duties. He is not only an agent, but to a large extent a principal. In practice he keeps two accounts with the underwriters, called the credit account and the cash account. When the slip for any particular policy is signed, it is arranged between the broker and the underwriter whether the premium is to go into the credit account or the cash account. In either case the broker becomes debtor to the underwriter for the premium at once; but the time and manner of the payment are different in the two cases. If the premium goes into the credit account, it is not payable until the end of the year. If before the end of the year any claim arising on one of the policies in the credit account is adjusted by the broker and the underwriter, the broker on the adjustment has credit in the account against the underwriter for the amount of the loss thus adjusted, if the account is good for that amount; and at the end of the year, and not until then, the balance of the account, and the balance only, is due in cash from the broker to the underwriter, under a discount of 12 per cent. If the premium, instead of going into the credit account, goes into the cash account, the custom is the same, except that the account is settled, and the balance is due in cash at the end of each month instead of the end of the year, and the balance is paid under a small discount.

An insurance broker may contract with the underwriter in his own name, and where the policy is not under seal he may so contract either with or without naming his principal. An action on a policy made by the broker may be brought either by the broker himself or by his principal. The broker may himself, without special authority, adjust the losses and receive from the underwriter payment therefor in money. But should he be the agent of the underwriter, he has no right to pay losses. Notwithstanding the custom of trade in the matter of accounts between broker and underwriter, and in the absence of the assured's knowledge of it, the broker may not allow the underwriter to set off any debt due to him by the broker. Even if the broker is acting upon a *del credere* commission, he does not thereby become a principal debtor so as to be able, or be required, to pay a loss to the insured and afterwards recover it from the underwriter. Nor has the broker any implied authority to arbitrate in the case of a disputed loss. It is also his duty both

to see that the insurance covers the risk and that the underwriter is a responsible person.

Like many other mercantile agents, the broker has a lien for his general balance upon any policy of insurance in his hands which has been procured by him for his principal, and also upon any money received by him upon such policy; but this lien extends only over matters relating to insurance brokerage, not to matters outside this relation. Sub-agents have, in the same way, a particular lien for premiums and commissions in relation to the policy. Should the broker's principal be acting as agent for another, of which fact the broker has no notice at the time, the lien attaches, notwithstanding his principal's agency, and notwithstanding a subsequent disclosure of the real principal; but should the broker have such notice, the lien will be limited to the necessary out-of-pocket charges.

A shipbroker is a person whose business it is to negotiate and effect charter-parties. His remuneration is by way of commission, usually 5 per cent. upon the agreed or estimated freight, but in the absence of agreement, or of a customary rate, it will be at a rate reasonable under the circumstances. Since his business is not only to negotiate, but to effect a charter-party, it follows that he does not acquire any right to remuneration unless and until a binding charter-party is concluded, and this is the rule, except upon proof of custom of trade to the contrary, whatever may be the cause preventing the conclusion of the charter-party. The earning of the freight is a matter of no importance to the broker, for his remuneration does not, apart from special agreement, depend upon it. Apart from custom, the charter-party must be the direct result of the broker's intervention in order to entitle him to his remuneration; and in a case where the negotiations pass through a number of brokers' hands, the first introducing broker would receive the commission, provided he did all things necessary to introduce the principals to each other, such, for instance, as mentioning the names and identifying the transaction. A charter-party effected through a broker has often a clause in its margin to the effect that a certain commission is due to the broker in respect thereof, but this clause would not give to the broker any right of action against the ship for his remuneration. The charterer might take such an action, however, on behalf of the broker. The charter-party when signed is usually retained by the broker, and certified copies are given by him when required. Should a shipbroker undertake to get a ship chartered on certain terms and fail so to do, he would be liable to her owner.

BROTHEL.—Legislation on this subject appears to have been first brought about in England by the Bishop of Winchester, in consequence of disturbances in certain disorderly houses kept in Southwark, at the end of the fourteenth century. The houses were said to have been interfered with by Wat Tyler, with the result that he was killed by Sir W. Walworth. A brothel may be defined as a disorderly house, or part thereof, to which men and women resort for the purposes of indiscriminate intercourse. Keeping such a place is a public nuisance, for which the keeper may be indicted at common law. He, or any other concerned in any way in the keeping or the management of the place, are also liable to summary conviction by magistrates. The lessor or landlord, or his agent, who lets a house or any part thereof, knowing that the premises will be used as a brothel, is liable to con-

viction under the Criminal Law Amendment Act, 1885. The receipt of a rent higher than that usually paid for similar houses would be evidence of guilty knowledge by the landlord. At common law any person may prosecute in respect of a brothel. Contracts to let a house for use as a brothel, or knowingly to supply it with furniture, are void. Any woman detained in a brothel may, for the purposes of escape, take any clothing or apparel necessary for her departure.

BUDGET.—This is the name commonly given to the annual account of the national finances rendered by the Chancellor of the Exchequer, or it might be by the First Lord of the Treasury, to a committee of ways and means of the House of Commons. The speech or statement by which this account is introduced or explained is looked forward to with great interest by different classes; if the revenue is in a flourishing condition and a surplus exists, all parties are anxious to learn how their interests may be affected by a reduction of taxes; and the public interest is probably even greater when the revenue is known to be overdrawn and an increase is anticipated. The speech usually includes an outline of the financial policy of the Government, an account of the general commercial condition of the country, and in particular an examination of any commercial interests which are proposed to be affected. The national balance-sheet is made up to the 5th April in every year, and upon the results of the balance-sheet in hand will depend the requirements of the treasury for the ensuing year. Whether taxation is to be increased or decreased, criticism is usually equally keen, and the minister in charge of the budget is equally bound not only to state definitely the proposed alterations, but also to defend them in principle and in detail. To reduce one tax is to raise the inquiry why another has not been reduced in its stead; to create or increase another is to attract a general criticism from those interested, the standpoints of the critics being almost as varied as the number of the critics themselves—at least as varied as the number of interests they represent. The speech is concluded by the minister moving resolutions for the adoption of the committee which will carry out the proposals of the Government. These resolutions, when afterwards reported to the House, form the groundwork of bills for finally accomplishing the financial objects proposed by the minister.

BUILDER—BUILDING CONTRACT.—A builder is one who builds houses for sale, on land purchased or leased by him for that purpose, or one who builds for other persons by hire or contract. Whether building for himself or for an employer, a builder needs to pay careful heed to certain branches of the law. If building for hire or other remuneration, it is important that the agreement therefor should cover all things necessary for his protection, and be valid and precise. Three things must be carefully looked for in a building contract: remuneration, the architect, and arbitration; neither one of these should be omitted, and not one expressed contrary to the builder's wishes. But whether building for himself or another, the builder must have strict regard to the Public Health Acts, the local Building Acts, and the regulations made thereunder. In London, for example, his building operations will be governed primarily by the London Building Acts. These Acts would require a moderately-sized book for their mere reprint. Not only will the London Building Acts necessitate the builder's attention, but there are also the Public

Health (London) Acts, and the many important unrepealed and still subsisting sections of the various Metropolis Management Acts, together with the bye-laws and regulations of the London County Council made under all these Acts. In fact no builder should on any account venture to carry on his business without some trade manual containing details of the provisions of the general and local laws affecting his operations. And in building elsewhere than in London it is equally necessary to obtain copies of all local Acts and regulations; to know the restrictions imposed by the local authorities as well as those by the general law. And in addition to all this, the builder must have some knowledge of the law relating to his liability for injuries to his workmen under the Employers' Liability and the Workmen's Compensation Acts; to the Truck Acts and the payment of wages; to notices of accidents; and to leases, landlord and tenant, fixtures, rights to light and air, and to documents of title to land such as conveyances and mortgages. Knowing all this, there would be very little else for him to learn other than that which should be known by every other man of business.

The first thing for a builder to consider is the contract, or the document which sets out the terms of his employment. This need not always be in writing; nor need it, if in writing, be necessarily technical and complicated —it is sufficient if it clearly expresses the agreement between the parties. Unless the period of the building operations will extend over a year, either by the necessity of the work itself or by the mere intention of the parties, the contract need not be in writing. In all other cases a written contract is essential; one, too, that is signed by the person intended to be made liable thereunder, which is made before action is brought upon it, that describes and identifies the contracting parties, and that sets out clearly the terms of the agreement. Care must be taken that the contract satisfies these conditions. A corporation or company should execute the contract with its seal.

A fruitful source of dispute and dissatisfaction is the question of payment for materials supplied, and work done "extra" to the contract. A builder should only put in extras when he has received a written authority from his employer or architect to do so. In the absence of such an authority, not only may he be unable to successfully claim payment therefor, but he may possibly be sued by the employer for putting the extras in, notwithstanding the fact that the employer may retain and take the benefit of them. It is never safe, except in very clear cases, for the builder to do extra work upon the faith of the contract being read as impliedly authorising them. Thus, where a builder contracted to build and complete a house according to a specification, and the specification, though mentioning the scantling of joists for the floors, rafters, and ridge and wall plates, made no mention of the flooring, it was held that the builder could not charge the flooring as an extra. The contract and specifications must be read together, and only those things which are a reasonable and necessary inference therefrom can be charged for as extras. Should the contract require a written authority from the architect for extras, a verbal authority therefor from the employer himself will not be sufficient.

An arbitration clause should be present in every builder's contract. Without it, he is practically helpless when dealing with an architect upon whom he depends for his certificates and his payments, and whom he finds it impossible to satisfy by reasonable means. The clause regulating payment is most

important. Usually, 20 to 25 per cent. is deducted from all payments on account, until the total amount deducted is reasonably sufficient as security to the employers; the larger the amount of the contract, the less should be proportionately the total amount retained as a deduction for security.

Short Form of Building Contract.

Agreement made the 9th day of July 1910. Between FITZROY MILDMAY, of 83 Portman Square, in the County of London, Esquire (hereinafter called "the owner"), of the one part, and HENRY MASON, of 12 Queen Victoria Street, in the City of London, Builder and Contractor (hereinafter called "the builder"), of the other part.

Witnesseth that, in consideration of the sum of Five thousand pounds, to be paid to the builder by the owner, at the times and in the manner hereinafter set forth, the builder will, upon the plot of land known as Betty Harding's Meadow, in the parish of Combmartin, in the county of Devon, and which is more particularly delineated in the map or plan thereof indorsed hereon, execute and complete the works shown upon the drawings and specification attached hereto, and marked "A" and "B" respectively, and signed by the parties hereto.

1. The builder shall be put in possession of the site on the 10th day of July 1910, whereupon he shall forthwith begin the works, and shall complete the same (except painting and papering, or such other work as the architect may deem it desirable to delay) by the 10th day of July 1911, subject, nevertheless, to the provisions of clause 12.

2. The builder is to provide all things needful for the due execution of the works, according to the drawings and specifications taken together in their true meaning, and according to the meaning reasonably to be inferred therefrom, and if there shall be any discrepancy between the drawings and specification, the same shall be referred to the architect, whose decision shall be final and followed.

3. The builder shall execute the works according to the directions and to the reasonable satisfaction of the architect, in accordance with the said drawings and specification, and in accordance with such further drawings and directions in explanation thereof as may from time to time be furnished by the architect. If such further drawings or directions are in the opinion of the builder in excess of the works contemplated by this contract, he shall before proceeding with such extra work give notice in writing to this effect to the architect. In the event of disagreement between the architect and builder hereon the builder shall, if required, proceed with the extra work, and the question in dispute, and the amount of extra remuneration, if any, shall be referred to an arbitrator.

4. The builder shall set out the works, and during their progress amend at his own costs any errors arising thereout, unless the architect shall not so require. And all materials and workmanship shall be to the satisfaction of the architect and of the respective kinds described in the specification.

5. The builder shall conform to all statutes and all regulations and bye-laws of any authority which shall have the effect of law, and which shall relate to the works, and shall duly give all notices and pay all fees thereby required.

6. The builder will keep a foreman constantly on the works, and any directions given by the architect to such foreman shall be held to have been given to the builder, who will also, on request of the architect, immediately dismiss and not re-employ any person employed thereon who, in the opinion of the architect, is incompetent or misconducts himself.

7. The architect shall at all reasonable times have access to the works, and to

any workshop of the builder or other places where any part of the works is being executed.

8. The clerk of the works shall be under the absolute control of the architect, and he shall be afforded every facility for examining the works and materials.

9. The architect shall have full power to order the removal from the works of any materials which in his opinion are not in accordance with the specification, the substitution of proper materials, and the removal and proper re-execution of any part of the works not executed in accordance with the drawings and specification, and the builder shall comply with such order at his own cost. In default, the owner may employ and pay other persons to execute the same, and all costs thereof shall be paid by the builder, and shall be recoverable from him by the owner, or deducted from any moneys due, or to become due, to the builder.

10. When authorised by the architect, or in consequence of any notice, or otherwise, under Clause 5, the builder may vary or omit from the drawings or specification, but not otherwise, in which latter event no claim for extras shall be allowed.

11. If the builder unreasonably fails to complete the works by the date named in clause 1, or within any duly extended time, the builder shall pay or allow to the owner the sum of Twenty pounds per week as liquidated damages for every week, or part of a week, during which he shall be in such default, and such damages may be deducted from any moneys due to him by the owner.

12. If the architect decides that the works have been delayed by reason of any inclement weather, or of his own instructions in consequence of disputes with adjoining owners, or by the works or delay of other persons employed by the owner or architect and not referred to in the specification, or by reason of extras or variations duly authorised, or by reason of any combination of workmen, strike, or lock-out affecting any of the building trades, or in consequence of causes beyond the control of the builder, the architect shall make a fair and reasonable extension of time for completion in respect thereof. In case of such strike or lock-out, the builder shall forthwith give notice thereof to the architect.

13. Any defects, shrinkage, or other faults which may appear within three months after the completion of the work arising out of defective or improper materials or workmanship shall, upon the directions of the architect and within such reasonable time as he shall specify, be amended and made good by the builder at his own cost, unless the architect shall decide that he ought to be paid for the same; and in default the owner may recover from the builder the costs of making good the works, or be deducted by the owner from any moneys due or that may become due to the builder.

14. The builder shall not, without the consent of the architect, assign this agreement or sub-let any portion of the works.

15. The builder shall permit the execution of extra work by any other workmen or tradesmen whom the owner may employ.

16. The builder shall be responsible for all damage to property, and for injuries caused by the works or workmen to persons, animals, or things, and shall indemnify the owner therefrom, and also in respect of any claims for injuries made by any person in the employ of the builder, and he shall also be responsible for all injuries caused to the works by inclemency of weather, and shall make good all damage thereby caused, and thoroughly reinstate and complete the whole of the works.

17. The builder is to insure and keep insured the works against loss or damage by fire, in an office to be approved by the owner in the joint names of the owner and builder, for the full value of the works executed, and upon request shall deposit with the architect the policies and receipts for the premiums for such insurance, and in

default the owner may effect the insurance and deduct the premium paid from any moneys due or which may become due to the builder. All moneys received under any such policies are to be applied towards the rebuilding or reparation of the works destroyed or injured.

18. The builder shall be entitled, under certificates issued to him by the architect and within three days from the date of each such certificate, to payment by the owner from time to time by instalments, when in the opinion of the architect work to the value of Two hundred pounds (or less at the reasonable discretion of the architect) has been executed in accordance with these presents, at the rate of seventy-five per cent. of the value of work so executed until the balance retained in hand amounts to the sum of Five hundred pounds, after which time the instalments shall be up to the full value of the work subsequently executed. The builder shall also be entitled, under the certificate to be issued by the architect, to receive payment of Three hundred pounds, being a part of the said sum of Five hundred pounds, when the works are practically completed; and in like manner to payment of the balance within a further period of one month, or as soon after the expiration of such period of one month as the works shall have been finally completed, and all defects made good according to the true intent and meaning hereof whichever shall last happen. The architect shall issue his certificates in accordance with this clause, and such certificates shall be considered conclusive evidence as to the sufficiency or otherwise of any work or materials to which they relate respectively.

19. The architect shall be Mr. John Holmes, of 15 Adelphi Terrace, and in the event of his ceasing to so act the owner shall appoint whomsoever he may think fit to act in his place, provided that he shall not so appoint any person to whom the builder has an objection sufficient and reasonable to the satisfaction of arbitrators to be appointed under clause 20.

20. Provided that, in case any dispute or difference shall arise between the owner, or the architect on his behalf, and the builder, either during the progress or after the determination or abandonment of the works, or after breach of this contract as to the construction hereof, or as to any matter or thing arising thereunder, except as to the matters specifically left to the sole discretion of the architect, or as to the withholding by the architect of any certificate to which the builder may claim to be entitled, then such dispute or difference shall be and is hereby referred to the arbitration and final decision of two impartial persons, one to be chosen by each party, and the award of such arbitrators shall be final and binding on both parties, and the equivalent to a certificate of the architect and the builder shall be paid accordingly. The submission shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act, 1889.

As witness the hands of the said parties,

Signed by the said Fitzroy Mildmay and Henry Mason in the presence of me,

JOHN FOULKES,
15 George Street, W.C.,
Solicitor.

F. MILDMAY.
HENRY MASON.

BUILDING SOCIETIES.—This is the term now applied to societies formed for the purpose of raising by the subscription of the members a stock or fund for making advances to members out of the funds of the society, upon security of freehold, copyhold, or leasehold estate by way of mortgage. The difference between building societies and joint-stock companies is found

in their respective leading ideas; that of the former being membership, that of the latter, capital. In the building society the capital is never fixed; the number of shares is always indefinite, and the share has no permanence; the capital is constantly increasing by the addition of new shares, or decreasing by the withdrawal of old ones. Its membership, says the Report of a Royal Commission, remains always open, it knows no share jobbing, fattens no brokers, and needs no settling day on the Stock Exchange. Building societies are, in fact, an investment peculiarly available to small capitalists. The shares may be purchased by instalments of from £1 upwards, and are held by investors and borrowers alike, and the profits of the society go to all the shareholders.

Building societies, as such, have not necessarily any concern with building operations. A case, however, that came before the Courts in the year 1812, would show that in those days the term was more descriptive of the objects of such societies than it is at present, for in that society the object was really to build for its members. There was then no statute law regulating building societies, and it was even doubtful whether the societies were legal; but this case having established their legality, the result was an immediate increase in their number—an increase which has been maintained until the present day. In 1836 was passed the first statute regulating building societies, but this Act was repealed by the Act of 1874, which was itself the result of a Royal Commission issued in 1871 to inquire into and report upon the state of the law as to both friendly and building societies.

The Act of 1874 is now the principal Act affecting building societies, but it must be read with a number of subsequent amending Acts, ending with the Building Societies Act, 1894. Apart from these Acts, building societies may be formed under the provisions of the Industrial Friendly Societies Acts, such societies operating upon somewhat different lines. The term "Co-operative," when forming part of the title of a building society, is not necessarily indicative of its real method of working, for a society with such a name may be formed under the Building Societies Acts as well as under those more applicable to co-operative societies.

There are also building societies still in existence which were established and certified prior to the year 1836. These societies now form an unimportant class, and not being incorporated under the Building Societies Acts, are known as *unincorporated societies*. Except in matters of detail, they are governed by the same statutory requirements as other building societies. The original form of building society would be known to-day as a terminating society, as distinguished from the other class comprising the permanent societies. The modern building society has no concern with actual building, and merely makes advances, upon security, to its members according to its rules.

A terminating society has been defined by Act of Parliament as a society which by its rules is to terminate at a fixed date, or when a result specified in its rules is attained. In such a society the members subscribe monthly sums, which are accumulated until the fund is sufficient to give a stipulated sum to each member, and then the whole is divided among them.

Take, for example, a society in which the sum to be raised for each member is £100. If this were all it would be a very simple transaction, mere accumulation, and the only question would be, how to invest sums subscribed to the greatest advantage. But this is not all; one main object is to enable members to obtain their £100 by anticipation on their allowing a large discount. For this purpose, when a sufficient sum is in the hands of the treasurer, the members who desire to get their shares in advance, bid by a sort of auction the sum which they are ready to allow as discount, and the highest bidder obtains the advance. Thus, if at the end of the year a sum of £500 is in the hands of the treasurer arising from the monthly subscriptions, and the holder of ten shares is willing to allow a discount of 50 per cent. (no one offering more), the £500 is, or may be, advanced to him, being £50 in satisfaction of each of his £100 shares. For this accommodation he is bound to pay monthly, until a fund is raised sufficient to give £100 per share to all the other smembers, not only the original monthly subscription, but also a monthly um called "redemption money." The amount of the monthly subscriptions and redemption money is fixed by the rules of each society—say, the monthly subscription on each share is 8s. 6d., and the monthly redemption money 3s. 6d., so that the monthly payment of each member who has not received his share in advance is 8s. 6d., and the similar payment by those who have been advanced, 12s.

If, after such an advance as the above, no further advance were made, the natural course of the society would be that the members, other than the holder of the ten shares, would continue their monthly subscriptions, and the owner of the ten shares would continue his monthly subscription and redemption money, until the fund thus raised should be sufficient to pay £100 per share to every member other than the holder of the ten satisfied shares. Thus, if there were one hundred shares, and at the end of the first year there was £500 in hand, the condition of each shareholder, before any advance had been made, would be that he would be bound to pay 8s. 6d. per month, say £5 per annum, until by the payments and the £500 in hand the requisite amount, that is, £10,000, being £100 for each £100 share, should have been raised by accumulation. After the advance, the condition of every shareholder, other than the holder of the ten advanced shares, is that he is to contribute his monthly payments until they, together with the monthly payments and redemption money contributed by the holder of the advanced shares, are sufficient to realise not £10,000, but £9000, that is, £100 for each share other than the ten shares of the advanced member, whose shares will have been already satisfied by the £500. He loses his interest in the £500 advanced to the holder of the ten shares; but, on the other hand, the sum to be raised is only £9000 instead of £10,000, and the monthly contribution is increased by the amount of the redemption money paid by the member who has received his ten shares in advance. Further advances are made from time to time, as funds are accumulated, and as members are inclined to give high discount in order to obtain payment of their shares by anticipation, the gain to the society arising mainly from the high rate of discount which members in want of money are ready to give. In fact, the whole scheme is but an elaborate contrivance for enabling persons having sums for which they have no immediate want, to lend them

to others at a very high rate of interest. In order to secure the due payment of the monthly subscriptions and redemption money by the members who have received their shares in advance, they are obliged to give satisfactory real security to the trustees of the society.

A member of such a society may withdraw upon the terms laid down in the rules. The principle of these terms is that he is to pay a small sum by way of fine or penalty, if he withdraws at any early date after the formation of the society; but if he withdraws after having been a member, and so having paid his subscriptions for several years, then upon withdrawing he is to receive back the full amount of the subscriptions, and also to take, if the society thinks fit, a further sum, to be from time to time fixed by them, by way of bonus upon what are called the profits of the society. It is obvious that this is an arrangement which may, if the calculations are properly made, be carried into effect without injury to the society. When the member withdraws, the society thenceforth loses the benefit of his monthly subscriptions; but then the other members are relieved from the obligation of making up the £100 to which, on the above lines, he would eventually become entitled. If the member upon withdrawing merely took back the amount of his subscriptions, the society would clearly benefit to the extent of the interest made by means of those subscriptions previous to the member withdrawing; and it is plain that out of the interest so realised an allowance may be made to the withdrawing member, still leaving to the society some benefit from his past contributions. The sums subscribed by a member who withdraws have contributed to make up the fund out of which the shares of those members who have been advanced (that is, have taken a smaller sum at once, allowing a large discount, in lieu of the full sum of £100) have been made good; they, therefore, enable the society to obtain a larger monthly payment, that is, 12s. instead of 8s. 6d. upon each share, and to reduce, on favourable terms, the number of shares eventually to be provided for. This is, in truth, substantially an investment at a high rate of interest; and the benefits thereby accruing may not inaptly be designated by the name of "profits." What is the precise amount of benefit which from these different causes may have resulted to the society from the subscriptions of each member would be a very difficult problem to solve. Though an absolutely accurate solution may be perhaps impossible, yet in a rough way the amount payable as profit to a withdrawing member may be ascertained. Where an advanced member desires to withdraw, the fair course would be for the society to ascertain, as nearly as may be, the period of time during which the monthly payments will have to be continued, and allow such a member to relieve himself from the obligation of continuing his monthly payments on paying down at once a sum equivalent to their present value. Thus, if the monthly payment is 12s., and it is ascertained that the payments must probably continue to be made for twelve years, it would seem to be a reasonable arrangement that the advanced member, who was liable to pay 12s. per month for twelve years, should be free from his liability on paying down at once a sum which an actuary would say is equivalent, in present money, to such continued prospective payments. But this principle is not always the one upon which a society bases its plan of redemption.

Another form of terminating society much in vogue until the last few years was that known as a Starr-Bowkett Society, the leading features of which were that the advances to members, or "appropriations" as they were called by such societies, were made by ballot, and the fortunate recipient had not to pay any discount or increase his subscriptions. The Act of 1894 has, however, prevented the subsequent establishment of societies of this nature, or indeed any society in which the principle of chance or lot is adopted.

A permanent society is one which, by its rules, has no fixed date whereon to terminate, nor any determining result to be attained. Such a society is much simpler, safer, and more equitable than a terminating society. The essential characteristics of a permanent society, and its advantages in relation to terminating societies are so clearly and succinctly set forth in the last edition of *Davis's Law of Building Societies*, that we cannot do better than take a short extract from that work :—

"In this form of society (the permanent society) the amount of each share is specified, but no limit is placed on the number to be issued. The investing members make their payments, either in one sum, when the share is said to be 'paid up,' or by periodical or other sums, the interest in either case being allowed to accumulate until the share has reached the full value prescribed by the rules, or else paid out yearly to the member, as he may prefer. Members who obtain advances from the society are deemed to hold shares equal to the amount of their loans. Repayment is generally made by fixed instalments spread over a specified number of years: the instalments being made up of principal and interest, and sometimes, in addition, of a sum charged as a premium on the loan.

"Practically most of the best societies discharge the functions of land mortgage banks. On the one hand they receive money in such a variety of ways as to meet the requirements of all classes of investors, and at a rate of interest higher than the ordinary savings banks; on the other hand they lend money out on mortgages, sometimes obtaining a higher rate of interest, it is true, than ordinary mortgages, but granting facilities for repayment which private mortgages could not afford.

"The great difference between permanent and terminating societies consists in this, that whereas in the latter a person must either become a member at the time the society is established, or else pay a large amount of back subscriptions, in the former he may become a member at any time, without making any such payment. Again, the former class offers many advantages to both investing and borrowing members, which a terminating society cannot offer. In a permanent society, the investors can always ascertain the exact length of time during which they will have to pay their subscriptions; and it is always comparatively easy to ascertain the amount to which any investing member, who may wish to withdraw, is entitled; whilst in a terminating society the members will be unable to calculate with any degree of certainty how long the society will exist, and, consequently, how long they will be required to subscribe, and it will be absolutely necessary to impose fines on those members who do not pay their contributions regularly. But it is to the borrowing member that the permanent system holds out the greatest inducements, for it enables him to extend his repayments over any fixed

number of years, at his own choice; and to feel, when he mortgages it, that he can redeem it at any time, on payment of a sum easily calculated. The objection which exists in terminating societies to allow the borrowers to share in the profits does not apply to permanent societies, and the borrowers often share the surplus funds equally with the investors."

Statutory provisions.—The Building Societies Acts apply to Scotland and Ireland as well as England, but they do not apply to the Isle of Man or to the Channel Islands. Before a building society may commence business it must be registered by the registrar of friendly societies and obtain a certificate of incorporation. At the same time it will be required to draw up and settle its rules, which must be approved and certified by the registrar. These rules usually follow a common form, and contain all regulations as to the management of the society and its powers, and the powers of its officers. They are too voluminous to set out here, but a few items may be noticed. They must set forth the name and chief office of the society; the manner in which its funds are to be raised; the terms of issue of unadvanced subscription shares; the manner of payment and withdrawal of contributions, together with certain tables of principal and interest; the terms of payment and withdrawal of paid-up shares; the conditions upon which advances are made; the terms for redemption of mortgages; the manner in which losses are to be ascertained and provided for; the manner in which membership is to cease; how the funds of the society are to be applied and invested; how the rules may be altered or added to; whether the society is terminating or permanent; and when and how it may be dissolved. In addition to this they must regulate the appointment of officers; the calling of and procedure at meetings; the audits and the custody of and manner of using the seal; and the settlement of disputes by reference or arbitration. The rules constitute a contract between, and binding upon, the society and its members. The law is explicit in many matters without regard to the rules. Thus the directors will be treated as trustees in respect of any money of the society which comes into their hands, or is under their control. The liability of a member on a share upon which no advance has been made is limited to the amount actually paid or in arrear; on a share upon which an advance has been made, to the amount payable thereon under any mortgage or other security, or as the rules may provide. Ten members, of not less than twelve months' standing each, may require an inspection and report on the books of the society by an accountant or actuary. An inspector may be appointed to inquire into the affairs of the society, or a special meeting of the society may be called upon the requisition of one-tenth of the members, or of one hundred members in case the society consists of more than one thousand. The next-of-kin of an intestate member or depositor may withdraw the amount due to the deceased, up to £50, without letters of administration.

The following are some special provisions: An officer of a building society must on demand (*a*) give in his account for examination and allowance as the directors or committee of management may require; (*b*) pay over all moneys in his possession; (*c*) deliver up all the property of the society in his hands or custody to any person the society may appoint; in case of neglect or refusal the society may sue on the bond which the law insists upon being given by him on his appointment, or apply to the County Court for a summary

order. No officer of a society, such as its director, secretary, surveyor, or solicitor, may receive a gift, commission, or benefit whatsoever, for or in connection with any loan made by the society. Both the donor and the recipient thereof will be punished; the first by the magistrates fining him £50, or in default of payment six months' imprisonment; the latter by the magistrates ordering him to pay to the society double the amount of the gift, or in default six months' imprisonment. If any person by false misrepresentation or imposition (*a*) obtains possession of money or effects of a society, or (*b*) having the same in his possession, withholds or misapplies the same, he may be fined £20 and costs, and ordered to deliver up and repay the misappropriated property and money respectively. Should he not comply with the order, he may be imprisoned for three months.

Disputes between a society and its members must be settled according to the rules, either (1) by arbitration (2), the registrar, or (3) the County Court. But an advanced member is entitled to recourse to the ordinary courts of law. Thus if a person who is simply a mortgagor to the society has a dispute with it as to the construction or the terms of the mortgage, the ordinary tribunals of the country are available to him. Upon payment of all moneys secured by a mortgage, the society may indorse upon or annex to the document either a reconveyance or a receipt. If this is done under seal according to the form prescribed by the rules, the "legal estate" is thereby vested in the person best entitled to it; and even if the receipt is given under a mistake, the society can never afterwards claim that any balance still remains due. *See* AMORTISATION; ANNUITY.

How to obtain an advance.—When application is made to a permanent society of good standing, the advance should be obtained without delay. We will give some practical directions and information, and will set out the most favourable terms which a borrower can obtain; they are not ideal or theoretical terms, but such as should be insisted upon; and the intending borrower should, by comparing the prospectuses of the different lending societies, have no difficulty in finding the societies which will readily give them to him. But whatever the terms are, it is most important that the reputation and stability of the society should be beyond dispute. The interest should not be more than $4\frac{1}{2}$ per cent. on the balance of the advance as brought forward each year, and it should commence from the date of the execution of the mortgage. In addition, a premium charge of £1 per cent. per annum may be reasonably made on the amount of the advance during the early years of the mortgage. When the money is borrowed for ten years or less, the premium is usually charged each year for three years; when the loan is for over ten years, the premium may be charged for four years. This premium is included in the monthly repayments as shown below in Table II. The reason for charging the premium is that experience has proved that if a borrower makes default, and so throws the property upon the hands of the society, it is generally in the early stages of the mortgage. During that period, therefore, the premium is charged. After a few years the repayments have reduced the amount owing to a sum which generally makes the security so good as to be practically free from risk. The amount of the monthly repayment is regulated by the period for which the advance is taken, and in Table I. will be found extracts from a typical scale of such repayments. The borrower may, however, pay off at his option more than the stipulated sum at any time, whereby he reduces the charge for interest, shortens the term, and consequently releases the property at an earlier period.

Table I.

Showing monthly repayments for an advance of £100, including principal, interest, and premium.

Number of Years for which the Advance is taken.	Monthly Repayments.	Number of Years for which the Advance is taken.	Monthly Repayments.
6	£1 13 3	12	£0 18 11
7	1 9 1	14	0 16 11
10	1 1 8	15	0 16 1

Table II.

Illustrating the way in which a borrower gradually reduces the amount owing by him to the society. (From the tables of the Temperance Permanent Building Society.)

When Advance of £100 is taken for 10 years.				
Repayments of £1, 1s. 8d. per Month, during	Apportioned.			Owing.
	For Interest.	For Commission or Premium.	For Principal.	
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
1st year	13 0 0	4 10 0	1 0 0	7 10 0	92 10 0
2nd „	13 0 0	4 3 3	1 0 0	7 16 9	84 13 3
3rd „	13 0 0	3 16 2	1 0 0	8 3 10	76 9 5
4th „	13 0 0	3 8 10	...	9 11 2	66 18 3
5th „	13 0 0	3 0 3	...	9 19 9	56 18 6
6th „	13 0 0	2 11 3	...	10 8 9	46 9 9
7th „	13 0 0	2 1 10	...	10 18 2	35 11 7
8th „	13 0 0	1 12 0	...	11 8 0	24 3 7
9th „	13 0 0	1 1 9	...	11 18 3	12 5 4
10th „	12 16 4	0 11 0	...	12 5 4	...
	129 16 4	26 16 4	3 0 0	100 0 0	

Having made his application for the advance, the borrower will very properly be required to pay a survey fee. A reputable society only proceeds so far as to take this fee and make the survey, when on the face of the particulars furnished with the application the property offered as security appears likely to be accepted and the advance granted. If the property is within five miles of the society's office the survey fee should not be higher than: If the amount applied for does not exceed £500, £1, 1s. 0d.; exceeds £500 but not £1000, £2, 2s. 0d.; exceeds £1000 but not £2000, £3, 3s. 0d.; exceeds £2000 but not £3000, £4, 4s. 0d.; exceeding £3000, for each additioual £1000, or fraction thereof, £1, 1s. 0d. Should the property be situate beyond such five miles, only an additional reasonable fee for travelling and like expenses should be paid. The survey having been made and the society having accepted the security, the borrower will be required to take up enough shares in the society to make up the amount of the advance, and to pay a nominal entrance fee of, say, 1s. on every such share. Thus, if the shares are

£50 each, and the advance £500, the borrower would have to take ten shares, and pay 10s. The only thing now remaining is for the solicitor to the society to investigate the title to the property, prepare the necessary documents and obtain their execution. The society will then pay the money to the borrower. Apart from the charges for registration where necessary, and any other out-of-pocket expenses, such as stamp duties, the solicitor's charges should be as follows: For an advance not exceeding £500, £3, 3s. 0d.; exceeding £500 and not exceeding £1000, £4, 4s. 0d.; exceeding £1000 and not exceeding £1500, £5, 5s. 0d.; each additional £500, or fraction of £500, £1, 1s. 0d.

BURGLARY INSURANCE.—This class of insurance, since its institution some twenty-one years ago, has made rapid progress in the favour of householders and men of business. In principle it is the same as insurance against fire, being merely an indemnity against loss, though the loss is limited to that sustained through burglary; the law applicable thereto is accordingly the same as under contracts of fire insurance. The following proviso, very usual in policies of burglary insurance, calls for notice:—

Provided always that this policy shall not extend to cover loss or damage where any member of the assured's household or of his business staff or any other inmate of the premises is concerned.

There is nothing in this proviso but what is right, for it would be manifestly against the public interest to insure property so as to make the character of his dependents a matter of no importance to the owner; should he wish insurance against them it is found in GUARANTEE INSURANCE. If a servant is merely an accessory to a theft the proviso applies (*Saqui and Lawrence* v. *Stearns*). It is usual, though, for the words "as principal or accessory" to be added to the proviso. A proviso is also usually made by the insurance company, before accepting a risk, that the sum assured is not less than one-third of the total value of the property proposed to be covered. This is on the same principle as the apportionment and averaging of risks in fire insurance, and is referred to under the headings ASSESSMENT OF FIRE LOSSES; AVERAGE, FIRE.

BURIAL.—The duty to bury the remains of a deceased person is cast upon his executor; but should the deceased die in the house of another and without known relatives, the householder is under a common law liability to provide for his burial. The parish, however, would undertake the burial of a pauper. The legal place of burial is the churchyard of the parish in which the death took place; and in the case of deaths at sea, the churchyard of the parish into which the body has been cast. All persons dying in England are entitled to Christian burial according to the rites of the Established Church, unless they are unbaptized or excommunicated persons, or have committed *félo de se*. Suicides, *i.e.* those who have been guilty of *félo de se*, were originally buried at cross-roads with a stake driven through their bodies; now they may be buried in consecrated ground, but a minister of the Church cannot be compelled to conduct their burial according to the usual rites. Until recently, Nonconformists and others not members of the Established Church were bound to be buried with the rites of that Church if buried in consecrated ground; but now, upon previous notice being duly given to the Established minister connected with such burial ground, the burial may take place without such rites, and with any religious ceremony decided upon by the representatives of the deceased. *See* CREMATION.

BUSINESS: TRADE.—Business is a word of large and indefinite import,

and it has accordingly received many definitions. Thus it is called, generally, an employment, a transaction of affairs, an object which engages care, a something required to be done. More particularly it is defined as that which occupies the time, and attention, and labour of men, for the purpose of profit or improvement. Again, "business is a particular occupation, as agriculture, trade, mechanics, art, or profession, and when used in connection with particular employments it admits of the plural, that is, businesses." It is accordingly a word of extensive use and indefinite signification, and is undoubtedly used as such when appearing in any Act of Parliament. The word is, moreover, of more extensive signification than "trade." The earlier Bankruptcy Acts, which only applied to persons engaged in trade, were held not to embrace farmers; but it was never doubted the farming was a "business," though not a "trade." Nor, strictly speaking, is banking a trade, yet it would be for the purpose of excluding a clergyman from its pursuit. There are many things which in common colloquial English would not be called a business when carried on by a single person, which would be so called when carried on by a number of persons. For instance, a man who is the owner of offices, that is, of a house divided into several floors and used for commercial purposes, would not be said to carry on a business merely because he let the offices as such; but suppose a company was formed for the purpose of buying a building, to be divided into offices, and to be let out, should we not say, if that was the object of the company, that the company was carrying on business for the purpose of letting offices? The same may be said as regards a single individual buying and selling land, with this addition, that he may make it a business, and then it is a question of continuity. A man occasionally buys and sells land, as many landowners do, and nobody would say he was a land-jobber, or dealer in land; but if a man made it his particular business to buy and sell land to obtain profit, he would be designated as a land-jobber or dealer in land.

It often becomes a question of considerable importance whether or no an individual is engaged in business or trade. For example, a married woman can only be made bankrupt when she is engaged in trade. A clergyman may not by himself engage in trade; but he may earn his living as a schoolmaster, or as a farmer of his own glebe, although the calling of a schoolmaster is a public trade or business within the meaning of a covenant, which prohibits "a public trade or business" being carried on upon certain premises. Keeping a lodging-house would apparently not be a breach of a covenant not to carry on a trade or business upon certain premises, but such premises could not be used as a pay-hospital, as a branch for the out-patients of a hospital, or as a home for working girls.

BUTCHER.—A butcher must carry on his business subject to the provisions of the Adulteration Acts, Public Health Acts, and the Weights and Measures Acts; but otherwise, unless he deals in horse-flesh or in cat's-meat, when he must observe the provisions of certain special Acts, and usually finds a hawker's licence necessary, he is not subject to any special Acts of practical importance. Like the rest of the public, he must so conduct his business as not to be the cause of a public nuisance; he would be liable to indictment therefor, even if caused by his servants without his knowledge and contrary to his general orders. Like the baker, he must be careful as to the quality of the goods he sells, for he is responsible therefor;

if his meat is, to his knowledge merely, unfit for human food he may be indicted, and should any person suffer injury to health or die as a consequence of the bad quality of his meat, the butcher would be criminally liable. Unsound meat must be neither exposed, sold, or even possessed. Such meat may be inspected and seized under sect. 117 of the Public Health Act, 1875, even when in the possession of a customer (*Salt* v. *Tomlinson*); but a police officer can institute proceedings under the section only with the consent of the Attorney General (*Dodd* v. *Pearson*). Should any of his cattle be overdriven, or meet with an accident in the street, so that it is necessary to kill them there, he may do so; but to slaughter them in the street, or even to dress his meat there, so as to cause a nuisance or annoyance to the public, is a punishable offence. *See* CATTLE; CATTLE SALESMEN; HORSE-FLESH.

BUTTER has been defined by the Margarine Act, 1887, as "the substance usually known as butter, made exclusively from milk or cream, or both, with or without salt or other preservative, and with or without the addition of colouring matter." By the same Act it is provided that any substances purporting to be butter, which are exposed for sale, and are not properly marked margarine, will be presumed to be exposed for sale as butter, and will be dealt with as such. The importation of adulterated or impoverished butter is prohibited, unless it is contained in packages or cases conspicuously marked with a name or description indicating that the butter has been so adulterated or impoverished. The owner, consignor, consignee, agent, or broker, who is in possession of or in anywise entitled to the custody or control of any adulterated or impoverished butter imported without regard to the above regulation, is liable on summary conviction to fines ranging from £20 for the first offence to £100 for the third and every subsequent offence; and the Commissioners of Customs will co-operate with the Board of Agriculture in preventing such importation. The latter Board may make regulations for determining what deficiency in any of the normal constituents of genuine butter, or what addition of extraneous matter or proportion of water, should raise a presumption that any particular sample of butter is not genuine. To the time of writing no such regulations have been made, and each case has therefore to stand on its own merits, without reference to any official criterion.

For the purposes of an intending prosecution for the adulteration of butter, any officer authorised to take samples may do so without going through the form of purchase necessary in the case of other articles of food; but in every other respect the procedure is the same as that provided by the Sale of Food and Drugs Act [*see* ADULTERATION]. In view of the extensive litigation now proceeding on the subject of butter and its adulteration, and the conflicting decisions given by various courts throughout the country, it is impossible to take any particular case as an authoritative guide; in fact, as the general judicial opinion is now expressed, the only butter that stands a chance of being held to be genuine is that which is so from the point of view of the commonsense, practical, and *bonâ fide* dairyman and consumer. But the dealer in butter should pay special attention to the defence referred to in the article on adulteration—that he has bought the butter in the same state as sold, and with a warranty. And in this connection he should also note that in the document, *e.g.* an invoice, upon which he relies as a warranty, express words of warranty need not be used; but the document must have been given at the time of his purchase, and must form part of the actual contract of sale, and there must, moreover, be clear evidence that the butter was actually sold to him under that document itself.

BYE-LAWS.—An order, rule, or regulation made by an authority subordinate to Parliament is called a bye-law. Within its prescribed limits, and with respect to persons upon whom it may lawfully operate, a bye-law has the same effect as has an Act of Parliament. It is not an agreement, but a law binding upon all persons to whom it applies, whether they agree to be bound by it or not. There are three special conditions to a valid bye-law: that it does not trespass the limits imposed by the enabling power; that it is, in the case of a bye-law depending upon a statute, duly confirmed by the appropriate authority; that even, though so confirmed, it is reasonable in itself and not contrary to the general law of the country. The power enabling the promulgation of a bye-law is to be found either in custom, charter, or statute. Bye-laws founded upon custom are exhibited in the regulations of a guild in respect of its own trade, or of a borough or manor. Those upon charter are found in the regulations adopted by a corporation created by the charter; and those upon statute in the regulations imposed by a corporation, authority, or company dependent upon a particular Act of Parliament. The orders and rules imposed by the British South Africa Company, both in Rhodesia for the proper government thereof, and elsewhere for the regulation of the internal administration of the company's affairs, are instances of bye-laws dependent upon charter: all that company's rules and regulations must be strictly within the scope of its authority as defined by the charter.

Bye-laws are most usually met with by the public in the regulations imposed by local authorities, such as county, town, and district councils, and in the regulations adopted by railway, train, and dock companies. Here the bye-laws must be confirmed by the Local Government Board, the Board of Trade, or other superior authority, as the case may be, and until so confirmed they have no effect. And as has already been pointed out, though duly confirmed they must be reasonable and not against the law. Before confirmation, the public have always an opportunity to inspect the proposed bye-laws, and oppose them if necessary. The articles of association of a limited company are a further instance of a code of bye-laws. In this case the bye-laws may be said to depend both upon statute and charter; the former being the Companies Acts, which have set out the general law of the country relating to such companies, and the latter being the memorandum authorised by statute, and at the same time limiting the powers and operation of the company, and consequently the extent and scope of the articles.

C

CAB.—The law recognises a cab only by the name of a hackney-carriage, which means a carriage publicly plying for hire by intending passengers therein. It is not a stage carriage, as the passengers are not charged separate fares for their seats. Cabs are regulated in London by special Acts, and in towns outside the metropolis by police regulations, and bye-laws under the Public Health Act, 1875. An intending cab proprietor must have his cab certified by the local police authority as fit for public use; have a plate thereon indicating such certification; provide the cab with a check-string;

mark on the cab the fact that it is licensed, and the number of persons it is licensed to carry; exhibit a table of fares; carry a lighted lamp in certain hours, and not obstruct the light or ventilation or annoy passengers by fixing notices or advertisements on the cab. A passenger will always find the number of the cab inside. The driver himself must also be licensed, and wear a badge with a number; if he has a dispute with the cab proprietor about wages or alleged neglect, it is to be settled by a magistrate. The proprietor keeps the driver's licence, but must return it upon the termination of the employment; should he deface it by writing a bad character upon it the driver may obtain compensation through a magistrate or damages in an action at law. Though the driver hires the cab and does not receive wages, the proprietor will still be liable for damages for any injuries caused by the driver in the course of his employment; so also would he be liable to the driver if the latter sustained injuries through the bad condition of horse or cab. Damages up to £10 may be claimed in summary proceedings before a magistrate, by a person injured through wanton or furious driving, or carelessness or wilful misbehaviour of the driver.

If a cab is actually standing in a public place (other than a railway station) ready for and awaiting hire, the driver is bound to take any passenger to any place within the limits prescribed by the local authorities. Should the passenger and driver have a dispute as to the proper fare payable, the driver must drive to the nearest police station, and if the passenger is found to be in the wrong he will be required to pay for the journey to the station. The fare is not payable until completion of the journey, but the driver may demand a reasonable sum as deposit; he must not demand more than the proper or agreed fare. Where a passenger wrongfully refuses to pay the fare; or hires a cab knowing, or having reason to believe, that he cannot pay the fare, or with intent to avoid payment; or fraudulently endeavours to avoid payment; or refuses to pay and also refuses to give his address; or gives a false address with intent to deceive, he may be imprisoned and required to compensate the driver. Should the proprietor or driver make default in compliance with the requirements of the law, he will be liable to various penalties and legal proceedings. The provisions of the London Cab and Stage Carriage Act, 1907, relative to taximeter cabs and the abolition of the privileged cab system will be found in the article CAB in the Appendix.

CABINET.—The Privy Council was formerly the adviser of the king in all weighty matters of state. Affairs were debated and determined in his presence, subject, however, to his pleasure. This body was, probably, too numerous for the despatch of executive business, and accordingly certain members would be selected by the king for more private advice, as persons in whom he had greater confidence than the rest. "The king can do no wrong" has always been, and still is, a constitutional doctrine of first importance; but that his ministers may do wrong has always been, and still is, a well recognised possibility. The king has therefore no responsibility, for he acts only through and by his ministers, and it is upon them that all responsibility rests. It was the selection of special members of the council that gave birth to a separate class of ministers, and at the same time to the Cabinet as now constituted. The period when the change became decidedly marked was in the reign of Charles I., though no formal constitutional change had yet been made; and in the reign of William III. the distinction

of the Cabinet from the Privy Council, and the exclusion of the latter from all business of state, became fully established. The Privy Council is, even now, occasionally assembled to deliberate on public affairs, but only those councillors attend who are summoned. All proclamations and orders still issue from the Privy Council, never from the Cabinet as such; for to this day the law knows nothing of its existence.

The terms Ministry, Cabinet, Government, are generally used in a more or less synonymous sense. The term Government may perhaps have a doubtful significance: is it composed of all the ministers, or of only such as are members of the Cabinet? Strictly speaking it includes the members of the Cabinet only. The Ministry, on the other hand, includes not only the members of the Cabinet, but certain of their subordinates, such as the various parliamentary Secretaries of State. At the present moment the Cabinet is composed of the following Ministers: The Lord Chancellor, Lord President of Council, Lord Privy Seal, Chancellor of the Exchequer, the Secretaries of State for the Home, Foreign, Colonial, War, and Indian Departments, and for Scotland, the First Lord of the Admiralty, First Lord of the Treasury, Lord-Lieutenant of Ireland, Lord Chancellor of Ireland, President of the Board of Trade, Chancellor of the Duchy of Lancaster, President of the Local Government Board, President of the Board of Agriculture, and the Commissioner of Works. But the heads of other public departments may be called upon to take a seat in the Cabinet; thus in the last administration the Postmaster-General was a Cabinet Minister, as also was the Chief Secretary for Ireland. A Lord Chief Justice has also had a seat in the Cabinet, as well as the Commander-in-Chief, and the Master of the Mint; even a statesman without any office has been a Cabinet Minister. The number of Cabinet Ministers is as variable as the offices they may fill. The D'Israeli Ministry of 1874 included only twelve Cabinet Ministers, while the present one has nineteen.

We have already mentioned that the Cabinet, as such, has no legal existence; it therefore remains only to point out that, consistent to the last with its technical inconsistencies, its chief has a designation, or as such fills an office, equally unknown to the law. There was until very recently no such office as that of Prime Minister; he usually held an office such as that of First Lord of the Treasury, and was known as Prime Minister because he had been selected by the king to form a ministry, and be responsible to the king therefor. The Prime Minister is accordingly the chief of the ministry, and often history gives his name to the administration he directs. Now the Prime Minister has specific rank as Premier, taking precedence next after the Archbishop of Canterbury. The Cabinet having had its origin in arbitrary selection by the king, is naturally subject to dismissal at the king's hands. The king may accordingly dismiss his ministers if they do not possess his confidence and he is dissatisfied with their policy. But this is a strongly fettered power and a step not lightly to be hazarded, for if a ministry is supported by a majority of the House of Commons, the power is practically non-existent and a change would be useless, as the measures of a new ministry, of different principles, could not be carried out in opposition to the opinions of a majority of the Commons, and the functions of government would be paralysed. A ministry may, therefore, retain their posts in spite of the well-known dislike of the king. He may dissolve

parliament and appeal to the country, and in this way may gain his object; but he also may be foiled in the attempt. If the Cabinet resigns from inability to carry their measures, or are dismissed, the king sends for some leader opposed to the late ministers and authorises him to form a new Cabinet. This individual would select from those who are friendly to his policy, and so himself appoint members of the new Cabinet and become the new Prime Minister.

CALL on shares.—This term may be used in three different significations; it may be the subject-matter of an OPTION (*q.v.*), or it may be the demand for contribution made upon the shareholders by the liquidator of a company in process of winding up [this form of call will be dealt with under the title CONTRIBUTORIES]; or finally, it may be the demand made upon the shareholders by the directors of a company for the payment of the balance, or part thereof, of the amount due from them upon their shares. It is this last form of call which is now engaging our attention.

In the prospectus of every company introduced to the notice of the public a particular prominence is given to the terms of payment upon which the shares are offered. It is very rarely indeed that a company requires the whole nominal amount of the shares to be paid up forthwith upon allotment. The usual formula to be found at the head of a prospectus, immediately below the title of the company, would run somewhat as follows:—

Capital, £120,000, divided into 120,000 shares of £1 each, payable as follows:—2s. 6d. on application, 2s. 6d. on allotment, 5s. two months after allotment, and the balance when called for.

The meaning of this announcement is that an applicant for shares must enclose 2s. 6d. with his application in respect of each share he applies for, and that he must pay to the company another 2s. 6d. forthwith upon his receipt of the letter of allotment. Two months after allotment he will receive notice to pay the further 5s., and this he must do. And later he may receive a "call" or "calls" for the balance. The inference intended to be drawn from such an announcement is that the company is going to carry on so profitable a business as not to be likely to require more capital than half the nominal amount, namely, £60,000, to be found by its shareholders as a provision for working purposes; the balance of capital uncalled being intended to remain outstanding as a reserve against possible developments of the business and unforeseen contingencies. But unfortunately the imagination of a prospectus writer is, as a rule, so optimistic, and at the same time so unreliable, as to make it dangerous for an intending investor to draw the desired inference and to rely upon it. The probability is that very soon after payment of the instalment due at the two months the directors will find it necessary to make a "call" upon the shareholders for perhaps the whole of the balance of the price of the shares. When that balance has been paid the shares are known as "paid up"; until then they are only "partly paid," with the result that the shareholders may be liable to a call for the balance at any time. With many companies of good standing the liability to such a call is a very remote one; indeed, all the shares of certain classes of companies are invariably unpaid to the extent of a very high percentage of their nominal value. Such classes of companies include banks and insurance offices, and their

shareholders need have little apprehension of calls, though at the same time they should not hold such shares except in proportion to their means to meet the calls if, and when, made. Partly-paid shares, because of this liability, have always a lower price; but in many cases their price is maintained at almost as high a figure, in proportion to the amount paid up, as if such amount paid up represented their nominal value.

It is to the Articles of Association of a company that the shareholders should look for the regulations as to calls. If there are no articles, Table A should be consulted. Generally, however, it may be laid down that the directors alone have the right to make a call, and even to receive payment thereof by instalments. The call will be taken to have been made at the time when the resolution of the directors was passed which authorised it to be made. When so made the call becomes a debt, and the shareholder may be sued therefor; it is, however, usual for a reasonable time to be given for payment, interest being payable during the period of non-payment after the time so limited. The directors have no right to abstain from enforcing payment; to do so would be to commit a breach of their duty to the company. Should it otherwise be impossible to obtain payment, notice may be given to the shareholder that unless the call is paid within a certain time his shares will be forfeited, whereby he will lose the benefit of the instalments he has already paid, and will cease to be a shareholder in the company. But this power of forfeiture must be used for the benefit of the company—to enforce payment of calls, and not to aid shareholders to withdraw from the company and escape their obligations. After forfeiture the shares become the property of the company, the directors of which, it is usually provided, may sell, re-allot, and otherwise dispose of the same in such manner as they think fit; and the shareholder may still be sued for the calls due and owing at the date of the forfeiture. The shareholder cannot abandon his shares in order to avoid payment of calls. *See* COMPANIES; SHARES.

CANALS.—Canal companies are bound to make adequate provision for the receipt and forwarding of traffic without unreasonable delay; they must not give any undue preference to any person or company with regard to their traffic. Where canals are in communication one with another, each canal company must afford the others all necessary facilities for receiving and forwarding their traffic over its own canal. A book of rates must be kept by every canal company showing every rate charged for the carriage of traffic other than passengers, whether under special contract or otherwise, and including tables of distances, and distinguishing the different parts of the rate. This book must be kept at all the wharves of the canal and be open to public inspection, so that all persons may know the rates charged, and how made up, *e.g.* so much for conveyance, and so much for working expenses. A canal company is liable in damages for the neglect or default of its servants in the carriage of animals or goods; but no greater damages can be obtained in respect of animals than as follows: for a horse £50; for neat cattle, per head, £15; and for sheep or pigs, per head, £2, unless the sender has previously declared a greater value. This liability of a canal company does not prevent it, by way of precaution against risk, making any just and reasonable conditions as to the receiving, forwarding, and delivery of traffic. The whole question of canals has recently been the subject of a Canal Commission, whose Report, issued in 1909, makes certain interesting recommendations.

Canal companies are subject to the Railway Commission, and it is to these commissioners that any person should apply when the companies fail to comply with the regulations. Thus if the rates charged are too excessive, or undue preference is given to any particular class or person, an application may be made to the commissioners for readjustment of the rates, or disallowance of the agreement alleged to be an undue preference. *See* CARRIERS.

CANDIDATE.—The Corrupt and Illegal Practices Prevention Act, 1883, defines a candidate as—

> Any person elected to serve in Parliament, and any person who is nominated as a candidate, or is declared by himself or by others to be a candidate, on or after the day of issue of the writ, or after the dissolution or vacancy in consequence of which such writ has been issued.

As will be seen elsewhere, it is most important to know whether a candidature does in fact exist, and if so, when it commenced; for with the commencement of the candidature the election itself may be said to commence. Statute law does not say when an election begins, and some judges have said that one cannot go behind the appointment of an election agent and start from an earlier date. But notwithstanding such an opinion it is entirely a matter of sound judgment to say how far one may go back, and how far one may not. When the candidate himself comes—the moment he comes in bodily shape—within the constituency, saying, "I am your candidate!" he cannot be heard to say that the election has not begun. He takes up the position, not of saying "I will be your candidate when I am asked," or whenever it may be, but he comes and begins from that time the fight of the election.

But it is impossible to lay down any definite rule as to when the conduct of an election begins, or to deal with it otherwise than as a question of fact, in which the general political history of the period and the conduct of the individual candidate are alike to be taken into account. It would be unreasonable to assume that a gentleman resident in the district, who has shown an active interest in party politics in the past, and who has been invited to become a candidate, is to be taken to have assumed the responsibilities of candidature because he continues to be an active worker in support of the principles he has always supported. As soon, however, as he begins to hold meetings in the constituency to advance his candidature—in other words, as soon as he begins to take measures to promote his election—the election commences. *See* CORRUPT PRACTICES; BRIBING; CANVASSING.

CANVASSING.—When canvassing for votes at an election, care should be taken not to offer to the voter any bribe, inducement, or threat; and it is advisable that, in order to meet any possible future suggestion, the canvassing should be done by two or more canvassers at the same time, one of whom should be a responsible person. A paid election clerk may canvass, but only apart from his duties as such, and as a voluntary addition to his work.

CAPITAL OF A COMPANY.—Capital may be defined in general terms as saved wealth devoted to the creation of more wealth. Such is the capital with which a trader carries on his business, whether the trader

is an individual owning his own business or a group of shareholders in a joint-stock company. Capital may consist of land, houses, furniture, reversionary interests — in fact, anything which possesses value; but of whatever it may consist, there is always present one characteristic—it may be expressed in terms of money. The result is that capital is always spoken of as being represented by so many pounds, shillings, or pence, as the case may be. We will here give special attention to the subject of the capital of a company limited by shares, and in passing would point out that such capital falls well within the above definition.

Capital generally.—A number of persons, each of whom has saved some money, are desirous of making more; they see in the pursuit of a certain trade or business an opportunity to satisfy their desire, accordingly they join together and each contributes something to a general fund of capital wherewith to carry on the proposed business. In other words, they form themselves into a company, incorporate it with limited liability, and become shareholders therein, each proportionately to the amount of his contribution of capital. The total amount of their contributions should, in an ideal company, exactly correspond with its actual capital. But there is always some difference between reality and the ideal, especially in matters involving complicated business interests and methods of finance ever attended by contingencies, both foreseen and unforeseen. Consequently the capital of a company may appear in different forms and nature, and under various distinctive names; and thus we have, *e.g.*, nominal, paid-up, uncalled, working, fixed, and circulating capital. We will now deal with these examples. In this article companies limited by shares are alone dealt with.

Nominal.—No company can be incorporated under the Companies Acts unless its memorandum states the amount of its capital, and it is upon that figure that the registration duties are assessed and payable. This capital is called the company's nominal capital, and its amount may be fixed after reasonable calculation as to the needs of the company, or merely in accordance with the caprice of the promoter, or even with a view to a misleading effect upon the public. We will refer to and dismiss first the two latter possible methods of fixing the nominal capital, and they may be conveniently discussed together. An impecunious promoter desires to establish a banking company at the least possible cost to himself, and yet having such an appearance of solidity and wealth as to attract the deposits of the public. He may accordingly fix the nominal capital at £2,000,000, and divide it into 2,000,000 shares of £1 each; and to do this requires only a few strokes of a pen and the payment of increased duty. But of this great capital there may very easily be only seven shares issued, one to each of the subscribers to the memorandum and articles, and even these shares may only be partly paid for; the result of this operation is that the bank, with its nominal capital of £2,000,000, has in fact only issued seven shares of £1 each, for which it has only received a part payment of, say, 10s. on each—in all £3, 10s. And though the capital issued is only £7 and the amount thereof paid up is only half of that sum, yet wherever the prospectuses and advertisements of that bank go, there the public will have placed most prominently before it the fact that the nominal capital of the bank is £2,000,000. And a great many people will believe that the bank has really got that large sum behind it, and

will deposit money on the faith of that belief. Such things as this have been done, and are being done to this day, with the result that a confiding public is always losing its money, and unscrupulous so-called financiers are taking it. If the ordinary investing public only knew that the nominal capital need not necessarily represent anything more valuable than the ink with which it is so boldly printed, more hard-earned money would be saved and less thrown away for rogues to squander.

But, fortunately, in most cases the question of nominal capital is one that is approached by business men in a business-like way. Whether it is the nominal capital of a large public company or that of a small private company, the question is the same, and its answer is found by the same process. For one thing the promoter does not wish to unnecessarily add to the amount of the registration duty, and accordingly from that point of view he desires to fix the amount of the nominal capital at as reasonable a figure as possible. Suppose the company to be formed for the purpose of purchasing an existent business, the price to be paid therefor being £10,000, of which £5000 is to be paid in cash and £5000 in shares, and the company will also require to keep in hand a sum of £2000 to work upon. Many possible methods may be suggested as to the capitalisation of this company, but we will deal with two only.

Let the company be formed with a nominal capital of £8000, and let it raise the £5000 to complete the purchase and the £2000 for its own use by the issue of £7000 in debentures. Here the £7000 necessary cash will be raised without reference to the capital, as such, of the company, though its repayment will be a charge on the assets; 5000 shares may then be issued and allotted to the vendor of the business, and the company will have on hand 3000 shares for future issue in case of need. The 5000 shares will be the capital issued, and the whole 8000 will constitute its nominal capital; but if it should turn out to be impossible to get purchasers of the 3000 shares when needed, that part of the nominal capital will be practically worthless. If, however, the company, before desiring to issue the 3000 shares, had been paying very high dividends, and there was a prospect of its continuing so to do, that difference between the issued and the nominal capital might even be greater in value than its figures—£3000.

Another method would be to form the company with a nominal capital of, say, £15,000, divided into 15,000 shares of £1 each. Of this capital £5000 would be issued and allotted to the vendor, and £7000 issued against subscriptions to that amount; out of the £7000 so obtained, the £5000 balance of purchase money could be paid and the £2000 money needed kept in hand. The advantage of this method would lie in the absence of debentures and the consequent higher value of the shares—including those unissued. Once the necessary issue of shares is provided for, any additional share capital kept in hand for later issue, if needful, must be an arbitrary amount; and since the nominal capital may always include the latter, it too must be an arbitrary amount, and would not itself, apart from special information as to the finances of the company, afford any criterion of the company's stability or solidity.

Paid-up.—The discussion of the nominal capital has undoubtedly necessitated such reference to the other forms of capital as to make further special

comment thereon but a matter of detail. Paid-up capital consists of all the money which has been actually paid by shareholders in respect of the shares they hold. Though shares which have been properly issued as fully paid up, in accordance with a duly filed agreement, would be included in the paid-up capital, the latter term does not necessarily imply that all the shares issued are fully paid up.

Uncalled.—This part of the capital is represented by the balance of the amount of the shares not paid by their holders, and which would be payable to the company upon a call being made therefor. Uncalled capital may often be a valuable asset of the company, and it is accordingly very frequently made security by mortgage for a loan. A company has not, however, any general implied power to create such a mortgage. There must either be an express or implied power so to do in the memorandum, or there must be a like power to that effect in the articles, with nothing to the contrary in the memorandum.

Working capital has already been sufficiently referred to in connection with the nominal capital. There is not very much difficulty in deciding as to the amount thereof when the company is taking over an already existent business; but in the case of a company formed to develop a new business or to exploit a new venture, the question of the working capital is an important and difficult one. In all such companies the investor should see that the working capital is adequate, and in some reasonable proportion to the purchase money. This is especially important in companies intending to develop mining and like properties, for in such cases it is not at all unusual to find a company with £120,000 nominal capital, out of which £80,000 is paid in purchase money, and only sufficient shares have been taken up to provide £2000 or £3000 for working expenses. Such companies are soon found to be undergoing the process of liquidation. *See* PROSPECTUS.

Fixed and circulating.—The distinction between fixed and circulating capital is very important. It is not necessary to make good out of the income of a company any loss or depreciation of its fixed capital; but it is so necessary in respect of circulating capital. Fixed capital would include even so wasting an asset as a leasehold quarry, or the horses of a delivery van. Circulating capital would include such a merchantable asset as stone already quarried and available for sale, or a piece of merchandise such as the above-mentioned vans could carry. *See* hereon PROFIT AND LOSS.

Reduction, re-organisation, and increase of capital.—In general a reduction of capital requires the sanction of the Court. An increase does not, but certain notices must, under pain of penalties, be given to the Registrar of companies. Re-organisation, such as by consolidating shares of different classes, or dividing shares into shares of different classes, requires a special resolution confirmed by order of the Court. On a proposal to reduce, the creditors have a right to object, and objecting creditors who should be settled with must be settled before the Court will make the order. So, in applying for a confirmation there must be no concealment from the Court of the names of creditors. The order may make it a term that the words "and reduced" be added to the word "limited" in the name of the company, and also that the reasons for the reduction shall be published. Sanction is not required where the company can effect reduction by accepting a surrender of shares, or by forfeiture thereof for non-payment

of calls, or by devoting an accumulation of profit to the all-round amortisation of fully-paid shares, or by cancelling shares which have not been taken or agreed to be taken. Should the articles not contain any power to reduce, two special resolutions must be passed, one to authorise the reduction, and the other to effect it.

No special power is necessary to authorise an increase of capital, but it is sometimes found convenient to vest in the directors an absolute power and discretion in the matter. *See* CALLS; COMPANIES; CONTRIBUTORIES; SHARES.

CARDS.—There is a duty of three shillings per dozen packs upon playing-cards imported into the United Kingdom. Such cards are sold in the United Kingdom subject to the same restrictions as those not made abroad. A maker in the United Kingdom requires an annual licence of £1, and must pay a stamp duty of threepence per pack of fifty-two cards. The following are not subject to the stamp duty: Imported duty-paid cards; toy cards not longer than 1¾ in. and wider than 1¼ in.; cards resold after use to a licensed maker, unless they are resold by him. Any person, other than a maker, may sell playing-cards without a licence; but cards so sold must have the duty denoted on the wrappers. Cards made in the United Kingdom can only be sold in separate packs, enclosed in wrappers printed with the maker's name and showing the stamp, and so securely fastened as to make opening impossible without destruction of the wrappers. The seller must cancel the maker's name before delivering the cards, unless he sells wholesale with a view to selling again, and not for use.

CARRIERS.—A person who publicly carries on the trade of a carrier is in law known as a common carrier. Such would be one who undertakes to carry from place to place, for hire, the goods of any person who employs him. The carrying of goods is essential to the character of a common carrier; if he conveyed passengers only, he would not be one; nor if he limited his carrying to a particular employer. Railway companies, barge owners, railway forwarding and collecting agents, and those who own and carry on business by any other means for the public conveyance of goods, are all common carriers to the extent that they carry goods generally. It has been laid down that in order to constitute a person a common carrier his trade must be plied from and to fixed termini; and consistently with this view, a town carman who did not so ply, but only undertook casual jobs, has been held not to be a common carrier. It would not, however, be very safe to rely upon this ruling, for once it is established that the person in question publicly professes to carry, and does in fact actually carry for the public generally, such person would undoubtedly be considered in law as a common carrier.

His rights.—In discussing the legal position of carriers, it would almost seem that such a division as his "rights" could be safely disregarded. Certainly the public attention is mainly directed towards his liabilities. Nevertheless he has some rights, and though unobtrusive ones, they are certainly very important. In the first place the carrier is entitled to his hire or remuneration. Apart from agreement, this must be reasonable and just, and a carrier not the subject of special statutory regulation, as is a railway company, has within reason the common-law right to charge one person more or less than another. He may also require the goods to be delivered to him and his hire paid before their carriage; and may make reasonable and just

conditions as to the terms of conveyance ; and may enter into a special contract, which must be reasonable and just, limiting his common-law liability. If, on goods being tendered to him for conveyance, they have an appearance suggesting that it is necessary he should know their nature, he may decline to carry them if such information is refused. As a matter of law the consignor is under a duty to inform the carrier as to the nature of the goods. In the absence of such information an implied warranty by the carrier arises that the goods are not dangerous, and if damage is caused to the carrier by the goods the consignor is liable to him therefor (*Bamfield* v. *Goole & Sheffield Transport Co.*). The carrier may increase his charges if the goods are of a nature susceptible to damage. But perhaps his most valuable right is that of lien : he may refuse to deliver up the goods until his charges have been paid. His lien is a particular lien—not general. *See* LIEN.

For whom he is agent.—It is often of great importance to know whether the carrier is the agent of the consignor or of the consignee. In disputes which may arise between seller and buyer, in matters incidental to the position of creditor and debtor, and also in connection with claims upon the carrier for damages, this question is often very material. A trader at Brighton, for example, orders goods from a manufacturer in London to be delivered per a specified carrier, the trader paying for the carriage. In this case the manufacturer has made a sufficient delivery of the goods to the trader when he has delivered them at the receiving office in London of the specified carrier, with the necessary directions ; and any loss or damage of the goods in transit will not prejudice the manufacturer's delivery. The rule would be the same wherever the consignee pays the carriage, even although the carrier is not specified ; but delivery in the latter case must be to an appropriate carrier. Generally speaking, the party who pays the carriage is the carrier's principal. Again, on the facts of the above illustrative case, if the trader fails to pay for the goods, and the manufacturer finds it necessary to sue for their price, the manufacturer will naturally wish to sue in a London court, where he will sustain less inconvenience and loss of time than if he had to proceed in a Brighton court. But the London court will require that some material part of the contract of sale has been performed within its jurisdiction before it will entertain the case ; the delivery to the debtor's agent, the carrier, within the jurisdiction, will meet the requirements of the court.

Subject to the several exceptions in cases where goods are merely sent for approval ; or forwarded under the circumstances in the above illustrative case ; or the consignee is agent of the consignor ; or the carrier has expressly made himself liable to the consignor in consideration of the latter having become responsible for the price of the carriage ; or, speaking generally, where the consignor has himself employed the carrier and taken upon himself the risk of the goods ;—subject to these exceptions, the general rule is that where goods forwarded to the purchaser are lost through the carrier's default, the consignee is the person who should sue the carrier. Apart from special contract it is the owner of the goods to whom the carrier is in general liable.

His liability.—The liability of a carrier is an extensive subject for discussion. He is what is known as an insurer of the goods entrusted to his care ; he insures the owner against all loss or damage. At common law he is responsible for every injury sustained by them by any means whatsoever, except only the act of God, or the king's enemies. If goods are tendered to him for conveyance he is bound to accept them upon payment of his reasonable hire ; he cannot decline them simply because they are of a nature which will demand special care ; but he can decline to carry them if they are of a

kind demanding exceptional and extraordinary care, or of a kind he is unable to carry, or which he does not profess to carry, or is not in the habit of carrying, or if his carriage is already full. He must deliver the goods at the consignee's address. A carrier may enter into a special contract with his employer. Such contracts became very usual about the beginning of the last century, when the increase in manufactures and the improving means of locomotion led naturally to an increase in the quantity of goods sent from one part of the country to another. And a large proportion of this traffic, perhaps the most valuable, was composed of small parcels having great intrinsic value. Carriers then had no statutory protection whatever; the only method by which they could insure any degree of safety against disproportionately heavy liabilities was by increasing their charges, and at the same time defining by contract the exact degree of responsibility they would assume. The railway companies, safe in their monopoly, went so far as to impose conditions most irksome and unreasonable, and were able, in consequence of the disinclination of the public for litigation, to continue doing so until they were checked by statutory provision. The fact of a special contract may be inferred from the circumstances of the case. Thus where a carrier gives a notice or writes a letter to the consignor imposing conditions, and the goods are sent without objecting to the terms of the notice or letter. And also where the receipt for the goods has certain terms endorsed on its back. No statute has prohibited special contracts between common carriers and their employers generally; but for all practical purposes it will be sufficient to confine our attention to the statute law on the subject. It will be noticed that the statutes have special reference to the carriage of articles, which though small in bulk may be great in value.

Land carriers generally.—By the Land Carriers Act of 1831:—

No common carrier by land for hire is liable for loss or injury to any gold or silver coin, gold or silver in a manufactured or unmanufactured state, precious stones, jewellery, watches, clocks, timepieces, trinkets, bills, bank-notes, orders, notes, or securities for payment of money, stamps, maps, writings, title-deeds, paintings, engravings, pictures, gold or silver plate, or plated article, glass, china, silks (manufactured or unmanufactured, wrought up or not wrought up with other materials), furs, or lace ("other than machine-made lace"—Act of 1865), when the value exceeds the sum of £10, unless at the time of delivery the value and nature of the article has been expressly declared, and the increased charges, or an engagement to pay the same, accepted by the person receiving the parcel.

The carrier may demand for such parcels an increased rate of charge, which is to be notified by a notice affixed in his office, and customers are bound by such notice, without further proof of the notice having come to their knowledge. The carrier cannot, however, limit by *such a notice* his responsibility in respect of any articles other than those enumerated above.

The above would apply in any mode of delivery to a carrier—whether to himself personally, or to a servant, or at his receiving office, or anywhere else where the carrier or his servant may receive the goods. If the carrier does not affix the notice in the manner mentioned above, he cannot claim an extra rate of carriage; but the consignor is still under an obligation to declare the nature and value of the goods in order to burden the carrier with full responsibility therefor. Carriers are responsible for loss occasioned by the felonious acts of their own servants, or of any person actually and

properly engaged in the performance of the transit and delivery of the carrier's goods; and it is no defence for the carrier to show that he himself had exercised every care. This would be a good defence, however, where the carrier's servant had merely, *bonâ fide*, lost the goods, or delayed their delivery.

A railway company, in addition to a liability as above, is liable, under the Railway and Canal Traffic Act, 1854, for the loss of or for any injury done to any horses, cattle, or other animals, or to any articles, goods, or things, in the receiving, forwarding, or delivering thereof, occasioned by the neglect or default of such company or its servants, notwithstanding any notice, condition, or declaration made and given by such company contrary thereto, or in any way limiting such liability. Any such notice, condition, or declaration is null and void.

But nothing is to prevent a company making *conditions* with respect to the receiving, forwarding, and delivering of any of the above-mentioned animals, articles, goods, or things which a judge, before whom any question relating thereto is tried, may deem just and reasonable. Nor can any greater damages be recovered for the loss of, or for any injury done to, any of such animals beyond the following sums: a horse, £50; neat cattle, per head, £15; sheep or pigs, per head, £2; unless the person delivering them to the company has, at the time of delivery, declared them to be of higher value; in which case the company may require an extra rate of carriage according only to a duly published scale. The proof of the value in such cases lies upon the person making a claim. Any *special contract* in order to be binding must be signed by the consignor himself, or by the person delivering the property to the company.

The above Act does not prejudice in any way the rights of railway companies as common carriers under the Act of 1831. It will be noticed that in the second part of the Act of 1854, there is a reference to "conditions" which a company may make; this word is really synonymous with the "special contract" referred to at the end of our abstract of the Act. Before this statute every case in which a special limited liability was substituted for the general common law obligation of the carrier, whether by notice acquiesced in, or by a document signed by the employer, was one of special contract, and the statute is to be construed with reference to that state of the law. No merely general notice given by a railway company is valid in law, for the purpose of limiting its common law liability as a carrier. It can be limited only by such conditions as a court determines to be just and reasonable; but with this proviso, that any such condition must be embodied in a special contract in writing between the company and the consignor, or person delivering the goods, and duly signed by either of the latter. And should such a contract have the effect of relieving the company from responsibility however caused, including therefore gross negligence and even fraud or dishonesty on the part of the company's servants, it would be void and of no effect. A company cannot therefore relieve itself from liability for its own gross negligence or misconduct. Nor can any contract absolve it from responsibility for loss or non-delivery of goods by reason of insufficient or improper packing; nor from liability for delay. No rules of general application can be given for determining the validity or otherwise of a company's conditions; each case must depend upon its own particular circumstances;

to use a legal expression, but one readily understood, it is a mixed question of law and fact. At the end of this article will be found some of the conditions most usually imposed by railway companies in respect of the carriage of goods.

Preferential rates.—Railway companies may not give preferential rates of carriage, or delay the forwarding of goods, or in any way show any partiality, so as to prefer or prejudice any person or firm. Should they do so, the person aggrieved should make complaint to the Railway Commission, which will make such order as it may deem just.

Through bookings.—By the Regulation of Railways Act, 1868, a company which has "booked through" any animals, luggage, or goods from place to place, partly by railway and partly by sea, or partly by canal and partly by sea, may impose a condition exempting it from any liability for loss or damage arising from the act of God, the king's enemies, fire, accidents from machinery, boilers, and steam, and all and every other dangers and accidents of the seas, rivers, and navigation. Such a condition will be considered to be incorporated in the contract for the through carriage, if it be written legibly on the receipt or freight note, and published in a conspicuous position in the booking-office.

Generally.—A carrier must deliver the goods by or within the stipulated time; if there is no such stipulation, it must be within a reasonable time. Should he make default in this respect he will be liable to an action for damages; and railway companies generally make a stipulation that claims for damages for loss must be made within three days from delivery, or for delay within three days from the time delivery should have been made. The fact of a claim being made only after such a limited period would not necessarily destroy the claimant's right of action. Upon delivery the consignee should sign for the goods and add the word "unexamined," if such is the case, in order to preserve his rights until he has had an opportunity to examine the goods; but to omit this would not prevent a proper claim succeeding. As soon as the goods have arrived at the end of the transit, the carrier must keep them for a reasonable time for the convenience of the owner; and during this time he has the same responsibility for them as when they were on transit. After the expiration of that time he is only liable for the goods as an ordinary depositee. The carrier is under no obligation to give notice to the consignor, if the consignee, after tender, refuses to accept delivery, but he must act generally in the matter as would a reasonable man. He may, after reasonable attempts to effect delivery, return the goods to the consignor.

Special conditions of railway companies.—Each railway system has its own special conditions. Here it will be sufficient to set out as briefly as possible those conditions which are imposed, with slight variation, by every railway company. In the first place there are two general statutory provisions which should be noticed, and a third provision which is usually found, with little or no variation, in the special act of each railway company. These three provisions are as follows:—

(1) No person shall be entitled to carry, or to require a railway company to carry upon a railway, any aquafortis, oil of vitriol, gunpowder, lucifer matches, or any other goods which in the judgment of the company may be of a dangerous nature, and if any person send by the railway any such goods without distinctly

marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the book-keeper or other servant of the company with whom the same are left at the time of so sending, he shall forfeit to the company £20 for every such offence; and it shall be lawful for the company to refuse to take any parcel that they may suspect to contain goods of a dangerous nature, or require the same to be opened to ascertain the fact. (2) Any person failing to give an account of or to produce the way-bill or bill of lading of any carriage or goods upon a railway to the collector demanding the same, or giving a false account, or unloading or taking off any part of such goods at any other place than that mentioned in such account with intent to avoid payment, is liable to a penalty of £10 for every ton of goods, or for any parcel not exceeding 1 cwt., in addition to the toll. (3) The owner of any goods permitting the same to remain beyond the space of fourteen days, and neglecting to remove such goods from a railway company's wharves or warehouses within twenty-four hours after notice has been given, thereby subjects himself to a charge payable to the company not exceeding 2s. 6d. per ton per day.

Passenger train conveyance.—It is now usual for railway companies serving agricultural districts to undertake the carriage and delivery of farm and market produce, per passenger train, at specially low rates. The maximum weight of each parcel is fixed at 60 lbs., and in consideration of the special convenience of this delivery and of the low rates charged, the carriage is always at the owner's risk; which means that the company would be liable only in case of gross negligence. General parcels are also carried by passenger train. Light packages, frail or very bulky in proportion to their weight, such as picture frames, light furniture packed, cases of stuffed birds and animals, bottles of medicine in packages, parcels containing glass, china, porcelain, pasteboard, boxes of light millinery or feathers, marble clocks packed in cases, or violins packed, are charged 50 per cent. more than the ordinary rates when carried at the company's risk, and 25 per cent. more at the owner's risk. Certain articles, such as statuary, musical and scientific instruments, and lamps, are only conveyed at the owner's risk. Explosive goods are not carried at all by passenger train.

Insurance.—The goods which are enumerated in the Act of 1831 are divided by railway companies into four classes. It will be useful to here set out these goods as so arranged. Class I. comprises: Stamps, maps, silks, or goods mixed with silk, where silk is more than 30 per cent. of the value, furs, clocks, timepieces, plated articles, coins (gold and silver), manufactured and unmanufactured gold and silver, jewellery (not containing precious stones) from or to manufacturers or factors, watches, gold and silver plate, handmade lace, engravings, trinkets, bank-notes, title-deeds, writings, bills of exchange, orders, notes, or securities for payment of English or foreign money, and platinum. Class II. comprises: Glass of all kinds, except as named in Class IV., china from manufacturers or factors, set or unset precious stones, jewellery *not* from or to manufacturers or factors, jewellery containing precious stones from or to manufacturers. Class III. includes only pictures and paintings. Class IV. comprises: Glass (stained, silvered, and bent), plate glass in plates each exceeding in size 30 ft. superficial, and china other than from manufacturers or factors. To insure against loss or damage to such goods, an insurance charge is payable which, taking Class I. as the normal rate, is in Class II. about twice, in Class III. about five times, and in Class IV. about ten times the rate for Class I. Goods exceeding £500 in value are usually the subject of special arrangement; and in all cases the company reserves the right of inspecting, before effecting any insurance, all goods delivered to it for insurance, in order to ascertain that the articles are in accordance with the declaration, and are in good condition and well packed. The company also usually

reserves the right of sending a representative to be present at the unpacking of such insured goods.

Cattle.—Railway companies always decline to be considered common carriers of horses, cattle, dogs, small quadrupeds, poultry, or other birds. A company will therefore only receive, forward, and deliver them upon certain conditions. One is that the company will not be responsible for loss, damage, or delay thereof, except upon proof that the same was occasioned by neglect or default on the part of the company or its servants. The company also declines in any case to be responsible for loss of market, or any other special damages whatever. In case, however, of a company unreasonably delaying delivery, the claimant would have little difficulty in getting a judge or jury to infer therefrom that the delay was in fact caused by neglect or default on the part of the company or its servants; this inference having been drawn, the company would be as much liable for damages for breach of its contract as would any other person. *See* BAILMENTS; RAILWAY PASSENGERS' LUGGAGE; DANGEROUS GOODS.

CARRYING OVER is the term applied to the arrangement by which parties to a Stock Exchange bargain defer payment or delivery, by continuing the transaction into the next account. As a rule, Stock Exchange bargains are done for a fortnightly SETTLEMENT (*q.v.*); and whether the purchase or sale, the subject of the bargain, is intended as an investment and to be absolutely completed, or whether it is merely a means of speculation in fall or rise of prices, the bargain is only expected to be concluded on the settlement day. But probably the greater part of these bargains are the subject of speculation only—the speculator not intending to complete by paying outright for the shares he has bought and take them off the market, or by delivering the shares he has sold and receive the price, as the case may be. It often happens that the intention alone has little to do with the matter, for the speculator may not be financially in a position to pay for the shares he has bought, or may not actually possess the shares he has sold and is expected to deliver. His real idea was, in the first case, that the price of the shares he had bought would rise before the next settlement; and that therefore he could sell the same quantity and so balance his obligations, and at the same time receive the profit comprised in the difference between the price at which he had bought and that at which he sold—a speculation of this kind is called a *bull*. In the second case, we meet the *bear*, whose method of operation is the reverse of that of the bull. The bear sells shares the price of which he thinks will fall, in the expectation that in such an event he will be able to buy a balancing quantity at a lower figure than that at which he had sold, and so make a profit. Both bulls and bears are known as speculators in differences; the bull may not have the money to pay the price, the bear may not have the shares to deliver. Their great hope is a rise or fall, as the case may be, in the price of the subject of their bargain before the next settlement, so that they may then profitably close their respective transactions with the receipt of differences in price. But it often happens that prices do not change, or that they move in a direction contrary to that expected. Thus the bull may be confronted with falling, and the bear with rising prices.

Whenever prices remain stationary, or move in the unexpected direction, the speculator finds himself to some extent out of pocket. If prices have not changed, his loss is limited to the broker's commission (which may be charged and included, without specific disclosure, in addition to the jobber's contango in the "net" rate charged for the carry-over: *Stubbs* v. *Slater*) and the other incidental expenses of the transaction; but if the prices have taken a contrary

turn he also loses the difference. It is here that the carrying over becomes to the speculator an important feature in Stock Exchange practice. If he is a "bull," and cannot afford and does not wish to pay the full price of the shares he has bought and to take delivery of them, or take them off the market as it is called, his broker expects him to at least pay to him the difference and the expenses, whereupon the broker will arrange a carry-over. To do this he finds a third party who is willing to provide the money for taking the shares off the market, and to hold them on behalf of the speculator until the next following settlement, upon the understanding that the speculator then relieves him of them at the sum so provided. For this accommodation the third party requires remuneration in the shape of interest or a percentage upon the money he has found. Such remuneration is called a *contango*, and is charged by the broker to his client the speculator. Carrying-over on these terms may be repeated on subsequent settlements, but if the shares dealt in are of a highly speculative nature and are being made the subject of general bulling operations, the rates for contango will rise, and eventually the broker may deem it wise to refuse to carry over, and will close the account. The speculator will then be required to pay the final difference.

In the case of a "bear" carry-over, the above operation is reversed, the speculator having to find a third party who will lend him, until the ensuing settlement, the shares he has contracted to sell. The remuneration for this loan is known as *backwardation*, and, like the contango, its rate may vary from time to time, and with regard to the particular shares being dealt in. And here too, according to the movements of prices, the "bear" may ultimately find the difference in his favour or against him. *See* also COVER; STOCK EXCHANGE.

CATCHING AND UNDERHAND BARGAINS.—The recent controversy over the unconscionable and usurious practices of a certain class of money-lenders and the legislation following thereon has apparently allowed the public to infer that, apart from special legislation, the borrower of money is always at the mercy of the lender—that the courts will always, apart from the limited provisions of the Money Lenders Act, enforce every contract connected with such a transaction. But this is not the fact, especially in cases of dealings by money-lenders with expectant heirs and reversioners, and others in a similar position. Such contracts, indeed, are not encouraged by the law, for they generally proceed from excessive prodigality on the one hand and extortion on the other, which are so disastrous in their consequences as to make it the duty of a court, if it can, to restrain them. Apart from these particular instances, a court of equity has an undoubted jurisdiction to relieve against every species of fraud.

Fraud may be of several kinds: actual, arising from plain facts of imposition; apparent, from the intrinsic nature and subject of the bargain itself, where it is one which no man in his senses, and not under delusion, would make on the one hand, and which no honest and fair man would accept on the other; and presumptive, where one person takes surreptitious advantage of the weakness or necessity of another. There is a further kind of fraud which may be inferred by the Court itself, from the nature and circumstances of the transaction, as being an imposition and deceit on other persons not parties to the fraudulent agreement. Thus, where a debtor

enters into a deed of composition with his creditors for, say, 10s. in the pound, all the creditors being required to execute it within a certain period, if the debtor privately agrees with one creditor to induce him to sign the deed, that he will pay, or secure a greater sum in respect of his particular debt—in this there is no particular deceit on the debtor who is party thereto, but it tends to deceit of the other creditors, who relied on an equal composition and did it out of compassion to the debtor. The Court will relieve against all such **underhand bargains.** Particular persons, in contracts, must not only transact *bonâ fide* between themselves, but must not transact *mala fide* in respect of other persons who stand in such a relation to either as to be affected by the contract or the consequences of it; and as the rest of mankind, beside the party contracting, are concerned, such relief may be said to be dictated by public utility.

A further head of fraud on which the Court grants relief is that which infects **catching bargains** with heirs, reversioners, or expectants on the life of another, &c. These are generally mixed cases, compounded of all or several species of fraud, there being sometimes proof of actual fraud, which is always decisive. There is always fraud presumed or inferred from the circumstances or conditions of the parties contracting—weakness on one side, usury on the other, or extortion or advantage taken of that weakness. There is always an appearance of fraud from the nature of the bargain, appearing merely from its intrinsic unconscionableness. To set aside the purchase of an interest in possession as distinguished from one in reversion or expectancy, there must be an inequality so strong, gross, and manifest that it must be impossible to state it to a man of common sense without producing an exclamation at the inequality of it. But with regard to interests in expectancy or reversion the mere inadequacy of price is a sufficient ground for rescinding contracts or dealings therein. Such cases would arise where a reversioner has mortgaged his reversion, or granted an annuity for an unreasonable and inadequate price. In order to obtain relief it is not necessary for the reversioner to be of comparatively tender age, or that he did not understand the nature of the transaction, or was in financial distress at the time. Should the purchaser of a reversion at an inadequate price resell it for its true value the reversioner may recover, notwithstanding the re-sale, where the subsequent purchaser knew at the time of purchase of the under value on the original sale.

Valuation.—The Courts do not admit that any reversionary interest is incapable of valuation; and if the contingency is very remote, no deduction should be made in respect thereof in estimating the value. There is no legal necessity to sell a reversion by auction only; it is sufficient if the price is a fair one as calculated at the time of the sale. In calculating the value of a reversionary interest, the valuation should not be based solely upon actuarial tables, which are usually too general to be of value in isolated individual cases. The proper method is a valuation by a surveyor, or auctioneer, who not only has in view the results of average mortality tables, but also pays particular attention to the nature, position, and other characteristic incidents of the property the subject of the reversion. Reference should be made to Lord Selborne's Act (31 & 32 Vict. c. 4). *See* REVERSIONS.

CATTLE—CATTLE SALESMEN—Importation of cattle.—Imported cattle are required to be landed at a foreign animals wharf. Before such cattle can be landed a request in writing, in the prescribed form, is required

to be made by the importer or his agent, setting forth the number of animals of each kind it is intended to land. Upon this the animals may be landed, and having been inspected by the officers the latter will, the same evening, send the request and a certificate to the authorities. Any animals shipped in a compartment of a vessel which has not been duly cleansed and disinfected, after having been used for the importation of foreign animals, are liable to forfeiture. Animals brought from certain countries, scheduled from time to time by the authorities, may not be landed. At present only cattle from North America may be imported alive, and such cattle when imported must be killed within ten days. Other importation of meat is in the shape of chilled and frozen carcases, chiefly from the Argentine. The following are the conditions to which is subject the landing of foreign animals:—

(1) That the vessel in which they are imported has not, within twenty-eight days before taking them on board, had on board any animal exported or carried coastwise from a port or place in any scheduled country. (2) That the vessel has not, within twenty-one days before taking on board any animal imported or at any time since taking them on board, entered or been in any port or place in any scheduled country. (3) That the animals imported have not, while on board the vessel, been in contact with any animal exported or carried coastwise from any port or place in any scheduled country.

After the landing of such animals, the vessels, movable gangways, and other apparatus are required to be disinfected. If it appears to a principal officer of customs that any disease may be introduced through any foreign animal, horse, ass, mule, or carcase, the same may be seized and detained; and if the circumstances require it, be slaughtered or destroyed, or delivered to the owner upon any conditions the authorities may think fit to impose. In case of such a detention, the owner may be required to pay the expenses thereof. To contravene any of the regulations made in respect of the importation of foreign animals is to commit a punishable offence.

Salesmen are persons who make it their business to sell cattle on behalf of others, either as factors, commission agents, or auctioneers; they are mercantile agents within the meaning of the Factors Acts, and as such have an implied authority to sell. An auctioneer may not sell cattle at a mart where cattle are habitually or periodically sold, unless such mart has all the weighing facilities usually provided at a regular market or fair. He must make the same returns when selling at a mart as he is required to make when selling at a market or fair. These provisions are contained in the Markets and Fairs (Weighing of Cattle) Act, 1891, and their breach subjects the auctioneer to a penalty of £20. Except for use by themselves and family, cattle salesmen are prohibited by statute from buying on their own account in London or on the road to London, or selling in London on their own account any live cattle, sheep, or swine. *See* also ANIMALS; BUTCHERS; CONTAGIOUS DISEASES.

CAVEAT EMPTOR.—Upon the sale and purchase of goods the ordinary rule of law has always been that conditions and warranties are not implied. If the buyer wants an express guarantee or warranty as to quality or otherwise, he must ask for it, and see that it is duly given to him. The rule is, therefore, *caveat emptor*—let the buyer beware. As in many other rules of law, there are in this case many important exceptions which have

developed during many years of litigation, but are now digested in the Sale of Goods Act, 1893.

Title to goods.—In a contract of sale there are the following implied condition and warranties, unless the circumstances of the contract are such as to show a different intention. (1) A condition on the part of the seller: (*a*) in the case of a sale that he has a right to sell the goods; (*b*) in the case of an agreement to sell, that he will have a right to sell the goods at the time when the property is to pass. (2) A warranty that the buyer shall have and enjoy quiet possession of the goods. (3) A warranty that the goods are free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made.

Sale by description.—Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description. If the sale is by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

Conditions as to quality.—Consistently with the maxim at the head of this article, there is generally no implied warranty or condition as to the quality or fitness, for any particular purpose, of goods supplied under a contract of sale. There are only two classes of exceptions to this rule, the first of which is created by special statutes, as, for example, in the case of CHAIN (*q.v.*) cables, the seller of which is by special statute held to warrant their quality and fitness, whether he actually does so in fact or not. The second class is created by the Sale of Goods Act, which contains the following exceptions to the rule: (1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose. But in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose. (2) Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or not), there is an implied condition that the goods are of merchantable quality; but if the buyer has examined the goods there will be no implied condition as regards defects which the examination ought to have revealed. (3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade. (4) An express warranty or condition will not negative a warranty or condition implied by the Sale of Goods Act unless inconsistent therewith. *See* SALE OF GOODS; SAMPLES.

CHAINS used as cables upon British ships are required to pass a test fixed by statute, and to be properly stamped. It is a misdemeanour to sell or buy such a chain cable not tested and stamped, and by statute any contract for sale impliedly includes a warranty that the cable has been properly tested and stamped. A marine store dealer is not allowed to cut up or unlay a cable, or similar article, exceeding five fathoms in length. He may do so, however, if he has the written permit of a local receiver or magistrate, which may be obtained by the dealer upon his making a declaration stating the quality and description of the cable, the name and description of the person

from whom he has obtained it, and that he acquired it honestly and believing that the person from whom he bought it had an honest title to it. To cut up and unlay a cable without such a permit, or having obtained the permit to do so without having previously advertised the fact that he had received the permit, is to render himself liable to heavy penalties.

CHAMBERS OF COMMERCE are voluntary associations formed to promote and protect general trade interests, as distinguished from trades of a particular class. In the United Kingdom they exist in all the important centres of commerce, and these local chambers are usually in federation with a general Association of Chambers of Commerce of the United Kingdom. The local chambers are also in touch with local societies connected with particular trades, and these societies are often directly affiliated with the local chambers. Not only do the Chambers of Commerce act as a medium for intercourse between commercial men and for the general promotion and protection of their interests, but the Government itself takes advantage of their existence in order to obtain, as well as to disseminate, useful commercial intelligence and advice. Chambers of Commerce are available for arbitration in mercantile disputes; they discuss commercial law and suggest reforms; promote commercial and technical education; and collect and distribute statistical and commercial information.

Glasgow was the first city to establish a Chamber of Commerce; this was in 1773, and since then their formation has become a matter of course wherever there is a locality with trade interests of any extent to promote or protect. In France the Chambers of Commerce are not voluntary associations in the same sense as are the English; they are rather departments of government activity.

CHANCELLOR.—*The Lord Chancellor* occupies the oldest and most dignified of the lay offices of State; to kill him is high treason. By virtue of his office, he is the king's principal legal adviser, and a privy councillor; speaker, by prescription, of the House of Lords, whether he be a peer or not; head of the profession of the law, and a member of the Court of Appeal. He has also a seat in the Cabinet, and usually takes an active part in political life. His title is Lord High Chancellor of Great Britain, and he ranks above all dukes not of the blood royal, and next to the Premier. He is appointed by the delivery of the Great Seal into his custody, and may be dismissed by its resumption. Being, however, attached to a political party, he would resign therewith. He is conservator and justice of the peace throughout England by prescription; is visitor in the king's right of all hospitals and colleges of royal foundation; and patron of all Crown livings under the value of £20 a year, according to the valuation made in the reign of Henry VII. He appoints all the judges of the High Court, except the Lord Chief Justice, and appoints and removes all justices of the peace, though at the recommendation of lord-lieutenants of counties. He issues writs for summoning parliaments, and transacts all business connected with the custody and use of the great seal; is entrusted with care of infants and their property; and has jurisdiction over lunatics and idiots. His salary is £10,000 a year.

The Chancellor of a Diocese is vicar-general to the bishop, holds his courts, and directs and assists him in matters of ecclesiastical law. He has a freehold in his office, and is not necessarily an ecclesiastic.

The Chancellor of the Duchy of Lancaster presides either in person or by deputy in the Court of the Duchy in all matters of equity relating to lands held of the king as Duke of Lancaster.

The Chancellor of the Exchequer holds the seal of the Exchequer, and with that dignity combines the office of Under-Treasurer, the functions of Lord High Treasurer being now executed by the Lords Commissioners of the Treasury. He is the responsible finance minister of the Crown, and always a member of the Cabinet. Originally he discharged judicial functions, and at a later period sat in the Court of Exchequer. At the present day his only appearance in Court is ceremonial, as when the sheriffs are nominated.

CHANCERY DIVISION.—This is the title of one of the divisions of the High Court of Justice, as established by the Judicature Acts. This division is the successor of the former Court of Chancery, which administered equity, as technically distinguished from law; now, strictly speaking, there is no such court, its modern representative being but a division of the High Court. The exclusive statutory jurisdiction of the Court of Chancery has been preserved by the Judicature Acts, but the matters assigned by them to the new Chancery Division are not co-extensive with the old equity jurisdiction. On the other hand, almost any common law action can now be brought in the Chancery Division. The aim of the Judicature Acts was to abolish all distinction between law and equity, and to make the High Court, and its divisions, the court of both equally. So far as that particular aim is concerned the Act may be said to have failed, for the Chancery Division is to-day, in the subject-matter of the causes it deals with, almost as exclusively a court of equity as was its predecessor.

The following are the causes and matters peculiarly within the cognisance of this division: The administration of the estates of deceased persons; the dissolution of partnerships and the taking of partnership accounts; the redemption and foreclosure of mortgages; the raising of portions or other charges on land; the sale and distribution of the proceeds of property, subject to any lien or charge; the execution of trusts, charitable or private; the rectification, or setting aside, or cancellation of deeds or other written instruments; the specific performance of contracts between vendors and purchasers of real estates, including contracts for leases; the partition or sale of real estates; the wardship of infants, and the care of infants' estates.

The practice of the Court is practically the same as that of the King's Bench Division [*see* ACTION], but, as a necessity of the character of the actions with which it deals, it has an extensive and comprehensive procedure in chambers adapted for the working out of its judgments. By this means, for example, after decreeing the dissolution of a partnership, it will adjust the accounts between the partners in the chambers of the judge.

CHARACTER, false.—It is a punishable offence to falsely personate a master, or his wife, relation, agent, or servant, and either personally or in writing to give any false, forged, or counterfeit character to any person offering himself to be hired as a servant. So, also, to knowingly and wilfully pretend, or falsely assert in writing, that any servant has been hired for any other period than the true period he shall have been hired; or that any servant was discharged or left his service at any other time than that at

which he actually left; or that any servant has not been hired or employed in any previous service. It is also a punishable offence for any person who offers himself as a servant to assert or pretend that he has served in any service in which he has not actually served; or to tender a false, forged, or counterfeit certificate of character; or to alter any word, date, or thing contained in any certificate given by any former master.

CHARGING ORDER.—This is a means by which a judgment creditor may enforce payment of his debt out of property belonging to the debtor which is not available for the ordinary processes of execution. Where any person, against whom there is in force a judgment of the High Court, has any Government stock, funds, or annuities, or any stock or shares of and in any public company in England, or is interested in the interest or dividends thereof, a judge of the High Court may order such stock, &c., or interest and dividends, to be charged with payment of the amount due on the judgment. It does not matter whether the stock, &c., is standing in the debtor's name in his own right, or whether it is in the name of a trustee on his behalf, or of the Paymaster-General; it is sufficient if it is in fact the property, in possession, reversion, or contingent, of the debtor. After the creditor has obtained the charging order he stands in the same position, and has the same rights and remedies in respect to the stock, &c., as if the debtor himself had created the charge, except for the postponement of their enforcement, as will be presently referred to.

The application for a charging order may be made by the creditor without notice thereof to the debtor; this is to prevent the debtor disposing of the property in anticipation of the order and with a view to defeat the efforts of the creditor. Upon this application, an order *nisi* is made, which should be served upon the debtor, and notice thereof given to the Bank of England or company whose stocks or shares are the object of it. The Bank of England, or the company, as the case may be, cannot then permit a transfer of the stocks or shares. Upon a day fixed by the Court, the debtor will be required to appear and show cause why the order *nisi* should not be made absolute. If he does show good cause, the order *nisi* will be discharged, and the stocks or shares released; but if he does not, the order will be made absolute and final. The creditor having thus got the charging order must wait six months before he can proceed to realise the shares, and this he can do only by a separate action. He can, however, in the meanwhile obtain a STOP-ORDER (*q.v.*) upon any dividends which may become due.

A solicitor may obtain a charge for his taxed costs upon any property which has been recovered or preserved through his instrumentality. The costs must be in respect of, or incidental to, the action in which the property has been so recovered or preserved, and the order must be made by the judge who has cognisance of the action.

Partners.—Where a creditor obtains judgment against a person who is a member of a partnership firm, he may obtain a charging order against that person's interest in the partnership property. The judgment where this is needed would be one against the partner in his private capacity, and not as a partner. *See* EXECUTION; ATTACHMENT; DISTRINGAS.

CHARTER-PARTY.—This is the name given to an agreement whereby

the shipowner agrees to place an entire ship, or a part of it, at the disposal of a merchant for the conveyance of goods. The shipowner binds himself thereby to convey the goods to a specified place for a certain sum of money, which the merchant agrees to pay as freight for their carriage. The merchant is under such circumstances called the charterer; the goods, the subject of the contract, are known as a cargo. Generally speaking, the ship continues to remain in the possession and under the control of its owner, the charterer merely acquiring a right to place his goods in the vessel and to have them conveyed according to the terms of the charter-party. A charter-party may, however, amount to a complete letting of the ship, so as to make the ship in effect the exclusive vessel of the charterer, and to oust the owner from all power and control thereover. The charter-party itself must contain the particular terms under which the ship is let. It is, however, not unusual to have bills of lading as well as a charter-party, the object of which is to provide the charterer with a more available means of dealing with his cargo during the course of its conveyance. Where such is the case, and the charter-party itself refers to the bills of lading, both the charter-party and the bills of lading may be read together in order to discover the exact terms of the contract between the shipowner and the charterer. A charter-party should be stamped 6d.; this duty may be denoted by an adhesive stamp, which should be cancelled by the person whose last execution makes the contract binding. Should it not be stamped before execution, a stamp will be impressed thereon by the Inland Revenue authorities within a month from the date of execution, but certain penalties may be required. A charter-party may be by deed, but this is not necessary; if it is by deed executed by the master of the ship, and not by the owners, who are not parties to it, the latter cannot bring an action upon it, though they would be liable to an action by the charterers for any breach of the duties generally as shipowners, and not inconsistent with the terms of the charter-party.

The loading of the cargo.—Cargo is a term which varies in its meaning according to the document in which it appears; but unless there is something in the context to give it a different signification it means, in a charter-party, the entire load of the ship which carries it. The charter-party states the port or ports of destination of the cargo, and the freight to be paid therefor, which may be either a gross sum or so much per ton, or so much for each tub, cask, or other package as the case may be, of the goods comprising the cargo. If the agreement is not to pay a certain sum for the entire ship, or a certain portion of it, but to pay so much per ton, the charterer usually covenants to load a fixed amount or a full cargo. It is immaterial whether the charterer loads with his own goods or those of others. Where the charterer has agreed to pay a certain sum for the whole or a specified part of the ship, that sum will be payable even although he has not supplied enough for a full cargo. But if he has undertaken to furnish the latter and to pay a certain sum per ton or package, he will in like manner be bound to pay for as many tons or packages as the ship, or part hired, was capable of containing, even although he has not been able to put on board any lading at all. It is well known that the actual burden of which a ship is capable generally exceeds that at which she is registered; consequently, if the char-

terer enters into a contract to supply a full cargo for a ship, the burden registered being that referred to in the contract and being less than the actual accommodation of the ship, he cannot insist upon limiting the amount of the cargo he is to supply to the amount referred to as the ship's burden. But if the agreement to supply a full cargo is followed by such words as "say about 1000 tons," this would measure the quantity which the shipowner is bound to accept.

And the shipowner is himself under some most important obligations. These are generally expressed in the charter-party, or some of them may be implied by law. The ship must be ready for loading, and at the appointed place, at the time specified; but a charterer should remember that in the absence of express stipulation, he is liable for not producing a cargo, though not personally in fault in not doing so. It is clearly established that where there is a contract to carry goods in a ship there is, in the absence of any stipulation to the contrary, an implied engagement on the part of the owner that the ship is reasonably fit for the purposes of such carriage. But this condition of seaworthiness extends only to the fitness of the ship at the commencement of the voyage; if it is to be extended further it must be done by express stipulation in the charter-party. There was held to be a breach of the condition for fitness where a merchant shipped cattle on board the owner's ship, which had on her previous voyage carried cattle suffering from foot and mouth disease, as a consequence of which the merchant's cattle were infected; and the merchant was awarded the full value of the cattle, notwithstanding the fact that the contract of carriage had limited the shipowner's liability in respect of cattle to £5 per head.

Transit of cargo.—During transit, the cargo of a ship is liable to various contingencies unknown in carriage by land. It may happen that through war, or otherwise, the ship is unable to land the cargo at the port of consignment, but it is found necessary to land and sell it elsewhere. Or the ship may meet with such stress of weather as to require a sacrifice of the cargo or some part of it. Where the parties have entered into a contract by which freight is made payable in one event only, viz. that of delivery of the cargo according to the terms of the contract, the owner would not be entitled to recover freight if no such delivery has been made; he should have provided in the contract for the emergency which has arisen. Such a provision is now always made in a charter-party or bill of lading. By a certain charter-party the freight was made payable upon the delivery of the cargo at the port of destination, but the shipowner was held not to be entitled to the freight under the following circumstances. The ship meeting with sea damage from heavy weather, the captain at an intermediate port justifiably sold part of the cargo to raise funds for the necessary repairs, the cargo so sold fetching more than it would have done if carried to the port of destination, and the proceeds of the sale were paid over to the charterer.

In such cases as the last, the general position of the owner of the cargo is discussed in the article on AVERAGE. The position of purchasers of cargo so sold is worth notice. The cases in which have been considered the rights of the purchasers of cargo from the captain, were for a long time only those where the cargo had been on shore. The rule then laid down, and

now generally applied, is that the captain becomes agent for sale of the cargo, that is, has authority to sell so as to bind the owners of the goods though they were entrusted to him for a different purpose, namely, carriage to their port of destination. But this agency only arises where there is a necessity, and it lies on those who claim a title to the cargo, as purchasers from the captain, to prove that this necessity clearly existed. It is not sufficient merely to prove that the captain thought he was doing the best for all concerned, or even that the course adopted was, so far as can be ascertained, the best for all concerned. The principle is that the captain is authorised by the owners only to convey the goods to the port of discharge, and that nothing but necessity can authorise him to adopt any other course of action.

Purchasers of cargo from a captain cannot justify the sale unless it is established that the master used all reasonable efforts to have the goods conveyed to their destination, and that he could not by any means available to him carry the goods, or procure the goods to be carried, to their destination as merchantable articles, or could not do so without an expenditure clearly exceeding their value after their arrival at their destination.

Delivery.—A captain would be justified in reasonably putting back for the purpose of ascertaining whether a war had been declared, and would be guilty of no improper deviation or delay in so doing; if he did not proceed to the port of destination in consequence of war having been declared, delivery at the port to which he had put back would be sufficient delivery, although not in accordance with the terms of the charter-party. Should the captain receive credible information that if he continued in the direct course of his voyage his ship would be exposed to some imminent peril, he is justified in pausing and deviating from the direct course, and taking any steps that a prudent man would take for the purpose of avoiding the danger. In such cases the shipowner would not be liable in damages for breach of contract.

There is a very frequent stipulation in a contract of affreightment, by which one party is held liable to the other in case the former delays the ship, *e.g.* when unloading, beyond a certain number of days known as lay-days. Such a liability is one for DEMURRAGE (*q.v.*). Delivery is complete when the shipowner has brought the ship to the place of delivery, and placed the cargo on the rail of the ship in such a position that the charterer can take it.

If the consignee does not take delivery of a cargo of imported goods within the time mentioned in the contract of carriage, or if no time mentioned, within seventy-two hours, excluding Sundays and holidays, from the time that the ship is reported, the captain is bound by statute to land and warehouse them. If he has any lien thereon he must give written notice thereof when warehousing, and the goods will not be delivered up until the lien is discharged, or a deposit made sufficient to cover the lien claimed. If the goods are not taken out of the warehouse within ninety days they may be sold by public auction, and the proceeds applied to the expenses and the discharge of the lien. *See* AFFREIGHTMENT; BILL OF LADING; CARRIERS.

Form of Charter-Party.

LONDON, 19—.

Charter-Party.

It is this day mutually agreed between of the good ship or Vessel called the Tons Register, or thereabouts, now and of London, Merchant That the said Ship being tight, staunch and strong, and every way fitted for the present Voyage, shall, with all convenient speed, sail and proceed to or so near thereunto as she may safely get, and there load from the factors of the Charterers, a full and complete Cargo of or other Grain or Goods, which the said Merchant bind themselves to ship, not exceeding what she can reasonably stow and carry over and above her Tackle, Apparel, Provision, and Furniture; and being so loaded shall therewith proceed to or so near thereunto as she may safely get, and deliver the same on being paid Freight at the rate of or other Grain or Goods in proportion, in full of Port Charges as customary. The act of God, perils of the sea, fire on board, in hulk, or craft, or on shore, barratry of the Master and Crew, enemies, pirates, and thieves, arrests and restraints of princes, rulers and people, collisions, stranding, and other accidents of navigation excepted, even when occasioned by negligence, default or error in judgment of the Pilot, Master, Mariners, or other servants of the Shipowners. Not answerable for any loss or damage arising from explosion, or any latent defect in the hull, not resulting from want of due diligence by the Owners of the Ship, or any of them, or by the Ship's Husband or Manager. The Ship has liberty to call in any ports in any order, to sail without Pilots, to tow and assist Vessels in distress, and to deviate for the purpose of saving life or property. The Freight to be paid on unloading and right delivery of the Cargo in Cash. The Captain to have a lien on the Cargo for all Freight, Dead Freight, and Demurrage, in consideration of which Charterer's liability to cease on the Cargo being shipped, provided it is worth the stipulated Freight. Days are to be allowed the said Merchant (if the ship is not sooner despatched) for loading the said Ship and discharging. And all days on Demurrage over and above the said laying days, Pounds per day. Cash for the disbursements of the Vessel to be advanced at the port of loading, if required, free of Interest or Commission, but subject to Insurance. The Cargo to be brought to and taken from alongside at Merchants' risk and expense.

The Brokerage of this Charter is at Five per cent., payable by the ship on the amount of Freight, Primage, and Demurrage, and is due on signment hereof to MORLEY BROS. & Co., by whom the Slip is to be reported at the Custom House in London, or their Agents, if to any other Port.

Penalty for non-performance of this Agreement—estimated amount of Freight.

CHATTELS is a term the significance of which must be understood by every one who would wish to intelligently appreciate almost any legal reference. The word is for ever in use, and generally conjointly with the word "goods"—goods and chattels; the latter word being the modern representative of the word "cattle." Speaking generally, chattels are the personal estate of a man, as distinguished from his real estate. To define real estate is comparatively easy, and since a man's whole estate can only be divided into real and personal, chattels may be taken as all his property other than his

realty. The latter, or real estate, comprises, according to the Wills Act: manors, advowsons, messuages, lands, tithes, rents, and hereditaments, whether freehold, customary freehold, tenant-right, customary or copyhold, or of any other tenure, and whether corporeal, incorporeal, or personal, and any undivided share thereof, and any estate, right, or interest (other than a chattel interest) therein. The phrase "other than a chattel interest" is taken by lawyers to refer to property held on lease for years. Bearing in mind the fact that a leasehold property is not real estate, we may take it that all property other than that just enumerated is personal or chattel property. Except leasehold property, it may be said that all personal estate is movable; and the words immovable and movable are used in many systems of law, other than the English, to connote as nearly as possible what we call real and personal respectively. The word chattel is said to come from a French word signifying goods. This derivation is probably incorrect; but it is as useful in its way as the true one, as its etymological history through the French language affords the best opportunity to grasp its real meaning. In the law of Normandy a chattel is described as a mere movable, but at the same time it is set in opposition to a fief or feud; so that not only goods, but whatever was not a feud, were accounted chattels. Thus is explained the apparent inconsistency of a leasehold term of 999 years being a mere chattel, whilst a tenure for a single life is real estate. Leases were originally of rare occurrence, and accordingly the feudal system, upon which our land holding and laws are based, took no regard thereof.

The law distributes chattels into two kinds: chattels real and chattels personal. A leasehold interest is an instance of the former; a piano of the latter. A chattel real can be alienated, *e.g.* by purchase or mortgage, only by deed; a chattel personal merely by delivery of possession, except in certain exceptional cases, as for example where a bill of sale is required. Real estate, upon the death of its owner intestate, devolves upon his heir; chattels, both real and personal, are divided among his next-of-kin. Again, the rule of succession in such a case may differ; for example, if a Frenchman domiciled in France die leaving land and chattels in this country, the succession to the land will be regulated according to the law of the country in which the land is situate—England, whilst the succession to the chattels will be regulated according to the law of the country of his domicile—France. *See* CHOSE IN ACTION.

CHEAP TRAINS.—A railway company is bound to afford a proportionate amount of accommodation for passengers who pay fares not exceeding the rate of one penny a mile; and also to provide sufficient workmen's trains, at reasonable fares, at times between 6 P.M. and 8 A.M., for workmen going to and returning from their work. The Board of Trade is invested by the Cheap Trains Act, 1883, with supervisory powers in this matter, and if the Board should certify that a railway company is not providing the proper accommodation, the company will thereafter lose a certain remission of passenger duty, the benefit of which it would otherwise enjoy. The matter may be brought before the Railway Commission, which has power, where it deems such an order proper, to require the railway company to provide additional trains.

CHEATING is an offence somewhat akin to obtaining goods or money by false pretences. It may be either a private or public cheat or fraud, and is an indictable misdemeanour at common law. Certain forms of cheating may, however, be punished upon summary conviction. In cases where a cheat or fraud against private individuals is charged, there are two conditions precedent to the offence—(1) that the act has been completed; and (2) that there has been injury to the individual. Instances of private cheats, or cheats against individuals, are where a man, in the course of his business, fraudulently sells a spurious article as genuine; where he sells goods by false weights; and where, for example, he sells a picture the signature to which is forged, and which has not been painted by the artist whose signature is represented. In private cheats, the fact of injury to the individual cheated is an essential ingredient in the offence, for without such an injury a mere naked lie might constitute an offence. In cases where the cheat is public, very different considerations apply. Such cheats have been defined as levelled against the public justice of the kingdom, and it is immaterial that the act complained of has been abortive and of no effect. Thus a person who makes a false affidavit is guilty of a public cheat, and it would be absurd to make the guilt of such person depend upon the subsequent use of the false affidavit, he being equally guilty of perjury, though no use is afterwards made of it. The real offence is the doing of some act which has a tendency and is intended to pervert the administration of public justice. A man who tampered with certain samples of wheat which had been taken for the purpose of an intended arbitration, has been held to have been guilty of a fraud or cheat at common law, and this although the arbitration was abandoned and the samples never used. *See* DECEIT.

CHEMIST AND DRUGGIST.—This term, and now also the term **Pharmacist,** are applied by statute to those persons (*a*) who, at any time before the 31st July 1868, carried on in Great Britain the business of a chemist and druggist, in the keeping of open shop for the compounding of the prescriptions of duly qualified medical practitioners; or (*b*) who before the same date were assistants in such a business, and have since been duly registered according to the provisions of the Pharmacy Acts; or (*c*) who have been duly registered under the Acts, without regard to whether they were or were not in business or assistants before the above date. A woman may qualify as a chemist and druggist. In 1852 the legislature found it expedient for the safety of the public that persons exercising the business of chemists in Great Britain should possess a practical knowledge of pharmaceutical and general chemistry and other branches of useful knowledge. At that time there was in existence a society of chemists and druggists called "The Pharmaceutical Society of Great Britain," which had been incorporated by royal charter in 1843, the object of which society was the advancement of chemistry and pharmacy, and the promotion of a uniform system of educating those who desired to practise the business of chemists and druggists. To this society, then, did Parliament hand over the examination as to their skill and knowledge of all persons who might in future desire to assume the title of, and engage in the business of, legally recognised chemists; and to further this end, the society was empowered to keep a register of all persons it found to be sufficiently qualified,

and additional powers were granted to it for regulating the qualifications of such persons. The first statute on the subject is the Pharmacy Act, 1852. This was followed by an amending and extending Act of 1868, by others of 1869 and 1898, and now by a final Act of 1908

There is nothing in any of these Acts to prevent any person, who so desires, from carrying on, without registration, the business of a chemist and druggist, even though he calls his shop "The Pharmacy" (*Pharmaceutical Society* v. *Mercer*), and, as such, selling drugs not containing poison, so long as he does not describe or hold himself out as a pharmaceutical chemist, pharmaceutist, pharmacist, dispensing chemist and druggist, chemist or druggist, or a member of the Pharmaceutical Society; and does not sell, or keep open shop to retail, dispense, or compound poisons. Should he unlawfully assume either of these titles, or use, assume, or exhibit any name, title, or sign implying that he is a person registered by the Pharmaceutical Society, or that he is a member of that society, he will be liable to a penalty of five pounds; so also if, being unregistered, he retails, dispenses, or compounds poisons. The Acts are chiefly concerned with regulating the constitution of the society and the keeping of the register. They also provide for the examination of persons who desire to become chemists, give power to the Pharmaceutical Society to make bye-laws, and require the society to register those who obtain certificates of proficiency after examination. The bye-laws regulating the examinations can always be obtained free of charge from its offices. The usual method of becoming a duly qualified chemist is for a lad to pass a public examination in general knowledge, and subsequently to be apprenticed to a chemist. During his apprenticeship, or after he has served a certain period of time, the society will examine him in his technical subjects, and if found proficient, award him a certificate, and place his name on the register. In January in every year the society must publish this register; it is known as the Register of Pharmaceutical Chemists and Chemists and Druggists. An actually practising and registered chemist is exempt from serving on juries or inquests. A shop in which only medicines and surgical appliances are sold is not subject to the Shop Hours Act, 1904.

The Acts do not extend to or interfere with the business of any legally qualified apothecary, or veterinary surgeon; nor with the making or dealing in patent medicines, nor with the business of wholesale dealers when supplying poisons in the ordinary course of wholesale dealing. Upon the decease of any chemist actually in business at the time of his death, the executor, administrator, or trustee of his estate may continue to carry on the business if and so long only as it is *bonâ fide* conducted by a duly qualified and registered chemist and druggist, and his name and qualification is conspicuously exhibited in the premises. Registration by the Pharmaceutical Society does not entitle any person so registered to practise medicine or surgery, or any branch thereof; nor to prescribe drugs as an apothecary. *See* BRITISH PHARMACOPŒIA; POISONS.

CHEQUES.—A cheque is one of the most remarkable instances to be found in recent times of the efficacy of usage of trade. Within the last half century the practice of banking, with the exception of that of the Bank of England, has undergone an entire change. Instead of the banker issuing his own notes in return for the money of the customer deposited with him, he now gives credit in account to the depositor, and leaves it to the latter to

draw upon him, to bearer or order, by what is called a cheque. Upon this state of things the older general course of dealing between bankers and their customers gradually attached incidents previously unknown, and these by the decisions of the Courts, and ultimately by the codifying Act of 1882, have become fixed law. Thus while an ordinary drawee, although in possession of funds of the drawer, is not bound to accept, unless by his own agreement or consent, the banker, if he has funds, is bound to pay on presentation of a cheque on demand. Even admission of funds is not sufficient to bind an ordinary drawee, while it is sufficient with a banker; and money deposited with a banker is not only money lent, but the banker is bound to repay it when called for by the draft of the customer. Beyond this even, a custom has grown up among bankers themselves of marking cheques as good for the purposes of clearance, by which they become bound to one another. Where, therefore, a person is required to make a payment in cash, his cheque for the amount will be taken as cash by the payee, when it is marked good by the banker upon whom it is drawn.

A cheque is defined by statute as a bill of exchange drawn on a banker payable on demand; in practice it is known as an order drawn by a customer upon his banker for the payment upon demand of a certain sum to a person therein named who is called the payee. The banker's customer, who draws the cheque, is called the drawer. If the banker has in his possession sufficient assets of the drawer to meet the cheque, he is bound to pay it upon presentation, unless he has received notice of the drawer's death, or the drawer has countermanded payment. Death of a partner would not stop payment of cheques drawn by him in his firm's name, nor of a treasurer in respect of cheques signed by him officially. A drawer would desire to countermand payment of the cheque when, subsequently to his having parted with it, circumstances have arisen which render it expedient that the payee should not obtain the cash. This is called stopping payment, and the drawer should write the following letter to the bank:—

NEWPORT, *2nd April* 1910.

To the Manager,
National Provincial Bank of England, Newport.

SIR,—Kindly refuse to pay, upon presentation, a cheque for £50 drawn by me in favour of John King, dated 1st April 1910, and oblige.—Yours truly,

R. THOMPSON.

Should the bank pay the cheque notwithstanding this notice, it will be liable to the drawer for the amount thereof.

Presentment for payment.—Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer had the right at the time of such presentment as between him and the banker to have the cheque paid, and suffers actual damage through the delay, he is discharged to the extent of such damage; that is to say, to the extent to which the drawer is a creditor of the banker to a larger amount than he would have been had the cheque been paid. To determine what is such a reasonable time, regard must be had to the nature of the cheque, the usage of trade and of bankers, and the facts of the particular case. Twelve months would certainly be an unreasonable time to hold a cheque without presenting it, and

upon presentation it would probably be refused; but the drawer is personally liable upon the cheque for six years from its date. Where a crossed cheque is received from a person whose financial state is doubtful, and the payee is desirous of knowing at once the probable fate of the cheque when presented, he should request his bank to send the cheque direct to the paying bank, and not through the clearing house. His bank can arrange to hear at once by telegram from the paying bank whether the cheque is honoured. The holder of a cheque, as to which the drawer is discharged as before mentioned, will be a creditor in lieu of the drawer, of the banker to the extent of the discharge, and will be entitled to recover the amount from him.

Crossed cheques.—A cheque is crossed *generally* where it bears across its face an addition of (*a*) the words "and company," or any abbreviation thereof between two parallel transverse lines, either with or without the words "not negotiable"; or (*b*) two parallel transverse lines simply, either with or without the words "not negotiable." It is crossed *specially* to the banker named, where it bears across its face an addition of the name of a banker, either with or without the words "not negotiable." The drawer may cross his cheque generally or specially. The holder may cross a cheque generally or specially when he receives it uncrossed; specially, when he receives it crossed generally; in either case he may add the words "not negotiable." The effect of marking a crossed cheque "not negotiable" is to make it of such a character that the holder cannot give a better title to the cheque than that which he himself has. Thus, if A. gives to B. a crossed cheque for £500, marked "not negotiable," and A. subsequently discovers that B. has obtained the cheque from him by fraud, A. should at once countermand its payment. If, then, B. passes the cheque on to C., who gives B. the £500 for it, C. will have no claim against A., when subsequently C. finds that he cannot cash the cheque when presented at A.'s bank. C. should have been more careful before parting with his money, for the cheque being marked "not negotiable," he was bound to take it from B. tainted, as it was, with B.'s fraud on A. Though he may not have known of B.'s conduct, yet the words "not negotiable" operated as a notice from A. that all persons who took the cheque would do so subject to any disputes or otherwise between A. and B. in respect thereof. In like manner, any holder of a cheque may mark it "not negotiable" before parting with it, and so preserve any rights he may have. The crossing of a cheque may not be altered or added to otherwise than as above, except in certain cases by the banker.

The banker's duties and rights thereon.—Where a cheque is crossed specially to more than one banker (other than an agent for collection), the banker upon whom it is drawn must refuse payment thereof. Should he pay such a cheque, or pay one crossed generally otherwise than to a banker, or one crossed specially otherwise than to the banker named or his agent, he is liable to the true owner of the cheque for any loss caused by the payment of the cheque. But the banker incurs no liability where, in good faith and without negligence, he pays such a cheque which has, without his knowledge, been obliterated, altered, or added to. Where a banker on whom a crossed cheque is drawn, in good faith and without negligence, duly pays it according to the crossing, the banker and drawer of the cheque have the same rights as if payment had been made to the true owner of the

*

The City Gas Company Ltd

London 31st May 1910

To The National Provincial Bank of England

Bishopgate Street &c

Pay to John Smith Esqr _____ or Order

The sum of One hundred pounds (*provided the receipt at the foot hereof is duly signed by the payee stamped and dated and is presented herewith)

For The City Gas Company Ltd

£100 0 0 James Barry. Secretary

RECEIPT: Not to be detached

Received of The City Gas Company Ltd the sum of One hundred pounds in settlement of my claim for damages for injuries caused by negligence of the company's driver on the 15th Febr 1910

(signed) John Smith

(dated 1st June 1910

(**NB This receipt and the cheque must be presented together intact)

Cheque with Receipt attached

cheque personally; it is immaterial whether the true owner has lost the cheque or it has been stolen from him.

Generally.—Should the banker by some mistake, or otherwise, dishonour a cheque of his customer when it is in proper form, and he has sufficient assets of the customer wherewith to meet it, the customer is entitled to bring an action against the banker for damages; and it is no answer by the banker to such an action that the customer has not, in fact, sustained any actual damage. Should a banker cash his customer's cheque, and then discover that he has no assets of the customer, the banker cannot demand the customer to hand it back, once the money has passed; indeed, there is a case that the banker cannot even sue the customer therefor, but such case was decided only upon a technical question of form of claim—the only question for the banker to decide is the form of action, and if he is well advised he will be able to recover the money. All cheques should be drawn upon the form provided by the banker; this tends to prevent forgery, and at the same time is more convenient to the customer, as the counterfoils in the cheque-book may be made a useful means of record. But there is nothing to prevent a cheque being drawn upon an ordinary sheet of paper if the customer so desires, though in that case the signature should be written across a penny postage stamp. If the cheque is undated, the holder may insert what he believes to be the true date, and there is nothing to prevent a banker cashing a post-dated cheque upon its presentation before the date thereon. Where the words and figures on a cheque differ, the banker may refuse to cash it, and may return it with the answer, "Words and figures differ," but he should not do this if the difference is immaterial or the intention obvious; thus, where Fifty-five three shillings and ninepence appears in writing, and the figures are £55, 3s. 9d., the banker should cash the cheque according to the figures. To guard against possible fraudulent alteration or forgery, the drawer of a cheque should either write across the top of cheque, or impress with a puncturing stamp, the words "under ten pounds," or other appropriate remark; such a precaution would prevent a cheque for eight pounds being altered into one for eighty.

The following are some forms of indorsement of cheques:—

(1)
his
ROBERT × JOHNSON
mark.
Witness,
ARTHUR ROBINSON,
12 Grove Hill, Worcester.

(2)
JAMES FORD, D.D.

(3)
per pro R. NEVILLE & Co.
JAMES RICHARDS.

(4)
HILDA GRAHAM,
née MORRISON.

(5)
per pro THE HAVANA TRUST, LTD.
JAMES MURIA,
Secretary.

(6)
For self and Co-executor of
ARTHUR REID, *deceased.*
G. F. HARLEY.

(7)
Mrs. BLANK'S Trustees.
WILLIAM BLACKFORD.
EDMUND G. MYERS.

(8)
Pay to the order of MARY ROWE.
G. F. HUTCHINGS.

In example (1) there is the form proper to be adopted in the case of an illiterate payee—he should mark the cross himself in the presence of the attesting witness. (2) is the signature of the Rev. Dr. Ford; and (3) and (5) are the indorsement of a private firm and of a registered company respectively. In these two last instances the bank, if it thought advisable, could delay payment until it was satisfied that the party signing as agent had in fact the authority to do so. Number (4) is the indorsement of a lady who has received a cheque made payable to her in her maiden name; if the cheque had been payable to her as Mrs. John Graham, she should indorse it as follows: Hilda Graham, wife of John Graham. One of several executors or administrators may sign to bind the others; a fact which explains example (6), but makes it necessary to remark that all of a body of trustees must sign as in example (7). In example (8) we have an indorsement which has restricted the further negotiation of the cheque, for the time being, in favour of a specified person; if the payee, G. F. Hutchings, had only signed his name, the cheque would have been absolutely negotiable, and capable of transfer by mere delivery. The expressions R/D, N/S, and "effects not cleared" mean, when marked by a bank upon a cheque, as to the first two that the payee has not sufficient funds wherewith to meet the cheque, and as to the last that the payee has himself paid some cheques in to the credit of his account, but until they are cleared his bank does not know whether he will be in a position to meet the cheque marked. *See* BANKER AND CUSTOMER; BILL OF EXCHANGE.

CHIMNEY.—Should a chimney catch fire in London, the occupier of the house is liable to a penalty of 20s., which may be recovered in a court of summary jurisdiction. It is no answer to the proceedings that he has not been guilty of any neglect; but he may, in his turn, summarily recover the penalty he has paid from any person through whose neglect or wilful default the fire has been occasioned. In towns outside London the penalty is only 10s., but is not recoverable if the occupier can show the fire did not in any way arise from carelessness, neglect, or omission, on his own part or of his servant. Chimneys should not be cleaned by setting fire to the soot therein; for if the chimney should catch fire therefrom, the person who lights the fire or causes it to be lighted will be liable to a penalty of £5.

CHIMNEY-SWEEPER is a person whose trade it is to cleanse foul chimneys from soot. In order to lawfully carry on his business, but only if employing an assistant or an apprentice, he must obtain from the police authorities, at the station nearest his residence, a certificate authorising him so to do. The certificate is renewable annually, and may be used for districts other than that for which it was originally granted, upon being indorsed by the police of the other districts. The certificate is only issued upon payment of a fee of 2s. 6d., is not capable of being assigned, must be produced on demand, and may be taken away by a magistrate upon conviction of the chimney-sweeper of any offence created by the statutes which regulate his business. For a chimney-sweeper to knock at houses from door to door, ring a bell, use a noisy instrument, or ring the door bell of a house to ask for custom to the annoyance of any inhabitant thereof, is to incur a penalty of 20s. He must give his name and address, if demanded, to any person for whom he acts, or may offer to act, as a chimney-sweeper; so must he to any constable or magistrate,

Until 1840 the actual sweepers were generally boys of very tender age, who were taught to climb the flues, and who, from the cruelties often practised upon them by their masters, were for half a century before that date the objects of particular care by the legislature. But an Act of 1840 is the one which dealt most practically with the evil, and this Act, together with three later ones, now regulates the business. We have already dealt with so much of those regulations as affect the masters, it is now the turn of the servants. No child under the age of sixteen years may be bound an apprentice to a chimney-sweep; any indenture in defiance of the law is void. Any person who compels, or knowingly allows, any young person under the age of twenty-one to ascend or descend a chimney is liable to a penalty of £10. Nor, under the same penalty, may a child under ten be employed in any work connected with the trade, except at the master's house or place of business; nor may the master bring a young person under sixteen, in his employment or under his control, to a place where he is going to sweep a chimney or clear a flue.

CHOSES in action and in possession.—The word chose means "thing," and a thing may be either in the possession of its owner, or out of his possession. A sum of money actually in the possession of its owner is a chose in possession; but when that money is deposited in a bank, or lent to another person, the money itself goes out of the possession of the owner, who then only has a *right* to its possession—the money so on deposit or lent would be called a chose in action. Shares, patents, copyrights, consols, stocks, and debts may be given as examples of choses in action.

This class of property is capable of absolute assignment by writing under the hand of the assignor; but in order to make the assignment effective express notice thereof in writing must be given to the debtor, trustee, or other person from whom the assignor would have been entitled to claim the chose in action the subject of the assignment. Without such notice there is no effective assignment, and the assignee has no legal or other remedies in respect of the chose intended to be assigned. There is a form of assignment of debts under the heading BOOK DEBTS, and the reader should note the necessity for notice to the debtor therein pointed out. At common law choses in action were not capable of assignment, the above provision therefor being introduced by the Judicature Act of 1873; but this Act reserves to the debtor, or other person liable in respect of a chose in action, any rights or claims he might have against the assignor, and allows him to set them off against any claim made upon him by the assignee under the assignment. If, therefore, a debtor has a defence or a set-off, or cross claim, or counter claim against his creditor, he may set it up against any claim made upon him by his creditor's assignee.

All that part of a bankrupt's property which consists of choses in action will pass to his trustee without assignment. Except debts due or growing due to the bankrupt in the course of his trade or business, his choses in action are not within the ORDER AND DISPOSITION (*q.v.*) clause of the Bankruptcy Act.

CINEMATOGRAPH ENTERTAINMENTS. *See* APPENDIX.

CIRCULAR NOTES.—In order, when travelling abroad, to obviate the necessity of carrying large sums of money, or of being put to the inconvenience and delay of writing home to one's bankers for further remittances, it

is a usual practice to carry circular notes. These notes may be obtained from a banker to the total amount required, and will be divided up into smaller separate amounts to suit the convenience of the customer; thus, instead of one note for £100, ten of £10 each may be obtained, each addressed to an agent of the banker in the foreign town at which the customer will be probably, for the time being, staying. Suppose the customer intends proceeding from London to Rouen, Paris, Zurich, Strasburg, Brussels, and thence home, and desires to obtain £20 at each place. He will approach his banker on the subject, and in return for a payment of £100 and a small charge, the banker will hand him five circular notes, each of which, probably written in French, will be addressed to an agent of the banker in one of the above towns, and will direct the agent to pay to the customer the sum of twenty pounds, free of any charge, against the customer's signature to a seven days' draft upon the banker, a form of which will appear on the back of the note. The banker will also hand the customer a general letter of indication which will contain an example of the customer's signature.

Thus furnished, the customer may proceed on his travels, but should be careful to keep separate the circular notes and the letter of indication, so that a theft of one may not include a theft of the other, and a consequent facility for forgery by the thief. Hotelkeepers and others will, as a rule, readily accept a circular note; but when not so negotiated, the customer should present his circular notes to the appropriate agents and at the same time produce the letter of indication. The agent, after seeing the signature made in his presence and in accordance with the example in the letter of indication, will pay the money; he will probably try to make a charge, but the payee should object to that. Any circular notes not required, and cashed, should be handed back to the issuing banker, who will refund the money. *See* LETTERS OF CREDIT.

CLEARING HOUSE—Banking.—The London Clearing House is the name given to an institution in London to which are attached all the leading London bankers. Such bankers are known as clearing bankers, and in addition to their own business they generally act as agents for those banks who do not belong to the Clearing House. Many of the large provincial towns have their own clearing houses for local purposes. The London Clearing House was first established by the private bankers in 1770, and the joint-stock banks were admitted in the year 1854. To state it briefly, the object of the Clearing House is to establish a centre at which the various banks may exchange their bills and cheques and settle the differences in money or balances representing money. The Bank of England is the ultimate banker of all the English banks, and all those banks connected with the Clearing House are bound to have accounts there, the Clearing House becoming in effect a clerical assistant to the Bank of England.

The principle upon which the operations of the Clearing House are based is that of set-off—the reduction of all the transactions of the banks, one with another, to a final account and balance. The object is to minimise as much as possible the actual use of money, and to make entries in account equivalent to the exchange of coin. That this is not only a possible, but even the most practical system, will be appreciated upon the consideration of a simple case. Suppose a monopolist bank to have fifty customers, each of

Photo: Reginald Haines

LORD ALVERSTONE has been Lord Chief Justice of England since 1900. He was called to the Bar in 1868; joined the Eastern Circuit, became Q.C. in 1878; Attorney-General 1885-1886, 1886-1892, and 1895-1900, Master of the Rolls, 1900. Has sat in the House of Commons for Launceston and the Isle of Wight.

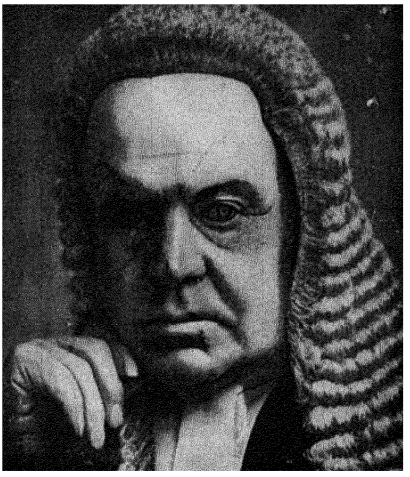


Photo: Russell & Sons

EARL OF HALSBURY has been thrice Lord Chancellor, after being Solicitor-General from 1875 to 1880; has had one of the longest tenures of office as Lord Chancellor, having held it in 1885-1886, 1886-1892, and 1895-1906.

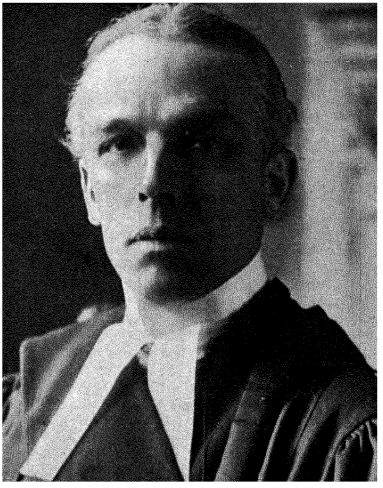


Photo Russell & Sons

SIR CHARLES JOHN DARLING has been a Judge of the King's Bench since 1897, his appointment following a successful career at the Bar. He was called in 1874, became Q.C. in 1885, and sat for Deptford 1888-1897. A sound lawyer, he is one of the judicial humorists, and has literary and artistic interests.

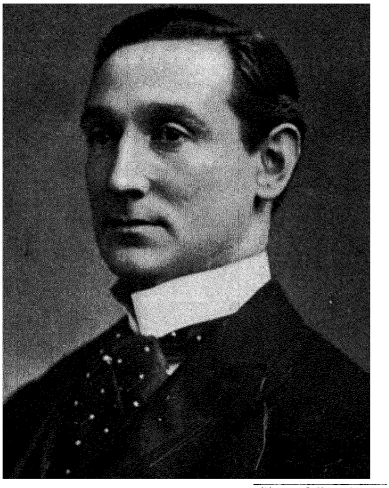


Photo Elliott & Fry

SIR RUFUS DANIEL ISAACS, after a phenomenally successful career at the Bar, was appointed Solicitor-General in 1910, having sat for Reading since 1904. Started his career in the City, but found his true bent in Law, his mastery of the intricacies of the Stock Exchange and financial subjects having been of marked assistance to him since he was called.

GREAT LAWYERS

which is actively operating his account and freely paying away crossed cheques to other persons, including the rest of the customers and also people who are bound to negotiate with customers of the bank the cheques they have received and which they wish cashed. These cheques are paid into the bank day by day, but the bank would not go to the bullion store, and from time to time allocate to each customer a varying amount thereof according to the monetary effect of the cheques; on the contrary, since the whole of the operation ultimately subsists between and affects the bank and its customers only, the bank confines its attention to the ledgers, and leaving the bullion alone, merely varies as occasion requires the different customers' balances. These balances will represent the position of each customer with regard to the bank—whether he is entitled to take money from the bank or whether he must pay in. Extend the example to the London Clearing House, which may be taken to be banker for all the other banks. These latter attend there, and each presents its parcels of cheques—one parcel payable by one bank or banks for which it is agent, another parcel payable by another, and so on. The result is a mutual presentation by the clearing bankers of cheques upon one another, and all that remains is for accounts to be taken and balances to be struck. The balances are given to the banks to which they respectively belong in the form of transfer tickets which are taken to the Bank of England, and are the authority for the adjustment there of the accounts of its clearing-banker customers.

By this means, without the interchange of a single coin, large sums of money, 200 or 300 millions, will change hands in the course of a week, and represent the ultimate transaction of the main financial movement of the country. In London there are three clearings every day—one in the morning for bills, another at noon for country cheques, and the third in the afternoon for bills and cheques. If Smith, whose bank is at Liverpool, pays Jones, whose bank is at Norwich, by sending to him a cheque, the method according to which that cheque is dealt with would be as follows. The Norwich banker does not post it direct to the Liverpool banker, but sends it to his London agents, who present it through the Clearing House to the London agents of the Liverpool bank, to which bank it is forwarded by the next post. The result would be that if the cheque were paid into the Norwich bank on a Tuesday, it would not be presented at Smith's bank until Thursday. If, therefore, Jones desires the cheque to be presented without delay, he should require his bank to clear it direct to Liverpool, and not through the London Clearing House. Sometimes a day is of great importance in the matter of a cheque.

Railway.—The railway Clearing House was established in the middle of the last century to settle and adjust the receipts arising from railway traffic within, or partly within, the United Kingdom, and passing over more than one railway, booked or invoiced at throughout rates of fares. From a small beginning in 1842, when its staff consisted of only four clerks, its operations have so extended that it is now located in an immense building near Euston Station in London, and employs the services of over two thousand persons. Before its establishment, the traveller whose journey necessitated his passing over different lines belonging to various companies, was required to take a fresh ticket in respect of each different line he passed over. To obviate this

inconvenience, which also occurred in the case of consignment of goods, the companies began to book the public over the various lines with one booking, and endeavoured to safeguard their mutual interests by making these through bookings the subject of separate accounts against each other. This system failed, however, as the peculiar nature of the services which one company might render to another made it difficult to arrive at a basis for their representation in an agreed sum of money; and beyond this, the principle and methods of keeping the accounts would differ in the case of each company. To meet this position was the Clearing House established, and it is now directed by a committee of delegates appointed by the companies which are parties to the clearing system.

The whole of the accounts in respect of through bookings, and of mutual dealings of a like nature, are now made up for the purposes of clearance by the Clearing House itself, the main object, as in other clearing systems, being the elucidation of a balance as between the various companies. Should any dispute arise as to the accounts, the committee's decision is conclusive, and binding upon the companies concerned. The Clearing House also acts as a centre for the mutual consideration by the railway companies of any matters affecting their interests. Not only does it exist to settle accounts and disputes as between its members, but also to look after the interests and maintain the rights of railway companies generally. It supervises the arrangements for passenger traffic, classifies the goods traffic, deals with the rules and regulations for the working of railways, and most usefully to the public, has made itself, with its extensive machinery, the responsible means for the recovery of lost luggage.

Stock Exchange.—The operations of the Clearing House are confined in Stock Exchange business to transactions in certain stocks only, and limited also to bargains transacted with members of the Stock Exchange who use the Clearing House. Besides this limitation, the system is a purely voluntary one, and a broker or jobber may decline to avail himself of its advantages. In practice the stocks most usually the subject of clearance are those of a speculative and active nature, the result being that probably the greatest proportion of Stock Exchange transactions pass through the Clearing House, as it is in such stocks that most dealings are effected. The principle of Stock Exchange clearance is the same as that of clearance in banking and railways. The object is to obviate the necessity for multitudinous deliveries of stocks and shares and payments in respect thereof; and as all these deliveries and payments are to and by the members of a limited circle, the object is effected by taking an account of the transactions, striking a balance, and making the latter the subject for delivery or payment as the case may be. The Clearing House itself has no concern with the actual stocks or with money, it only deals with balance-sheets and tickets. The latter show the result of the balances, and the person who is found to be required to deliver stock is given a ticket showing the separate amounts of the stock into which his balance has been divided, and indicating the person or persons to whom delivery of the balance must be made. Those whose balance is in favour of their receiving stock, have given to them a corresponding ticket. Delivery of stock is accordingly in due course made, and payment passes therefor at the same time.

CLUBS.—Clubs are generally either "proprietary" or "members." In the former case the club premises and furnishing belongs to a proprietor who allows the members of the club to have the use thereof in return for their entrance fees and subscriptions; in the latter case, the members are themselves the proprietors of the club. A club is merely a voluntary association, as distinguished from a partnership or joint-stock company; it is, however, convenient in many cases to register the club as a joint-stock company with the liability of its members limited by guarantee—the capital of such a company is furnished by the entrance fees and subscriptions. We will here deal with voluntary clubs, those other than proprietary.

Generally.—As between the members, the rules of the club are binding upon them and furnish in fact the constitution of the club; whether the acts of a managing body of a club, such as the committee, are within the powers conferred upon it by the rules may be the subject of a decision of the Court, and if the acts are beyond its powers, the Court will restrain them. Every member, if afforded reasonable opportunity to see the rules, will be presumed by the law to be acquainted with them. A member who is not in arrear with his subscriptions, and owes no duty to the club, may resign at any time, and it is immaterial whether or no his resignation is accepted. Should any part of the members of a club wrongfully possess themselves of its assets, any member may take proceedings against them in respect thereof on behalf of the members generally, and the other members need not join him as plaintiffs in the action.

Liability of members.—A club-book, kept regularly open in the club-room, has been received as evidence of articles delivered to the members, though the servants who made the entries were not proved dead or their absence accounted for. The members of a club, merely as such, are not liable for debt incurred by the committee for work done or goods supplied to the club, for the committee has no authority to pledge the personal credit of the members; nor would the committee have such an authority even where the rules expressly confer upon it the management and regulation of all the club's concerns. Nor would the committee itself be liable as a whole unless the dealing on credit was in furtherance of the common object and purposes of the club, or except as to those members of the committee who were personally privy to the contract. It would be upon the creditor to affirmatively prove both or either, as the case might be, of these two latter exceptions. The creditor can always sue those who have personally given him orders, or contracted with him in respect of goods for a club, and he need not trouble to sue any other parties who might be liable. If any individual members of a club, with the consent and approval of the club generally, incur a liability for the benefit of the club, they are entitled to a lien on the club's property as security for repayment.

Expulsion of members.—The Court will only interfere in such a question in the case of a member's club, for its jurisdiction is based upon the aggrieved member's right of property, of which he has none in a proprietary club. The social character of a club is its most distinctive feature; and if the requisite majority of its members, in the *bonâ fide* exercise of a discretion given to them by its regulations, expels a member from the club, the Court will not consider whether that discretion was rightly or wrongly exercised, and will

not go into the circumstances of the case further than is necessary to satisfy itself that there was not a merely capricious or an arbitrary exercise of the discretion. It will interfere where the rules are contrary to natural justice, or what has been done is contrary to the rules, or where there has been *mala fides* or malice in arriving at the decision. That a decision is unreasonable may be strong evidence of malice, but it is not conclusive, and may be rebutted by evidence of *bonâ fides;* and apparently even an erroneous but *bonâ fide* decision, in accordance with the rules of the club, will be conclusive. As to the registration of Clubs, *see* LICENSING.

COAL.—All coal must be sold by weight only, except where, by the written consent of the purchaser, it is sold by boat-load or by waggons or tubs delivered from the colliery into the purchaser's works. And there was good reason for the legislature enforcing the sale of coal by weight. Formerly it was sold by measure, the standard measure being a boll, and it is curious to observe the sort of abuse to which this practice gave rise. If one piece of coal, measuring exactly a cubic yard (nearly equal to 5 bolls), is broken into pieces of a moderate size, it will measure 7½ bolls; if broken very small it will measure 9 bolls. This shows that the proportion of the weight to the measure depends upon the size of the coals; therefore, accounting by weight is the most rational method. The coaldealer accordingly bought only large coal, but as he re-sold by measure, he was careful to break it into smaller pieces. In fact, the greater the number of dealers through whose hands the coal passed to the consumer, the more frequently was it broken up, the breakage alone often being the sole source of a dealer's profit.

Where any quantity of coal exceeding two hundredweight is delivered by vehicle to a purchaser, the seller must deliver with it, or by hand or by post before unloading any part thereof, a ticket according to the form set out below. The quantity delivered must not be less than that stated in the ticket. Where more than two hundredweight of coal is conveyed for delivery or sale in a vehicle (not supplied by the purchaser) in bulk, the seller must first ascertain the weights of both vehicle and coal by a weighing-machine stamped by the inspector of weights and measures. This must also be done with regard to the vehicle as often as the local authority may require. The ticket in such case should contain the correct weight of the vehicle as well as the coal, and of the animal drawing it, if it were weighed also. The person in charge of such a vehicle must not make any false statement as to the weight of the vehicle, or wilfully do any act by which either the seller or the purchaser of the coal may be defrauded. No seller of coal may deliver a less quantity of coal than is agreed to be sold.

Proper weighing-machines should be kept at the place where coal is sold by retail, and the coal weighed before sale or delivery. An inspector may at any time require coal exposed for sale on a vehicle or in a shop to be weighed with the machines there kept; by this he will test the accuracy of the weights, and the truth of the representations implied by the parcels in which the coal is packed. The seller must not keep coal in parcels which do not contain the full amount of their represented weights.

Any seller, purchaser, person in charge of a vehicle for coal, or inspector, may require any coal or vehicle for the carriage of coal in bulk to be weighed or re-weighed by any weighing-machine stamped by an inspector of weights

and measures. But (*a*) no seller or person in charge of a vehicle is bound to carry coal for this purpose farther than half a mile; (*b*) where such coal or vehicle has been weighed or re-weighed at the instance of a purchaser, and the weights have been found to be correct, the purchaser must pay the reasonable costs actually incurred of and incidental to the weighing or re-weighing.

Only the provision that coal must be sold by weight applies in Scotland. In England, bye-laws may be made by local authorities respecting the local sale of coal, and these bye-laws may regulate the sale in quantities not exceeding two hundredweight; decide upon the form of weighing-machine to be carried in vehicles; prescribe the distance which coal may be carried for weighing or re-weighing; and fix the fees of weighing and the penalties. These latter are incurred on the omission or neglect of any of the above requirements, and may amount, for each offence, to the sum of five pounds.

WEIGHT TICKET

or Consignment Note on delivery of Coal over Two Hundredweight.

Mr. A. B. [*here insert name of the buyer*].

	Tons.	Cwts.	Lbs.
Take notice that you are to receive herewith of coal			
[*When sold in sacks, add*]—			
in sacks, each containing cwt.			
[*When sold in bulk, add*]—			
Weight of coal and vehicle			
Tare weight of vehicle			
Net weight of coal herewith delivered to purchaser			

C. D. [*here insert the name of the seller*].

E. F. [*here insert the name of the person in charge of the vehicle*].

Where coal is delivered by means of a vehicle, the seller must deliver or send by post or otherwise to the purchaser or his servant, before any part of the coal is unloaded, a ticket or note in this form.

Any seller of coal who delivers a less quantity than is stated in this ticket or note is liable to a fine.

Any person attending on a vehicle used for the delivery of coal who, having received a ticket or note for delivery to the purchaser, refuses or neglects to deliver it to the purchaser or his servant, is liable to a fine.

COASTING TRADE includes all trade by sea from one part of the United Kingdom to another, ships thus engaged being known as coasting ships. No goods may be carried coastwise except such as are laden for that purpose at some port or place in the United Kingdom. The master of a coasting ship is liable to a penalty of £100 if when at sea, or over the sea, he should take in or put out any goods; nor may he touch at any place over the sea, or deviate from his voyage, unless forced by unavoidable circumstances, and if he should touch at any place over the sea, he must declare the

fact at the first port of his arrival in the United Kingdom. He is also penalised if, without proper permission, he should ship or unship goods on a Sunday, or any other day not in the presence of an officer of the customs. So too if he should fail to keep a cargo-book, which must include an account and description of all the goods on board, the names and description of the ship, the master, the port to which she belongs and to which she is bound, the shippers and consignees, the dates of delivery of goods, and of departure and arrival at lading and discharging ports respectively. Before the ship can depart from the port of lading an account in duplicate must be furnished to the proper officer, one copy of which will be returned to the master and serve as a pass for the goods; this pass is called a transire. General transires may be obtained subject to certain regulations, and such transires may be issued locally for periods not exceeding twelve months.

A large variety of goods may be carried without transires, only the keeping of a cargo-book being required. Amongst these goods are: Fish, and the appliances for carrying on the business of a sea fisherman, ashes, coal and soap, bricks, chalk, clay, chimney-pots of clay, draining tiles and pipes of clay, gravel, granite, hay, iron ore, fresh meat, pebbles, lime, straw, sand, slates, and British stone and timber. Clearance or transire will not be granted to ships when boats and life-buoys are not provided or kept fit and ready for use. Coasting trade between any places in the estuary of the Thames, within the ports of London, Rochester, Faversham, and Colchester, to the westward of an imaginary line drawn from Reculver Towers to Colne Point in the Port of Colchester, is deemed a trade by sea, and the ship is not a coasting ship. The arrival and departure of coasting vessels trading wholly within the above limits need not be recorded in the official coasting statistics, and transfers and clearances for such vessels are not required. Customs officers are expected to frequently rummage coasting ships, and to exercise special vigilance over the traffic between English and Irish ports for the purpose of detecting suspicious packages or cases which may be supposed to contain arms or explosives.

CODICIL is a testamentary document altering or modifying a will. It may however take effect without a will, even if its language implies that a will exists. A codicil ratifying a will amounts to a republication of that will, and both ought to be considered together as one will. The addition of a codicil sets up everything in the will not altered by the codicil; and though the codicil has no date, yet if it appears to have been executed subsequently to an act which might amount to a revocation, it will operate as a republication of the will. To revive or republish a revoked will, a codicil must refer to it in such terms as show an intention to revive the will; for the will cannot be revived by mere implication, as for example by referring by date only to a revoked will, or by merely annexing a duly executed codicil of later date to a former will. A codicil must be witnessed in the same way as a will. It has been laid down that to revoke a will which has revoked a former one is to revive the first will, but this rule is too doubtful to rely upon. Thus where an executor was given by will a legacy of £100, and subsequently by codicil a gift of £500 was substituted therefor, this latter gift was in its turn revoked, but it was held that the prior gift of the £100 had not been set up again. *See* WILL.

Short form of a Codicil.

This is a codicil to the last will and testament of me, Josiah Albert Williams, of 15 Gloucester Gate, Highgate, in the County of London, Gentleman, which will bears date the fourteenth day of July, one thousand nine hundred and one [*here state succinctly and specifically the changes desired to be made in the dispositions of the will and also set out any additional gifts, and conclude:*] **And in all other respects** I confirm my said will, **In witness** whereof I have hereunto set my hand this ninth day of October, one thousand nine hundred and ten.

Signed by the above-named Josiah Albert Williams in the presence of us, both being present at the same time, who in his presence and in the presence of each other have hereunto subscribed our names as witnesses. J. ALBERT WILLIAMS.

AMBROSE RAMSAY,
15 Clifford Road, Norwood, S.E.,
Merchant.

A. F. BENNETTS,
11 New Square, W.C.,
Solicitor.

COINAGE.—The coinage of money in England is regulated by certain statutes, of which the first and principal is an Act of 1870. Generally speaking, the power to coin money is an exclusive prerogative of sovereignty, and though in Great Britain Parliament has taken into its own hands the practical exercise of this prerogative, yet it has expressly reserved to the Crown important and extensive rights. Thus, by royal proclamation, the Crown with the advice of the Privy Council may, for example, determine the weight, denomination, dimension, and design of any coin; call in coins of any date or denomination; direct certain coins to be legal tender up to certain amounts; direct the currency in British dominions of foreign coin; direct the establishment of any branch of the mint in any British possession, and impose a charge for the coinage of gold thereat; and regulate any matters relative to the coinage and the mint within the prerogative of the Crown, and revoke or alter any proclamation previously made. In the United Kingdom the currency is a gold one, and is based upon the sovereign, which is worth its free value. Silver and bronze coins are merely tokens representing fractions of the sovereign, and they have not themselves an intrinsic value equal to their denomination.

Prohibitions.—No piece of gold, silver, copper, or bronze, or of any metal or mixed metal, of any value whatever, may be made or issued as a coin except by the mint; nor even as a token for money, or as purporting that the holder thereof may demand any value which may be denoted thereon. The penalty for contravention hereof is £20. Every contract must be made in the currency—that is to say, no contract, sale, payment, bill, note, instrument, or security for money, may be made, executed, or entered into except according to the coins which are current and legal tender at the time thereof. Such contracts and dealings include every transaction, matter, and

thing whatever relating to money, or involving the payment of or the liability to pay any money. But contracts and dealings may be entered into and made according to the currency of a British possession or a foreign state.

Certain gold coin to be defaced.—Should any gold coin be below the current weight, or be called in by any proclamation, every person who has such coin tendered to him in payment is required to cut, break, or deface it, and the person tendering it will be required to bear the loss. Should the payee so cut, break, or deface without proper cause, he will be bound to receive and keep the coin in payment according to its denomination; and in case of dispute, the matter may be referred to a magistrate. Fair wear of gold coin is limited to three grains, and any pre-Victorian gold coin not diminished more than that weight will be exchanged by the authorities at its face value. If the diminished weight is more than three grains, it will only be so exchanged upon proof by the person offering it that it has not been illegally dealt with.

Tender.—Provided the coins have not been called in by proclamation, or are not defaced or of light weight, a tender thereof will be a legal tender of payment of money—(*a*) In the case of gold coins for a payment of any amount; (*b*) in the case of silver coins for a payment of an amount not exceeding 40s., but for no greater amount; (*c*) in the case of bronze coins for a payment of an amount not exceeding 1s., but for no greater amount. Coin having a name or word stamped thereon is thereby so defaced as not to be legal tender.

Present currency.—Except pre-Victorian coinage, all gold coins minted in London or Australia are now current and legal tender in the United Kingdom. Silver coins coined in or before the year 1816 are not current and legal tender; nor are copper coins coined prior to 1861.

Generally.—Any person may take not less than £10,000 in value of gold bullion to the mint, which will be assayed and coined, and delivered to him without charge for the assay and coinage, or for waste in coinage; and the mint authorities may not show preference to any such person, but must deal with him in priority according to the time at which he brings the bullion. If the bullion so brought is not of sufficient fineness, the mint may refuse to accept it; but if it is finer than the standard fineness, the authorities will give to the person bringing it such additional amount of coin as is proportionate to its superior fineness. For offences against the coinage *see* MINT, and for related subjects, PYX, TRIAL OF THE; MONETARY UNIONS.

COLLECTING SOCIETIES. *See* APPENDIX.

COMBINATION IN TRADE is found in its main examples in joint-stock companies, co-operative societies, and partnerships. Apart from these, however, are those trade combinations, the object of which is either the control of the production of certain commodities with a view to obtaining a monopoly, or the restriction in the buying and selling prices of commodities so as to maintain profits, or a monopoly of carriage and traffic. In all cases of combination, care has to be taken that the objects for which they are created are not illegal, as being in restraint of trade and against public policy. In some cases, as in dealings with public stocks, an equal care must be taken not to come within the purview of the criminal law. The control of production and distribution may be effected by combinations known as

Agreement made the 30th day of September 1910 **Between George Graham** of 12 Kennington Road London of the first part **Da Pinto Brothers** of 8 Fenchurch Street London of the second part **James Kay Goldie** of Borough High Street London of the third part **Frederick Lamble & Co** of 12 Water Street Liverpool of the fourth part **Conway Myers & Blake** of 93 Clare Street Bristol of the fifth part **Charles Ridley** of 19 Bear Gardens Hull of the sixth part and **James Stephens & Sons** of Corporation Street Manchester of the seventh part **Whereas** the said parties hereto being engaged in the business of hair and bristle importers and merchants are desirous of entering into an arrangement between themselves whereby their business and the business of each of them shall be promoted and improved the sales increased and the losses decreased and for that purpose have agreed to enter into the arrangement or agreement herein contained **Now it is hereby agreed** by each and all of the parties hereto with all and each that in consideration of the said agreement and of the individual and mutual advantages and benefits to be secured thereunder to and for the said business both as a whole and as regards the business and businesses of each and all of the said parties that each and all of the said parties will duly observe and perform the terms and conditions hereinafter contained that is to say

1 This agreement shall remain in force for a period of three years from the date hereof

2 Any person firm or company engaged in the said business may at any time be admitted to the benefit of this agreement with the consent of a majority of the said parties and on admission shall be deemed a party hereto

3 The said parties shall without further notice than is given by this clause meet at the offices of the party hereto of the first part on the first Monday in October and March in every year at 2 o'clock p m and the first business of each such meeting shall be to fix by a resolution of the majority of the said parties then and there present the maximum and minimum prices at and conditions under which the said parties shall buy and sell respectively the products and commodities of their business for and during the six calendar months commencing at the end of the month of the meeting also the areas or districts within the United Kingdom wherein each of the said parties shall sell also the quantity which shall be sold and also the persons firms or companies with whom sales may be effected

4 The said parties hereby respectively agree to abide by comform to and act in all respects in their business in accordance with the terms of any resolution of a duly constituted meeting of the said parties

5 Other meetings than those referred to in paragraph 3 may be called in respect to the same business as and when any two of the said parties

signify in writing a desire for another meeting to the said party of the first part who will thereupon give due notice in writing to the said parties of the day hour and place of the meeting

6 The said parties or any of them may be represented at a meeting by agents appointed in writing who shall there have all the rights and powers of the said parties themselves

7 Each of the said parties shall forthwith deposit with the manager of the London Banking Company the sum of £500 which unless forfeited as hereinafter provided shall be repaid to him on the termination of this agreement

8 If any party hereto commits to the satisfaction of the others of the said parties expressed by a resolution of a majority of the others of the said parties then present passed at a meeting any breach of this agreement such party shall by a resolution of a like number be excluded from the benefits of and be no longer a party to this agreement and shall forfeit the said deposit to the others of the said parties

As witness the hands of the said parties

Witness to the signatures
of the said parties
R. D. Gresswell
St Mary Axe, E.C.
Solicitor.

George Graham
Da. Pinto Brothers
J. H. Goldie
Frederick Lamble & Co
Conway Myers & Blake
C. Ridley
Jas. Stephens & Sons

OUR COINAGE OF THE NINETEENTH CENTURY

OUR COINAGE OF THE NINETEENTH CENTURY.

SOME old Parliamentary Returns in my possession contain particulars of the coins made at the Mint as far back as the year 1760. From these Returns, and from the more recent annual reports from the Mint, it has been possible to ascertain particulars of the coinage during the nineteenth century, that is, from January 1, 1801 to December 31, 1900. Here is the condensed summary of the facts:—

A SUMMARY OF THE COINS OF THE REALM MADE DURING THE NINETEENTH CENTURY. [JANUARY 1801 TO DECEMBER 1900.]

Name of Coin.	Number Made.	Face Value.
GOLD COINS.		£
Five-pound piece. .	73,360	366,800
Two-pound piece. .	151,183	302,366
Guinea	361,473	379,547
Sovereign	284,214,216	284,214,216
Half-guinea . .	3,251,794	1,707,192
Half-sovereign . .	117,182,942	58,591,471
Seven-shilling piece.	6,842,140	2,394,749
Total, Gold Coins	412,077,108	347,956,341
SILVER COINS.		£
Crown	9,098,438	2,274,609
Four-shilling piece .	2,689,830	537,966
Half-crown	89,908,385	11,238,548
Florin	92,496,576	9,249,657
Shilling	339,835,405	16,991,770
Sixpence . . .	262,949,210	6,573,730
Fourpence . . .	20,622,420	343,707
Threepence . .	137,762,080	1,722,026
Twopence . .	700,800	5,840
Penny-halfpenny. .	479,670	2,998
Penny	811,920	3,383
Total, Silver Coins	957,354,735	48,944,234
COPPER AND BRONZE COINS.		£
Penny	510,470,016	2,126,958
Halfpenny	414,648,861	863,852
Farthing	234,384,028	244,149
Half-farthings . . .	16,438,104	8,562
Total, Copper and Bronze Coins	1,175,941,009	3,243,521
ALL COINS . .	2,545,372,852	400,144,096

The face-value of the coins made in the Royal Mint during the nineteenth century was, we see, over 400 millions sterling; and this high amount refers only to coins of the realm—not to miscellaneous coins made in the Mint for use in India and in other countries. The meaning of this great sum may be better understood if I say that, invested at three per cent. interest, it would yield a perpetual income of more than one million sterling per calendar month—or about £33,000 per day. Another view of these 400 millions sterling is given by the statement that they represent an average coinage in the Mint of half-a-crown's worth of money (approximately), for every second of time throughout the century, working day and night without cessation.

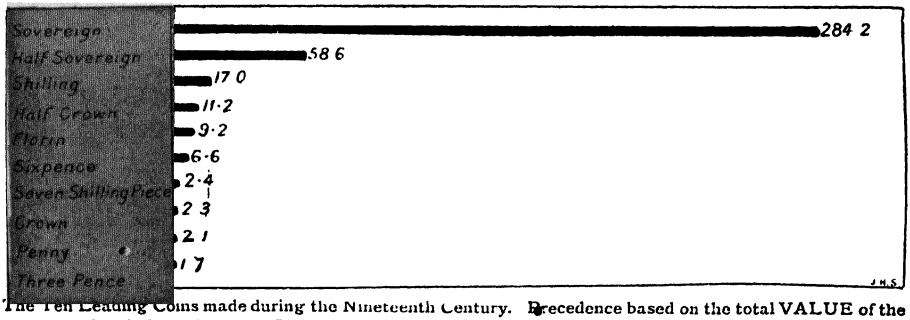
Coming now to the number of coins made during the last century, we see that this was over 2545 millions. This means an average output of over 70,000 new coins per day throughout the century, or (say) 50 new coins per minute of the nineteenth century.

With regard to coins of each denomination, the order of precedence, in value coined, is as follows:—

Value.	Millions of £'s Sterling.
Sovereign	284.2
Half-sovereign	58.6
Shilling	17.0
Half-crown	11.2
Florin	9.2
Sixpence	6.6
Seven-shilling piece (gold). .	2.4
Crown	2.3
Penny	2.1
Threepence	1.7
Half-guinea	1.7
Total Value of the eleven leading Coins	397.0
Total Value of the other Coins, no one of which was coined to the extent of one million sterling	3.1
Grand Total Value of All Coins made, 1801–1900 . . .	400.1

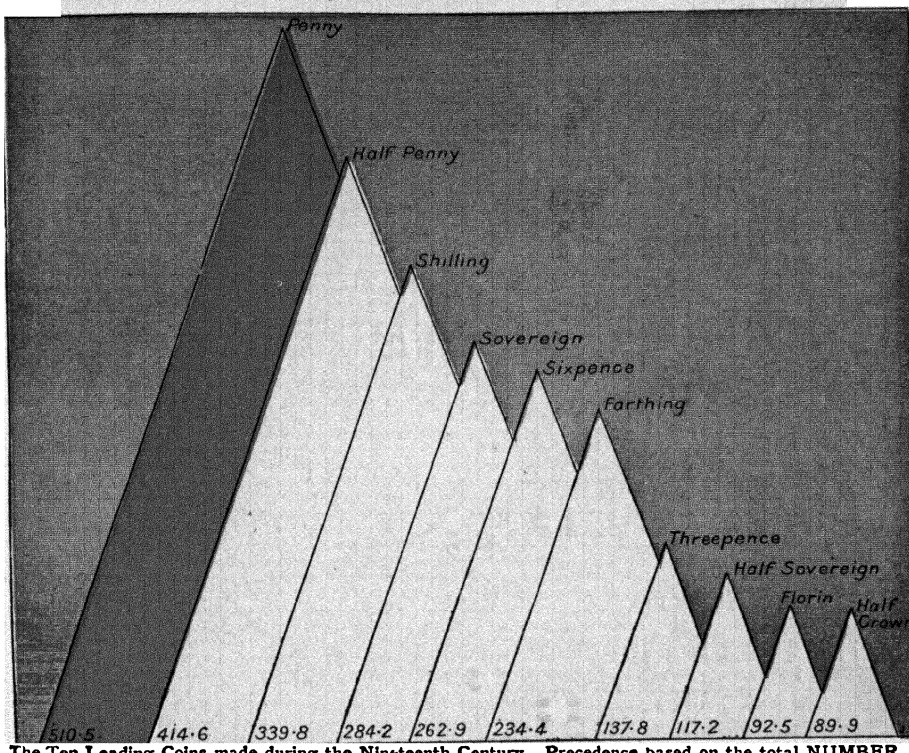
The above result is pretty much what one would expect, at any rate as regards the six leading coins, of which the sovereign stands very prominently at the top.

But if we look at the number of the coins made, not at their coined value, a very different result is seen. The penny is at the head of the list, with a large majority.



The Ten Leading Coins made during the Nineteenth Century. Precedence based on the total VALUE of the coins of each denomination. The total value coined of each denomination is stated in millions sterling.

OUR COINAGE OF THE NINETEENTH CENTURY



The Ten Leading Coins made during the Nineteenth Century. Precedence based on the total NUMBER of the coins of each denomination. The total number coined of each denomination is stated in millions, and is represented by the height of each cone.

	Number Made. Millions.
Penny	510.5
Halfpenny	414.6
Shilling	339.8
Sovereign	284.2
Sixpence	262.9
Farthing	234.4
Threepence	137.8
Half-sovereign	117.2
Florin	92.5
Half-crown	89.9
Total Number made of the ten leading Coins	2483.8
Total Number made of all the other Coins	61.6
Grand Total Number of All Coins made, 1801-1900	2545.4

The above list shows clearly enough which coins have been most in demand by the public throughout the nineteenth century, for the Mint regulates its supply of new coins by the demand made for coins of each denomination.

The penny, which heads the list, has been coined at an average rate of over 14,000 per day, throughout the nineteenth century, and on the average, over 11,000 halfpennies have been made daily. More than 9000 new shillings have been made per day, on the average, and nearly 8000 new sovereigns. These are truly astonishing results, especially when we bear in mind that they are average results which extend over the whole of the nineteenth century, in the earlier years of which the output of new coins was much smaller than in the more recent years.

As bearing upon the point just mentioned it is interesting to ascertain and to compare the new coinage per head of population, in 1801, 1851, and the average of the ten years 1892–1901.

	Value of New Coinage.	Population.	Yearly New Coinage per Head of Population.
	£	Millions.	s. d.
In 1801	450,295	15.9	0 7
In 1851	4,492,864	27.4	3 3
Average of ten Years— 1892–1901	8,263,309	39.7	4 2

This statement shows that the great increase in our population since 1801 and since 1851 has been quite outpaced by the increase in the yearly amount of new coinage per head of population. Our coins are now practically only the "small change" of our national pocket, and the banking business of to-day is beyond all comparison with that of the earlier years now contrasted. Bearing in mind this fact, the large increase in our coinage per head of population much under-states the growth of national progress and prosperity so far as these two things can be gauged by a money test. Although one does not wish to attach too much importance to the increase in the amount of hard cash coined, this increase may be taken to indicate a great advance in the national well-being of the nation.

J. HOLT SCHOOLING.

Pools, Syndicates, or Trusts; but very frequently a particular combination exists under the form of an ordinary trading company. General forms of combination are not always necessary, for special agreements are often used, as where wholesale firms restrict their customers not to sell except under certain conditions, *e.g.* over the counter to *bonâ fide* retail purchasers, or only at a certain specified price. In order to enforce freedom of trade, the law will not punish those who make a perfectly honest agreement with a belief that it is fairly required for their protection. Suppose that in a small town there are two shops, sufficient for the wants of the neighbourhood, making only a small profit. They are threatened with a third. The two shopkeepers agree to warn the intending shopkeeper that if he comes they will lower prices, and can afford it longer than he. May they be indicted for conspiracy? They certainly have conspired. If he, being warned, does not set up his shop, has he a cause of action? He might be able to prove that he has suffered damage; that alone would not be sufficient for him to succeed. Would a shipowner who had intended to send his ship to Shanghai, but had desisted owing to a combination amongst other shipowners to lower their freights to such a figure as would prevent the merchants using his ship, be entitled to maintain an action against such combination? If he would be so entitled, why not every shipowner who could say he had a ship fit for the trade, but was deterred from using it? To draw a line between fair and unfair competition, between what is reasonable and unreasonable, would pass the power of any Court.

Whatever one trader may do in respect of competition, may be done with equal lawfulness by a body or set of traders. If the rule were otherwise, a large capitalist could do what a number of small capitalists, combining together, could not do, and thus a blow would be struck at the very principle of co-operation and joint-stock enterprise. If the combination were in restraint of trade, it would be illegal, and the result would be that the agreements between the parties to it could not be enforced. This fact alone would prevent the continued existence of a combination in restraint of trade, for none of the parties to it could sue each other. But they would not be necessarily committing any crime, even if parties to an illegal combination; for agreements which are merely void and unenforceable would hardly be the basis of a crime. There is a great difference between illegality in agreement and a criminal illegality.

For a combination to be in restraint of trade, its objects would be required to be against public policy. Public policy has been said by a learned judge to be an unruly horse, and one dangerous to ride; and accordingly it is a question which judges hesitate to decide. As one of their number has well said, they are more trusted as interpreters of the law than as expounders of what is called public policy. In these cases of public policy, there is never sufficient evidence as to the effect and consequences of the action complained of. To exclude others from a trade may be, in general, beneficial for a time to the public; but whenever a monopoly is likely to arise, with a consequent rise in prices, competition naturally arises also. *See* RESTRAINT OF TRADE.

COMMERCIAL COURT.—This Court has not, as such, been expressly established by statute; it owes its origin to the right of the judges of the

King's Bench Division of the High Court of Justice to decide among themselves as to the mode of disposing of the business in their courts. The judges, finding that the commercial litigation of the country could be best dealt with in a special court, decided in 1895 to establish what is now known as the Commercial Court, for the trial of commercial causes. Such causes are those arising out of the ordinary transactions of merchants and traders; amongst others, those relating to the construction of mercantile documents, export or import of merchandise, affreightment, insurance, banking, mercantile agency, and mercantile usages. The object was to settle disputes of a commercial nature in the shortest possible time, and at the same time to devote to their trial judges especially skilled in commercial law. The court has been a great success and much appreciated by the commercial community. Both time and expense are saved, for directly after appearance by the defendant, the judge will make such an order as he thinks fit for the speedy determination of the question really in controversy between the parties. More that that, the solicitors in such actions are practically put upon their honour to facilitate in every way a skilful and candid conduct of the proceedings, and to respond to any reforms designed to lead to despatch and prevent useless expense. *See* ACTION.

COMMERCIAL INTELLIGENCE OFFICE is the name given to a sub-department of the Board of Trade, established in 1899, for the purpose of collecting commercial information and disseminating it among the trading and manufacturing classes. The information is collected by the Board of Trade itself, and from the various departments of the Public Service, the Colonial Agents-General, the Chambers of Commerce, and other organisations.

Most important to the manufacturer, and the importer and exporter, are the reports of the Foreign Office. These are in "Annual" and "Miscellaneous" series, and are received from the diplomatic and consular agents abroad. They contain a general annual review of commerce, industry, agriculture, and shipping at the place of residence of the consul, and of the country to which the diplomatic officer is accredited. The reports are carefully edited at the Foreign Office, and are published, with a complete subjective index at the commencement of each paper, as soon as possible after their receipt. The time which elapses from the date of receipt to their actual issue to the public varies, according to circumstances, from ten days to one month. The Foreign Office also procures from the diplomatic and consular services, as circumstances render necessary, special reports with regard to particular subjects, such as detailed accounts of special industries in foreign countries, openings for British trade, bounties on shipping, regulations concerning commercial travellers, and the like; these are similarly edited, indexed, and published for general information. A complete subjective index to the whole of these reports is published annually. In the same way are published copies of all commercial treaties and conventions as they are concluded by the Government, and copies of such correspondence relating to commercial negotiations with foreign powers as are laid before Parliament.

The Board of Trade also places at the disposal of the public all its reports and returns. And from the Colonial Office come copies of all the annual

reports received from the various Crown colonies upon the finances, trade, &c., of those colonies. A large amount of commercial information is derived from the offices of the High Commissioner for Canada, and the agents-general for the Australasian and South African colonies. Apart from this, these colonial representatives answer questions and invite correspondence on commercial subjects, and are active in disseminating such information as opportunity may offer.

All, or most, of the reports are, immediately on publication, sent gratuitously to every chamber of commerce in the United Kingdom, and to some exchanges and sale-rooms. Those who desire commercial information, and have not at hand the means of otherwise obtaining it, should address themselves to this office. The catalogue of published reports and papers may be obtained through any bookseller, the cost of the reports themselves being very low—from a halfpenny upwards. Not only is the information they contain most valuable, but as reading matter merely they are equally interesting; but in any case the *Board of Trade Journal* should be consulted, as therein may be found most of the collected information which will be generally useful to the public. This journal is issued weekly at the price of 3d.

At the office, which is situate at 73 Basinghall Street, London, E.C., there is an inquiry-room, where copies of official publications, directories, and other works of reference may be consulted by the public. The following are, in some detail, the subjects upon which information is usually sought:—Commercial statistics; matters relating to foreign and colonial tariffs; excise and consumption duties; port, harbour, and tonnage dues, and other charges on shipping; customs regulations; consular fees; forms of certificates of origin; regulations concerning commercial travellers; trading licences; foreign and colonial contracts open to tender; foreign and colonial bounties; lists of firms engaged in particular lines of business in different localities, &c. &c.

COMMERCIAL LAW.—There is not in England any branch of the law specially separated from the rest, and known as commercial law. Nor is there, as in France for example, in addition to a commercial code, a court specially established to administer such law. There is, of course, the COMMERCIAL COURT (*q.v.*), but that is rather the court of one of the judges of the King's Bench Division of the High Court, who, for the convenience of business in the division, has confined his attention for the time being to certain classes of commercial litigation. So far from commercial business being confined to one court, it is in fact distributed among nearly all. Bankruptcy has its own court, partnerships and companies are largely dealt with in the Chancery Division, and shipping is partly provided for in the Admiralty Court. But, generally speaking, the King's Bench Division is the court for the disposal of commercial cases.

Commercial law itself has not in recent times been dealt with as a whole by any legal writer. This is probably because of its extent, and because of the great variety of legal systems which go to make it up. The laws of navigation, of war, of contract, of patents, for example, each properly contain in themselves the necessity for exclusively separate treatment. Roman Law, International Law, the mediæval maritime law of Europe, all enter into the

composition of our commercial law. And to these must be added the common law, some equity, the custom of merchants, judicial decisions, and statutory enactments. There is, however, a tendency towards a commercial code; indeed the tendency is itself a series of legislative contributions to a general codification. The result of this is that the law on many important branches of commercial activity is in effect already codified, and available for intelligent study by the mercantile community; instances may be found in the Bills of Exchange, Partnership, Factors, Sale of Goods, and the Merchant Shipping Acts, in each of which will be found an intelligible statement of the law on the subject dealt with.

COMMERCIAL TRAVELLER.—There is not any law especially applicable to commercial travellers as a class, the nature of their employment bringing them within the general law relating to MASTER AND SERVANT (*q.v.*). As, however, a commercial traveller may be employed by several distinct persons, frequently receives his remuneration either wholly or in part in the form of a commission, and appears to arrange the detail of his employment with very little reference to his principals, there has apparently arisen an idea that the traveller is on a somewhat different footing to an ordinary employee. But this is not the case. Even where a commercial traveller is only paid a commission by his employer, and is at liberty to receive orders for others, he is still the servant of the employer. The independent occupation most similar to that of a traveller is a commission agent, and it is often a nice point to determine to which class a person may belong. If there is an agreement in writing, which there should always be if the employment is intended to be for a year or more certain, the Court will look to that for the terms of the employment, but will always take into consideration any custom of the particular trade which may be established. The chief point to decide will be whether the relationship of master and servant really in fact exists—whether the traveller is under orders to go about his employment here, there, and when; or whether, as in the case of a commission agent, he may go where and when he pleases.

The conditions of the employment must be gathered from the agreement between the parties. Apart from special agreement, a commercial traveller is only entitled to one month's notice of dismissal. Where P. agreed to act as the representative of J., at a salary of £150 a year, and the agreement contained a proviso that if at the end of the year P. had done sufficient business, his salary would be raised to £180, it was held that there was nothing in the agreement to exclude a usage to terminate it by either party giving a month's notice. If, therefore, the traveller wishes to be assured of a certain term of employment, the term must be clearly expressed in the agreement. Indeed the courts would appear to lean against an extensive construction of the term of employment. Thus, where an agreement was expressed to be binding between the parties for twelve months certain from the date thereof, and to continue from time to time until three months' notice in writing was given by either party to determine it, the Court held the agreement to be binding for twelve months certain, and no more. Commercial travellers selling and seeking orders for goods, to or from dealers in such goods who buy to sell again, need not take out a hawker's licence. When taking an order for goods of the value of £10 or upwards, it would be advisable to obtain the

signature of the customer to the memorandum of the order entered by the traveller in his order-book. Such a signature is necessary in order to make the order binding upon the customer; though should the latter pay something in earnest to bind the contract, or in part payment, or accept and receive the goods, the order will be enforceable. But these are not necessary conditions to the validity of an order for goods under £10 in value. Goods may be sold by description, for a particular purpose, or by sample. The law relating to such sales is of considerable importance to the traveller as well as to his employer; it will be dealt with under the titles CAVEAT EMPTOR; SALE OF GOODS; and SAMPLES. Reference should also be made to FOREIGN COMMERCIAL TRAVELLING.

An agreement made the day of 19—, **Between** A. B. & Co. of &c. (hereinafter called "the employers") of the one part and C. D. of &c. (hereinafter called "the traveller") of the other part, **Whereby it is agreed** as follows:—

1. The traveller shall enter into the service of the employers for the purpose of soliciting orders for all goods sold by them, and the employers agree to employ the traveller for such purpose upon the terms and conditions herein contained.

2. The said engagement as a traveller shall be for the term of three years from the date hereof (provided the firm of A. B. & Co. shall so long last), but determinable as hereinafter mentioned.

3. There shall be paid to the traveller by way of remuneration for such services as aforesaid the sum of three pounds per week, payable weekly on Saturday in each week.

4. There shall also be paid and allowed to the traveller in addition to such salary as aforesaid a reasonable sum for his expenses connected with his travelling for the employers as shall be from time to time determined upon by them at their absolute discretion.

5. There shall be paid to the traveller in addition to the salary mentioned in clause 4 hereof a commission of one per cent. upon all orders obtained by him or through his instrumentality in respect of all goods now dealt in by the employers and upon all new goods of every kind and description dealt in by the employers, during the continuation of this agreement, but such commission shall not be payable on any orders given by the firms mentioned in the schedule hereto unless the employers shall in their absolute and uncontrolled discretion think fit to give any remuneration to the traveller in respect of such orders given by such firms. Provided that if the employers shall at any time give any such last-mentioned remuneration, the fact thereof shall not create any precedent or give rise to any claim by the traveller in respect of any orders given by such firms. Provided also that the traveller shall not be entitled to any commission upon any goods supplied to any customers of the employers in or about London unless he introduces and obtains orders therefrom for any goods not at present supplied to such firms, in which event he shall be entitled to commission upon all new orders so obtained.

6. The traveller shall represent the employers at such place or places whenever and wherever he may be required, and he shall devote his whole time and attention to their business, and shall not at any time during the continuance of his employment either directly or indirectly carry on or represent, or be concerned in carrying on in any manner whatsoever, a similar trade or business or anything of a like nature to that carried on by the employers; nor shall he travel for or

represent in any manner whatsoever any other firm carrying on a business of a similar nature or at all.

7. The traveller shall keep an order-book and record therein all orders received by him, and shall produce the same whenever required.

8. The traveller shall not collect any accounts whatever unless he shall be expressly authorised and requested in writing by the employers so to do.

9. Upon the termination of this agreement all books of account, papers, price-lists, and documents of every description used by the traveller in connection with the business shall be handed over by him to the employers and become their absolute property.

10. Upon the termination of this agreement, whether by affluxion of time or otherwise, the traveller shall not for a period of three years then next ensuing carry on or represent either directly or indirectly, or be concerned in directly or indirectly either by himself or in partnership with any person or persons, company or companies, or in any other manner whatsoever, any trade or business of the same or a similar nature to that now carried on, or hereafter during the continuance of this agreement to be carried on, by the employers anywhere within the British Isles or within a hundred miles of wherever he shall have represented the employers, under a penalty of £500, which sum shall be recoverable as liquidated damages.

11. If at any time during the continuance of this agreement the traveller shall not in all respects perform the obligations on his part herein contained, the same and the employment hereunder shall immediately cease and determine, anything else herein contained to the contrary notwithstanding.

As witness the hands of the said parties,

The Schedule above referred to.

Johns & Brown, Leeds; Smith, Robinson & Co., Birmingham, &c.

(*Signed*) { A. B. & Co.
C. D.

Witness,
E. F.

COMMON EMPLOYMENT.—This is the term applied to the doctrine of the common law, that there is no implied contract by a master to indemnify his servant against any injury happening in the course of his employment, or even not to expose his servant to any extraordinary risks. In effect, this rule holds that a servant upon accepting an employment undertakes all risks incidental thereto. The doctrine had its effective origin in 1837, but within recent years there has grown up an increasing opposition to its spirit. This opposition made itself first felt in the EMPLOYERS' LIABILITY (*q.v.*) Act of 1880, which imposed upon the master a liability in certain events for injuries sustained by his servant in the course of his employment; and in 1897 the WORKMEN'S COMPENSATION (*q.v.*) Act, and ultimately the Act of 1906, imposed still more extensive liabilities upon the master. Indeed, the combined effect of the above Acts almost neutralises this doctrine in practice, and even extends to servants greater and more practical advantages than those they would have had under the common law, had there been no doctrine of common employment. But the doctrine remains in fact, and where a case of injury does not come within the above Acts, it may be applied to exclude the servant from relief.

COMMON LAW.—In England the Common Law is said to be that body of customs, rules, and maxims which have acquired their binding power and the force of laws in consequence of long usage, recognised by judicial decision, and not by reason of statutes now extant. The word *common* is used in the sense of general, and means that the law to which the word is applied is universal throughout the country, and not confined to any particular locality. Thus the general rule that a freehold estate descends to the heir is common law, as distinguished from the local rule (in Kent) that such an estate descends to all the sons equally. Again, common law is said to be *lex non scripta* (unwritten law), as distinguished from statute or written law—*lex scripta.* The term is also used very generally by lawyers to denote a certain part or branch of the whole law of England, to distinguish it from other parts. So used, it suggests that the common law is the one indigenous general law of the country, and would not be confined to the unwritten law. In this sense it stands opposed to equity, or the law as originally exclusively administered in the Court of Chancery; to the law administered in Admiralty, which may be said to be largely based upon a development of the Roman Civil Law; and to the law administered in the probate and ecclesiastical courts, which is based on the Canon Law. Used in such a sense as this, the common law is now composed of more statute or written law than any of the divisions of law from which it is distinguished.

Sir Matthew Hale has said that the origin of the common law of England is "as undiscoverable as the head of the Nile." Of course the head of the Nile is not to-day so great a mystery as it was in the days of that eminent judge; but his comparison seems very pertinent in the light of modern learning. For all practical purposes the origin of the common law of England is now fairly well elucidated, and it is probably to be found in a growth of peculiar customs introduced into this country during its early political vicissitudes, such, for example, as at the times of the settlement of the Saxons, Danes, and Normans; this growth finding root in the customs of the country then found here, and which it probably shared in common with all Aryan peoples who had only arrived at a certain stage of culture. Even the Roman Law may have had some influence on the common law when this country was occupied by Rome; the common law was certainly considerably influenced by it during the first few centuries after the Norman Conquest, as well as some one to two centuries ago, when commercial law was in the making by the judges.

Except as used in the above-mentioned sense, as opposed to equity, the civil law, and the canon law, it is doubtful whether there is any practical value in clinging with reverent respect to the term common law. There can be no absolute definition or description of it, there has been no continuity in its rules and provisions. The jury was once witness to the fact, to-day it is the judge of the fact upon the evidence of other witnesses; at one time the common-law judges would base their whole judgments on the Roman Law appropriate to the question before them, to-day, except by way of illustration, reference to the Roman Law would be impossible in a court of common law; at one time goods and chattels were almost absolutely disregarded as the subjects of contract or wrongs by the unwritten common law, while to-day contracts and wrongs in respect thereof almost exclusively occupy the atten-

tion of our common-law judges, who to some extent generally apply to them the provisions of a written or statute law.

COMMON LODGING-HOUSE.—Such a place may be described as a house, or part thereof, where persons of the poorer classes are received for gain, and in which they use one or more rooms in common with the rest of the inmates, who are not members of one family, whether for eating or sleeping. The common room is an essential characteristic of a common lodging-house. These houses are subject to statutory regulation such as is contained in the Towns Improvement Clauses Act, the Public Health Acts, and in London the Common Lodging-Houses Acts. In London they are under the management of the London County Council, and in the provinces, of the local borough, urban, or district council; but whether in London or in the country the regulations are in most respects similar. The fact that a house is kept for charitable purposes and not for purposes of gain does not prevent it from being a common lodging-house; and no distinction can be drawn between a case where a small charge for admittance is made, though not for the purpose of making a profit, and one where no payment at all is made.

Every keeper of a common lodging-house must be registered by the local authority, and the house is required to be first inspected and approved. The words "registered common lodging-house" must, if required by the authority, be affixed and kept undefaced and legible in a conspicuous place outside the house. Officers of the authority, and in London the police as well, are entitled to free entry at any time; the house must be kept in such condition as to whitewashing, the water supply, and otherwise as the authorities may determine; and if vagrants and beggars are taken in, a full list thereof, if required, must be furnished every morning as to those using the house during the preceding night. Before registering a person as a common lodging-house keeper the local authority are entitled to satisfy themselves as to his character and fitness for the position. *See* also article in APPENDIX.

COMPANIES: THEIR FORMATION AND CONSTITUTION.—The companies with which it is proposed to deal in this article are those formerly formed under the Companies Acts, 1862 to 1900, of which statutes the Act of 1862 was the chief, and those now formed under the repealing and consolidating Act of 1908. It is unlawful to trade in co-partnership where the number of the partners exceeds twenty (or ten for a banking company); unless the co-partnership is registered under the Act. A co-partnership so registered may, under the provisions of the Companies Act, be unlimited in its liability, or its liability may be limited either (*a*) by its shares, or (*b*) by guarantee; but, in no case where the company is a public one, may its partners or members be less in number than seven. A company may also be registered with the liability of its directors unlimited. Where the company to be formed will be a "private" company it may consist of only two or more members. There is no restriction or regulation as to the minimum proportion of shares which may be held by each member, the consequence being that a public company may be registered and will be valid which has its capital divided into, say 500,000 shares, of which six are held by the same number of persons and the remaining 499,994 are held by one member alone. And it is very necessary that the number of members of a public company should never at any time be allowed to go below seven, even if a share apiece has to be given to a few nominees or dependants for the sole purpose of

keeping up the statutory number. To go below the number is to give power to the registrar to strike the company off the register as defunct. Moreover, should such a company carry on business when the number of its members is less than seven for a period of six months after the number has been so reduced, each person who is a member of the company during the time that it so carries on business after the period of six months, and is cognisant of the fact that it is so carrying on business with fewer than seven members, will be personally liable for the payment of the whole debts of the company contracted during such time, and may be sued for the same, without any other member of the company being joined in the action. Two members are sufficient for a private company.

Limited Liability.—There is little practical value in staying to discuss the merits of a registration with unlimited liability; the real interest of the public centres in companies having their liability limited. As above mentioned, there are two forms of limited liability—that by guarantee, and that by shares. The former of these two exists where, the capital not being divided into shares, its members instead guarantee certain proportions thereof. A company limited by guarantee is seldom to be found amongst business companies, except amongst such as are of a mutual character, as *e.g.* mutual insurance societies. In fact the method of limitation of liability by guarantee is of little value to a trading company requiring the usual facilities for credit, and it is accordingly adopted by those companies, or rather societies, such as chambers of commerce and law societies, which require little or no credit, and have not the primary object of making profit for their members. All limited companies, whether public or private, or whether by guarantee or by shares, must affix at the end of their title the word "limited," and always use it, or an easily understood abbreviation. Any notice or other act of a company omitting this word "limited" is invalid, and may lead to serious consequences. But the Board of Trade has power, where a company is not formed for the purpose of profit but for the advancement of some object of general public utility, to permit it to omit the affix "limited" from its title. The word "limited" may not be used by a company or firm not so registered.

The advantages offered to the trader by the system of limited liability are many and obvious. It is true that the arm-chair critic may, as the result of a superficial consideration of them, object that for the most part they afford an opportunity for the individual to sink his identity in that of a mere abstraction, and thereby to escape his proper personal liabilities. Whether this be so or not, it is sufficient that the law stands as it does; and notwithstanding any occasional opportunities it may offer for "immoral" commercial enterprise, the system of limited liability at the same time affords, on the whole, undoubted and most necessary advantages and facilities to trade and commerce generally. The law is aware of this, and accordingly the system is maintained to-day on practically the same principles as it was introduced in 1862. To properly appreciate the advantages of "limited liability," the business man must not overlook the fact that a "one-man company," as it is called, is as legal a form of company as any other. The one-man element may legally extend to such a length that in the above-mentioned superstitious company with half a million capital, the owner of the 499,994 shares may even have the remaining six shares in his own possession and power as pledges or otherwise. And the recently introduced "private" company only strengthens the position of the one-man company.

If the company meets with financial disaster it may be wound up, and

he individually will escape the odium and inconvenient personal results of bankruptcy. Does the company require further capital, it may be obtained by debentures duly registered. Again, by turning his business into a company the business has become in itself a legal person subject to but few of the contingencies usually attendant upon the natural person; it can live as long as desired by the persons from time to time interested in it. Had it been an ordinary partnership, the death of a partner would have necessitated new arrangements of capital and partnership. Moreover, the shares of the company may be freely dealt with by way of sale, mortgage, or otherwise—partners cannot sell or mortgage their shares in a partnership. So also, shares in the company may be disposed of by will.

The Formation of a Company.—It would be of very little practical use to the general reader to set forth here the methods of flotation of a company as adopted by the professional company promoter when he desires to obtain for his venture the financial support of the general public. For one thing, the chief function of the promoter is to obtain capital by means of a public issue, while *a private company is prohibited from inviting the public to subscribe.* It will, on the other hand, be of some interest to show how a company may be formed under certain circumstances which may arise at any time in the ordinary course of an average business career. There are two of such circumstances that may be profitably referred to. The first is where a business, already a going concern, is about to be turned into a limited company, the actual proprietary remaining the same. The second is where a limited company is to be formed, having capital provided for it by several persons upon terms already agreed, and which company is intended to take over either an already existing business, or to create and develop a new business altogether. Until recently all limited companies were, strictly speaking, public companies. Now the class of "private" company has been introduced, and into a company of such class the business now to be considered can most conveniently be transformed. A private company is essentially one which does not issue a prospectus. Though the formation of all companies—both public and private—follows practically the same lines, there are certain additional incidents in the promotion of a public company. These, however, need not detain us in this article, but reference may be made to such other articles as PROSPECTUS and UNDERWRITING.

A Private Company is one which by its articles (*a*) restricts the right to transfer its shares; (*b*) limits the number of its members (exclusive of persons who are in the employment of the company) to fifty; and (*c*) prohibits any invitation to the public to subscribe for any shares or debentures of the company. Moreover, a private company need not obtain a certificate entitling it to commence business, or file a balance-sheet, or forward and file a report for the statutory meeting, or disclose the auditor's balance-sheets and reports to preference shareholders or debenture holders. It may pay a commission for subscribing or underwriting its shares. Let it be assumed that the business intended to be transferred to a company is an already existent and working printing and publishing establishment owned entirely by one person; and the company is to be called "The John Bull Printing and Publishing Company, Limited." The first thing to be done by the owner will be to prepare a complete balance-sheet of the business. This having been done, attention should be paid to the two very important items—(*a*) total net assets, not including

goodwill as such; and (*b*) net annual profit. Let (*a*) be £5000, and (*b*) £1000. With these two items before him, the owner may approach the very important question of the capital of the intended company; and he must be careful, on the one hand, not to saddle the company with too heavy a capital, and on the other hand not to depreciate the value of his business by making it too small. The nominal capital should be fixed at such a sum as will leave a margin of unissued shares after acquiring the business, which will be available for issue in the future if deemed expedient. The part of the nominal capital actually issued should be limited to such a sum as will make the dividends payable thereon reasonable and satisfactory to any one who may in course of time become, by purchase, a shareholder. For the shares to yield 10 per cent. would be very reasonable from all points of view; and perhaps he will be wise if, having regard to the nature of the business, he fixes the nominal capital and the part thereof to be issued relatively to such a desired result. But he must first make provision for the expense of a general but occasional supervision of the business, such as directors generally give. As he himself is at present the sole owner, and so will take all the profits, he might fix the total directors' fees at £150 per annum, which would allow for supervision by others when he himself has retired. The net profit available for dividend will stand, therefore, at £850, which capitalised at 10 per cent. shows £8500. This latter figure can, therefore, be reasonably fixed as the amount of the part of the capital to be actually issued; and the business can be valued thereat, namely, £5000 for plant, stock, and other assets, and £3500 for goodwill. The nominal capital could be fixed at £10,000, which will leave a margin of £1500 for further issue. In the estimate we have just made it is assumed that there will be sufficient floating cash, or realisable assets, in the business as transferred to the company, to provide for working capital. If further working capital is needed, it may be obtained by issuing the unissued shares, or upon debentures; the latter plan will give security to the person who finds the further capital.

Agreement for Sale.—The next step will be to prepare an agreement for the sale of the business to the company. The agreement will follow the form set out in illustration of this article. It will be noticed in particular that the owner, whom we have therein called John Bull, agrees to sell the business to one John Smith, who enters into the agreement on his part solely as a trustee for the intended company—as, in fact, a conduit pipe for the conveyance of the business to the company when formed—and consequently is not supposed or expected to incur any personal obligation in the matter. John Smith is therefore merely a nominal purchaser, and it is not only convenient but very usual to find him among the clerks or other dependants of the vendor. The agreement recites, amongst other things, that the nominal capital of the company is to be £10,000, divided into 10,000 shares of £1 each, and that the price to be paid for the business is £8500, payable in fully-paid shares to that amount. It is advisable for the agreement to specify the number of the shares it is intended to allot to the vendor in satisfaction of the purchase price, also to fix an early convenient date for the completion of the purchase. This latter need only be about a week ahead, so long as sufficient time is given for filing the agreement and registering the company in the meantime. Nor should the agreement fail to provide for the discharge of John Smith from any liability thereunder, or to provide for its being filed within one month after allotment.

It is most essential that the agreement should be filed within one month after allotment of the shares. To allot fully paid shares without so filing the agreement therefor would be to hand shares over to the vendor for which he might be liable in cash to the amount of their face value, notwithstanding the fact that they are expressed to be fully paid, and have been allotted for a good consideration. Any future transferee of these shares would also hold them subject to the same liability if, when he took them, he knew the agreement relating to them had not been filed; but any *bonâ-fide* purchaser thereof who had no such knowledge would hold the shares as fully paid up and without any liability, and so would any further transferee of those shares who derived his title thereto through the above-mentioned *bonâ-fide* purchaser, even though such further transferee himself knew of the non-filling of the agreement.

The allottee of fully-paid shares should himself see that the agreement is duly filed, but as the duty should lie primarily upon the company, it will be wise to notice this duty in the agreement itself. If the allottee finds that the company has omitted to file the agreement, he may proceed to have the omission supplied by either of two means. One method is to apply to the company to cancel his shares and strike his name in respect thereof out of the share register, with a view to subsequently filing the agreement and allotting him a new set of shares in lieu of those cancelled. This the company may lawfully do, but it is necessary that the whole of the details of the cancellation and re-allotment, and of all the proceedings incidental thereto, are clearly and fully set out in the minute-book of the company; it would be the best plan for the allottee's letter of request to be pasted in the minute-book, and the directors' resolution thereon to recite in detail all the facts leading up thereto. Such an allottee has, however, other means of rectification open to him; he may apply to the Court setting out all the facts, and the Court, if satisfied as to the justice of the application, and as to the solvency of the company, will order the share register of the company to be rectified by striking out the name of the allottee with a view to the agreement being filed and the shares reissued.

Memorandum and Articles.—The above having been duly executed, it remains to prepare the Memorandum and Articles of Association. Each of these documents are discussed in separate articles, and it will be sufficient here to refer to a few points in their relation to a private company such as the one we are assuming to be in process of formation. Since the acquisition of the business by the intended company is the real object of the latter's existence, it follows that a first place must be given to that object when constituting the company. Accordingly, the Memorandum of Association should provide that acquisition as its first object. It should do this in the terms of Clause 3 (*a*) of the memorandum set out at the end of this article; and it will be in this that our memorandum mainly differs from that of a public company. In the latter case the directors have a much wider discretion whether they will or not purchase a business which the company has been floated to acquire. In the case of a private company it is not intended that they shall have any discretion whatsoever in this respect. Apart from this point the memorandum does not require further discussion in this article.

In the case of the Articles of Association there is need for a greater particularity in preparing it for a private company. It may, for example,

be thought desirable to restrict the free transfer of shares, so as to prevent the introduction of undesirable shareholders or to confer upon the shareholders a right to the first offer of any shares of which a member may desire to dispose; or to provide that only persons approved by the directors may be permitted to hold shares. Again, where employees are allowed to hold shares as a condition for office in the company, and one retires, or misconducts himself so that it is necessary to discharge him, it may be expedient to have an article which gives the directors power to demand the sale to them of his shares at an agreed price. So, too, shareholders may be restrained from entering into a business in competition with the company, or even from doing so within a certain time from their having retired from membership.

And the provisions with regard to the directors—their appointment, term and conditions of service, remuneration and dismissal, or retirement, are of the utmost importance to the owner of the original business, and must vary in detail in almost every case. Invariably, however, these particular articles are different to those of a public company; the managing director has often granted to him an unlimited and absolute power of management. He cannot be compulsorily retired under the usual circumstances; he may have an unfettered liberty to engage in what other business he likes, or he may be tied hand and foot to the business of the company. And so, throughout the Articles of Association, those of a private company may differ materially from those of a public company; and they differ generally in the two extremes: First, in the most important and general individual powers of the directors, which are usually extended in the private and limited in the public company; and secondly, in the details of the company's regulations, which are usually expressly defined in the private, but merged in general provision in the public company. But notwithstanding this, the general tenor of the articles of both public and private companies is the same.

Registration.—The Memorandum and Articles of Association having now been settled, and each having been subscribed in duplicate by two persons, they must be taken to Somerset House and filed in the Companies' Registry there. It will be here that all other documents will be filed that are required so to be, where the public may inspect them. At the time of filing the memorandum and articles it is necessary to file a statutory declaration that all the requirements of the Companies Acts incidental to the formation of the company have been duly complied with, and a special form of application to register. This declaration must be made by the solicitor, if any, who has had in hand the work of the formation of the company, or by a director of the company named as such by the articles, or by the secretary of the company. Particulars are also filed as to the offices of the company and its secretary; such offices are always known as the company's registered offices. On registration of a "public" company there are certain other requisites.

Incorporation.—About a week after registration and filing, the authorities at Somerset House will have ready for delivery the certificate of incorporation. When this has been obtained, the company may be said to have become a living legal personage as from the date of its incorporation as mentioned in the certificate, and it may thenceforth proceed to carry out its objects.

Once registered, once born, the company cannot be got rid of in any other way than by process of winding-up, or by being struck off the register

as defunct in consequence of its membership having fallen below the legal minimum, or its not having kept up its returns to the authorities; no circumstances attaching to a company, however disgraceful, or in abuse or fraud of the law, can give to any authority the power of putting an end to its existence. The registrar may, however, withhold a certificate of incorporation where a company has been formed for an unlawful purpose, or for objects not authorised by the Acts. But the certificate when granted is conclusive evidence that all the requisitions of the Companies Acts in respect of registration and of matters precedent and incidental thereto have been complied with, and that the company has been authorised to be, and is duly registered. And it is only reasonable that the certificate should be conclusive, for when once the memorandum and articles are registered, and the company is held out to the world as a company undertaking business, willing to receive shareholders and ready to contract engagements, then it would be of the most disastrous consequences if, after all that has been done, any person might go back and enter into an examination (it might be years after the company had commenced trade) of the circumstances attending the original registration and the regularity of the execution of those documents.

The first thing to be done after incorporation will be for the directors to hold a meeting, and pass a resolution adopting the agreement for sale and allotting the shares payable thereunder—not forgetting to file the agreement within the prescribed time. The company will then carry on the business as its proprietor in the stead of its former owner; and the latter, though he still may be in fact the almost absolute owner of the company and all its property, will be in law a separate and distinct personage therefrom. Formerly, when conducting the business personally, if he wished to put more capital therein he could only do so without security; now, if further capital is required, he may personally lend it to the company upon the security of mortgage debentures over the whole of the company's property, and so constitute himself a prior and a secured creditor. The result of this position would be that, in case of financial disaster, he would rank before the trade creditors both in point of preference for payment and in point of security — the assets of the company being charged with the prior payment of his debt.

The Company at work.—The company having now been duly formed, the original owner of the business now being the managing director of the company, it is necessary that he should know something of the many regulations imposed by statute for the conduct of the company's business. But notwithstanding the very general powers and authority with which he may have been entrusted, there is one official of the company who represents it in the flesh to the outside world—the secretary. In the case of our imaginary company he may be merely the old managing or chief clerk under a more dignified name; but he may be, and very often is, a public accountant well versed in company procedure who has undertaken the secretarial duties of this company. But whoever he may be, the secretary is the official who should be the chief authority amongst the officers of the company, in all questions relating to its formal management and administration. He must know what books must be kept, what meetings of directors and shareholders are required by law, the different classes of meeting, the nature of resolutions and their various kinds, what registers are to be kept, and what accounts and documents are required to be filed at Somerset House. Many other things too he must be acquainted with, the knowledge of which is a practical know-

ledge of the constitution and formal working of a company; particulars of all this will be found in the article on the SECRETARY OF A COMPANY. The directors, too, will find further information relating to their office under the heading of DIRECTORS; whilst the ordinary shareholder, who has bought shares in a company on the strength of a PROSPECTUS, will find the law relating thereto under that title, and under CALLS; CAPITAL; PROMOTERS; and SHARES. Other articles that may be consulted are ARTICLES OF ASSOCIATION; BALANCE-SHEET; CONTRIBUTORIES; CORPORATION DEBENTURES; DIVIDENDS; MEMORANDUM OF ASSOCIATION; RECONSTRUCTION; and WINDING-UP. To understand the Articles of Association appended hereto, they should be read together with TABLE A.

Powers and Liabilities of a Company.—It has already been stated that an incorporated company is in law a person; and it follows that it should have the same rights and be subject to the same obligations. But as a company is a fictitious and created person, it also follows that under some circumstances its rights and obligations may necessarily be either more limited or extensive than those of a natural person. A corporation, which is the general title that includes a company incorporated under the Acts we have been considering, has from time immemorial been said by the law to have no soul; here is at once a startling difference well recognised by the law, and the logcial inferences to be drawn therefrom might very reasonably make the legal position of a company very different to that which it to-day occupies in the sight of the law. And attempts have at times been strenuously made to force the judicial authorities to adopt a legal attitude consistent with logical inference. In the matter of crime, it has been urged that a company can incur no criminal responsibility, because it has no "mind" to be capable of a guilty intent, which generally speaking is a necessary ingredient in every criminal offence; and on similar grounds it has been urged that a company cannot be liable for any private wrong, in respect of which the law requires proof of express malice on the part of the wrong-doer as a necessary condition before the person wronged can obtain damages.

And yet in face of the first contention, a company may be criminally indicted and fined for a breach of duty imposed by the law; and in respect of many crimes and offences, either by the common law or by special statutory provision, directors and officers of the company may be called upon to personally stand a criminal trial. With regard to the second contention, it is now well settled that a company is liable in damages for malicious prosecution and for libel. Generally in respect of torts, it would be liable *e.g.* for assault and battery, nuisance, fraud, negligence, and trespass. As a contracting party, a company may enter into agreements as freely as a natural person, subject to two main limitations: (1) Except where the contract is in respect of an everyday and ordinary transaction of its ordinary business, all contracts entered into by a company must have its seal duly affixed thereto; the seal is the legal signature of a company. (2) Its contracts must be within its powers. These powers are contained in the memorandum of association; but speaking generally, it may be said that a company may enter into any contract which is a necessary incident in the carrying into effect of the objects and powers contained in the memorandum, even if the subject of the particular contract in question is not referred to therein.

A company may act through an agent, and is accordingly liable for and bound by his acts. It may also be bound by acquiescence and conduct, for although it may not have eyes of its own wherewith to see, it has agents who should have. Upon most trading companies the law confers an implied power to borrow money, and to make, accept, indorse, or issue bills of exchange; but it would always be wise to look at the memorandum of association before entering into such a transaction with a company. In fact the reader may be here usefully advised to request to be furnished with a copy thereof before he engages with a company in any business of an important character; if it will not give him a copy, he may see it at Somerset House, though if the registered office of the company is in Scotland or Ireland, or the company is a mining company conducting its operations in Cornwall or Devon, search should be made at the Companies Registration Offices at Edinburgh, Dublin, or Truro respectively, as the case may be.

Bills of Exchange.—Particular care must be taken in the matter of bills of exchange and cheques. The most important points are that the word "limited" must never be omitted from the termination of the company's name, and that the latter is always correctly stated; failure in either of these details will entail personal liability upon the directors in respect of the bill, not to mention certain penalties. So, too, the directors or others signing the bill must be careful to let it clearly appear that they are signing merely "for" or "on account of" the company, and not so as to incur personal liability thereon. Any person duly authorised so to do may sign a bill or cheque on behalf of a company; sometimes the company affixes its seal. We now append a few examples of bills, a cheque, and a promissory note.

I. ACCEPTANCES BY A COMPANY.

(a) *Under seal.*

£500 : 0 : 0 LONDON, 14*th November* 1910.

Three months after date pay to my order the sum of Five hundred pounds, value received.

To JOHN BULL, LIMITED,
3 Fenchurch Place, E.C.

JOHN FORD.

(b) *By Directors, and drawn by a Company per its Secretary.*

£500 : 0 : 0. LONDON, 14*th November* 1910.

Three months after date pay to our order the sum of Five hundred pounds, value received.

To JOHN BULL, LIMITED,
3 Fenchurch Place, E.C.

for JOHN JONES & Co., LIMITED.
JOHN JONES, *Secretary.*

II. CHEQUE.

LONDON, 14*th November* 1910.

To THE NATIONAL PROVINCIAL BANK OF ENGLAND, LIMITED,
Bishopsgate Street.

Pay to Mr. John Smith or order the sum of Five hundred pounds.

for JOHN JONES & Co., LIMITED.
H. B. HARWOOD, *Managing Director.*

£500 : 0 : 0 JOHN JONES, *Secretary.*

This Indenture made the twenty sixth day of March One thousand nine hundred and ten **Between** Mary Daniels of Hassocks in the County of Sussex Spinster (hereinafter called the Vendor) of the one part and William George Brown of Saint Georges Road in the City of Chichester (hereinafter called the Purchaser) of the other part **Witnesseth** that in consideration of **Two hundred pounds** this day paid to the Vendor by the Purchaser (the receipt whereof she the Vendor doth hereby acknowledge) She the Vendor as beneficial owner doth hereby **convey** unto the Purchaser his heirs and assigns **All those** two several plots of ground situate at Leigh in the County of Sussex being part of a piece or parcel of Land formerly called or known by the name of "The Six Acres" and numbered 112 on the Tithe apportionment Map of the Parish of Leigh **And also All those** two several messuages erected on the said plots of ground and known as Nos. 49 and 50 George Street Leigh aforesaid (except all coals mines and minerals thereunder **To hold** the said premises unto and to the use of the Purchaser in fee simple **In witness** whereof the said parties have hereunto set their hands and seals the day and year first above written

Signed Sealed and Delivered by the said Mary Daniels in the presence of: . . . . . } Mary Daniels (L.S.)

G Burgess
14 High Street
Leigh

III. PROMISSORY NOTE.

Under seal.

£500 : 0 : 0. LONDON, 14*th November* 1910.

John Jones & Co., Limited, hereby promises to pay to Mr. John Richardson or order the sum of Five hundred pounds on the 31st day of December 1910 for value received.

As witness the common seal of the said company the 14th day of November 1910.

(L.S.) JOHN JONES, *Secretary.* H. B. HARWOOD, *Managing Director.*

Execution of a deed.—The following is a short form of conveyance of a freehold house, which shows the formal parts of a deed where a company is a party thereto.

THIS INDENTURE, made the fourth day of October one thousand nine hundred and ten, **Between** The Italian Ware Syndicate, Limited (hereinafter called "the vendor"), whose registered office is at 15 Threadneedle Street in the city of London, of the one part, and **C. D.** of &c. (hereinafter called "the purchaser") of the other part, **Witnesseth** that in consideration of the sum of one thousand pounds to the vendor paid by the purchaser on or before the execution hereof (the receipt whereof is hereby acknowledged), the vendor as beneficial owner hereby conveys unto the purchaser **All that** (*here describe the property*), **To hold** the same unto and to the use of the purchaser in fee simple, **IN WITNESS** whereof the said company hath hereunto affixed its common seal and the said C. D. set his hand and seal the day and year first before written.

Seal of the said company duly affixed by and in the presence of
Pietro Salviati, *Managing Director.*
C. Colonna, *Secretary.* (L.S.)

Signed, sealed, and delivered by the said C. D. in the presence of
E. F. of &c. C. D. (L.S.)

Cost of formation of a Company.—These may be taken to be comprised of four sets of expenses. The first is the expense, so far as it may be found necessary, of the assistance of an accountant in preparing a statement of affairs of the business prior to the formation of the company. The second is made up of the costs of legal assistance in preparing the necessary agreements and the memorandum and articles of association, and advising generally in the matter. The third is the expense of printing the memorandum and articles, the share certificates, and the necessary special books; whilst the fourth consists of the stamp duties on the agreements and deeds, and the fees payable to Government. The first three sets will vary according to the nature of the business and any special complications incidental thereto—their total may be comparatively small or the reverse; in any event estimates

should be obtained before the matter is proceeded with. The official fees payable on registration of a company limited by shares are a duty of 5s. per £100 of the nominal capital without any limit, and registration fees in addition, on the following scale:—

	£	s.	d.
For registration, where the nominal capital does not exceed £2000	2	0	0
For registration, where the nominal capital exceeds £2000, the above fee of £2, with the following additional fees, regulated according to the amount of the nominal capital: (that is to say)			
For every £1000 of nominal capital, or part of £1000, after the first £2000, up to £5000	1	0	0
For every £1000 of nominal capital, or part of £1000, after the first £5000, up to £100,000	0	5	0
For every £1000 of nominal capital, or part of £1000, after the first £100,000	0	1	0
For registering any document required or authorised to be registered, other than the memorandum of association	0	5	0
For registering a record of any fact authorised or required to be recorded	0	5	0
The articles require a 10s. deed stamp, and also for registration.	0	5	0

The Companies (Consolidation) Act, 1908.

MEMORANDUM OF ASSOCIATION

OF

THE JOHN BULL PRINTING AND PUBLISHING COMPANY, LIMITED.

1st. The name of the Company is "THE JOHN BULL PRINTING AND PUBLISHING COMPANY, LIMITED."

2nd. The Registered Office of the Company will be situate in England.

3rd. The objects for which the Company is established are:—

(A.) To adopt and carry into effect without modification an agreement dated the 16th day of November 1909, made between John Bull of the one part and John Smith (as trustee for the Company) of the other part, for the purchase of the business now carried on by the said John Bull at Hadley, in the County of Essex, and the leasehold messuages therein mentioned, and to carry on the said business as heretofore carried on, and generally to carry on the business of stationers, printers, typefounders, lithographers, stereotypers, die-sinkers, bookbinders, advertising and general agents, designers, draughtsmen, ink manufacturers, booksellers, paper manufacturers, dealers in paper and in the material used in the manufacture of paper, engineers, cabinet-makers, and of dealers in or manufacturers of any other articles or things of a character commonly made, sold, or dealt in by the foregoing, or any of them, or connected therewith

An Agreement made the sixteenth day of November One thousand nine hundred and ten **Between** John Bull of 15 High Street Hadley in the County of Essex Printer and Publisher (hereinafter called "the Vendor") of the one part and John Smith of 9 Grove Park Hadley aforesaid Clerk (hereinafter called "the Trustee") as Trustee for and on behalf of the Company hereinafter mentioned of the other part **Whereas** the Vendor is the Owner of and has for some years past carried on the business of a Printer and Publisher upon the leasehold premises No 15 High Street Hadley aforesaid **And Whereas** a Company is about to be formed under the Consolidation Act 1908 having for its objects (inter alia) the purchase from the Vendor and the working of the said business **And Whereas** the Memorandum and Articles of Association of the said Company have been already prepared with the knowledge and concurrence of the Vendor **And Whereas** the nominal Capital of the said Company is to be Ten thousand pounds divided into Ten thousand shares of One pound each **And Whereas** by the said Memorandum of Association an object of the said Company is expressed to be the adoption and carrying into effect of an Agreement referred to in Clause 3 (a) of the said Memorandum such Agreement being these presents and by the said Articles it is provided that the Directors of the said Company shall forthwith adopt and carry into effect the said Agreement **Now it is hereby agreed** as follows

1 **The** Vendor shall sell and the Company shall purchase **First** the said leasehold premises for the unexpired residue of a term of Twenty one years thereon granted by an Indenture of Lease dated the twenty ninth day of September One thousand eight hundred and ninety seven and made between The Ecclesiastical Commissioners of the one part and the Vendor of the other part subject to the rent reserved by and the covenants and conditions contained in the said Indenture of Lease **Secondly** the steam engines presses guillotines type furniture paper books copyrights and all other the plant machinery stock in trade chattels and effects connected with the said business and now in or about the said premises **Thirdly** the goodwill of the said business and all book and other debts due to the Vendor in connection therewith and the full benefit of all contracts and rights to which the Vendor is entitled in respect of the said business

2 **The** consideration for the said sale shall be the sum of Eight thousand five hundred pounds which shall be paid and satisfied by the allotment to the Vendor or his Nominees of Eight thousand five hundred fully paid shares of One pound each to be numbered 1 to 8500 inclusive

3 The title of the Vendor to the said leasehold premises shall commence with the said Indenture of Lease and shall be accepted by the Company without investigation requisition or demur

4 The purchase shall be completed on the twenty third day of November One thousand nine hundred and ten at the Registered Offices of the Company when the Company shall allot the said Eight Thousand five hundred shares to the Vendor or as he shall direct

5 Upon such allotment being made the Vendor shall at the expense of the Company do all things necessary to vest the said leasehold premises in the Company and to give it the full benefit of this Agreement

6 The Vendor shall not except in connection with the Company and its business at any time hereafter either solely or jointly directly or indirectly carry on or be engaged or concerned or interested in any way in the business of a Printer and Publisher nor permit or suffer his name to be used in connection with such a business within twenty five miles of the said leasehold premises

7 Possession of the said leasehold premises and of the said business shall be retained by the Vendor up to the said twenty third day of November One thousand nine hundred and ten or until the completion of the purchase up to which time or event he shall pay all outgoings and receive all income

8 Upon completion of the purchase the Vendor shall hand over to the Company all books of account and the Company shall undertake and perform all the contracts and engagements the benefit whereof is hereby agreed to be sold and shall indemnify the Vendor his heirs executors and administrators and his and their estates and effects from and against all actions expenses claims and demands in respect thereof

9 The Company shall not at any time alter or attempt to alter Clauses 2, 3, 5, 11, 15, 16, 18, 19 and 24 of its Articles of Association as now framed and intended to be filed or do or suffer any thing to be done against the intent and tenor of those Clauses or any of them

10 Upon the adoption of this Agreement by the Company the said John Smith shall be discharged from all liability in respect thereof and if this Agreement shall not be adopted by the Company before the twenty third day of December next either of the parties hereto may by notice in writing to the other rescind the same

11 The Company shall cause this Agreement to be filed with the Registrar of Joint Stock Companies before any of the said Shares are allotted

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

Signed by the said John Bull and John Smith in the presence of James Clarke, Chelmsford, Essex, Accountant

John Bull

J. Smith

(B.) To establish, purchase, or otherwise acquire, print, and publish newspapers, journals, magazines, books, and other publications in the United Kingdom or abroad, and to carry on the business of newspaper and magazine proprietors, and any business in combination therewith that may in the opinion of the Directors seem calculated to benefit the Company.

(C.) To apply for, purchase, or otherwise acquire any patents, copyrights, licences, concessions, and the like, or any secret or other information as to any invention, matter, or thing which may seem capable of being used for any of the purposes of the Company, or the acquisition of which may seem calculated to benefit this Company, and to use, develop, or grant licences in respect of or otherwise turn to account the property, rights, or information so acquired.

(D.) To establish and carry on works, or agencies, in any part of the United Kingdom or abroad for the manufacture or sale of all or any of the aforesaid articles or otherwise for the purposes or benefit of the Company.

(E.) To acquire and undertake the whole or any part of the business, property, and liabilities of any person, association, or company carrying on any business which this Company is authorised to carry on, or possessed of property suitable for the purposes of this Company.

(F.) To carry on any other business which may seem to the Company capable of being conveniently carried on in connection with the above, or calculated, directly or indirectly, to increase the value of any of the Company's property, or otherwise to benefit the Company.

(G.) To enter into partnership or into any arrangements for sharing profits, co-operation, or otherwise, with any person, association, or company, engaged in, or about to engage in any business or transaction which this Company is authorised to engage in, or any business or transaction capable of being conducted so as directly or indirectly to benefit this Company; and to lend money to, guarantee the contracts of, or otherwise assist any such person, association, or company, and to take or otherwise acquire shares and securities of any such person, association, or company; and to sell, hold, or otherwise deal with the same.

(H.) To sell the undertaking of the Company, or any part thereof, for such consideration as the Company may think fit, and in particular for shares, debentures, or any other security of a company, or otherwise.

(I.) To promote any other company or companies for the purpose of acquiring all or any of the properties and liabilities of this Company, or for any other purpose which may seem beneficial to this Company.

(J.) To purchase, take on lease, or in exchange, hire, or otherwise acquire, any real or personal property, and any rights or privileges which the Company may think necessary for its business, and in particular any land, buildings, easements, patents, licences, machinery, and stock-in-trade, and to pay for the same either in cash or fully or partly paid shares, or in debentures of the Company, or by a royalty or otherwise.

(K.) To lend money to such persons, associations, or others, on such terms as may seem expedient, and in particular to customers and others having dealings with the Company, and to guarantee the performance of contracts by any such persons, associations, or others.

(L.) To borrow or raise money by the issue of debentures charged upon all or any of the Company's property, both present and future, including its uncalled capital, and by bills of exchange and other securities, charged, if need be, upon such property.

(M.) To remunerate any person for services rendered in connection with the placing of any of the shares in the Company's capital, or any debentures or other securities of the Company, or in or about the promotion of the Company, or the conduct of its business.

(N.) To make, accept, indorse, and execute cheques, bills of exchange, and other negotiable instruments.

(O.) To sell, improve, manage, develop, lease, mortgage, dispose of, turn to account, or otherwise deal with all or any part of the property of the Company.

(P.) To do all such things as are incidental or conducive to the attainment of the above objects or any of them.

4th. The liability of the members is limited.

5th. The capital of the Company is £10,000, divided into 10,000 shares of £1 each, with power to increase such capital.

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.

Names, Addresses, and Description of Subscribers.	Number of Preferred Shares taken by each Subscriber.
JOHN BULL, Hadley, Essex, Printer and Publisher	One.
JOHN BULL, the younger, Hadley, Essex, Journalist	One.
RICHARD CLARKSON, 12 Lincoln's Inn Fields, W.C., Solicitor	One.
ARTHUR HENRY GILLETT, 15 Wilton Street, Hornsey, N., Solicitor's Clerk	One.
JOHN SMITH, 9 Grove Park, Hadley, Essex, Clerk	One.
EDWARD GEORGE HUTCHINGS, 4 Warwick Place, W.C., Solicitor's Clerk	One.
EMILY EDITH BULL, Hadley, Essex, Married Woman	One.

These are the necessary 7 subscribers of a private company.

Dated this 17th day of November 1909.

Witness to the above Signatures,

ARTHUR GEO. BALFOUR,
12 Lincoln's Inn Fields,
London, W.C.,
Solicitor.

The Companies (Consolidation) Act, 1908.

ARTICLES OF ASSOCIATION

OF

THE JOHN BULL PRINTING AND PUBLISHING COMPANY, LIMITED.

1. Subject as hereinafter provided the regulations contained in the table marked A, in the first schedule to the Companies (Consolidation) Act, 1908 (hereinafter called Table A), shall apply to this Company.

2. The Directors shall forthwith adopt and carry into effect the agreement dated the 16th day of November 1909, and made between John Bull of the one part and John Jones on behalf of the Company of the other part, mentioned in the Memorandum of Association of the Company.

* 3. The shares shall be under the control of the Directors, who may allot or otherwise dispose of the same to such persons on such terms and conditions and at times as the Directors think fit, subject nevertheless to the stipulations contained in the said agreement with reference to the shares to be allotted in pursuance thereof.

4. The following provisions shall have effect, namely—

(*a*) The number of members for the time being of the Company (exclusive of persons who are for the time being in the employment of the Company) is not to exceed fifty, but where two or more persons hold one or more shares in the Company jointly, they shall, for the purposes of this paragraph, be treated as a single member.

(*b*) Any invitation to the public to subscribe for any shares or debentures or debenture stock of the Company is hereby prohibited.

5. The Directors may decline to register any transfer of shares upon which the Company has a lien, or in the case of shares not fully paid up, or where the Directors are not of opinion that it is desirable to admit the proposed transferee to membership.

6. A fee not exceeding 2s. 6d. may be charged for each transfer.

7. The quorum of a General Meeting shall be three members personally present.

8. The number of the Directors shall not be less than two nor more than six.

9. The persons hereinafter named shall be the first Directors, that is to say: John Bull, of Hadley, Essex, and John Bull, the younger, of the same place.

10. The Directors shall have power to appoint any other persons to be Directors at any time before the Ordinary General Meeting to be held in the year 1910, but so that the total number of Directors shall not at any time exceed the maximum number fixed as above, and so that no such appointment shall be effective unless two-thirds of the Directors concur therein.

* These clauses are essential in the case of a private company.

11. The minimum remuneration of the Directors shall be £1, 1s. each for every attendance at a meeting of Directors, or such other sum as the Company in General Meeting may from time to time determine.

12. The Directors may from time to time appoint one or more of their body to be Managing Director or Managing Directors of the Company, either for a fixed term or without any limitation as to the period for which he or they is or are to hold such office, and may from time to time remove or dismiss him or them from office and appoint another or others in his or their place or places.

13. A Managing Director shall not, while he continues to hold that office, be subject to retirement by rotation, and he shall not be taken into account in determining the rotation of retirement of Directors, but he shall, subject to the provisions of any contract between him and the Company, be subject to the same provisions as to resignation and removal as the other Directors of the Company, and if he ceases to hold the office of Director from any cause he shall, *ipso facto*, and immediately, cease to be a Managing Director.

14. The remuneration of a Managing Director shall from time to time be fixed by the Directors, and may be by way of salary, or commission, or participation in profits, or by any or all of those modes.

15. The Directors may from time to time entrust to and confer upon a Managing Director for the time being such of the powers exercisable under these presents by the Directors as they may think fit, and may confer such powers for such time, and to be exercised for such objects and purposes, and upon such terms and conditions, and with such restrictions, as they think expedient; and they may confer such powers, either collaterally with, or to the exclusion of, and in substitution for, all or any of the powers of the Directors in that behalf; and may from time to time revoke, withdraw, alter, or vary all or any of such powers.

16. The said John Bull shall be the first Managing Director, and he shall not be removed except for gross incompetence or misconduct.

17. The said John Bull, the younger, shall be employed by the Directors as Editor of the newspaper, *The Essex People's Guardian*, and shall not be removed except for gross incompetence or misconduct.

18. A meeting of Directors for the time being at which a quorum is present shall be competent to exercise all or any of the authorities, powers, and discretions by or under regulations of the Company for the time being vested in or exercisable by the Directors generally.

19. No Director shall be disqualified by his office from contracting with the Company either as vendor, purchaser, or otherwise, nor shall any such contract or arrangement, or any contract or arrangement entered into by or on behalf of the Company in which any Director shall be in any way interested, be avoided; nor shall any Director so contracting or being so interested, be liable to account to the Company for any profit realised by any such contract or arrangement by reason of such Director holding that office, or of the fiduciary relation thereby established, but the nature of his interest must be disclosed by him at the meeting of the Directors at which the contract or arrangement is determined on, if his interest then exists, or in any other case at the first meeting of the Directors after the acquisition of his interest. Provided nevertheless that no Director shall, as a Director, vote in respect of any contract or arrangement in which he is so interested as aforesaid, and if he do so vote his vote shall not be counted.

20. Subject as aforesaid, the profits of the Company shall be divisible among the members in proportion to the amount paid up on the shares held by them respectively. Provided nevertheless that where capital is paid up in advance of calls, upon the footing that the same shall carry interest, such capital shall not, whilst carrying interest, confer a right to participate in profits.

21. The Company in General Meeting may declare a dividend to be paid to the members according to their rights and interests in the profits.

22. The Directors may from time to time pay to the members such interim dividends as in their judgment the position of the Company justifies.

23. If any casual vacancy occurs in the office of auditor the Directors may fill it up.

24. Every member whose registered place of address is not in the United Kingdom may from time to time notify in writing to the Company some place in England which shall be regarded as his place of abode for the purposes of Table A.

25. Any notice, if served by post, shall be deemed to be served on the day following that on which it is posted, and Clause 95 shall be modified accordingly.

26. If the Company shall be wound up, and the surplus assets shall be insufficient to repay the whole of the paid-up capital, such surplus assets shall be distributed so that, as nearly as may be, the losses shall be borne by the members in proportion to the capital paid up, or which ought to have been paid up, on the shares held by them respectively at the commencement of the winding-up. But this clause is to be without prejudice to the rights of the holders of shares issued upon special conditions.

Names, Addresses, and Description of Subscribers.

JOHN BULL, Hadley, Essex, Printer and Publisher.
JOHN BULL, the younger, Hadley, Essex, Journalist.
RICHARD CLARKSON, 12 Lincoln's Inn Fields, W.C., Solicitor.
ARTHUR HENRY GILLETT, 15 Wilton Street, Hornsey, N., Solicitor's Clerk.
JOHN SMITH, 9 Grove Park, Hadley, Essex, Clerk.
EDWARD GEORGE HUTCHINGS, 4 Warwick Place, W.C., Solicitor's Clerk.
EMILY EDITH BULL, Hadley, Essex, Married Woman.

See Memorandum of Association.

Dated this 17th day of November 1909.

Witness to the above Signatures,

ARTHUR GEO. BALFOUR,
12 Lincoln's Inn Fields,
London.
Solicitor

COMPENSATION is a term used to describe the recompense awarded to an individual in return for some right or property he has been forced by statute to give up to another. The common law has never allowed the rights or property of any one to be at the mercy of a covetous and more powerful neighbour. It has been apparently so careful of the rights of the individual, as to regard with extreme jealousy and distrust any operations against them on the part of the monopolist, the capitalist, or the merely socially-powerful. Not even the general good of the community has been allowed to weigh against the property rights of the individual. The maintenance of such a principle of law was no doubt beneficial, and even necessary, in those days of our history which preceded modern civilisation. But since the development of modern trade, and the introduction of modern scientific methods and facilities, there has grown up such an intricate condition of both opposing and co-operating individual rights, as to make the hard and fast application of this principle of the older law an impossibility and even an injustice.

The question of compensation has always usually arisen in connection with such undertakings of a public nature as railways, water-works, harbours, docks, and the improvement of towns, in which cases the undertakings would have been impossible had there been no power conferred upon the promoters under which they could compulsorily effect purchases of property. Until 1845 the practice was to confer such powers in the private or other Act of Parliament by which the undertakings were authorised. But in this practice was involved two serious disadvantages. For one thing the insertion in each Act of a large number of special clauses led to a great additional expense; for another, there was always considerable contention of a similar nature in the settling of the clauses in every Act—attempts being made to either extend or limit the scope of the clauses commonly inserted. Accordingly, to remedy this evil and to supply one general authority as to the practice in compulsorily taking over private property and giving compensation therefor, there was passed the Act known as The Lands Clauses Consolidation Act, 1845. This Act is to-day the leading general statute which governs this subject. In addition thereto, however, there have been enacted, amongst others, the Railways Clauses Consolidation Act, 1845; the Water-works Clauses Act, 1847; the Markets and Fairs Clauses Act, 1847; the Harbours, Docks, and Piers Clauses Act, 1847; and the Towns Improvement Clauses Act, 1847.

When, therefore, the owner or tenant of any property has been approached by the promoters of a public undertaking who have a power of compulsory acquisition, he should refer to those of the above or similar Acts which would be appropriate to his particular case. The first step by the promoters is generally the service of a notice to treat. But this notice to treat gives no rights to the promoters beyond that of entering upon the property to survey it. To acquire any further rights they must pay a deposit. But after a notice to treat no onerous interests can be created; nor can interests be charged to the prejudice of the promoters. Where the promoters give notice as to the whole of the property, there need not be very much difficulty in settling the price and compensation. It is when the promoters only desire to acquire some portion thereof that difficulties arise. In connection with this, the owner of

the property should remember that, as a rule, the empowering Act confers upon him an important right, viz. that he shall not at any time be required to sell or convey to the promoters of the undertaking a part only of any house, or other building or manufactory, if he is willing and able to sell and convey the whole thereof. If he desires to take advantage of this right, he should be careful to reply to the notice to treat with what is called a counter-notice. The compensation may be ascertained, as a rule, either by the magistrates, a surveyor appointed by the magistrates, an arbitrator, or a jury. The magistrates are the proper tribunal where the claimant has no greater interest in the property than a year. Generally speaking, the claimant has his choice whether he will submit his claim to an arbitrator or to a jury. *See* LANDS CLAUSES.

CONCILIATION. — In order to prevent and settle disputes between employers and workmen by conciliation or arbitration, provision is made by the Conciliation Act, 1896, for the establishment of Boards of Conciliation. Such a board would be an association or body authorised by an agreement in writing made between employers and workmen to deal with disputes of the above character. A board of conciliation should be registered with the Board of Trade, which keeps a register of boards of conciliation, and enters therein the name and principal office of each registered board. Any registered conciliation board is entitled to have its name removed from the register on sending to the Board of Trade a written application to that effect; but the Board of Trade may remove from the register, without application, the name of a conciliation board which has ceased to exist or act. Every registered conciliation board is required to furnish such returns, reports of its proceedings, and other documents as the Board of Trade may reasonably require.

If it appears to the Board of Trade that in any district or trade adequate means do not exist for having disputes submitted to a conciliation board for the district or trade, they may appoint any person or persons to inquire into the conditions of the district or trade, and to confer with the employers and employed. And if the Board of Trade think fit they may confer with any local authority or body as to the expediency of establishing a conciliation board for the district or trade.

Powers of Board of Trade as to Trade Disputes.—Where a difference exists or is apprehended between an employer, or any class of employers, and workmen, or between different classes of workmen, the Board of Trade may, if they think fit, exercise all or any of the following powers, namely: (*a*) Inquire into the causes and circumstances of the difference; (*b*) take such steps as to the Board may seem expedient for the purpose of enabling the parties to the difference to meet together, by themselves or their representatives, under the presidency of a chairman mutually agreed upon or nominated by the Board of Trade or by some other person or body, with a view to the amicable settlement of the difference; (*c*) on the application of employers or workmen interested, and after taking into consideration the existence and adequacy of means available for consideration in the district or trade, and the circumstances of the case, the Board may appoint a person or persons to act as conciliator or as a board of conciliation; (*d*) on the application of both parties to the difference, the Board may appoint an arbitrator. If any person is so appointed to act as conciliator, he must inquire into the causes and circumstances of the difference by communication with the parties, and otherwise

must endeavour to bring about a settlement of the difference, and must report his proceedings to the Board of Trade. If a settlement of the difference is effected either by conciliation or by arbitration, a memorandum of the terms thereof is required to be drawn up and signed by the parties or their representatives, and a copy thereof delivered to and kept by the Board of Trade.

Arbitration.—The Arbitration Act, 1889, does not apply to the settlement by arbitration of any difference or dispute to which the Conciliation Act, 1896, applies. Any arbitration proceedings under the latter Act are to be conducted in accordance with such of the provisions of that Act, or such of the regulations of any conciliation board, or under such other rules and regulations as may be mutually agreed upon by the parties to the difference or dispute. *See* TRADE DISPUTES.

CONFLICT OF LAWS.—Under this title are usually considered the rules which regulate the rights and obligations of private individuals when they are affected by the separate internal laws of distinct countries having independent jurisdictions. The rules of this class which are observed by the English Courts are a part of English law; and in like manner, similar rules in Scotland, France, Russia, or any other country, would be part of the "municipal" or internal law of either of those or any other country respectively. These rules are also known under the title of Private International Law; but the objection to that title lies in the fact that international law is a body of law to which states are subject, and consequently "private" international law should mean a body of law more extensive than, and superior to, the territorial limits of any one state, and one to which individual members of a state are subject, in addition to the laws of their own state. For this reason "the law relating to the conflict of laws" is a more appropriate designation than is "private international law."

The circumstances under which the rules relating to the conflict of laws come into operation are, in cases of disputes between individuals, incidental to which are differences between the internal laws of various countries, which internal laws disagree, not because the countries are in dispute one with the other, but generally because the legislators of each country have taken the internal situation solely into consideration, and have overlooked the existence of the other countries. In questions relating to the conflict of laws, it is not necessary that the particular countries in question should be foreign to each other, in the sense that they are each under different independent sovereigns. It is sufficient if they are distinct countries or areas, having each its own peculiar law and jurisdiction. Thus, for example, the laws in Scotland, England, India, Cape Colony, and Canada may be different from one another, and yet each of these countries is a part of the same kingdom and empire. So there may be a conflict between the laws of the various United States of America, and yet each of these States is a part of a supreme federation.

The rules have regard chiefly to contracts, rights and remedies, and to marriages, divorces, wills, successions, and judgments. *The principal rule* is that each civilised nation is to give efficacy to the laws of another country, unless its own laws or the general principles of justice are thereby invaded. On the basis of this rule the English courts will enforce any rights duly acquired in any civilised country, provided its enforcement is not inconsistent

with any English statute intended to neutralise this rule, or with the policy of our law, or the maintenance of our institutions, or does not trespass upon the authority of a foreign sovereign.

As to contracts.—*Relating to land.*—The general principle of the law is, that the laws of the place where landed or "immovable" property is situate exclusively govern, with regard to the rights of the parties, the modes of transfer and the solemnities which should accompany them. This is called the doctrine of the *lex situs*. If for example a contract relating to land situate in France is in question, according to this doctrine the contract will be governed by the law of France; and an English court will require evidence of that law in order to decide any dispute in respect of that contract. Thus the "capacity" of the parties to the contract will be determined by the law of France; so also will the formalities required in a contract of that nature—that it should be in writing, by deed, or a notarial act, according as the law of France may be. The law of France does not recognise as valid a transfer of freehold property according to the form of an English conveyance; accordingly the English courts would, consistently with that law, hold a transfer of freeholds situate in France to be invalid if made in the English form only.

Relating to "movable" property.—Contracts relating to movable property are governed, as a rule, by the *lex loci contractus*—the law of the place where the contract, or a material part thereof, is made. If the law of that place forbids a certain contract to be made, or if the contract is void on the ground of immorality, the contract would be void all over the world, and no civilised country could be called upon to enforce it. Though the law of the country where a contract is made, or is to be performed, furnishes the rules for expounding the nature and extent of its obligations, yet the law of the country where it is sought to enforce its performance governs all questions as to the remedy and mode of proceeding. In ambiguous contracts the domicile of the parties, the place of execution, the purpose, and the various provisions and expressions of the instrument, are all points material to be considered in the construction of the contract. A deed in the Scotch form made between parties, some of whom were domiciled in Scotland and others in England, was construed by the courts according to the Scotch law, so far as it affected the Scotch parties, and according to the English law, so far as it affected the English parties. Where a contract is made in one country, to be performed wholly or partly in another country, the rule is, that the law of the country where the contract is made governs as to the nature of the obligation and the interpretation of it, if the parties to the contract are either subjects of a power there ruling, or as temporary residents owe that power a temporary allegiance—in either case they must be understood to submit to the law there prevailing, and agree to its action on their contract. A reference to foreign law in any English contract would not incorporate that law, but would only affect the interpretation of the contract.

Should the law of a foreign country in which a contract is made require registration thereof, the English courts will not regard the absence of compliance with that requirement, unless the foreign law has made registration essential to the validity of the contract. The English courts will not take any notice of the revenue laws (those that impose stamp duties) of foreign

states; but if the foreign law renders a contract void unless stamped, that contract cannot be sued upon in England. If a plaintiff sues in an English court in respect of a foreign contract, he must submit to the English laws of limitation of actions; it is therefore conceivable that the claim may be maintainable by an action in the foreign country, but barred in England by the statutes of limitation. If a debt or liability arising in a foreign country is discharged by the laws of that country, such discharge would be a complete answer to an action in respect thereof in an English court. This would not, however, be the case if the debt or liability arose in England, and the discharge was effected under a foreign law, as for example by a discharge under the *bankruptcy* laws of the United States. But by special statutory provisions, a discharge from any debt or liability in an English, Irish, or Scotch bankruptcy is effectual throughout the British dominions.

Torts.—By this term is meant wrongs arising independently of contract. A foreigner resident abroad may maintain an action in England for a *libel* concerning him published here. An action may be brought in England in respect of an *assault* or other tort committed by one English subject upon another in a foreign country, provided the law of that country would itself give compensation or damages in respect of such wrongs. But the English courts will not entertain an action for damages for trespass to land in a foreign country when the action is founded upon a disputed claim of title to the land. Generally speaking, an action in respect of a tort committed in a foreign country can only be brought in an English court if the action complained of is wrongful both in the foreign country and at home.

Marriage.—The capacity of parties to a contract depends upon the law of their domicile. In a contract of marriage this is a most important point in the consideration of its validity; and after that comes the question whether the form of the celebration of the marriage was sufficient. Formality will be satisfied if the celebration is in accordance with the form lawful in the country of the celebration, or in accordance with the English common law in a country where there is no local form, or in accordance with the provisions of the requirements of the Foreign Marriage Act, 1892.

Divorce.—The English courts have jurisdiction to entertain suits for divorce, and to dissolve marriages, in all cases where the parties to the proceedings have a domicile in England at the time of the commencement thereof. And even this domicile is not an essential if the parties submit to the jurisdiction. In this connection it should be remembered that the domicile of the wife is the same as that of the husband. The English courts do not recognise the authority of a foreign tribunal, so far as regards the consequences in England, to divorce English subjects married under English law, unless the parties were *bonâ fide* domiciled within the jurisdiction of the tribunal at the time the divorce was decreed, and there was no collusion. By the parties merely staying within that jurisdiction for such a time as would render them amenable to the foreign tribunal, for the sole purpose of founding a jurisdiction, a *bonâ fide* domicile would not be acquired. The English courts recognise as valid the decree of a competent Christian tribunal dissolving a marriage between a domiciled native in the country where the tribunal has jurisdiction, and an Englishwoman, when the divorce has not been obtained through collusion or fraud. And this would be so, even if the marriage had

been solemnised in England, and had been dissolved for a cause which would not have been sufficient to obtain a divorce in England.

Wills and Succession.—In respect of realty, or immovables, it follows from the rule that this class of property is governed by the law of the place in which it is situate, that a will in order to pass real estate, and in order that the deceased shall not be regarded by the English law as having died intestate in respect thereof, must comply with the requirements of the local law, and be executed in accordance therewith. As to movable property, it is sufficient if the will is in accordance with the law of the place in which the testator is domiciled at the time of its execution. And a subsequent change of domicile will not require the execution of a new will. With regard to wills of movables, the Wills Act, 1861, should be referred to; this is set out in the article on WILLS. In the case of an intestacy, the deceased's real estate will descend to his heirs in accordance with the law of England, or otherwise in accordance with the law of the place in which the property is situate. But the personal estate will pass to those persons who are entitled to it according to the law of the place of domicile of the deceased.

Generally.—*Crimes* are local; accordingly no country has any regard to crimes committed outside its jurisdiction. But this doctrine of the "extra-territoriality" of crime is, in England, excluded in cases of murder, manslaughter, bigamy, offences committed on a British ship on the high seas or even in foreign territorial waters, and offences committed in any ship in British territorial waters. Though *ships* are movables, they are yet considered, for many purposes, as a part of British territory when on the high seas. *See* MARRIAGE.

CONSANGUINITY is the term applied to relationship by blood, as distinguished from AFFINITY, or relationship by marriage. Marriage is essential, however, to legal consanguinity, for without marriage no legal relationship can be created, as in the case of a bastard. But marriage would not be essential if considering the subject from the point of view of the legal capacity of parties to a marriage—for a bastard can come within the prohibited degrees equally with a person born in lawful wedlock; or from that of the criminal and divorce law—for bastardy does not in itself prevent incest. In addition to the question of legal capacity for marriage, consanguinity is an essential element in the determination of questions of descent, or succession to real property. Persons between whom there subsists the relationship of consanguinity are also known as kin or kindred, and they may be of two kinds—lineal or collateral. Lineal kindred exists where the relationship is in a direct descending or ascending line, as that between grandfather, father, son, grandson; and collateral, where it subsists only through the medium of a common ancestor, as in the case of first cousins who have a mutual grandfather.

The degrees of collateral consanguinity are computed according to the rules of the Canon Law, those of affinity according to the Roman Law. According to the Canon Law the reckoning begins at the common ancestor and is carried downwards to the person whose degree of consanguinity it is desired to ascertain, counting each generation as a degree. The degree of consanguinity in which each of the parties stand to one another is the degree in which they stand to the common ancestor, if they are removed

from the common ancestor by the same number of degrees; if they are not, their degree is that in which the more remote of them stands to the common ancestor. Two brothers would according to this be related in the first degree, for only one can be counted from the father of each of them. Uncle and nephew would be related in the second degree, for the nephew is two degrees removed from the common ancestor—namely, his own grandfather.

In the above cases, if the computation were one to ascertain degrees of affinity, for the purpose of discovering the next-of-kin amongst whom an intestate's personal estate is to be distributed, it would be made according to the Roman Law, and the results would be different. Thus, the uncle and his nephew would be placed in the third degree of consanguinity, for by the Roman Law all degrees are counted upwards from one given person to the common ancestor, and downwards from that common ancestor to the person whose degree of relationship to the first person it is the object to establish. By this calculation the nephew is two degrees to his grandfather, and one more from his grandfather to his uncle.

CONSIGNMENT NOTE.—This is the name applied in commercial practice to at least two different documents, though each of these have sufficiently the same object in common to make the term equally applicable in both cases. The first is a letter written to the merchant or manufacturer from whom goods have been ordered, and which the purchaser has been advised are ready for delivery. The object of the letter is to give the vendor instructions to whom, where, and how the goods should be sent.

Of more practical importance are the consignment notes by which goods are forwarded by a general carrier, such as a railway company. Such a consignment note is a document written or filled up by the sender of goods, giving particulars of the packages and their destination. When dealing with goods of a very ordinary character—those having no exceptional fragility, value, or danger—there is not usually any requirement on the part of the carrier that any particular form should be used. But printed forms may always be obtained, and their use is a convenience both to the sender and the carrier. When, however, the goods are of particular value, coming within the limits of liability imposed upon carriers by Act of Parliament, or are of a character specially dangerous, (*see* hereon, p. 263) or liable to damage, the carrier requires them to be forwarded with a special consignment note. These special notes may vary according to the nature of the goods being forwarded, and usually contain declarations made by the sender appropriate to the circumstances of the case and, as in the instances of inflammable liquids or explosives, in accordance with the requirements of special statutes. Consignment notes would also be of a special nature where the goods forwarded are not properly protected by packing, when the sender, in consideration of that fact, and of the consequent saving to him of the cost of packing, and of the reduced weight of the consignment, agrees to relieve the carrier for all liability for loss or injury thereto, except upon proof that such loss or injury has arisen from wilful misconduct on the part of the carrier's servants.

When the goods have arrived at their destination, the carrier sends, when necessary, an advice thereof to the consignee, and asks for instructions as

to their removal as soon as possible. The advice also gives notice as to when and how the carriage is to be paid, and that any objections as to weights or charges must be made within three days from the date thereof; also that, so long as the goods remain in the possession of the carrier, the latter will hold them, not as a carrier, but as a warehouseman, subject to the usual warehouse or wharfage charges. This document is known as an **Advice of Goods**, but it is not sent out in cases where the carrier makes delivery of the goods to a specified address. On the back of both the consignment note and the advice of goods, as used by railway companies, there usually appears the terms and conditions upon which the goods are carried. Though in detail these terms and conditions may vary with different companies, yet in substance they are very much the same. We will now set out some general conditions of carriage which may be usefully referred to in connection with the article on CARRIERS.

1. The Company will not be liable for loss or injury done to any goods, matters, or things described in the Carriers Act, 1830, unless the particular articles and the value thereof be declared, and an increased charge over and above the charge for carriage be paid as compensation for the risk incurred.

2. In respect of any animals, luggage, or goods booked through by them or their agents for conveyance partly by railway and partly by sea, or partly by canal and partly by sea, the Company shall be exempted from liability for any loss, damage, or delay which may arise during the carriage of any such animals, luggage, or goods by sea, from the act of God, the King's enemies, fire, accidents from machinery, boilers, and steam, and all and every other dangers and accidents of the seas, rivers, and navigation, of whatever nature and kind soever, in the same manner as if the Company had signed and delivered to the consignor a bill of lading containing such conditions.

3. No claim in respect of goods for loss or damage during the transit for which the Company may be liable, will be allowed unless the same be made in writing within three days after delivery of the goods in respect of which the claim is made, such delivery to be considered complete at the termination of the transit as specified in the next condition.

4. The transit shall in no case extend beyond (*a*) the time when goods carted by the Company are unloaded or tendered at the address to which they are consigned; or (*b*) the expiration of twenty-four hours after notice of arrival of the goods, posted by the Company, is due for delivery to the consignee in the ordinary course of post, or notice of arrival is given to him personally, or delivered at his address.

5. After the termination of the transits as defined in Condition 1, the Company will thenceforth and subject to these conditions hold the goods as warehousemen, subject to the usual charges.

6. After the termination of the transit goods carried or conveyed by the Company will be subject, in addition to the charge for carriage, to further charges for demurrage of 3s. per truck per day, and 1s. per sheet per day, or in the case of such goods as are unloaded from the truck, to reasonable charges for rent or services performed, until they are removed from the Company's premises; and similar charges will be made with respect to goods the delivery of which cannot be effected by the Company, in consequence of incorrect or insufficient address. Provided that no such charges shall be made if the Company have not given proper opportunity for the removal of the goods or the discharge of the truck. When specially constructed trucks are used, 6s. per truck per day demurrage will

be charged on trucks constructed to carry fifteen tons and under twenty tons; 12s. per truck per day on trucks capable of carrying twenty tons and under thirty tons; and 20s. per truck per day on trucks capable of carrying thirty tons and above.

7. Consignors ordering trucks, and failing to load and order them away within twenty-four hours after such trucks shall be ready for loading at the station or siding to which they were ordered, will be subject to charges of 3s. per truck per day, and 1s. per sheet per day, for demurrage, for every day, or fraction of a day, they shall be detained after the expiration of such twenty-four hours. When specially constructed trucks are ordered, 6s. per truck per day demurrage will be charged on trucks constructed to carry fifteen tons and under twenty tons; 12s. per truck per day on trucks capable of carrying twenty tons and under thirty tons; and 20s. per truck per day on trucks capable of carrying thirty tons and above.

8. All goods delivered to the Company will be received and held by them, subject to a lien for money due to them for the carriage of and other charges upon such goods, and also to a general lien for any other moneys due to them from the owners of such goods, upon any account; and in case any such lien is not satisfied within a reasonable time from the date upon which the Company first gave notice to the owners of the goods of the exercise of the same, the goods may be sold by the Company by auction or otherwise, and the proceeds of the sale applied to the satisfaction of every such lien and expenses.

9. All perishable articles refused by the consignee, or at the place to which they are consigned, or consigned to a place not known by the Company's agents or servants, or insufficiently addressed, or not paid for and taken away within a reasonable time after arrival, if addressed to be kept till called for, may be forthwith sold by auction or otherwise, without any notice to sender or consignee; and payment or tender of the net proceeds of any such sale, after deduction of freight charges and expenses, shall be accepted as equivalent to delivery.

10. The Company will not be liable for any loss of market.

11. The Company will not be liable for any indirect or consequential damages in respect of goods lost, injured, or delayed.

12. The Company will not be liable for any loss of or damage to, or delay of goods, resulting from their being not properly protected by packing.

13. The Company will not be liable for any loss of or damage to, or delay of goods, resulting from their being not properly or not sufficiently addressed.

14. The Company will not be liable if goods are lost, injured, or delayed, owing to a defect in a waggon not belonging to or provided by the Company, unless such defect arose from the neglect or default of the Company or their servants, or unless the Company or their servants were guilty of negligence in not discovering such defect.

15. In respect of goods consigned to places beyond the limits of the Company's free delivery, the responsibility of the Company will cease when such goods have been delivered over to another carrier in the usual course for delivery.

16. In all cases where the Company's charges are not prepaid, the goods are accepted for carriage only upon the condition that the sender remains liable for the payment of the amount due to the Company for the carriage of such goods, without prejudice to the Company's rights, if any, against the consignee or any other person.

17. In respect of traffic of every description which loses weight in transit, through drainage, evaporation, or any cause beyond the Company's control, carriage shall be paid upon the weight ascertained at the sending station.

CONSIGNMENTS.—When goods are forwarded to a merchant or broker for sale on behalf of a principal they are said to be forwarded on consign-

ment. The principal forwarding the goods is called the "consignor," and the merchant to whom they are sent the "consignee." A delivery of goods sold direct to the purchaser would not be a delivery on consignment; indeed, speaking in accordance with mercantile usage, they would not even be a consignment. This word—and often the word "adventure" also—is used very generally as an equivalent to the name of the goods themselves; *e.g.* ten bales of cotton could be called "a consignment of ten bales." The usual instances of consignments are those of imported goods from a consignor abroad, the opposite form of consignment—that of export—being rarely resorted to unless the merchant at home finds it impossible to obtain a market for his goods otherwise, for export consignments invariably result in a loss to the consignor. The law on the subject of consignments will be found in the article on FACTORS.

Whether the consignment is one of importation or exportation it is always accompanied by an invoice, known as a **consignment invoice**, directed to the consignee. This invoice, except as to its heading, is practically the same in form as a "loco" invoice, but is really only a **pro forma invoice** for the purpose of satisfying the requirements of the customs, and of serving as a guide for the sale of the goods. The invoice does not purport to charge the consignee with the price of the goods, nor does the consignor debit him therewith. Particulars of these INVOICES will be found under that heading.

The consignee having received the invoice and the bill of lading, proceeds to obtain a DELIVERY ORDER from the shipping agents wherewith he can get possession of the goods. His duty is then, after payment of all liabilities in respect thereof, to sell the consignment either by private sale or public auction at the highest price he can obtain. The sale being effected, he must prepare and forward to the consignor a statement of account known as an **Account-Sales**, in which he will credit the consignor with the price obtained for the consignment, and debit him with all the proper payments he may have made in respect thereof, and with the brokerage and commission. Whilst an invoice is an account of goods bought, an account-sales is conversely an account of goods sold. The balance, which in the case of a consignment is called the "net proceeds," is then debited or credited to the consignor according to the result of the transaction. This balance is either settled for in a bill attached to the account-sales, or where there is a running account between the parties it is entered into the account. Where specific advances have been made to the consignor in respect of the consignment, or amounts due upon several consignments are settled for at stated intervals, it is usual to append to the account-sales, or to forward at certain periods, a summary statement known as an **Account-Current**, for a form of which *see* STATEMENT OF ACCOUNT.

Insurable interest.—A consignee, having possession and a lien upon the consignment for advances or otherwise, may insure it in his own name generally, without specifying his interest therein, unless the policy contains a provision to the contrary. His insurable interest is limited, however, to the amount of the loss he may sustain by the destruction of the goods; it does not necessarily extend to the full value of the goods.

Example of an Account-Sales.

ACCOUNT-SALES of 60 casks Lard, per *Amabel*, Captain Richards, from Boston, received by us and sold on account of Messrs. Johnson, Burt & Co., of Chicago.

Marks.	Nos. of Casks.		Cwts	Qrs	Lbs.	@ Per Cwt.	£	s.	d.
A. J. B.	1/30	30 casks fine lard, gross	90	0	0				
		Draft 0 1 2							
		Tare 14 2 26	15	0	0				
			75	0	0	40s.	150	0	0
B. J. B.	1/30	30 casks inferior, gross	90	0	0				
		Draft 0 1 2							
		Tare 14 2 26	15	0	0				
			75	0	0	37s. 6d.	140	12	6
							290	12	6
		Charges.	£	s.	d.				
		Insurance £300, @ 20s. per cent., policy 2s.	3	2	0				
		Freight as per Bill of Lading	11	0	6				
		Customs entry and stamps	0	12	0				
		Discharging, weighing, housing, coopering, sampling, and rent	8	10	0				
		Sale expenses and advertising	2	0	0				
		Fire Insurance	0	12	0				
		Brokerage on £290 @ 1%	2	18	0				
		Commission on £290 @ 2½%	7	5	0		35	19	6
							254	13	0
		Less discount 2½% on £290, 0s. 0d.					7	5	0
							£247	18	0
		E. & O. E.							
		London, 19th June 1910.							
		Arthur Broadbridge & Co.							

It will be noticed in the above account-sales that a broker receives a brokerage, as well as the consignee a commission. It is the broker who handles the goods, conducts the sale, or otherwise disposes of the goods, and upon the arrival of the consignment reports to the consignee on the state and prospects of the market. The quantity of goods accounted for in the account-sales must be the same as the invoice, and in both documents the marks, numbers, and particulars of the different packages should be specified. If the quantity of goods should be less than that stated in the invoice, whether through damage at sea, through waste, or any other cause, the extent of the deficiency should be explicitly stated. It is usual for merchants to have their account-sales printed in a common form with the items of the charges already enumerated which are incidental to the particular trade. The broker himself renders an account-sales to the merchant instructing him, and in this

statement is contained the result of the sale and the proceeds of samples, and particulars of his brokerage, the sale expenses, and of the time for payment by the purchasers. It is from this broker's statement that the consignee makes out the full account-sales for the consignor.

In the above and other accounts-sales there is generally some technical expression used, of which the meaning is not very apparent to the uninitiated reader. Most of these expressions are explained elsewhere in this work, but a few may be conveniently referred to here. *Cooperage* is the cost of making, repairing, or opening barrels or casks. *Customs entry* is the charge made by the merchant for making an "entry" at the customs with a view to obtaining delivery, an operation which necessitates the filling up and delivery of certain prescribed forms, the production of the invoice, bill of lading, and other documents relating to the goods, and in some cases the payment of duty. *Draft* is an allowance made to the purchaser of the goods, and it varies according to custom in various trades. Its object is to ensure his receiving as nearly an absolutely full weight as possible; dirt and even the turn of the scales coming within the reason of this allowance. Generally it is but a very insignificant allowance, but in the case of certain goods such as tobacco, it becomes to the purchaser an appreciable advantage. *E. & O. E.* is a very common form on invoices, accounts-sales, and other like documents; it means "Errors and omissions excepted," and is intended to provide for slight mistakes. *Garbling* is a charge which is made for going through the consignment, sorting it, and taking out such parts of it as may be damaged. This work is usually only made the subject of a charge where the special nature of particular goods makes it a serious task and necessitates a supply of new packages. When the charge of *bank commission* appears in an account-sales it means that money in hand relating to the consignment has been lying upon deposit at a bank, and that this charge was made by the bank to the consignee when he withdrew it in order to remit. In connection with this charge it will be usually found that the consignee does not credit his principal with the interest he has been meanwhile receiving in respect of that same deposit.

CONSPIRACY is a criminal offence which consists of the intention and agreement of two or more persons to do an *unlawful* act, or to do a *lawful* act by unlawful means. When two or more persons agree to carry the intention into effect the very plot has been said to be the act itself, and the act of each of the parties promise against promise, capable of being enforced by the law if lawful, but punishable by the law if for a criminal object or the use of criminal means. The whole subject of conspiracy is too extensive and technical to permit of any adequate attempt at its exposition within the limits of this work. It may be useful, however, to give a few examples of the offence.

Where A. and B., in concert with each other, falsely pretended to C. that a horse which they had for sale had been the property of a lady deceased, and was then the property of her sister, and was not then the property of any horsedealer, and that the horse was quiet to ride and drive, and by these inducements induced C. to purchase the horse, they were found guilty of conspiracy, although the money was obtained through the medium of a contract. To get money out of a man by conspiring to charge him with a false fact is a

conspiracy, whether the fact charged is criminal or not in itself. In one case where certain brokers agreed together, before a sale by auction, that one only of them should bid for each article sold, and that all articles thus bought by any of them should be sold again among themselves at a fair price, and the difference between the auction price and the fair price divided among them, these facts were held to constitute a conspiracy for which the brokers could be indicted. A mock auction with sham bidders, who pretend to be real bidders, for the purpose of selling goods at prices grossly above their worth, is an offence at common law; any persons aiding and abetting such a proceeding may be indicted for a conspiracy with intent to defraud. So also may it be a conspiracy to obtain goods without the intention of paying for them, as where A. obtained goods on credit at B.'s suggestion, in order that A. might sell them to B. below their value, B. aiding A. as a referee, and giving him a character. And in like manner where A. bribes B., who is C.'s servant, to sell to him the employer's goods at less than their authorised price; or where traders dispose of their goods in contemplation of bankruptcy, with intent to defraud the creditors. And *see* RESTRAINT OF TRADE, and RIGGING THE MARKET.

CONSULAR INVOICE. — When exporting goods to certain foreign countries, such as the United States of America, Portugal, Chili, Brazil, and other South American countries, it is necessary for the exporting merchant to make out an invoice of the goods in a prescribed form, and make a declaration before the local consul for the country to which they are to be exported. In the case of exports to the United States, this consular invoice is not required where the invoice price of the goods does not exceed £20. The consular invoice has on one side the declaration, and on the other side the invoice of the goods. The object of this formality is to ensure the observance by importers of the laws of the country to which the goods are forwarded, and especially in regard to duties payable upon imported goods, and to the latter being duly described, priced, and marked with the name of the place of their origin and manufacture. The invoice is usually made out in triplicate; but where the goods are to be forwarded in bond from the port of entry to some other port in the same country, it is quadruplicated. Of these three (or four) copies, the original is retained by the consul, and the triplicate sent by him to the customs' authorities at the port of entry, whilst the duplicate is handed back, certificated by the consul, to the exporting merchant. If the circumstances of the case require a fourth copy, this is also returned to the merchant. The latter having complied with all the formalities, forwards to the consignee at the port of entry a copy of the consular invoice, so that he may obtain delivery of the goods, or, when such is the case, see to their being sent on in bond to the other port.

The different countries have different forms of consular invoices, but speaking generally, the requirements common to all would be as follows. The invoice must be signed by the exporting merchant himself, or by a partner in a firm. The packages in which the goods are contained must be marked "Made in Great Britain," and with a general description of the nature of their contents. The invoice must contain, in detail, specific references to the different packages, and must disclose exactly the nature, quantities, and prices of their respective contents. Care should be taken

that the invoice contains: (*a*) A true and full statement of the time when, the place where, and the person from whom the goods were purchased; the actual cost thereof, the price actually paid or to be paid therefor, and all charges thereon. (*b*) A true and full statement of all discounts, bounties, or drawbacks which have actually been allowed in respect of the goods. A confirmation of the invoice will be required in the declaration, and under that form the exporter will be required to declare the place at which the goods were manufactured; that no different invoice thereof has been or will be furnished to any one; and that the currency in which the invoice is made out is that which was actually paid or is to be paid for the goods. The consul, before certificating the invoice, satisfies himself that the actual marked value or wholesale price of the goods described in the invoice is the same as that obtaining in the principal markets of the country at the time of exportation. He will also, if he thinks it necessary, make a special communication to his home authorities about the goods, the subject of the invoice, as to their price or generally as may seem proper.

CONSULS.—The defence and protection of British interests in foreign countries are confided to two classes of agents—diplomatic agents and consuls—between which international law draws a very strict line of demarcation. The first class are, in effect, the political agents of a government—the intermediaries of sovereigns. Consuls, on the contrary, are authorised administrative agents. Their mission is limited to the private commercial interest of their states; political negotiations, the transactions of one government with another, are outside their province altogether. They do not deal with the supreme authorities of the place of their residence, only with the secondary. Their place of residence has no reference to political considerations; it is arbitrarily fixed according to the necessities of commerce. Their appointment is by commission from the Crown, and their title to reside in the foreign country is contained in an *exequatur;* a gracious concession of the territorial authority, the refusal of which does not necessarily affect international relations.

There is a very vague appreciation on the part of merchants, as well as the general public, of the precise position and functions of a consul. One merchant will write asking many questions of a general commercial nature; another will outline a proposed trading speculation and request a reply as to the probability of its success; another will ask if the consul will guarantee the honesty of Mr. So and So, a local resident; another will desire the consul to push, or to take a share in, or to provide capital for a commercial speculation. But a consul is not, as such, a trade protection society, nor a financial agent, nor a commission agent in hardware or fancy goods. Nor is he a guide and interpreter for every Englishman who may happen to be in his locality, nor an official whose duty it is to cash cheques for strangers merely because they call themselves English. When, however, he is also engaged in certain classes of business, such as that of a banker, there is no doubt that his position as consul works very advantageously with his business. It is difficult to state with precision what exactly are the position and functions of a consul. In the interests of the country he represents, it is better for him to have an extended than a limited idea of them. Whatever tends to the general commercial advantage of his country may be taken as lying within

his province. When he is engaged in trade he is an unsalaried official; consuls with salaries are not allowed to trade. But some of the most important of our consuls abroad are traders, and without salary; the position being itself an honour. In most Mohammedan and Oriental countries the consuls possess, in addition to their usual consular powers, a judicial jurisdiction in matters in which British subjects are concerned, and also a diplomatic or quasi-diplomatic character. This branch of the consular service is a very popular and important one, it being entered by a young man, after examination, as a "student interpreter." In foreign countries generally, consuls have a special authority to celebrate marriages by virtue of the Foreign Marriages Act [*see* FOREIGN MARRIAGES], and they have also power to administer oaths and to act as notaries public. Any affidavit or declaration purporting to have been sworn or declared before a consular agent will be accepted in any court of the United Kingdom, in the same manner as would a similar document vouched by a lawful authority at home. The consular service is divided into several grades, from that of consul-general downwards, and it has a table of precedency and rank relative to that of the naval and military services. A pro-consul is an official subordinate to a consul, and having no independent authority, nor any security of office. The precedency of the service is as follows:—

Agents and Consuls-General, Commissioners and Consuls-General	rank with, but after,	Major-Generals, Rear-Admirals.
Consuls-General	„	Brigadiers, Commodores.
Consuls	„	Colonels, Captains R.N., of three years' standing; *but before all other captains R.N.*
Vice-Consuls	„	Majors, Lieutenants R.N., of eight years' standing.
Consular Agents	„	Captains in the army, Lieutenants R.N., of less than eight years' standing.

A consul, in order to effectively perform his duties, should be acquainted with the laws and practices relating to the trade of Great Britain with foreign countries; and also with the language, laws, and the conditions and state of the trade of the country in which he resides. While using every fair means to protect and promote British trade, he must do his best to prevent British subjects from carrying on an illicit trade in violation of the laws and revenues of Great Britain, as well as those of the foreign country with which he is concerned. Notice of such illicit trading should be given to his own government. He must also advise and assist his Majesty's trading subjects, promote goodwill among them, and conciliate as much as possible the subjects of the two countries in all differences which may come under his cognisance. On him lies the duty of upholding the personal and property rights of British subjects, and when redress for grievances cannot be obtained from the local authorities the case should be placed in the hands of the British minister at the court of the country in which he resides. He is

required to furnish to the home government, at the end of every year, a return of the trade carried on at the different ports within his consulate, and his reports should contain remarks and information upon the local trade and state of the markets. These reports are of exceptional value to the British merchant, giving as they do every information possible about the trade of the different foreign countries. In particular they mention the goods for which there is a probable market, and they also give full accounts of the possible development of those countries' natural, mineral, and commercial resources. To distressed British seamen, or other British subjects thrown upon the coast, or reaching any place within his consulate, the British consul is required to afford relief, and, if possible, to find means for their return to England. Whether salaried or unsalaried, a consul is entitled to charge fees in respect of many of the duties of his office, these fees being frequently referred to under the name of consulage. And *see* APPENDIX.

CONTAGIOUS DISEASES.—In this article the diseases of animals only will be dealt with; those of mankind will be the subject of the article entitled INFECTIOUS DISEASES. The law and regulations on this subject are now contained in the Diseases of Animals Act, 1894, and in the orders of the Board of Agriculture and of the local authorities made thereunder. The object of the Act is the prevention of the spread of contagious diseases amongst animals, and its operation extends to Scotland, as also to Ireland. Persons who have charge of diseased animals must keep them separate, and give notice of the fact. Any cow shed, field, or other place may be declared by the Board of Agriculture to be a place infected with cattle plague, as also may any area of the country containing such an infected place. If the case of disease is one of pleuro-pneumonia, or foot and mouth disease, the place may be declared by a local authority, such as a town council, as well as by the board, to be an infected place; and in respect to diseases other than these three, the power of such a declaration lies solely with the board. Except under certain prescribed conditions, cattle are not allowed to be moved into, within, or out of a place or area infected with pleuro-pneumonia or foot and mouth disease; and strangers may be excluded from the infected place or area by the person in charge of the animals. A stranger, or person not having by law a right of entry or way, is thereupon prevented from entering the place. Provision may be made by the board for the slaughter of animals suffering, or suspected to be suffering, from diseases such as plague, pleuro-pneumonia, foot and mouth disease, and swine fever, and for payment of compensation, and regulating the exposure for sale and the transit of such animals, and requiring due cleansing and disinfection, and prohibiting or regulating the importation of animals from abroad, and their movements into, within, and out of specified ports. The local police are empowered to enforce the execution of the provisions of the Act, and inspectors are appointed thereunder in order to see that persons in charge of animals comply with all the regulations for the time being in force. The police have full authority to do all things necessary to enforce the law; they may freely enter suspected premises; arrest offenders or suspected offenders without warrant; and stop, examine, and deal with, as may seem proper, any suspected animals, or conveyance in which they may be.

Penalties are imposed by the Act in respect of any contravention of its

provisions, and those penalties, which in some cases amount to so much as £20 for each offence, are recoverable in summary proceedings before magistrates, and in default of their payment, and in case of an insufficient yield by a distress therefor, the offender may be imprisoned without hard labour. On a second or subsequent conviction, within twelve months, the offender may be imprisoned for one month with hard labour in lieu of a fine. In respect of some offences the imprisonment may be for two months. Beyond the above short enumeration of some of the requirements of the Act, the limits of this work prevent a complete list and description of the various possible offences. They are seventeen in number. Persons, therefore, who have to deal with animals, and in whose charge they ever come, would be wise if they provided themselves with a copy of the Act and of the orders and regulations made thereunder. These may all be obtained from the King's printers for a few pence, and information as to the provisions on the subject made by the local authorities can always be obtained from the local police. The local authority is not alone entitled to take proceedings under the Act; any private person who becomes aware of an offence being committed may initiate proceedings. It is not necessary to prove that the owner or person in charge of the animals had a knowledge of their suffering from a contagious disease; the presumption is that he had such a knowledge, and his only defence on this ground would be conclusive evidence that he had not that knowledge, and could not with reasonable diligence have obtained it. In the same way, if the offence charged is that of not duly cleansing or disinfecting, it will lie upon the person charged to rebut the accusation by himself proving the due cleansing and disinfection. The certificate of a veterinary inspector will also be conclusive evidence against him of the matter certified. If, however, any person is dissatisfied with the decision of the magistrates, he may appeal to Quarter Sessions. *See* ANIMALS.

CONTEMPT OF COURT is a wilful disobedience of the rules, orders, or process of a court of law, or a disturbance of or interference with its proceedings. Contempts by resistance to the process of a court, such as the refusal of a sheriff to return a writ, or wilful disobedience of a rule or order, such as the non-payment of money, or the non-execution of a deed; or interference with the proceedings of a court, such as a comment upon an action pending which is calculated to pervert the course of justice, are punishable by attachment. But contempts committed in the presence of a court of record, such as a wilful obstruction of the proceedings, or insolent conduct or demeanour, may be punished by the judge forthwith either by fining the offender or committing him to prison.

Disobedience of an order of Court is perhaps the most common form of contempt, arising most frequently where a party is ordered under the DEBTORS ACT (*q.v.*) to pay a debt, or is ordered to pay over money which he holds as a trustee, or to execute a deed of conveyance in an action for specific performance of a contract for sale. This power of attachment is necessarily inherent in a superior court of law, for otherwise it would often be impossible for the judgments or orders of the Court to be enforced.

Contempt in the form of comment by third parties upon a pending action is not by any means unknown in these days of personal journalism,

though the cases that have been brought before the courts have not been very numerous. Contempt of this nature goes perilously near an infraction of the criminal law, it being an indictable offence to write and publish anything which is calculated to pervert the course of justice; only recently an editor and his reporter were each imprisoned for publishing the results of their independent investigations into a crime the trial of which was at the time pending, and which publications were held to inflame and prejudice the public against the accused. But to return to civil contempt, it has been laid down by Lord Hardwicke that even if there is no misrepresentation of facts, and the Court is spoken of with great respect, such a colourable comment will not impose upon the Court. There cannot be anything of greater consequence than to keep the streams of justice clear and pure, so that parties may proceed with their action with safety both to themselves and their characters. It is accordingly a contempt of court to abuse parties who are concerned in pending actions, or generally to prejudice the public against them before the action is heard. Lord Romilly has adverted to this subject in the following terms:—

"The principle is quite established in all these cases that no person must do anything with a view to pervert the sources of justice or the proper flow of justice; in fact, they ought not to make any publications, or to write anything, which would induce the Court, or which might possibly induce the Court or the jury, the tribunal that will have to try the matter, to come to any conclusion other than that which is to be derived from the evidence in the cause between the parties; and certainly they ought not to prejudice the minds of the public beforehand by mentioning circumstances relating to the case."

CONTRABAND.—This word, in its most extensive signification, comprises all commerce carried on against the laws of a state; but it is applied more particularly to contraventions of revenue laws which prohibit or restrict the importation of foreign merchandise. Such a particular contravention is popularly called smuggling; the name contraband is applied, however, to merchandise itself when made the subject of SMUGGLING (*q.v.*). Up to so recent a period as the last generation, the practice of smuggling was one very universally approved by the popular mind, notwithstanding the existence of the personal danger by which it was attended, and the fact that the law constituted it an offence punishable most severely. The reason for this sympathetic view probably lay in the fact that the general public had an instinctive dislike to governmental interference with, and restriction of trade, and had moreover a more or less ignorant prejudice against taxation—especially when it was levied directly upon commodities for the most part used as food. To-day, however, public sentiment has changed, and this change, together with the remarkable vigilance of the customs authorities, has practically put an end to smuggling as a form of trade in itself. But there still exists the occasional amateur smuggler, the child of modern facility for foreign travel, who never feels that his foreign journey has been a complete success unless he has smuggled, or attempted to smuggle, a few unsmokable cigars, or other articles of a similar character. *See* CUSTOMS.

We will now set out a list of commodities, of which the **importation is prohibited or restricted**, and which therefore come within the definition of contra

bind when dealt with against the provisions of the law. The following are absolutely prohibited from being imported:—*Books*, which were first composed, written, or printed in the United Kingdom, in which copyright subsists, and which have been printed or reprinted in any other country. The proprietor of a copyright, who fears the importation of foreign reprints, should give written notice of his proprietorship to the Commissioners of Customs, and stating the date when the copyright will expire. The importation of books, the copyright of any of which is protected under the International Copyright Act, 1886, is also prohibited. And coming under the head of books are copyright musical songs or pieces, foreign reprints of which are often imported through the post-office, bound up or enclosed with non-copyright compositions. Repetitions, copies, or imitations of copyright paintings, drawings, or photographs are included in the prohibition. *Clocks and watches*, or any other article of metal impressed with any mark or stamp representing or in imitation of any legal British assay, mark, or stamp, or purporting by marks or appearance to have been manufactured in the United Kingdom, may not be imported. *Coin*, false money, or counterfeit sterling; also silver coin of the realm, not being of the established standard in weight or fineness, are prohibited. Except coins coined in any foreign country and carried on the person, or in the baggage of passengers, so long as the quantity so carried does not, in the judgment of a customs officer, exceed the reasonable requirements of an individual; but there is no restriction at all upon the importation of foreign gold and silver coins. Coin in imitation of, or bearing a resemblance to British coin, may not be imported, except for the purposes of knowledge or art, or any exhibition or collection, or for any lawful purpose. *Coffee, chicory, tea, or tobacco*, in essence, extract, or concentrated form, or any admixture thereof. Under this rule, essence of coffee and milk is prohibited; and also coffee seeds, unless they contain germs, and are intended for use as seed only. *Indecent or obscene* prints, paintings, photographs, books, cards, lithographic or other engravings, or any other indecent or obscene articles, are kept out of the country. Match-boxes are specially looked for by the customs officers. *Infected cattle*, sheep, or other animals, or the carcases or parts thereof, are prohibited; and so also are *tobacco stalks*, snuff-work, tobacco stalk flour, or tobacco cut and compressed by mechanical or other means. *Foreign prison-made goods*, and goods made or produced wholly or in part in any foreign gaol, house of correction, or penitentiary, may not enter the country unless such goods are of a description not manufactured in the United Kingdom, or are merely in course of transit, or are not imported for the purposes of trade. *Nitro-glycerine* may only be imported under the conditions specified in the Explosives Acts. The Merchandise Marks Act, and the Margarine Act, also prohibit the importation of goods where the marking thereof is illegal and in contravention of those Acts. *Spirits, wine, tobacco, cigars, cigarettes, and snuff* are also prohibited, except subject to elaborate restrictions interesting to the wholesale importer only. *Fictitious postage stamps*, and any die, plate, instrument, or materials for their manufacture, may not be imported; nor even studs (unless approved by the Customs officials) which bear a representation of a postage stamp. *Lotteries:* any advertisement or other notice of, or relating to, the drawing of any lottery, which is sent for the purpose of publication in the United Kingdom, in contravention of the Lotteries Act, 1836, or any other Act relating to foreign lotteries, will be confiscated.

Prohibitions and restrictions on exportation.—*Explosives* must be exported according to the conditions contained in the Explosives Act; and *salmon*, in compliance with the Salmon Fishery Acts for the time being in force. *British or Irish spirits* cannot be dealt with in cask of less capacity than nine gallons each; and *tobacco* may be exported from only certain specified places. *Arms*,

ammunition, gunpowder, military and naval stores, guns, fowling pieces, and gun-stocks, require generally an entry before shipment, and inquiry should be made as to the prohibitions and restrictions on their exportation for the time being. Penalty for a breach is £100, and forfeiture.

Leaving contraband of revenue, some notice should be taken of that form of contraband a subject of international law and known as **contraband of war.** Under this denomination may be classed in general all those things which serve a particular purpose in warfare, and which may be used directly in attack or defence. The conveyance by a neutral of such things to one of the belligerents in a war is regarded as an illicit act. It is the general custom, at the commencement of a war, for both the belligerents and the neutrals to declare what commodities will be regarded as contraband of war. There is a great divergence of opinion between the different states with regard to the classification of articles as contraband or otherwise; so great is this divergence that it is impossible to determine with precision, and as a general rule of law, what goods the traffic in which should be absolutely restricted in time of war. With regard to arms, munitions of war, and in fact all the articles of military pyrotechnic, there is no difficulty—these are always and under all circumstances prohibited and considered to be contraband. Steamers and steam-engines are also generally prohibited; but coal not always, or by all states. But it is a general opinion amongst international lawyers that such commodities as corn and other alimentary goods are not properly the subject of contraband, prohibition of their conveyance being enforced only in cases of blockade and in respect to places blockaded. Troops are in the same category as munitions of war, and consequently a neutral may not transport soldiers, marines, sailors, or others, in order that they may form the forces of a belligerent; and with very good reason a neutral may not carry despatches or messages for a belligerent. In respect to unmanufactured materials, it is often a difficult question to determine whether such are contraband. The only means of arriving at its solution is to consider the character of the materials and that of the articles usually manufactured therefrom.

A belligerent has the right to capture contraband destined for its enemy. It is not sufficient that the goods are merely the subject of negotiation for conveyance; they must be actually in course of conveyance to the enemy in order that their confiscation may be regular. And neutral powers are themselves under an obligation not to identify themselves with a traffic in contraband; but apart from this general obligation upon states as such, the regulation or prohibition of traffic in contraband by these subjects is a matter solely for the domestic law of states. In short, private commerce in contraband is a risk which may be carried on by any individuals whatever, subject first to any particular laws on the subject imposed in their own state, and secondly to the risk of failure in their enterprise and the consequent suffering of the penalties recognised by international law for engaging in contraband traffic. *See* BLOCKADE.

CONTRACTOR.—A contractor is a person who is bound by contract to perform some labour or act and do some work for another, who is called his employer. A contract may be constituted by a tender on the part of the

contractor and its acceptance by the employer, even though the acceptance refers to a formal contract to be subsequently executed. It is important to know whether in a particular case there has been a sufficient actual tender and acceptance to constitute a binding contract. The principles upon which a decision can be arrived at are set out in the article on CONTRACT, but it will not be without use to refer here to a few illustrations of the point. A butcher seeing an advertisement by a certain Board of Guardians inviting tenders for a supply of meat for a workhouse for three months, wrote to the guardians as follows: "I propose to supply your house with meat according to advertisement for the next six months at 6d. per pound." His proposal was accepted, but upon being informed that he had been appointed butcher to the board, he forthwith declined the appointment. Litigation ensuing, it was decided that in that case the transaction amounted merely to a proposal for a contract, and that there was no binding contract until a written agreement had been signed. On the other hand, a complete contract has been held to have been created in the following cases:—(*a*) Where A. having sent in a tender to do work for B., to which B.'s agent replied, accepting the tender, and saying, "The contract will be prepared by, &c."; and (*b*) Where the employer met B. and several other would-be contractors, in order to receive tenders relating to certain work, and to whom he read a specification thereof, and B. afterwards handed in a tender signed with his name, but of which there was no evidence that it was in his handwriting.

Unless there is a custom to that effect in the particular trade, there is no implied undertaking in an advertisement for tenders that the lowest will be accepted. Any agreement between a class of traders or manufacturers not to make certain tenders, and arranging how the offers therefor shall be dealt with by them for their mutual advantage, is not void, either as against public policy or for want of equity; more than that, an action may be maintained for a breach of the agreement.

In undertaking a contract in the line of his business or art, the contractor impliedly represents and undertakes that he possesses a skill and ability reasonably requisite to the performance of the task. Thus a valuer of ecclesiastical buildings, *e.g.*, would be required to possess a knowledge of the general rules and practice applicable to the subject; and in like manner a patent agent would be expected to know the law relating to the practice of obtaining patents. A contractor must also make any reasonable experiments and trials which may be necessary as a proper preparation for the execution of the work; an engineer, for example, who has to erect a bridge and make a road, should ascertain for himself and properly test the nature of the soil. To fail in the exercise of a reasonable degree of care and skill would be to render himself liable to an action for damages for negligence. The intervention of an act of God is sufficient to excuse the non-performance of any contract in the nature of one for personal service, even if the contract is absolute and unconditional in its terms. Thus a contract with a musician to play on certain specified occasions is subject to the implied proviso that he is not then disabled by illness not caused by his own default. A workman may not do his work in a way practically useless, simply because it is impossible to do it otherwise; his duty is to first give notice of the circumstances to his employer, and receive his instructions. A person asking for tenders

and preparing plans and specifications for the information of intending contractors, does not thereby enter into an implied warranty that the work can be successfully executed according to the plans and specifications. A contractor under such circumstances could not therefore obtain damages if it turned out that the work could not be executed according to the plans and specifications; his only remedy would apparently be an action for compensation for the work he had actually done.

If under all the circumstances of the case it is obvious that the work contemplated in a contract is bound to be completed by the date for completion named in the contract, the time so specified for completion will be considered to be of the essence of the contract, and the contractor will be responsible in case of delay. If the provision as to the time for completion is specifically stated as being of the essence of the contract, or if a specific penalty is attached to non-performance within the stated time, the contractor would be undoubtedly liable in respect of his non-performance within the time mentioned. The penalty for non-performance may be in the nature of a certain stipulated rate of damages, and also of a rescission of the contract. Should the employer break the condition as to the time for performance, or himself by his interference, or by that of his agent, cause the delay or the greater part of it, or cause extras or additions to be done to the work when the latter was by the contract of a fixed and determined quantity and nature, the contractor has a good excuse for non-performance of the contract in the specified time.

Property in Materials.—A clause in an ordinary building contract that all building and other materials brought by the builder upon the land should become the property of the landowner would not be a Bill of Sale. The question of the ownership of the materials is very important to both employer and contractor when either becomes a bankrupt, or when an execution is levied against the goods of either of them. In the case of a building contract it may be said that, apart from agreement, the materials are the property of the contractor if they have not been supplied by the employer, and until they are actually incorporated in the premises in course of erection. Everything affixed to the land becomes the property of the landowner. This rule would apply in other forms of contract where a structure is being affixed to the land. If materials are supplied by the employer to the contractor for the latter to work with, and to produce a specified article, the property in the materials and in the article when completed would be in the employer, subject to the contractor's lien thereon for his remuneration.

A contractor supplied materials to a railway company for the purpose of carrying out his contract. The latter contained provisions—(*a*) that the materials brought upon the railway should immediately become the absolute property of the company, except that they were to remain under the dominion of the contractor; (*b*) that if he should duly complete his contract, the company would give to the contractor, as part of his payment, the unconsumed materials; (*c*) and that if instead of the contractor the company should use the materials, the company would compensate him in respect of them. The terms of this contract were held not to make the materials so absolutely the property of the company as to be seizable by the sheriff under an execution upon a judgment against the company. Take another case; but this time

one in which certain materials were held not to be liable to be taken in an execution levied against the goods of the contractor. B. was the contractor and A. the employer, and clause 7 of the contract stated that all materials brought on the premises by B. for building purposes were to be considered as immediately attaching to and belonging to the premises, and were not to be removed therefrom without the consent of A. By an eighth clause in the same contract A. was empowered to enter upon and take possession of the land, with all buildings and other materials standing thereon, if B. should fail to proceed with the completion of the work. But notwithstanding the eighth clause, A. was held to have such an equitable interest in the materials for the buildings brought afterwards on the land by B. as to justify their exemption from seizure under an execution against B. as above stated. And so in the case of a contract which provided that all plant brought by the contractor upon the works should be deemed to be the property of the employer, and that in case of suspension of the works, or of the works being taken out of the hands of the contractor, the plant should be subject to be used by the employer in the completion of the works. Here, in bankruptcy proceedings, it was held that the contract gave the employer no property in the plant, but only a right of user.

Remuneration.—The mode and rate of remuneration should be stated in the contract. It is therefore only special cases that need claim our attention. Services, however long continued, do not create a claim for remuneration in the absence of a bargain for them, express or implied, from circumstances showing an understanding on both sides that there should be payment. The employment of a professional person, or any business man, implies an undertaking to remunerate him; but the implication may be rebutted by the circumstances in any particular case. A fraudulent intent on the part of the employer, at the time of the employment, not to pay, does not relieve him from his liability to do so. To promise a present to a business man for services to be rendered is equivalent to promising to pay him. But when one man employs another to do work for a third party, for whose benefit it is known the work is to be done, and the third party gives instructions about it, the latter is liable for payment; the first party is not even *primâ facie* liable, and can only be made to pay upon evidence that he led the employé to believe that he, and not the third party, was solely liable. Should an employer induce a contractor by misrepresentation to enter upon a certain work at a specified price, the contractor can only receive that price; he should throw up the contract directly he discovers the fraud and sue the employer for damages for deceit. If a contractor undertakes a work of specified dimensions and with specified materials, and deviates from the specification, he can only claim the agreed price, less the sum necessary to complete the work according to the specification. If he should put in materials of a better kind than those stipulated for, he cannot charge an additional price, nor can he require the article to be returned because the employer will not pay an increased price on account of the better materials.

Where the agreement is that the contractor does a specified work and supplies the materials for a specific sum to be paid upon completion, he is entitled to nothing at all until the work is completed, unless the completion is proved to have been prevented by the default of his employer. It has

already been pointed out that a contractor for personal services would be exonerated from performance by the intervention of an act of God. It is often a nice question to decide whether the employer has or has not prevented completion, and whether the contractor has always been ready to complete; such a question would be one for a jury. In the case of bad work the employer may make proper deductions in respect thereof from the price payable to the contractor; but in such a case the work must not be bad only to a trifling degree, but must be substantially bad and defective. *See* BUILDING CONTRACT; and see also, as to his liability for wrongs, under NEGLIGENCE.

APPENDIX

ADVERTISEMENTS.—The exhibition of advertisements is now regulated by bye-laws made by local authorities under the powers conferred by the Advertisements (Regulation) Act, 1907. The subject-matter of these bye-laws is: (i.) to regulate and control hoardings and similar structures used for the purpose of advertising when they exceed twelve feet in height; (ii.) to regulate, restrict, or prevent the exhibition of advertisements in such places and in such manner, or by such means, as to affect injuriously the amenities of a public park or pleasure promenade, or to disfigure the natural beauty of a landscape. Hoardings and similar structures in use for advertising purposes at the time of making the bye-laws, or any advertisements exhibited at that time, are exempt from the operation of such bye-laws for such period, not being less than five years from that time, as a local authority may think fit. In Scotland a local authority has power, in addition to the foregoing, to prevent the affixing or otherwise exhibiting advertisements upon any wall, tree, fence, gate, or elsewhere on private property, without the previous written consent of the owner or occupier or some other sufficient legal authority. An offender against a bye-law made under the above-mentioned statute becomes liable, on summary conviction, to a penalty not exceeding £5, and to a penalty not exceeding 20s. for every day during which the offence is continued after his conviction thereof. *See* SKY-SIGNS.

AGRICULTURE (*see* also article in Vol. I.).—The new provisions of the Agricultural Holdings Act, 1906, together with the various Acts from 1883, are now consolidated in the Act of 1908. The general law is contained in the original article. An Act of 1905 contains provisions making a railway company liable for fires caused by sparks from engines, with power for the employees of the company to enter upon any land to extinguish such fire; the claim must be sent within seven days, with particulars of damage in fourteen days.

By the Act of 1906, which came into force on the 1st of January 1909, and the provisions of which are now substantially re-enacted in the Act of 1908, which repealed it, the tenant is compensated for an improvement in such a sum as fairly represents the value of the improvement to the incoming tenant. All questions which under the Act, or the contract of tenancy, are referred to arbitration, are to be taken before a single arbitrator. The arbitrator, on the application of either party, is to specify the amount awarded for any particular improvement or matter, and the award must fix a day between one and two months after, for the payment of the compensation and costs.

Ground game.—If the tenant has suffered damage to his crops from ground game, the right to kill not being vested in him, nor any one claiming under him, other than the landlord, the tenant not having permission in writing to kill, he is entitled to compensation from the landlord, if the

damage is over one shilling per acre of the area damaged, and any agreement to the contrary or in limitation of such compensation is void. The amount, in default of agreement, is to be fixed by arbitration, but nothing can be recovered unless notice in writing is given to the landlord as soon as possible after the tenant becomes aware of the damage, and opportunity is given to the landlord to inspect. This opportunity to inspect must be afforded—(*a*) in the case of growing crops, before being reaped, raised or consumed, and (*b*) in the case of reaped or raised crops, before removal. Notice in writing of the claim, and particulars, must be given within one month of the end of the year, or the end of a period of twelve months, as agreed. If the landlord can prove that, under a tenancy commencing before the Act, the compensation is payable by him, or the rent was fixed allowing for an agreed amount as compensation, the arbitrator may make the appropriate deduction from the amount otherwise payable. Where the right to kill is vested in some other person, the landlord is to be indemnified against all claims for compensation. "Game" includes for this purpose deer, pheasants, partridges, grouse and black game.

Cropping. — Notwithstanding any custom or contract of tenancy or agreement as to cropping or the disposal of crops, the tenant can practise any system of cropping, and dispose of the produce without incurring any penalty, forfeiture, or liability. But this right of the tenant can be exercised only when he has made, or as soon as possible makes, provision to protect the holding from injury or deterioration, by returning to the holding the full equivalent manurial value of all crops sold or removed in contravention of the contract or agreement. And the right does not extend to a tenancy from year to year, before the tenant quits, or any period, after notice to quit has been given or received which results in his quitting; or, in any other case, in regard to the year before the expiration of the tenancy. Should the tenant act so as to injure or deteriorate the holding, or be likely to do so, the landlord, without prejudice to any other right, can recover damages for this at any time, and if necessary obtain an injunction. In default of agreement such damages are to be settled by arbitration. The tenant is not entitled to compensation for improvements made to protect the holding from injury or deterioration under the Act. This cropping does not apply to grass land, which by the terms of tenancy is to be retained as grass land throughout the tenancy.

Unreasonable disturbance.—If the landlord, without good and sufficient cause, and for reasons inconsistent with good estate management, terminates the tenancy, or refuses to renew after request in writing at least one year before the expiration of the tenancy, or where it is proved that an increased rent is demanded because of the increased value from the tenant's own improvements, and the tenant quits, the latter is entitled to extra compensation, besides any compensation for improvements, and notwithstanding any agreement, for loss or expense unavoidably incurred through the sale or removal of his household goods, farm implements, produce or stock used in connection with his holding. But to recover compensation under this section the tenant must—(*a*) give the landlord a reasonable opportunity to value such goods, implements, produce, and stock; (*b*) two months after notice to quit or refusal to renew give the landlord notice in writing of his intention to claim

under this provision. If the tenant has died within three months before notice to quit or refusal to renew a lease "for years," or the claim for compensation is not made within three months after quitting, no compensation is payable. Any differences, in default of agreement, are to be settled by arbitration.

In regard to market gardens, the provision for compensation for improvements is to apply to improvements executed before the dates of the Market Gardeners Acts, as well as to improvements executed after those dates. The consent of the landlord is not required for repairs to buildings necessary for the proper working of the holding, other than repairs which the tenant is under obligation to execute, but the tenant must give the landlord notice in writing before beginning such repairs, with particulars, and he can do them only if the landlord fails to do so within a reasonable time.

At the beginning of any tenancy, after the 1st January 1909, if either party so requires, a record of the condition of the buildings, fences, gates, roads, drains, ditches, and cultivation is to be made, three months after the commencement of the tenancy, by a person appointed, in default of agreement, by the Board of Agriculture, the cost in such case to be borne equally by the landlord and tenant.

ALIENS (*see* also article in Vol. I.).—The Aliens Act, 1905, and the regulations made thereunder, provide that an immigrant is not to be landed in Great Britain except at a port where there is an immigration officer. The function of this officer is to inspect the immigrants on board the ship, or on shore, if they are conditionally disembarked, and to grant leave to land or refuse the immigrant as undesirable. If the immigrant is refused, the master, owner, or agent of the ship, or the immigrant himself, can appeal to the Immigration Board of the port, and the Board can give leave to land or refuse the immigrant.

An undesirable immigrant is one who (*a*) cannot show that he has or can obtain the means to decently support himself and his dependants, if any; (*b*) is lunatic, idiot, or diseased, and likely to become a charge on the rates, or otherwise be a detriment to the public; (*c*) has been sentenced in a foreign country, with which we have an extradition treaty, for a non-political crime which would come under the Extradition Act of 1870; (*d*) has had an expulsion order made in his case.

Political refugees, &c.—If the immigrant proves that "he is seeking admission to this country solely to avoid prosecution or punishment on religious or political grounds, or for an offence of a political character, or persecution involving danger of imprisonment, or danger to life or limb on account of religious belief," then want of means, or the probability that such person will be a charge on the rates, is not to prevent leave to land being given. Also, where the immigrant has resided six months in Great Britain, and then left for a foreign country, and has been refused leave to land there, on his return after such refusal he will be allowed to land; or if such immigrant was born in Great Britain, and his father was a British subject.

Expulsion orders.—The Secretary of State can make an order for expulsion in the following cases: (*a*) if there is a certificate from any Court that the alien has been convicted of felony, misdemeanour, or any offence, including imprisonment without the option of a fine, or under the Burgh Police (Scotland) Act, 1892, the Towns Improvement (Ireland) Act, 1854, and the

Metropolitan Police Act, 1839, the Court can recommend expulsion as an addition or in lieu of sentence; (*b*) if a certificate is given in a Court of Summary Jurisdiction, in proceedings within twelve months of the alien's last entry into the country, that he has, within three months before the certificate, been in such receipt of parochial relief as would disqualify for franchise, or has been found wandering without visible means of subsistence, or living under insanitary conditions due to overcrowding; (*c*) if the alien has entered the country after the date of the Act, and has been sentenced for a non-political crime which is extraditable. If an expulsion order is made, the Secretary of State can pay all expenses of sending the alien back; but if the order is made within six months of the alien being disembarked, the master of the ship or of any ship belonging to the same owner must pay the expenses, and give a free passage back to the alien and his family.

Immigrant ships.—All ships bringing twenty or more (for some time this was fixed at twelve or more, but has been again raised to twenty) alien steerage passengers are "immigrant ships." First-class passengers are exempted, but where there is only one class the ship comes within the Act. There is also an exception as to second-class passengers, where there is a proper system of inspection at the port of embarkation, or security is given by the ship or shipping company, or only transmigrants are carried. Then an order of exemption from inspection is granted. This applies to alien second-class passengers who pay the excess of fare on the ship, or alien third-class rail and second-class on the ship, but alien third-class rail, and deck or steerage on the ship, still remain subject to inspection. *Ports of entry.*—The ports of entry are Cardiff, Dover, Folkestone, Grangemouth, Grimsby, Harwich, Hull, Leith, Liverpool, London (including Queenborough), Newhaven, Southampton, and the Tyne ports (comprising Newcastle, North Shields, and South Shields, which are to be deemed one port). Other ports may be added from time to time. *Alien seamen.*—Seamen who have actual contracts to join a ship in British waters are exempt, but not if they are only seeking for employment. Distressed seamen sent home by a British Consul are also exempt.

Bonds.—Security must be given—(1) when the aliens are conditionally disembarked before inspection; (2) where exemption of the ship from inspection is granted; (3) in the cases of transmigrants. There must be one principal to the bond and two sureties, and the amount, where conditional disembarkation is desired, is from £500 to £1000, and where exemption from inspection, or for transmigrants, the amount is £2000 to £5000. On the breach of any bond the penalty is £20 per alien emigrant.

Penalties.—If the alien immigrant refuses to give information, he can be sentenced to three months' hard labour. The master of the ship is liable, on summary conviction, to a fine of £100. For a false statement or representation the immigrant, master, or other person is liable to three months' hard labour. The provisions of the Merchant Shipping Acts as to courts, jurisdiction, and distress (for fines) apply to the Aliens Act.

Procedure.—On arrival the master produces the full return of all alien passengers on board, giving the different numbers of exempted and alien steerage passengers. He then signs the return in the presence of the immigration officer, who boards the ship at the earliest opportunity. The

exempted aliens (cabin passengers) are allowed to land. The officer then verifies the number of transmigrants and those possessed of through tickets. This may be done after conditional disembarkation. The officer and medical inspector, accompanied by an interpreter, then examine the alien steerage passengers, and the officer grants leave to land, which may be done verbally, or refuses the immigrant. If the medical inspector will not pass the immigrant, he fills up a form and hands it to the officer, who refuses the immigrant, and hands a counterpart refusal to the master and immigrant, containing grounds of refusal and notice of right to appeal. If the master, owner, or immigrant wish to appeal, verbal notice can be given to the officer before he leaves the ship, or in writing by the master, owner, or agent within twenty-four hours to the officer, or at the Custom House or Customs Watch House of the port. The amount of means justifying refusal is under £5 for each alien immigrant and £2 for each dependant, which sum must be apparently the property of the alien, and not furnished to him for the purpose of his being allowed to land, or he must prove he can obtain that sum. The alien fills up a form giving his means, trade, or occupation, and the immigration officer has to consider the state of the labour market in that trade, unless the alien has a definite offer of work at a fair wage.

The immigrant officer sends notice of refusal to the Immigration Board Clerk, who summons a Board. The clerk keeps a list of those appointed to act on the Immigration Board, attends the meetings, keeps the minutes, and makes returns to the Secretary of State, and furnishes a report of any question referred to such Secretary of State, with statements by the parties. The Board must be summoned twenty-four hours after the notice, a magistrate, where possible, taking the chair. Notice is given to the parties and the medical officer, and leave to land granted or refused.

The returns by the master of the ship must distinguish—(1) transmigrants; (2) alien steerage passengers; (3) other alien passengers. Separate forms are in use for the Channel crossings, and the returns for immigrant ships are to be given to the immigration officer, and those for non-immigrant ships, or all ships entering a non-immigration port, to the officer of customs for that port.

ANIMALS—*Cruelty.*—A fine of £25 is incurred, under the Protection of Animals Act, 1911, by any person who is convicted of cruelty to animals. Alternatively to the fine, or in addition, he may be imprisoned, with or without hard labour, for six months. There is cruelty where one (*a*) cruelly beats, kicks, ill-treats, over-rides, over-drives, over-loads, tortures, or terrifies any animal, or, being the owner, allows any such thing to be done; or (*b*) allows any animal to be conveyed or carried in such manner or position as to cause unnecessary suffering to it; or (*c*) is concerned in any way, even as occupier of premises, in the fighting or baiting of an animal; or (*d*) allows an animal to be given or take a poison or injurious substance; or (*e*) is concerned in an operation on an animal which is performed without due care and humanity. An owner, who is guilty only because he has failed to exercise reasonable care and supervision in respect of the protection of a particular animal, is not liable to imprisonment without the option of a fine. No offence is committed, it should be noted, where the act is done

in the course of the destruction, or the preparation for destruction, of an animal as food for mankind, unless unnecessary suffering is also inflicted. Nor is there an offence in coursing or hunting a captive animal, unless it is liberated in an injured, mutilated, or exhausted condition.

The destruction of an animal may be ordered by the Court where the owner is convicted of cruelty. But this can be done only where the Court is satisfied, upon the evidence of a veterinary surgeon, that it would be cruel to keep the animal alive. The costs of destruction are payable by the owner. And where there has been a previous conviction, or there is evidence as to the character of the owner that the animal, if left with him, is likely to be exposed to further cruelty, the Court may deprive him of his ownership and dispose of the animal as it thinks fit.

Impounded animals must be supplied by the impounder, under a penalty of £5, with a sufficient quantity of wholesome and suitable food and water. Default in this matter for six successive hours, or longer, confers a right upon any person to enter the pound for the purpose of supplying the animal forthwith. There is also a penalty for employing, or allowing to be employed, dogs for the purpose of drawing or helping to draw a vehicle on a public highway. Traps for catching hares or rabbits must be inspected, by some competent person, at least once a day between sunrise and sunset—penalty for default £5.

Injured Animals, or diseased animals, which cannot be removed without cruelty, may be slaughtered on the highway by order of a police constable, on the certificate of a veterinary surgeon if one resides within a reasonable distance. The expenses are recoverable from the owner. In this connection the expression "animal" means any horse, mule, ass, bull, sheep, goat, or pig.

Definitions.—"Animal" means any domestic or captive animal. "Domestic animal" means any horse, ass, mule, bull, sheep, pig, goat, dog, cat, or fowl, or any other animal of whatsoever kind or species, and whether a quadruped or not, which is tame, or which has been or is being sufficiently tamed, to serve some purpose for the use of man. "Captive animal" means any animal (not being a domestic animal) of whatsoever kind or species, and whether a quadruped or not, including any bird, fish, or reptile, which is in captivity, or confinement, or which is maimed, pinioned, or subjected to any appliance or contrivance for the purpose of hindering or preventing its escape from captivity or confinement. "Horse" includes a mare, gelding, pony, foal, colt, filly, or stallion; "bull" includes a cow, bullock, heifer, calf, steer, or ox; "sheep" includes a lamb, ewe, or ram; "pig" includes a boar, hog, or sow; "goat" includes a kid; "dog" includes a bitch, sapling, or puppy; "cat" includes a kitten; and "fowl" includes a cock, hen, chicken, capon, turkey, goose, gander, duck, drake, guinea fowl, peacock, peahen, swan, or pigeon.

APPROVED SOCIETIES.—An approved society is one, *e.g.* a Friendly Society or a Trade Union, whose constitution complies with the requirements of the National Insurance Act, 1911, and is accepted by the Insurance Commissioners, and whose members pay for and receive their benefits under the Act through and under the administration of the society. In order to obtain the status of an approved society certain conditions must be fulfilled. The society must—(1) possess absolute self-government; (2) not work for a profit;

(3) elect its committees and representatives by the members in accordance with the statutory conditions: (4) possess a minimum number of 10,000 members (5,000 for Ireland) who are persons insured under the Act; (5) provide for both local and central control of medical attendance and sick benefit, and for appeal to arbitration on questions arising under the Act; (6) give security; (7) keep separate accounts for the State scheme: (8) comply generally with the requirements of the Act.

A society, on becoming an approved society, is not required to apply any of its existing funds for the purposes of the State scheme, and does not sacrifice its independence in the selection of new members. The consequent Government inspection, audit, and periodical valuation aims at a strengthening of its position in the interest of all its members. Societies having a smaller membership than the above-mentioned minimum may associate themselves with other societies similarly situated with a view to forming an association, with a central body, qualified for acceptance as an approved society. Such association is not intended to diminish the independence of the constituent societies, but should, on the contrary, strengthen it. Superannuation Funds established by employers may, without regard to the requisite minimum of membership, become approved societies.

About 4,500,000 people belong to societies which now have the opportunity to become approved societies. As this is but a small part of the great number outside it is obvious, in view of the special advantages that an insured person derives through membership of an approved society, that these friendly societies will obtain, as a consequence of the Act, a considerable and increasing adhesion of membership. An approved society may continue to select membership from the point of view of health, but it will no longer be entitled to make a condition as to age. This cannot injure it, as under the Act there will be an adequate compensatory credit. Societies gain by accession to the ranks of approved societies mainly by the fresh reserves with which they will be credited under the Act. Members gain inasmuch as their wage-deducted contributions to the Act are credited to the society, the latter paying the members their benefit under the Act, leaving only a small balance necessary to be paid by the members in order to participate in the proportionately larger benefits of the society. And *see* INSURANCE COMMITTEES and NATIONAL INSURANCE.

BILLETING.—The keeper of a victualling-house is entitled to be paid for the accommodation for any soldiers billeted upon him at the following rates per each person: Lodging and attendance where meals furnished, 6d. per night; breakfast, 4d.; dinner, 11½d.; supper, 2½d.; where no meals furnished, lodging and attendance, and candles, vinegar, salt, and the use of fire, and the necessary utensils for dressing and eating his meat, 6d. per day; stable room and 10 lbs. of oats, 12 lbs. of hay, and 8 lbs. of straw per day for each horse, 1s. 9d.; lodging and attendance for officer, 2s. per night. *N.B.* An officer must pay for his food.

CAB.—The fares of cabs fitted with taximeters are now fixed, in London, by the Home Secretary. If horse cabs, the fare fixed must not be less than at the rate of sixpence per mile so far as the fare is fixed on the basis of distance, and of sixpence per twelve minutes so far as the fare is fixed on the basis of time, and so that no fare is less than sixpence

The privileged cab system has now been abolished in the metropolis by the London Cab and Stage Carriage Act, 1907. Section 2 (1) of that Act runs: "In the admission of cabs to a railway station, or in the treatment of cabs while in a railway station, the company having control of the station shall not show any preference to any cab, or give any cab a privilege, which is not given to other cabs; and where any charge is made in respect of the admission of any cab to a railway station for the purpose of plying for hire therein, the charge made shall not exceed such sum as may be allowed by the Secretary of State." The operation of that section may be suspended by the Home Secretary, with conditions if necessary, in respect of a particular station if he is satisfied that otherwise it would be impossible to obtain a sufficient supply of cabs at the station for the proper accommodation of the public. Notwithstanding this abolition of the privileged system a company has power to make regulations or conditions for the purpose of maintaining order or dealing with the traffic, including regulations as to: (i.) the number of cabs to be admitted at any one time; (ii.) the rejection of cabs and drivers unfit for admission; and (iii.) the expulsion of any cabman who has been guilty of misconduct, or of a breach of the company's bye-laws or regulations.

CHILDREN (EMPLOYMENT OF).—The Employment of Children Act, 1903, provides that no child shall be employed between the hours of 9 P.M. and 6 A.M. unless the local authority by bye-laws varies these hours generally or for a specified occupation; that no child under eleven is to be employed in street trading; that a half-timer under the Factory Act must not have any other occupation; and that no child may be employed to lift, carry, or move such weights as may cause injury, or work at any occupation likely to be injurious to its life, limb, health or education, having regard to its physical condition. The local authority can send a certificate, signed by a registered doctor, to the employer giving a specified weight, or stating the occupation is likely to be injurious, and this certificate will be evidence in any subsequent proceedings. By the term "child" is meant any one under fourteen years of age. "Local authority," in England, means the Common Council for the City of London, any borough over 10,000 population, any district council over 20,000, and the county councils; in Scotland, the School Board, except for bye-laws, when any borough over 7000, and the county councils; in Ireland, any district council over 5000 and the county councils.

Bye-laws.—Any local authority may make bye-laws—(1) prescribing for all children or boys and girls separately, and in regard to all occupations or any specified occupation, the age below which, the hours between which, the daily and weekly hours beyond which, employment is illegal; (2) prohibiting or permitting, subject to conditions, employment in any specified occupation; (3) as to street trading by persons under sixteen—(*a*) prohibiting it unless under conditions as to age, sex, or otherwise, or under license; (*b*) regulating the granting, suspending, or revoking of such licenses; (*c*) fixing the days, hours, and places for such street trading; (*d*) requiring badges to be worn; (*e*) regulating the conduct of the street traders. The license or right to trade is not to be subject to conditions as to poverty or bad character.

Special regard is to be had to the undesirability of the employment of girls under sixteen in streets or public places.

The bye-laws are to be confirmed by the Secretary of State, the Secretary for Scotland, or Lord-Lieutenant for Ireland, not earlier than thirty days after the local authority have published them. The Secretary must consider all objections made to him by those affected. He may, before confirming, order a local inquiry. The bye-laws may apply to the whole of the local area or part only. Those by a county council are not to have effect in a borough within their area, if the latter is a local authority.

Penalties.—(1) For employing any one under sixteen in contravention of the Act or bye-laws, on summary conviction, first offence £2, subsequent £5. (2) For a parent or guardian conducing to the offence by wilful default or habitual neglect, a similar fine. (3) For any one under sixteen contravening as to street trading, first offence, 20s., subsequent £5, or if a child sent to an industrial school. (4) Or instead of an industrial school the child may be taken out of the charge of its guardians, and given in charge of some fit person until sixteen. (5) If the offence is committed by an agent or workman, he is liable as if he were the employer. (6) Where the parent is privy to a false or forged certificate, or has made a false representation as to age, he can be fined 40s. (7) The employer can on being charged, supply information so as to have the real culprit brought before the Court, and if satisfied of his due diligence, and want of knowledge of the offence, the other will be convicted, and not the employer. (8) If an inspector is satisfied the employer has used due diligence, and does not know of the offence, and it is in contravention of his orders, he can proceed against the actual culprit without first proceeding against the employer. The information must be laid within three months after any offence. A justice of the peace, on complaint of the officer of the local authority and on reasonable cause, can empower the officer to enter any place within forty-eight hours of the order and inquire as to the employment of any child therein. Any person refusing admission or obstructing is liable to a fine of £20. The bye-laws are not to apply to a child over twelve employed under the Factory Acts or the Mines Regulations Acts of 1872 and 1887. The inspectors under these Acts have the powers of the local authorities in this Act. Nor is the Act to apply to certified industrial or reformatory schools or manual instruction in any school.

The Prevention of Cruelty to Children Act, 1904, and *The Children Act*, 1908, provide a fine of £25, or in default or addition three months, for any one causing or procuring any boy under fourteen or girl under sixteen, or having the custody allows such—(*a*) in any street or premises for the purpose of begging, receiving alms, or inducing the giving of alms, under the pretence of singing, playing, performing, or offering for sale; (*b*) to be in any premises licensed for sale of intoxicating liquor, other than premises licensed for entertainments, for the purpose of singing, playing, performing, being exhibited for profit, or offering for sale between 9 P.M. and 6 A.M.; (*c*) if the child is under eleven, on licensed premises, whether for liquor or public entertainments, or a circus, or other place of amusement where entrance is paid for, or any street, for the purpose of playing, &c., as above; (*d*) if under sixteen, in any place to be trained as an acrobat, contortionist, circus performer or any dangerous exhibition or performance. But these provisions do not apply to entertainments for

the benefit of schools or charities not held on premises licensed for liquor, or if so under special exemption by two justices of the peace. The local authority may by bye-laws change the hours of 9 P.M. to 6 P.M. generally or specifically. A petty sessional court, or in Scotland the school authority, may grant a license under conditions for any child above ten—(*a*) to take part in entertainments on premises licensed therefor, or in a circus or other public place of amusement; (*b*) to be trained as above; or (*c*) for both purposes, if satisfied of the fitness of the child, and that there is proper provision for its health and kind treatment. The Court may add to, vary, or rescind any license. The inspector under the Acts of 1903 is required to see the conditions carried out, and can enter any public premises for that purpose. On application for a license, seven days' notice must be given to the chief of the police for the district, who can appear at the hearing and object. A copy of the license must be sent to the local authority under a penalty, on failure, of £5.

Employment under the Factory Act.—A "child" is any one under thirteen, or where no certificate of school attendance fourteen, and a young person is from that age to eighteen. A "young person" can only be employed from 6 A.M. to 6 P.M. or 7 A.M. to 7 P.M., with two hours for meals. On Saturday 6 A.M. to 12 A.M., and one hour for meals, or 12.30 in some cases, or 11.30 if only one half-hour for meals, or 12 in some cases, and from 7 A.M. to 12.30 or 1 P.M., with half-an-hour for meals; but no period must be over 4½ hours without an interval of half-an-hour for a meal. Children can only be "half-timers," beginning in the morning shift as above to 1 P.M. or dinner-time, or at 12 if the dinner-time is not till 2; in the afternoon shift, from 1 P.M., dinner-time, or 12 A.M. if the afternoon starts then, and end as for a young person. These shifts must be week about, and a child must not be employed on two successive Saturdays. If employed on the alternative day system then as a young person, but not on two successive days, or the same day on two successive weeks, nor more than 4½ hours at a stretch. These hours are varied slightly in non-textile factories, print works, &c.

Except during such periods the child cannot be employed in a business outside the factory on any day it is employed therein; or a young person when on both morning and afternoon shifts. This applies where work is given out to be done at home. The young person, both in factory and otherwise, must not work beyond the number of hours allowed above. The employer must fix up a notice giving the period of employment, the times allowed for meals, and whether the children are on morning and afternoon shifts or alternate days. If any change is to be made from the times specified in the notice, it can only be done once a quarter, by giving notice to the inspector and fixing up a copy. The inspector can give notice that the time must be regulated by a specified public clock or one open to view. The children and young persons must all have meals at the same time (with exceptions), and must not be employed or remain in a room where work is going on during meals, nor can they be employed on Sundays. Provision is made for annual holidays. There are many other details as to hours in different trades, such as employment of young persons in creameries for three hours on Sundays, the substitution of another day for Saturday, provisions as to Jewish workshops, overtime, and other matters too detailed to set out.

Provision is made for certificates of fitness of young persons and children, upon personal examination and signed by the examining surgeon, and provisions for the education of the half-timers.

By the Mines Act of 1900 no boy under the age of thirteen can be employed below ground. Under the Dangerous Performances Act of 1897 the age limit is extended to sixteen for a boy and eighteen for a girl.

Local education authorities have now statutory powers, under the Education (Choice of Employment) Act, 1910, to give boys and girls information, advice, and assistance with respect to the choice of employment.

CINEMATOGRAPH ENTERTAINMENTS.—These are now subject to the provisions of the Cinematograph Act, 1909. Statutory regulations have been made by the Home Secretary in regard to the character and disposition of the premises and the apparatus with a view to securing safety. These may be obtained from Messrs. Wyman & Sons at a cost of a few pence.

Exhibitions to which the Act applies are "picture or other optical effects by means of a cinematograph, or other similar apparatus, for the purposes of which inflammable films are used." In the case, therefore, of an exhibition produced by non-inflammable films the Act would not apply. Exhibitions in which inflammable films are used will now be lawful only when given (*a*) in compliance with the statutory regulations, and (*b*) in licensed premises. But the Act does not apply to an exhibition given in a private dwelling-house to which the public are not admitted, whether on payment or otherwise. Nor need the premises be licensed if they are used occasionally only, and not for more than six days in any calendar year for the purpose of exhibitions within the meaning of the Act; but where it is proposed to give an exhibition in such premises, the occupier must, at least seven days before the exhibition, have given a written notice to the local Licensing Council and the local chief of the police of his intention to use the premises, and he must have complied with the statutory regulations and also with any conditions imposed by the County Council and notified to him in writing.

The license.—The license is granted in a county borough by the Borough Council, and in a county by the County Council. The powers of a County Council may, however, be delegated to a District Council or to justices sitting in petty session. Such terms, conditions, and restrictions may be inserted into a license as, subject to the statutory regulations, a Council may think fit. They need not be limited to imposing conditions for securing safety, but may require the premises to be closed on Sundays, Good Friday, and Christmas Day (*London County Council* v. *Bermondsey Bioscope Co.*). The license is annual or for shorter period, at the discretion of the Council, unless previously revoked. It may be transferred. An applicant for a license or a transfer is required to give not less than seven days' written notice to the Council and the chief of the police, but such notice is not requisite on an application for the renewal of an existing license held by the applicant for the same premises. Fees may be charged on a grant, renewal, or transfer; but they must not exceed £1 in the case of a grant or renewal for one year, or, in the case of a grant or renewal for a less period, 5s. for every month for which it is granted or renewed, so, however, that the aggregate of the fees payable in any year shall not exceed £1, or, in the case of transfer, 5s.

Theatres.—Where the premises are licensed by the Lord Chamberlain,

the powers of the Council, under this Act, are as respects those premises exciseable by him instead of by a Council.

Moveable buildings.—It is not necessary to obtain a license for an exhibition in a building or structure of a moveable character from the Council of the county or borough in which a proposed exhibition is to be given, provided the owner of the building has already obtained a license for it from the Council in whose area he ordinarily resides. It is necessary, though, that the owner should give to the Council and chief of the police of the area in which he intends to give the exhibition at least two days previous written notice of his intention and comply with the statutory regulations, and, subject to such regulations, with any conditions imposed by the latter Council and notified by him in writing.

Penalties.—The owner of a cinematograph or other apparatus who uses it or allows it to be used in contravention of the provisions of the Act, or of the statutory regulations, or of the conditions or restrictions upon or subject to which any license to the premises has been granted under the Act, is liable to a substantial penalty. So, too, is the occupier of any premises who allows them to be used in like contravention. The penalty on summary conviction is, in each case, a fine not exceeding £20. In the case of a continuing offence, there is a further penalty of £5 for each day during which the offence continues, and the license (if any) may be revoked by the Council.

Power of entry.—With a view to seeing whether the provisions of the Act, or the statutory regulations, and the conditions of the license have been complied with, a constable, or an officer appointed for the purpose by a Council, may at all reasonable times enter a person's premises, whether licensed or not, in which he has reason to believe that a cinematograph exhibition is being or is about to be given. Any one who prevents or obstructs his entry is liable, on summary conviction, to a penalty not exceeding £20.

COLLECTING SOCIETIES.—Among the purposes for which collecting societies and industrial insurance companies may issue policies of assurance there are now included, by virtue of the Assurance Companies Act, 1909, insuring money to be paid for the funeral expenses of a parent, grandparent, grandchild, brother, or sister. And policies effected before the passing of that Act with a collecting society or industrial insurance company are expressly placed on the same footing, subject to certain considerations, as policies under the new Act. Thus it is provided that no such policy is void by reason only that the person effecting the policy had not, at the time the policy was effected, an insurable interest in the life of the person assured, or that the name of the person interested, or for whose benefit or on whose account the policy was effected, was not inserted in the policy, or that the insurance was not one authorised by the Acts relating to friendly societies. All this is subject, however, to the conditions that the policy was effected by or on account of a person who had at the time a *bonâ fide* expectation that he would incur expenses in connection with the death or funeral of the assured; and that the sum assured is not unreasonable for the purpose of covering these expenses. A policy of the foregoing character and satisfying these conditions duly ensures for the benefit of the person for whose

benefit it was effected, or his assigns. A collecting society having a membership of over one hundred thousand in number may be converted into a mutual assurance company. *See* INDUSTRIAL INSURANCE.

COMMON LODGING-HOUSE.—The registration of a common lodging-house keeper is now valid only for such time not exceeding one year as may be fixed by the local authority, but may be renewed from time to time. The deputy, too, must be registered. Either the keeper or deputy must manage and control the house and exercise supervision over those using it, and remain in the house between 9 P.M. and 6 A.M. Every house must be provided (i.) with sufficient and suitable sanitary conveniences, having regard to the number of persons who may be received in the house, and also where persons of both sexes are received in the house, with proper separate accommodation for persons of each sex; and (ii.) with a water supply laid on sufficiently flushing any water-closets or urinals which are used in the house. On conviction for non-compliance with the law the keeper or deputy may be punished and the registration cancelled.

END OF VOL. I.

Printed by Hazell, Watson & Viney, Ld., London and Aylesbury.